

# **Policy Guide** on Protecting Victims of Trafficking



## **The Bali Process**

on People Smuggling, Trafficking in Persons and Related Transnational Crime

An introductory guide  
for policy makers and  
practitioners



# The Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was established in 2002 and is a voluntary and non-binding regional consultative process co-chaired by the Governments of Australia and Indonesia and comprising over 45 member countries and organizations.

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Published May 2015.

# Acknowledgements

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# The Bali **Process**

# Foreword

Since its inception in 2002, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) has effectively raised regional awareness of the consequences of people smuggling, trafficking in persons and related transnational crime, and also developed and implemented strategies and practical cooperation in response. 48 member countries and international organizations, as well as a number of observer countries and international agencies, participate in this voluntary forum.

Senior Officials at the eighth Ad Hoc Group Meeting of the Bali Process, recommended a set of policy guides on the issues of identification and protection of trafficked persons be developed by the Bali Process Regional Support Office (RSO) in consultation with interested members. Further to this direction, the RSO established a Drafting Committee co-chaired by the Government of the Republic of Indonesia and the International Organization for Migration (IOM) to draft the policy guides. This Drafting Committee comprised experts from the Governments of Indonesia, Australia, Maldives, Philippines, Thailand and the IOM.

The Committee met on four occasions, over a six month period, with the objective of developing short introductory guides for policy makers and practitioners on issues related to identifying and protecting victims of trafficking. Draft versions of the guides were circulated to Bali Process members and observers for written comments and discussed and reviewed at a full Bali Process Consultation Workshop held from 23-24 March, 2015 in Bangkok, Thailand. Participants agreed that the policy guides were useful resources for policy makers and practitioners to assist in identifying and protecting victims of trafficking. In response to comments received from the membership, the Drafting Committee revised the drafts and incorporated key changes and recommendations.

The policy guides aim to provide an overview of international and regional standards for the identification and protection of victims of trafficking, drawing extensively on examples of good practices from Bali Process member countries. In line with the recommendations of the Fifth Ministerial Conference in April 2013, these policy guides are the second set of Bali Process Policy Guides falling within the thematic areas of the Bali Process and on issues of particular concern to Bali Process members. They are voluntary, non-binding and intended for use as reference tools by a range of domestic agencies in Bali Process Member States.



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## Acronyms and Abbreviations

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>Bali Process</b>	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>MOU</b>	Memorandum of Understanding
<b>NGO</b>	Non-governmental organization
<b>Organized Crime Convention</b>	United Nations Convention against Transnational Organized Crime
<b>RSO</b>	Regional Support Office of the Bali Process
<b>Trafficking in Persons Protocol</b>	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNODC</b>	United Nations Office on Drugs and Crime

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# Executive Summary

Human trafficking is a serious crime with grave human rights implications. States are obliged to protect victims as part of their international obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking in Persons Protocol) and other international instruments, including international human rights conventions, and regional commitments. Victim protection is also a cornerstone of an effective criminal justice response to the crime; unless victims of trafficking are appropriately protected, they will not be empowered to support criminal justice action against traffickers.

In upholding obligations towards victims of trafficking, this Policy Guide suggests that States adopt a **victim-centred approach** that takes into account the individual needs of victims of trafficking and tailors protection responses accordingly. The protection of victims should not be conditional on, nor compromised by, their participation in the criminal justice system. State authorities are supported in their work where they understand protection challenges, and are trained to effectively address them in accordance with the relevant legal framework and international best practice.

To operationalize protection obligations, States should protect victims of trafficking from further harm from the point of first contact up until such a time as they achieve a certain level of socio-economic self-sufficiency. The **initial protection** they are provided with should address their immediate needs and include an appropriate reflection period that allows them to begin to physically and psychologically recover from their experience and make decisions about the future, including whether or not to participate in criminal justice processes. For those who are willing and able to do so, it is considered good practice to enable the views and concerns of victims to be presented, considered and addressed at each stage of the process. As threats to victims continually change, protection plans should be revised on the basis of **risk assessments**.

Effective and **sustainable protection solutions** can help victims to regain their autonomy and reintegrate into society by becoming self-sufficient participants in the economic and social life of their communities. This Guide highlights access to **compensation** through criminal or civil procedures as an important factor in successful recovery and reintegration. Victims of transnational trafficking may return to their country of origin, remain in the country they are identified in, or settle elsewhere, following a period of time to reflect on and recover from their experiences, or after the conclusion of criminal proceedings against traffickers. In determining which option is in the victim's best interests, the threat of retaliation and intimidation must be taken into consideration.

Though the obligation to protect victims of trafficking lies with States, other actors may play a significant role in supporting them to fulfil those obligations. **Coordination** between and among State and non-state actors is therefore crucial. Non-state actors may have the specialized skills to build trust and rapport with victims, understand their protection needs, and deliver effective and comprehensive services to address them. Effective protection may also require cooperation between States. The strong **bilateral and regional cooperation** mechanisms that exist in the Asia-Pacific region, including the Bali Process, are a solid basis on which to strengthen protection-related cooperation. This Policy Guide is offered as a tool to support States in their important work in developing protection procedures and standardizing them across the region.



# Section 1:

## Introduction to the protection of victims of trafficking

### 1.1. The international legal framework for protecting victims of trafficking

Article 25 of the *United Nations Convention against Transnational Organized Crime* (the Organized Crime Convention), obliges States Parties to provide assistance to and protect victims, in particular in cases of threat of retaliation or intimidation, and to establish appropriate procedures that provide access to restitution and compensation for victims. The protection of victims is one of the stated aims of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking in Persons Protocol) which supplements the Organized Crime Convention. Article 6 of the Trafficking in Persons Protocol sets out that States:

- Shall, in appropriate cases and to the extent possible, protect the privacy and identity of victims, including by making legal proceedings confidential (Article 6(1));
- Shall, in appropriate cases, provide victims with information on court and administrative proceedings, and assistance to present their views and concerns to the court in criminal proceedings, in a manner not prejudicial to the defence (Article 6(2));
- Shall provide for the physical, psychological and social recovery of victims, including by providing appropriate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities (Article 6(3));
- Shall endeavour to provide for the physical safety of victims (Article 6(5));
- Shall ensure the legal system provides victims with the possibility of obtaining compensation for damage suffered (Article 6(6)).

The Trafficking in Persons Protocol also emphasises that States should take into account the age, gender and individual needs of victims of trafficking, in particular the special needs of children such as appropriate housing, education and care (Article 6(4)).

