



Combatting Human Trafficking

***Human rights
guidelines for
practitioners***

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1. Introduction

The exploitation of individuals for profit has a long history of international efforts to prevent and address it. Trafficking involves a wide range of exploitative practices. Victims are men, women and children, across the world, (EU) nationals as well as non-(EU) nationals (migrant workers, irregular migrants, asylum seekers, refugees).

The European Network of National Human Rights Institutions (ENNHRI)¹ aims to enhance the promotion and protection of human rights across wider Europe. Through its work, it fully supports the European efforts to strengthen the action against trafficking of human beings and underlines the need for a human rights based approach. It thus welcomes previous initiatives in the field, such as the European Commission's publication 'The EU rights of victims of trafficking in human beings'. These rights are also laid down in various human rights documents. To a large extent the individual rights and States parties' obligations under these instruments coincide.

This document, written by the Netherlands Institute for Human Rights, provides a brief overview of the subject and aims to be a useful tool for all human rights practitioners. The guidelines are drawn from various human rights treaties and instruments relevant to trafficking. By no means do the principles intend to limit or reduce the existing obligations under national or international law.

ENNHRI recommends the use of these human rights principles for practitioners to further specify their work and actions in accordance to their respective mandates and to identify and address gaps in the protection of victims of trafficking. It also stresses the importance of a coherent and human rights centred approach in the transposition and implementation of various relevant EU directives and instruments. National Human Rights Institutes and Ombudsman Institutions across Europe, united in ENNHRI, stand ready to cooperate in safeguarding and promoting the rights of victims of human trafficking.

2. Human rights

International human rights law, as well as EU directive 2011/36/EU recognize that trafficking in human beings is a gender-specific phenomenon. Men and boys are often overlooked as victims. Women and girls are often trafficked in ways that are specific to their gender and with an impact that is also gender specific. LGBTI persons may fall victim to trafficking because of discrimination on the grounds of their sexual orientation or gender identity. Special attention is needed for persons with disabilities, who can be targeted for certain forms of exploitative labour, begging or sexual exploitation.

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There is now a wide-spread acceptance that trafficking of human beings is a serious violation of human rights of its victims. This understanding of the severe human rights impact of trafficking leads to the need for a victim-centred approach in which human rights form a central part. Human rights provide a normative framework for the prevention of and response to trafficking at all stages, operationally directed towards the promotion and protection of these rights.

3. What is human trafficking?

International agreement on what constitutes human trafficking is based on the definition in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), which has since been incorporated and further developed in various human rights treaties and instruments, as well as in the 2005 European Trafficking Convention of the Council of Europe and the 2011 EU Directive on trafficking in human beings. Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain. Trafficking can occur within a country (domestic) or may involve movement across borders (transnational).

The definition of human trafficking of adults consists of three key elements:

- Action: such as, but not limited to recruitment, transportation, transfer, harbouring or receipt of persons.
- Means: including without limitations the use of threat, force or other forms of coercion, of abduction, fraud, deception, forced marriage, debt bondage, abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person. Note should be given to gender specific harm of women and girls, such as rape, unwanted or forced pregnancy, forced termination of pregnancy and sexually transmitted diseases, including HIV/AIDS.
- Purpose: exploitation, including without limitation enforced prostitution or other forms of sexual exploitation, forced labour, including in domestic and service industry, slavery or slavery-like situations, servitude or the removal of organs.

The definition of trafficking in children under the age of 18 years does not require the above-mentioned element of “means”. Therefore, trafficking of a child exists if the child was subjected to some act, such as recruitment or transport, for the purpose of exploitation.

The intrinsic inalienability of personal freedom renders it irrelevant as to whether or not the victim at some stage expressed “consent”. Once it is established that deception, coercion, force or any of the other afore mentioned means were used, “consent” is irrelevant and cannot be used as a defence by it perpetrators, nor can it be a reason to deny protection and assistance to the victim.

The adoption of the UN Convention against Transnational organized crime and its two protocols on human trafficking and migrant smuggling for the first time made a legal distinction between these phenomena, making clear that these phenomena may be intertwined but should not be equated. Smuggling of persons involves facilitated illegal border movement for profit, which should be distinguished from trafficking in which this movement often is merely the first step toward the sinister practice of exploitation, except where exploitation takes place during transport, e.g. forced prostitution of (female) refugees and migrants, or in case of forced marriages. Situations of a large influx of migrants and refugees pose additional challenges in the work carried out in the detection and fight against human trafficking. In view of ensuring these principles and standards, institutional capacity building and training of (border) staff on a human rights-based approach is paramount.

4. Identification of victims and immediate protection and support

Victims of trafficking are often not (timely or correctly) identified, and as a result, are simply invisible and deprived of their right to protection and assistance and means for redress. Therefore, various human rights instruments stress the importance of a quick and accurate identification of these victims, since the failure to do so renders any right granted to such persons illusory. In this respect it is also important that trafficked persons should not be prosecuted or be subject of penalties imposed for their involvement in criminal activities which they have been compelled to commit as a direct result of being subjected to trafficking.