#### **Tip:** Follow key principles for protecting victims of trafficking

- **Victims should not be detained, charged or prosecuted for irregularly entering or remaining in a State, or for other illegal acts or for crimes they have committed as a direct result of being trafficked**
- **Victims should have access to adequate physical and psychological care**
- **Victims should be provided with legal and other assistance through any criminal, civil or other proceedings**
- **Child victims of trafficking should be provided with appropriate assistance and protection, in accordance with their special vulnerabilities, rights and needs**
- **Victims should be guaranteed safe (and where possible, voluntary) return by receiving and origin States**
- **Victims should be given access to effective and appropriate legal remedies**

See Office of the High Commissioner for Human Rights (OHCHR) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*



The provisions contained in the Trafficking in Persons Protocol must be understood in the wider context of the international normative framework for assistance and protection of victims of trafficking. According to Article 14(1), the Protocol must be understood in accordance with international law, including international human rights law and humanitarian law.

The 1951 *Convention relating to the Status of Refugees* and the 1967 *Protocol relating to the Status of Refugees* and the principle of *non-refoulement* are specifically referenced to emphasise that States cannot expel or return a refugee or asylum seeker to a place where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.<sup>1</sup> Additionally, Article 14(2) of the Trafficking in Persons Protocol explains that measures taken in its implementation must accord with international principles of non-discrimination, meaning that a person cannot be discriminated against on the basis of any characteristic, including his or her migration or other status.

**Tip:** Operationalize the protection provisions in international law:

States are encouraged to follow the example of those States that go beyond the minimum standards provided for in the Trafficking in Persons Protocol, for example, by introducing compensation schemes outside of and in addition to criminal proceedings.

### **Non-refoulement in protecting victims of trafficking**

*The obligation of States not to return a person to the territory where there is a risk that his or her life or freedom would be threatened, or the person would be persecuted, is applicable to all persons and has implications for protecting victims of trafficking.<sup>2</sup> Specifically in relation to children, the Committee on the Rights of the Child has stipulated that: "Return to the country of origin is not an option if it would lead to a 'reasonable risk' that such return would result in the violation of fundamental human rights of the child, and, in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child."<sup>3</sup>*

In relation to child victims of trafficking, Article 39 of the *Convention on the Rights of the Child* (CRC) obliges States to promote the physical and psychological recovery and social integration of child victims. Article 3 of the CRC obliges States to consider the best interests of the child in all matters concerning children. Considerations for the best interests of children should be formally integrated into procedures and guidelines for assisting and protecting child victims of trafficking. Where a victim of trafficking is reasonably presumed to be under the age of 18, he or she should be entitled to the higher standard of assistance and protection afforded to child victims without the need to prove his or her age, until his or her age can be confirmed through appropriate age assessments.

<sup>1</sup> See Article 33(1) of the 1951 *Refugee Convention relating to the Status of Refugees*, Article 3 of the *Convention against Torture* and Article 16 of the *International Convention for the Protection of All Persons from Enforced Disappearance*. Also see Article 7 of the *International Covenant on Civil and Political Rights*, which the United Nations Human Rights Committee has interpreted as entailing a prohibition on *refoulement*. See: UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, paragraph 9.

<sup>2</sup> 1951 *Refugee Convention relating to the Status of Refugees*, Article 33(1). Also see *Trafficking in Persons Protocol*, Article 14, and the *International Covenant on Civil and Political Rights*, 16 December 1966, Articles 6 and 7. The principle of *non-refoulement* has also become a rule of customary international law.

<sup>3</sup> Committee on the Rights of the Child, General Comment No. 6, (2005), *Treatment of unaccompanied and separated children outside their country of origin*, Paragraph 84. States should ensure that authorities designated to determine the best interests of the child are able to do so without having to balance the interests of the child against other interests, including those of the State. For more, see: *UNHCR Guidelines on Determining the Best Interests of the Child*, UNHCR, May 2008, available at: <http://www.refworld.org/docid/48480c342.html>

All individuals within a State's jurisdiction, including non-citizens, have core human rights. The *International Covenant on Civil and Political Rights (ICCPR)*, which sets out the right to freedom from slavery, servitude and forced labour, establishes the right to an effective remedy for people whose rights under the Convention have been violated. The UN Human Rights Council has stated that the right to an effective remedy encompasses an obligation to bring perpetrators to justice, and to provide appropriate reparation to victims.

There are many norms and standards that emphasise State obligations to protect non-citizens victims and witnesses.<sup>4</sup> In this respect, Article 5(b) of the *International Convention on the Elimination of Racial Discrimination* and Article 16(2) of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* are of particular relevance. Under these provisions, States Parties are required to provide effective criminal justice protection for all persons, including those in irregular situations, who are subject to physical or sexual violence, whether inflicted by State officials or private actors.

Several International Labour Organization (ILO) Conventions are also applicable. *Convention No. 29 on Forced or Compulsory Labour* (1930) and the 2014 *Protocol thereto* (June 2014), have the effect of strengthening protection for victims of forced labour and human trafficking. Recommendation No. 203 on Forced Labour (Supplementary Measures) sets out protection measures including for compensation of victims, and *Convention No. 182 on the Worst Forms of Child Labour* addresses protection of children. Further, *Convention No. 189 concerning Decent Work for Domestic Workers* (2011) requires Member States to promote and protect the human rights of all domestic workers by requiring contracts, by ensuring workers have the rights to keep their travel and identity documents, and by regulating private employment agencies.

## 1.2. Protection challenges

Victims of human trafficking<sup>5</sup> - irrespective of their migration or other status - must be protected from further harm. States are obliged to protect victims in order to uphold their human rights. Victim protection, including protection for victims who serve as witnesses during a criminal trial, is also a cornerstone of effective and comprehensive responses to human trafficking as defined in Article 3 of the Trafficking in Persons Protocol.<sup>6</sup>

Beyond the initial challenges of identifying potential victims of trafficking<sup>7</sup>, there are a number of additional challenges that States face in fulfilling their protection obligations. Victims of trafficking may be reluctant to receive protection of the State, for similar reasons that they do not wish to be identified by national authorities.<sup>8</sup> Victims may lack trust and confidence in State institutions and their capacity to protect victims and their families from harm, particularly where family members are located in other States or jurisdictions. Some victims may even prefer to remain within the control of their traffickers rather than engage with national authorities. Because victims of trafficking are of different age, sex, gender, economic status, educational and

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<sup>4</sup> See for instance, victim and witness protection provisions in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, (29 November 1985), (Article 6(d)); Guidelines on Justice in Matters involving Child Victims and Witnesses (Nos. 32-34); Articles 24 to 26 of UNTOC; Articles 6 to 8 of the Trafficking in Persons Protocol; Article 16(2) of the Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime (Smuggling of Migrants Protocol); and Article 32 of the UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

<sup>5</sup> Throughout this document, the term 'human trafficking' is used to refer to 'trafficking in persons' as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol). Also see Policy Guide on Identifying Victims of Trafficking, Bali Process, 2015.

<sup>6</sup> For more information, see Policy Guide on Criminalizing Trafficking in Persons, Bali Process, 2014.

<sup>7</sup> For more information, see Policy Guide on Identifying Victims of Trafficking, Bali Process, 2015.

<sup>8</sup> For more information, see Policy Guide on Identifying Victims of Trafficking, Bali Process, 2015, section 2.2.

familial backgrounds, and have different experiences, motivations and goals, ‘one-size-fits-all’ solutions are not effective.<sup>9</sup> Non-citizens who have no right to remain in the country in which they were identified may face particular barriers to accessing protection services, including accessing compensation or pursuing claims, but all persons, irrespective of their migration status should be entitled to access such services.<sup>10</sup>

### 1.3. Protection considerations: Key obligations and interests

Protection is an essential component of a comprehensive response to human trafficking.<sup>11</sup> Unless victims of trafficking are effectively protected, they may continue to be exploited, never recover from their exploitation, or fall into a cycle of re-trafficking. States are obliged to protect victims, irrespective of whether they agree to contribute to criminal justice processes. Where victims are willing to participate in investigations or prosecutions, their testimonies may be crucial towards furthering State interests in detecting, investigating and prosecuting traffickers, which in turn promotes the prevention and deterrence of crime. Ensuring that victims are effectively protected increases the possibility that they will be able to contribute to law enforcement efforts to bring traffickers to justice.

To be effective, State responses should be victim-centred and comprehensive, taking into consideration the individual needs and interests of each victim. Key considerations for protection and assistance plans include the following:

- Some victims would like to return home and be reunited with their families. Others cannot immediately return to their communities, and may need to be counselled, obtain medical and psychological treatment, and/or seek legal redress, including by participating in the investigation and prosecution of trafficking cases
- Some victims will not be able to return at all because recruiters or others in their country of origin may continue to pose a threat to them. In these cases best practice is to provide them with sustainable protection solutions in States where they are identified or in third States
- The protection services of States should not exclude or overlook certain categories of individuals, for instance men or victims of domestic trafficking
- Protection must be tailored to the needs of individuals and utilize service providers with specific skills and experiences in confronting the particular challenges faced by trafficking victims. Some individuals may be at risk of retaliation from traffickers, while others may face barriers to protection that need to be addressed. Some victims may require more time than others to recover, or require access to particular services in order to help them do so
- Ensuring that victims receive specialized protection will often require cooperation with specialized non-state actors who can assist States in fulfilling their obligations to protect victims
- Victims should have autonomy and be involved in decisions related to their assistance and protection. Consideration should be given to the particular needs of individual victims, including those arising from their age, sex, gender, sexual orientation, nationality, ethnic or social origin, disability and other characteristics.

The protection needs of victims may change from the point that they are identified through any involvement in criminal justice processes, and following the conclusion of such procedures. Accordingly, States must continually undertake **risk assessments** to ensure that protection services adapt as needs change.

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<sup>9</sup> In some countries, inadequate services are available for victims of trafficking depending on their personal characteristics. For example, safe accommodation in shelter facilities may only accommodate female victims.

<sup>10</sup> For more information, see *Policy Guide on Identifying Victims of Trafficking*, Bali Process, 2015, section 2.2.

<sup>11</sup> See *Policy Guide on Identifying Victims of Trafficking*, Bali Process, 2015, section 2.1. “Why identification is important”.

As human trafficking is often a cross-border crime, it is important to ensure that: a) victim protection programs apply to both national and non-national victims; and b) international cooperation is established at the bilateral, regional and multilateral level, in accordance with the provisions of the Organized Crime Convention and the Trafficking in Persons Protocol, to ensure that border and jurisdictional issues do not hamper the ability of the State to fulfil its obligation to protect victims. Consular agents in the receiving country may also play a significant role in identifying victims and providing them with immediate assistance and protection at the point of first contact, and should be appropriately equipped to do so.<sup>12</sup>

The application of a victim-centred approach should be based on the fundamental considerations of safety, confidentiality and non-discrimination, irrespective of whether the victim participates in the criminal justice process.

**Safety:** Traffickers pose serious risks not only to victims but also their families.

- The personal safety of victims and their families and others should be provided for.

**Confidentiality:** Breaches of confidentiality can compromise the safety of victims and their families. Victims often fear stigmatization by the public and their families, especially in cases involving sexual exploitation. To address these concerns:

- Information should only be shared when a victim gives consent and should be confined to as few people as possible in order to maintain confidentiality of victim information
- Where a victim consents to his or her information being shared with specialized agencies for further assistance, the respective agencies or others involved, such as the media, should be duly informed of the confidentiality of the information.

**Non-discrimination:** Safeguards to protect victims of trafficking should be extended to all victims, without discrimination.

- Trafficked victims must be protected, regardless of personal characteristics<sup>13</sup>
- States should not only refrain from discriminating, but also take positive steps to combat all forms of discrimination by both private and State actors involved in protecting victims of trafficking.

**Tip:** Ensure that approaches to protection are victim-centred

Ensure that approaches to protecting victims of trafficking are victim-centred, taking into consideration the safety of victims and their families, and the confidentiality of information pertaining to them. Victim protection programs should apply to all victims of trafficking on a non-discriminatory basis and should flexibly adapt to the individual needs of victims, including through effective cooperation with specialized NGOs.

<sup>12</sup> See: *Guidelines for the Identification of Victims of Trafficking in Human Beings: Especially for Consular Services and Border Guards*, European Union, 2013.

<sup>13</sup> For further information see section 1.2.

# Section 2:

## Operationalizing protection

Victims of trafficking may require protection in three key contexts:

1. Initial protection
2. During criminal justice procedures
3. On a sustainable basis, including to facilitate their reintegration.<sup>14</sup>

The protection needs of each victim will change throughout these stages, making it crucial for States to undertake risk assessments at each stage to ensure that protection services are appropriately tailored to changing needs.

### 2.1. Initial protection

The nature of the protection provided once a presumed victim of trafficking is identified is crucial to the further success of the protection plan implemented by service providers. In particular, protection measures taken at this stage are essential for establishing a relationship of trust and cooperation between the victim of trafficking and service providers. The provision of protection that is safe and adequate for the needs of victims of trafficking should not be dependent on their willingness to cooperate with authorities.