Victims who manage to break free from their traffickers often find themselves in an extremely vulnerable and uncertain situation. They may be injured and/or traumatized, in danger, afraid of retaliation, and are likely to have few or no means of subsistence. They may have insufficient knowledge to whom to turn to or may fear officials and/or state authorities, preventing them to seek protection and support.

The obligation under international law to identify victims of trafficking can be supported by:

- Developing guidelines, procedures and referral mechanism for relevant State authorities and officials such as police, border guards, labour law officials and inspectorates, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, as well as professionals working in medical or social sectors, to permit the rapid and accurate identification of trafficked persons.
- Providing regular training in identification of victims of trafficking to officials, such as police, labour inspectorate, border guards, immigration officials and other involved in the detection, detention, reception and processing of irregular migrants, as well as professionals working in medical or social sectors.
- Identify and remove barriers and adverse effects, including a risk of being criminalized or detained that may prevent victims to turn to the police or other institutions to seek protection, care and assistance.

- Identify and remove barriers and adverse effects for other persons and/or networks who/that may know or suspect trafficking of an individual to report this to the competent authorities.
- Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences and for them to receive information that enables them to seek protection and assistance if required.

The state in which a victim is located is responsible for providing immediate protection and support. The first and immediate obligation is to ensure that the victim is protected from further exploitation or harm from the ones who exploited them or others. The necessary measures that need to be taken are dependent on the individual circumstances and may vary. In most cases appropriate measures require at a minimum:

- Moving the trafficked person out of the place of exploitation into a safe place (not being a detention facility).
- Providing victims of clear and accessible information on rights and entitlements in a language they understand.
- Ensuring a safe reflection period for victims with the aim to begin recovery from their experiences and to make an informed decision on further steps, including as to whether they want to cooperate in criminal proceedings. For victims without a residence permit, this reflection period is also needed to provide victims with the appropriate assistance and support.
- Providing medical care to attend to immediate medical needs of the victim.
- Assessing whether the victim and their children and/or relatives are under risk of retaliation, intimidation or danger stemming from their exploiters or others in order to provide them with protection. In addition to victims and their family, also others could potentially be at risk and in need of protective measures, including informants, those giving a testimony or those providing support services to victims.
- Protect privacy and identity of victims and their family members, as a failure to do so may increase risks of further harm, cause humiliation and may negatively impact on their recovery. In case of transnational trafficking of human beings, privacy standards and standards of discretion should be applied coherently by the authorities of the country of destination and country of origin.
- Ensure that procedures are in place for the receipt of asylum requests and that the principle of non-refoulement is upheld.

5. Assistance and support to victims

Victims are entitled to assistance and support as soon as the competent authorities have reasonable grounds to believe that they may have been trafficked. Assistance and support may not be made conditional to the victim's willingness and/or capacity to cooperate in legal proceedings. Assistance and support should take due account of individual needs based on gender, health condition, disability and/or age and includes:

- at least a subsistence-level standard of living; for those entitled to residence, access to the labour market,
- appropriate and safe accommodation,
- necessary medical care and treatment, including psychological assistance, counselling and information. Special needs, including in relation to pregnancy, health and/or disability need to be specially attended to,
- providing appropriate translation services, if necessary.

A human rights-based approach requires that provisions of care and support are provided on a consensual and informed basis, taking due account of the special needs of a person in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care. For example, victims should receive information on their entitlements in a language they understand so that they can take an informed decision on what to do. Also, victims should not be subjected to mandatory testing for diseases.

Trafficked persons have a legitimate interest in a criminal or civil legal proceeding against their exploiters and are entitled to access existing compensation schemes for victims of crimes and/or a decision on compensation by the perpetrators in the course of a criminal or civil proceeding. Therefore, all efforts should be made to enable victims to participate in a legal proceeding freely, safely and well-informed. These efforts include, legal assistance in relation to a court or administrative proceeding, including keeping the victim informed of the scope, timing and progress and of the outcome of their cases.

Victims of trafficking who are unlawfully in a country face extra vulnerabilities as a result of their legal status, such as further exploitations and/or inability to access important sources for subsistence, support and protection. Therefore these victims should be granted a regularized reflection and recovery period with non-conditional support for them to decide on their option, including as to whether they cooperate in the prosecution of their exploiter(s). Trafficked persons without a residence permit should not be routinely be deported to their country of origin or transit. Due regard should be taken of the victim's safety and dignity since return may have serious consequences for victims; they may face social isolation and stigmatization, as well as intimidation and violence from their traffickers. Decisions on return to a country of origin should be taken on an assessment of the individual situation with due regard for the safety and dignity of the person and in respect to the principle of non-refoulement.

With respect to child victims, the child's best interest shall be the primary consideration in all actions concerning trafficked children and shall be assessed on an individual basis, taking due account of the child's age, maturity, views, needs and concerns. Child victims are entitled to assistance and support taking full account of their special circumstances. Where child victims are not accompanied by relatives or guardians, the reunion with their family should be facilitated if in the best interest of the child. In situations where the safe return to his or her family is not possible, or where return

would not be in the best interest of the child, adequate and durable arrangements, including protection, (health)care and education, should be in place that respect the rights and dignity of the child. In both situations, due weight should be given to the views of the child in all matters affecting him or her.