The main objective at this point is to identify and address the **immediate needs** and concerns of victims of trafficking. These include:

- Privacy, safety and security for the victim and family or close friends
- Access to basic needs such as food, clothing and safe accommodation
- Communication with family and family tracing, where there is no reason to suspect their involvement in the trafficking, and where such communication is safe for the victim and his or her family
- Urgent medical attention
- Legal and migration advice

It is at this point that victims of trafficking are ideally provided with detailed information about their rights, as well as the scope, nature and function of the assistance and protection program and the obligations and responsibilities it will entail. The information should be provided when victims of trafficking are in a position to adequately discern and understand all the information provided. The availability of translators/ interpreters may be necessary if victims of trafficking do not speak the language of the place in which they are identified. Informing them of the availability of assistance may ease the anxiety of victims of trafficking and help them decide on next steps and processes. These early stages of care are essential in setting the stage for sustained and long-term support, and to empower victims to make decisions about the type of protection services they want and whether to participate in the criminal justice process.

**Tip:** Protect victims whether they cooperate or not

**States should uphold their obligations to protect victims, irrespective of their migration or other status, and their willingness to participate in criminal justice proceedings.**

<sup>14</sup> For information on the identification of victims of trafficking at the point of first contact and throughout interviews (including those undertaken for criminal justice objectives), see *Policy Guide on Identifying Victims of Trafficking*, Bali Process, 2015.

Victims presumed to be children should be referred immediately to child protection authorities to conduct age assessments, appoint legal guardians and conduct best interest determinations in making interim care arrangements as appropriate. If the child is accompanied, decisions must be made as to whether or not his or her guardian can represent the child's best interests, for example if the guardian is suspected as having been involved in the child's trafficking or exploitation.<sup>15</sup> Responsibilities of the guardian include ensuring the child has appropriate care, accommodation, health care, psycho-social support, education and language support, and also keeping the child informed of his or her rights, and assisting in the identification of sustainable protection solutions in the child's best interests.<sup>16</sup>

### **Caution:**

***There is a risk that traffickers may seek to infiltrate assistance programs or obtain information about a victim's location. Service providers should remain alert to this risk and not disclose any information to people whose identities and credentials are unknown.***

Those who are the first point of contact with potential victims of trafficking will have to take steps to protect the **security** of the potential victim, as well as staff who come into contact with the victim. Through a process of risk assessment, appropriate measures can be put in place to manage those risks. Security measures may range from the presence of security personnel, or direct communication and cooperation with police, to the presence of private security companies in shelters. Where victims are placed in non-shelter accommodation, the risk assessment conducted will need to consider the

security challenges that may be posed to the victim, the victim's family and friends, and service providers, including access to communication and the reliability and competence of local police. It is crucial that all staff members involved in providing assistance to victims are given security briefings and are kept up to date with risks to victims and to themselves.<sup>17</sup> Information about victims and their circumstances should only be shared on a 'need to know' basis, meaning that staff should be only provided with information they need for the purpose of performing their protection work.

Victims of trafficking may be provided with **safe accommodation** in shelters or other locations appropriate to their needs and should be allowed freedom of movement. They should not be held in locked facilities, whether immigration detention centres, jails, or other closed facilities where they are not free to come and go.<sup>18</sup> Victims may also require immediate medical attention and access to health care, as well as access to legal and migration assistance and support.

It is well established that due to the inherently traumatic nature of this type of crime, victims of trafficking should be given a **'reflection period'** to begin to recover from their experiences and make

### **Tip:** Provide reflection periods to victims of trafficking

**Provide reflection periods to victims of trafficking to enable them to begin to recover from their experience. Reflection periods and associated support, including temporary visas for victims of transnational trafficking, should be provided irrespective of a victim's willingness to participate in criminal justice proceedings against traffickers.**

<sup>15</sup> Children should be consulted in determining what is in their best interests. Article 12 of the *Convention on the Rights of the Child* (CRC) determines that the views of the child should be given due weight, in accordance with the age and maturity of the child. In consulting with children, consideration should also be given to Article 16 of the CRC, protecting children from arbitrary or unlawful interference with their privacy, family or correspondence, and Article 17 concerning State obligations to guarantee the right of children to access information.

<sup>16</sup> See *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF technical notes, UNICEF, 2006, pp.16-17.

<sup>17</sup> See *The IOM Handbook on Direct Assistance to Victims of Trafficking*, IOM, 2005, section 4.2.6.

<sup>18</sup> See also *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 6(1).

a decision about whether or not to assist with an investigation or prosecution. Reflection periods vary amongst States, and typically range from 30 to 90 days.<sup>19</sup> Additional challenges arise where victims of trafficking are non-citizens who have irregular status within the State. The protection plan for a foreign national may require temporary visa arrangements to enable the person to remain in the country during the reflection period.

If victims are given adequate assistance and time to recover and make decisions regarding their future, they may ultimately be more willing and able to support the criminal justice process. Many States arrange for permanent visas to be issued to victims to allow them to remain in the country, for instance, when a victim has contributed towards the investigation and/or prosecutions of traffickers and would be in danger if they were to return to their country of origin.

**Tip:** Protect victims of human trafficking in accordance with best practice

**Guideline 6 of the Office of the High Commissioner for Human Rights (OHCHR) *Recommended Principles and Guidelines on Human Rights and Human Trafficking* advises that States, and where relevant inter-governmental and non-governmental organizations, should consider:**

- Ensuring that victims are not held in any form of immigration or other detention facility
- Ensuring that victims are not obliged to accept any protection or assistance services that they do not consent to receive
- Informing victims of their rights to access diplomatic and consular representatives from their State of nationality
- Protecting victims from threats, harm or retaliation from traffickers, including by respecting their privacy and not disclosing their identity.

## 2.2. Protection through the criminal justice process

Victims must not be compelled to participate in the criminal justice process, but be empowered to choose whether or not they wish to. For those victims who are willing and able to contribute to the investigation and prosecution of traffickers, particular protection considerations apply.

Prosecutions for human trafficking and related crimes often rely on witness testimony in the absence of corroborating evidence, meaning they are unlikely to succeed without the participation of victims. If a victim is unable to give reliable evidence, or is reluctant to give evidence at all, this may adversely affect the possibility of prosecution or the outcome of a trial and jeopardize the State's prospects of securing a conviction.

A State's capacity to provide victims with access to an effective remedy may be compromised where victims are not supported to achieve satisfaction through legal processes.<sup>20</sup> Ensuring victims are provided with appropriate support and protection throughout each stage of the criminal justice process is not only key to protecting their rights as victims of crime, but is also necessary for their safe, effective and valuable contribution towards the prosecution of traffickers.

<sup>19</sup> See for example, Cathy Zimmerman et al., *Stolen Smiles: The physical and psychological health consequences of women and adolescents trafficked into Europe*, London School of Hygiene and Tropical Medicine, 2006, p.3.

<sup>20</sup> See section 1.1. above on State obligations to protect victims and section 2.1 on their interests in doing so.



**Tip:** Conduct risks assessments throughout the criminal justice process

The protection needs of victims will differ before, during and after trials. Accordingly, best practice is for States to conduct risk assessments at each stage of the process to ensure that protection services being provided to victims are adapted to effectively address their changing protection needs.

**Pre-trial protection**

As part of obtaining an effective remedy for themselves, victims of trafficking may wish to seek justice by participating in the criminal justice process. In most cases, they will be involved as complainants and witnesses which will mean that their presence is required during investigations and, in some cases, court proceedings.

A key component of protection occurs before the trial begins during the investigation and case-preparation phase. Victims need to be kept informed, for example by having explained to them what is happening, how long processes are likely to take, why their personal belongings may have been taken from them to use as evidence, and when those items will be returned. During the pre-trial phase, victims can be prepared for the trial phase, which may include giving evidence as witnesses, through the provision of counselling and other emotional support. This support should continue into the trial phase.

In some States, there are legal requirements to provide support to vulnerable victim-witnesses prior to trials. Such support may include the use of a qualified person to prepare the victim for trial, such as by accompanying him or her to the courtroom, explaining court procedures and helping them to understand the questions they may be asked.

Where appropriate and consistent with the rights of defendants, the pre-trial detention of alleged traffickers may assist in protecting victims and their families from retaliation. Such pre-trial detention may give victims and their families an increased sense of security and also strengthen the chances of a fair trial taking place by preventing the alleged traffickers from tampering with evidence or influencing the victim or other witnesses.<sup>21</sup>

Decisions as to whether victims of transnational trafficking should be returned to their country of origin between the initial investigation and the trial must take into account the best interests of victims. Such decisions may depend on protection mechanisms in the origin country, the logistical possibilities of bringing the victim back to the country where the trial is due to take place, or the possibility of providing remote testimony (with the use of internet or other technology that can be used in a way that protects the privacy of the witness). Where it is not practical or appropriate for testimonies to be given, witness statements may be used.<sup>22</sup>

**Tip:** Provide pre-trial support to victims and witnesses of human trafficking

The protection provisions of the Trafficking in Persons Protocol provide the minimum standards for pre-trial support to victims and witnesses of human trafficking. States should put in place a formal process to provide such support. Competent NGOs and civil society organizations that understand the criminal justice system and have specialist training in providing support to victims may be able to assist in the provision of such support services.

<sup>21</sup> *Anti-Human Trafficking Training Manual for Criminal Justice Practitioners*, Module 11: *Victims' needs in criminal justice proceedings in trafficking in persons cases*, UNODC/UN.GIFT, 2009, p.8.

<sup>22</sup> *Anti-Human Trafficking Training Manual for Criminal Justice Practitioners*, Module 11: *Victims' needs in criminal justice proceedings in trafficking in persons cases*, UNODC/UN.GIFT, 2009, pp.7-8.

## Protection during trial process

For most victims of trafficking, appearing before a court is a difficult experience. The aspects of the trial process that will exacerbate fear and anxiety, such as testifying in court, should be minimized to the extent possible.

To assist victims of trafficking to give evidence in court, some States have instituted vulnerable witness measures and testimonial aids. These measures are intended to ensure victims are in a position to present their best possible testimony to the court, by minimizing the risk of intimidation, additional trauma, fear for personal safety and/or undue public embarrassment. Although transparency is a fundamental element of due process, it must be balanced against the right of participants in the criminal justice system to safety and protection from undue distress or public embarrassment. States should keep in mind that measures to protect victims participating in criminal justice proceedings must be reasonable, necessary and proportionate, particularly given that they may impact upon the right of a defendant to a fair and public hearing.

### **Tip:** Support victims throughout the criminal justice process

**States should provide victims with comprehensive information, in a language they understand, on options that are available to them including as witnesses in court proceedings. States should also strive to provide victims with access to independent legal counsel to assist them in understanding their legal rights and obligations.**

Measures and testimonial aids to protect vulnerable victims and witnesses of trafficking during trial processes may include:

- Allowing the victim to give evidence by means of closed circuit television or video link
- Limiting the victim's contact with defendants and members of the public, including through the use of screens or by closing the courtroom
- Allowing a support person to be present while the victim is giving evidence
- Introducing rules to allow a victim's evidence in an original trial to be admitted again in any later trials, minimizing the risk of re-traumatization
- Allowing victims who are abroad to give evidence by video link if travelling to the relevant jurisdiction to attend court would cause harm, trauma or undue distress
- Protecting the privacy of victims by creating offences relating to the unauthorized publication of a victim's name or identifying characteristics.

### **Tip:** Put protection measures in place for child victims and witnesses of trafficking

**States may consider making measures and testimonial aids for protection of vulnerable persons, automatically available for child victims. Additional protections may also be considered, such as allowing submission of video recordings of police interviews with child victims and/or witnesses as evidence in chief. However, child victims should not be required to participate, especially when they have experienced extreme trauma.**

Some State prosecution services employ specific witness assistance or victim liaison officers to reduce stress and trauma by providing victims with information and face-to-face support, and to attend court appearances with them. Civil society organizations can also provide an invaluable source of supplementary care and support to victims as they go through the prosecution process.

States may consider allowing victims to make voluntary victim impact statements when a verdict has been reached and offenders are being sentenced in order to outline to the court the harm experienced by them. Victim impact statements can benefit victims in their recovery process, including by allowing them to explain to a judge how the crime has affected them physically, emotionally, financially and/or socially. Victim impact statements may also be beneficial in:

- Reducing the public perception of the victim's alienation in the criminal justice process
- Making sentencing more transparent and more reflective of the community's response to crime
- Promoting the rehabilitation of traffickers by confronting them with the impact of their offence.

States considering the use of victim impact statements should ensure certain safeguards are in place, including that victims are expressly precluded from providing an opinion about an appropriate sentence; or from including offensive, threatening, intimidating or harassing material in their statement. Traffickers should also be allowed to test the facts contained in a victim impact statement.