6. Remedies and compensation

Compensation for victims of trafficking who have been exploited is important to put an end to that period and to restart their life. Under international human rights law the right to an effective remedy in case of a human rights violation is a key right. This right is guaranteed in all core human rights instruments; a wealth of jurisprudence from judicial and quasi-judicial bodies exists.

Remedies can involve:

- restitution (for example return of property),
- compensation for damage caused, including for physical and mental harm,
- rehabilitation (a need to ensure that the person whose human rights have been violated has his or her status and position “restored” in the eyes of the law and of the wider community. This could include the provision of medical and psychological care, as well as legal and social services),
- satisfaction and guarantees of non-repetition.

The right to an effective remedy has been elaborated includes the right of access to justice, the right to reparation for harm suffered *and* the right of access to information concerning violations and reparation mechanisms. Remedies or reparation should be proportional to the gravity of the harm suffered.

In order to make the right to adequate and appropriate remedies effective, at least the following arrangements should be in place:

- Information on possibilities for obtaining remedies and compensation for both material injury as well as suffering should be made available to the victim in a language he or she can understand, as well as legal assistance and/or information to effectively access these remedies. Procedures for remedies and compensation may be criminal, civil or administrative
- Victims should be informed about lodging a complaint against their employer/exploiter, including the right to claim outstanding remuneration
- Arrangements to enable victims to remain safely in the country in which the remedy is sought for the duration of the proceeding.
- Special measures and assistance need to be in place for child victims to have effective access to compensation and remedies
- Ensure that victims have access to existing compensation schemes for violent crimes.

References:

- European Commission, [The EU rights of victims of trafficking in human beings](#). Luxembourg: European Union, 2013.
- High Commissioner for Human Rights, [Recommended principles and guidelines on human rights and human trafficking: Commentary](#). Geneva: OHCHR, 2010.
- High Commissioner for Human Rights, [Human rights and human trafficking](#). Fact Sheet No. 36. Geneva: OHCHR, 2014.
- Council of Europe, Group of Experts on Action against Trafficking of Human Beings, recommendations, www.coe.int.

About ENNHRI

ENNHRI brings together National Human Rights Institutions (NHRIs) from across wider Europe.

NHRIs are independent public bodies that promote and protect human rights. NHRIs address the full range of human rights through functions including: monitoring, research, advising government and parliament, reporting to international treaty bodies, complaints handling, providing legal assistance, human rights education, training, and awareness raising.

NHRIs are accredited by reference to the UN Paris Principles to ensure their independence, pluralism, impartiality, accountability, and effectiveness. They are a key element of a strong and effective national and global human rights system.

ENNHRI's mission is to support and strengthen NHRIs to promote and protect human rights across wider Europe, in line with Paris Principles.

ENNHRI's main areas of work are:

- Assisting in the establishment and accreditation of NHRIs;
- Providing capacity building and training for NHRIs, as well as coordinating exchange of information and good practice between members;
- Building solidarity and support for European NHRIs, particularly for those under threat;
- Facilitating NHRIs' engagement with regional mechanisms, including interventions on the human rights aspects of legal and policy developments at a European level.

ENNHRI's Secretariat is based in Brussels.

About the Netherlands Institute for Human Rights (NIHR)

The Netherlands Institute for Human Rights explains, monitors and protects human rights, promotes respect for human rights (including equal treatment) in practice, policy and legislation, and increases the awareness of human rights in the Netherlands. The Institute seeks to improve the human rights situation in the Netherlands and thereby contributes to create a society:

- in which the observance of human rights is assured for all those who find themselves in the Netherlands or within the Dutch sphere of influence;
- with a culture of respect for human rights;
- in which everyone can participate with freedom and dignity without hindrance from prejudice or discrimination and where everyone can develop his or her full potential.

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Great Britain	Equality and Human Rights Commission
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Hungary	Office of the Commissioner for Fundamental Rights
Ireland	Irish Human Rights Commission
Kosovo	Ombudsperson Institution of Kosovo
Latvia	Ombudsman's Office of the Republic of Latvia
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Luxembourg	Commission Consultative des Droits de L'homme du Grand-Duché de Luxembourg
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Portugal	Provedor de Justicia
Romania	Romanian Institute for Human Rights
Scotland	Scottish Human Rights Commission
Serbia	The Protector of Citizens of the Republic of Serbia
Slovakia	Slovenske narodne stredisko pre ludske prava (Slovak National Centre for Human Rights)
Slovenia	Varuh Clovekovih Pravic RS (Human Rights Ombudsman),
Spain	El Defensor del Pueblo (DPS)
Sweden	The Equality Ombudsman
Ukraine	Office of the Ukrainian Parliament Commissioner for Human Rights
Turkey	National Human Rights Institution of Turkey

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