**Tip:** Ensure assistance and protection measures are not inducements to participate

**Assistance and protection measures should be provided in a way that does not amount to any form of inducement that could undermine the case of the prosecution. Anything provided to witnesses, including accommodation and visas, for example, should be recorded and rationalized, and any abuse of support identified and addressed promptly.**

## Post-trial protection

Protection measures should not cease upon the conclusion of criminal proceedings, but be based on the actual needs of individual victims. Immediately following the trial, witness assistance officers or other appropriate authorities should provide victims with information about the outcome of the trial and its implications, including the sentence imposed on the trafficker, its duration and the trafficker's proposed release date, as well as any appeal possibilities. The victim's protection plan should be revised accordingly, in consultation with the victim and in consideration of his or her concerns.

Following a prosecution, threats and intimidation against victims of trafficking and their family or friends may increase. States should consider the need for on going witness protection and personal safety measures, including by allowing victims to remain permanently in the jurisdiction if victims would be in danger upon return to their country of origin.<sup>23</sup> Beyond any danger from retaliation or re-trafficking, an assessment of the risks posed by inadequate assistance and support in States of origin may be relevant in determining whether or not a victim should be returned or rather be granted a residence permit in the country in which the trial takes place or elsewhere.<sup>24</sup>

<sup>23</sup> See section 3.3. below on sustainable protection solutions.

<sup>24</sup> See section 3.3. below on sustainable protection solutions.

## 2.3. Sustainable protection solutions

Sustainable protection solutions **start from the point of first contact** when the needs of identified trafficked persons are assessed by addressing immediate needs such as temporary shelter, medical care, safety and security. Such measures may be taken in States of origin, transit or destination. While ‘protection solutions’ involve removing the victim from the control of the trafficker and mitigating any immediate risks, ‘sustainable protection solutions’ are comprehensive, going beyond addressing immediate needs to assisting victims of trafficking to regain their autonomy and empower them to integrate or reintegrate into society.

Sustainable protection solutions may include measures that ensure victims have access to long-term opportunities to overcome the situations that initially made them vulnerable to trafficking. For example, services such as access to education, training, livelihood, and employment opportunities address vulnerability and support the social and economic reintegration of victims. Some solutions that have been identified at the point of first contact may need to be sustained or continually addressed, such as ongoing accommodation, medical and psychological attention and counselling, and guarantees for the safety and security of the victim.

The ultimate objective of any victim assistance and protection program is to ensure that assisted victims of trafficking are able to come to terms with what they have experienced, to achieve self sufficiency, and to participate fully in economic and social life. The failure to meet this objective may further increase vulnerability and could result in a cycle of re-victimization.

Sustainable protection solutions are more complex when trafficking occurs across borders and victim assistance and protection has to be coordinated between and among the authorities and service providers of two or more States. Following the reflection period or the conclusion of any court proceedings, options for integration, voluntary return or reintegration should be explored.<sup>25</sup> Victims may return to their communities of origin, unless they are granted residency or other visas to remain, or be moved to a third State. Where victims are returned to their places of origin - whether domestically or in another State - authorities should make efforts to ensure that they are protected from retaliation or re-trafficking upon arrival and during the reintegration process.

Any return to **countries of origin** should to the extent possible, be voluntary and carried out with regard for the rights, safety and dignity of returnees and include the provision of the adequate protection, assistance and support necessary to achieve reintegration and prevent re-trafficking.<sup>26</sup> Where it is preferable for a victim to relocate to a **third State**, the State in question should assist in the facilitation of safe relocation and integration.<sup>27</sup> Where there are ongoing safety concerns, humanitarian considerations or other risks that prohibit victims from being returned, temporary or permanent residency in the country of destination should be considered.<sup>28</sup>

Sustainable protection solutions require the **cooperation** of various service providers and stakeholders. Referrals and feedback are crucial to ensuring that services are appropriate and given in a timely and

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<sup>25</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 5(8).

<sup>26</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 6(8). Also see Article 8(3)-(4), Article 9(1)(b) of the Trafficking in Persons Protocol concerning safe return.

<sup>27</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 6(8). Also see Article 8(3)-(4), Article 9(1)(b) of the Trafficking in Persons Protocol concerning safe return.

<sup>28</sup> See *Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, OHCHR, 2010, pp.180-182.

coordinated manner, and are available within and between origin and destination States. The cooperation and contribution of victims themselves is essential to this. Not only should victims understand their roles and responsibilities in carrying out protection plans, but their contributions in determining what type of assistance and support is critical to ensuring the success of any longer term plan. Due regard should be given to individual needs and aspirations in the development of protection approaches, particularly in cases of children whose best interests must be at the forefront of protection plans. Finally, assistance and protection plans should be periodically assessed or evaluated, and adapted to the changing needs of victims of trafficking.

**Table 1: Key components of sustainable protection solutions**

<b>Basic needs</b>	<ul style="list-style-type: none"> <li>• Continued safe accommodation, especially when reintegration is not yet advisable</li> <li>• Safety and security measures</li> </ul>
<b>Medical and psycho social care</b>	<ul style="list-style-type: none"> <li>• Psychological counselling</li> <li>• Social counselling, including family visits</li> <li>• Medical and dental care</li> <li>• Family and community reintegration interventions</li> </ul>
<b>Economic reintegration</b>	<ul style="list-style-type: none"> <li>• Education, especially for children</li> <li>• Language training in cases of social inclusion</li> <li>• Vocational or skills training programs based on labour market or industry demands</li> <li>• Job placement assistance</li> <li>• Livelihood grants and mentoring</li> <li>• Financial grants/provision of start-up capital</li> </ul>
<b>Legal support and assistance</b>	<ul style="list-style-type: none"> <li>• Legal counselling</li> <li>• Filing criminal complaints and other legal remedies before law enforcement and/or prosecutorial authorities</li> <li>• Assistance in recovering compensation</li> <li>• Assistance in applying for temporary stay permit or permanent residency, where available</li> <li>• Representation to discharge victims of trafficking of the crimes committed as a result of trafficking.<sup>29</sup></li> </ul>

## Compensation

A key means of facilitating sustainable protection solutions is through the provision of compensation, financial assistance, or reparation in recognition of the injury, loss or harm experienced by the victim of trafficking. While compensation does not undo the victim's trafficking experience, it can improve his or her prospects of recovery and economically protect him or her from vulnerability to re-trafficking. Compensation may include unpaid wages, legal fees, medical expenses, lost opportunities and compensation for pain and suffering.<sup>30</sup>

<sup>29</sup> For more on non-criminalization, see *Policy Guide on Criminalizing Trafficking in Persons*, The Bali Process, 2014, p.7.

<sup>30</sup> Also see the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34, 29 November 1985, (Articles 12 and 13).

Compensation schemes for victims of trafficking may be sourced from assets of traffickers, or from State-funded schemes administered through judicial processes or administrative actions. In many jurisdictions, a civil claim for damages is associated with filing a criminal action and monetary awards are included in court decisions, or compensation payments to victims are made a part of the penalty. Others, however, have also allowed recovery of damages through civil action, independent of the criminal prosecution. Claims through labour courts for unpaid wages and other contractual benefits, especially in cases of trafficking for exploitation, are another possibility for compensation.

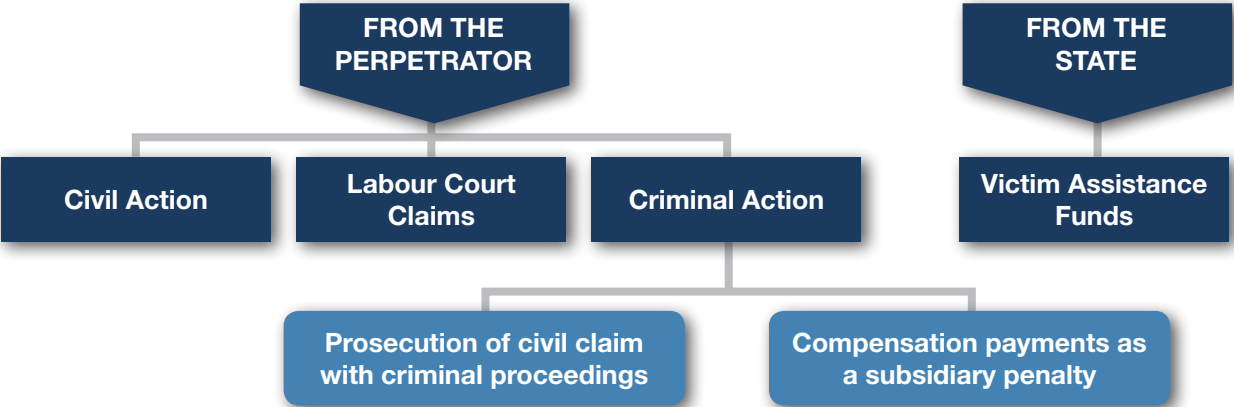
Some countries in the Asia-Pacific region have established funds out of State resources to provide material support to victims as they recover from their trafficking experiences. Trust funds for victims of trafficking have also been created with finances sourced from monetary fines and penalties as a result of criminal conviction. Others have allowed victims of trafficking to access existing general assistance funds such as those established for victims of serious crimes or violence.

Private sector actors, whose industries or supply chains may be affected by trafficking, also have a role to play in protecting employees from exploitation and compensating victims. This has included the possibility of augmenting State funds by contributions from national institutions, charities, business community and individuals.

While most jurisdictions permit victims of trafficking to pursue compensation through civil courts (through social welfare or labour regimes), irregular migrants may face barriers to accessing such compensation on account of their status and/or lack of documentation. Accordingly, States should facilitate access to civil courts for compensation for the harm suffered, including for victims of trafficking who are in irregular situations.

The diagram below shows possible sources of victim compensation.

**Diagram 1: Possible sources of victim compensation**



**Tip:** Provide effective compensation as part of sustainable protection solutions

States should consider making sources of compensation available to victims of trafficking, outside of criminal justice proceedings. Consideration should be given to ensuring that compensation is accessible to victims of trafficking who are non-citizens.

# Section 3:

## Coordination and the multi-stakeholder approach

### 3.1. Protection stakeholders

Coordination is a key component of comprehensive protection. Given the complex protection needs of individual victims of trafficking, the most tailored and effective measures will include a variety of experts and interventions. The obligation to protect victims of trafficking primarily lies with States, but other actors may play a significant role in supporting this function.<sup>31</sup> Civil society actors are well placed to build trust between victims of trafficking and authorities, and have particular expertise that is necessary to provide effective protection services to them.

The Trafficking in Persons Protocol acknowledges the necessity of multi-stakeholder coordination in assistance and protection measures, by requiring States to consider implementing measures to provide for the physical, psychological and social recovery of trafficking victims *“in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society”*.<sup>32</sup> Several governmental and non-governmental stakeholders may be involved in protecting victims in any given State including police, immigration and social service authorities, as well as labour and industry-related actors, ministries of interior and foreign affairs and NGOs specializing in services for victims of crime, migrants, women and/or children, as well as providers of legal aid.<sup>33</sup>

#### Direct assistance and protection stakeholders

**State actors** are responsible for providing victim protection and may provide direct financial assistance through social service programs, childcare services, criminal procedure funds, victims’ funds, funds for women who have experienced violence or other sources. The following State actors are of particular importance:

- Police and criminal justice authorities are vital for physical safety of victims
- Immigration and consular authorities may be involved in facilitating the temporary or permanent stay of victims of trafficking in the State
- State health service agencies may provide counselling, information, medical, psychological and material assistance
- State social service agencies also have a role to play in providing vocational and educational training, and removing barriers to access employment, educational and training opportunities.<sup>34</sup>

<sup>31</sup> See *Trafficking in Persons Protocol*, Article 6(3).

<sup>32</sup> See *Trafficking in Persons Protocol*, Article 6(3).

<sup>33</sup> For more information, see *Policy Guide on Identifying Victims of Trafficking*, Bali Process, 2015, section 3.1.

<sup>34</sup> See Article 6 of the *Trafficking in Persons Protocol*.



Although state actors are responsible for providing victim protection, in many countries non-state actors, including **civil society organisations, international organizations and other non-state service providers** carry out protection work, often under significant financial and other pressure.

- Non-governmental and international organizations may assist State actors by providing victims with information about specialized State services.
- They may also provide material support in the form of accommodation, food, health (including sexual health care) and medical care as well as psychological counselling, legal and migration advice. In accordance with their protection responsibilities, the State should provide civil society actors with sufficient support and funding to protect victims.<sup>35</sup>
- International organizations such as United Nations (UN) agencies and the International Organization for Migration (IOM) may be able to provide financial and material support.<sup>36</sup>

## Return and reintegration stakeholders

Stakeholders involved in return and reintegration of victims to their countries of origin may include immigration and foreign affairs authorities, police, consular affairs, social service departments, as well as other authorities in countries of origin and destination. These actors, in both returning and receiving States, may need to issue victims of trafficking with the documentation they require in order to return.<sup>37</sup> Government shelters or temporary accommodation providers in both returning and receiving States will need to be engaged throughout the process. State actors from both States will also need to coordinate in advance to develop and implement a plan for the social inclusion of the returning person. For instance, ministries of labour, employment and industry may play key roles in providing sustainable livelihood opportunities for victims of trafficking reintegrating into society.

NGOs involved in issues of return and reintegration may include support groups for victims, migrants, women and children. International organizations such as IOM and UN agencies may play a vital role in supporting or monitoring return procedures, and facilitating cooperation between States in the development of sustainable protection and social inclusion plans.<sup>38</sup> Such non-governmental and inter-governmental actors may be active in facilitating coordination between returning and receiving States, offering both pre-departure assistance and post-return assistance.

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<sup>35</sup> See *The IOM Handbook on Direct Assistance to Victims of Trafficking*, IOM, 2007, Chapter 4, and *National Referral Mechanisms, Joining efforts to protect the Rights of Trafficked Persons: A Practical Handbook*, OSCE, 2004, p.73-76.

<sup>36</sup> Through its Global Assistance Fund (GAF) and other support mechanisms at country and regional levels, IOM provides direct assistance to approximately 6,000 – 7,000 victims of trafficking per year.

<sup>37</sup> Embassies and Consulates issuing replacement papers to enable their travel must not identify the person as a victim or trafficking in those documents, and returning authorities should not forward any personal data to countries of origin without explicit permission of the person concerned.

<sup>38</sup> See *The IOM Handbook on Direct Assistance to Victims of Trafficking*, IOM, 2007, Chapter 3, and *National Referral Mechanisms, Joining efforts to protect the Rights of Trafficked Persons: A Practical Handbook*, OSCE, 2004, pp.80-83.



## 3.2. Coordination at the political level

Coordination at the political level is required in order to lay foundations for effective multi-stakeholder coordination of protection. Many political commitments have been made at the international, regional and national levels, and agreements are in place to coordinate responses.

At the international level, States have committed themselves to strong coordinated obligations, by becoming parties to the Trafficking in Persons Protocol. Beyond this, strong regional commitments have also been made. For example, members of the Association of the Southeast Asian Nations (ASEAN) have entered into a *Declaration against Trafficking in*

*Persons Particularly Women and Children*. The Declaration emphasizes the need for a regional approach to prevent trafficking, including to take actions to safeguard the rights and dignity of victims of trafficking.<sup>39</sup> The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) was established in 2004 with the signing of a MOU that commits signatory governments of the Greater Mekong Sub-region to coordinate and strengthen their efforts against trafficking, including in the protection, recovery and reintegration of victims.<sup>40</sup> Under the COMMIT process, signatory governments commit themselves to cooperating against human trafficking in accordance with international standards. National taskforces comprised of government officials from relevant Ministers (including police, justice, social service and women's affairs) make decisions on anti-trafficking policies and programming in their country that are reflected in annual COMMIT workplans and resulting action plans which are implemented nationally, bilaterally and multilaterally through partnerships between government departments and non-governmental stakeholders, including UN agencies, IOM, civil society actors and other stakeholders.<sup>41</sup>

Another example of political commitment to strengthen regional coordination of protection efforts is found in the South Asian Association for Regional Cooperation (SAARC) *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*.<sup>42</sup> Under this Convention, States Parties commit to establishing protective homes for victims of trafficking, and authorize and recognize the role of non-governmental organisations in doing so.

At the national level, political coordination occurs in many ways, including through arrangements entered into by government and non governmental actors to coordinate their protection functions. Approaches differ from State to State, but generally involve a national coordinator who is a high-level government official or agency, and a committee or roundtable comprised of senior representatives of government agencies and civil society groups who work together to develop national policy and procedural recommendations.

**Tip:** Formalize national coordination mechanisms for protecting victims of trafficking

**National coordination mechanisms are more likely to be effective where they are entered into formally, for instance through the signing of Memorandums of Understanding (MoUs) that outline specific roles and duties of each stakeholder.**

<sup>39</sup> See: <http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-against-trafficking-in-persons-particularly-women-and-children-3>

<sup>40</sup> Cambodia, China, Lao PDR, Myanmar, Thailand and Viet Nam.

<sup>41</sup> See <http://www.no-trafficking.org/commit.html>

<sup>42</sup> South Asian Association for Regional Cooperation (SAARC) *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*, 2002. Signatories include governments of Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

### 3.3. Coordination at the operational level

Given that several stakeholders may be involved in ensuring that victims of trafficking are protected, it is vital that coordination mechanisms are put in place to allow for the different services to complement each other in providing appropriate assistance. To promote effective coordination at the operational level and to provide access to appropriate protection services for victims of trafficking, States have adopted different mechanisms during specific stages of victim protection.<sup>43</sup> At the outset, it is useful to map relevant stakeholders, their roles and the protection services they provide.

Coordination mechanisms between States and non-State actors have been described as “a cooperative framework through which State actors fulfill their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society.”<sup>44</sup> Although commitments at the political level offer a framework for strengthened protection, a common means of operationalizing those commitments is by formalizing coordination between governmental and non-governmental stakeholders to give victims of trafficking access to assistance and protection services. By bringing together appropriate service providers in this way, the implementation of legislation, policies and procedures in relation to protection is improved.

#### **Tip:** Operationalize coordination mechanisms

**Operational level coordination to ensure inter-agency collaboration is a prerequisite for the success of any national or local strategy to prevent and combat human trafficking. Good practice examples include standard operating procedures (SOPs), regular meetings as well as evaluation and monitoring mechanisms agreed upon and utilized by different stakeholders.**

Coordination mechanisms also allow for the exchange of best practice on multi-stakeholder protection. They can support bilateral, regional and international cooperation on protection, by enabling actors from one jurisdiction to effectively engage with anti-trafficking actors in other jurisdictions. Ideally such mechanisms are not only used as instruments to support investigation and prosecution, but primarily focus on protecting victims of trafficking.<sup>45</sup>

Effective coordination mechanisms are broad enough in scope to capture all forms of exploitation (including sexual and labour exploitation and other forms such as removal of organs), categories of victims (including men and boys as well as women and girls), and types of trafficking (including internal as well as transnational trafficking). Effective and efficient coordination mechanisms are based on a clear description of the respective roles of various agencies involved, including leadership and accountability.

Inter-departmental committees on human trafficking may be a useful coordination mechanism, bringing together representatives from criminal justice, employment, immigration, labour and industry, social services, and other relevant government sectors to monitor implementation of national strategies and address emerging issues across all departments of government. National roundtables may be convened to serve as a formal consultative mechanism between government and civil society, union and industry stakeholders. Working groups may also be formed to address specific trafficking issues, or to address operational issues in individual cases.

<sup>43</sup> On operationalizing international State-to-State cooperation on trafficking in persons, see *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, ASEAN Secretariat, August 2010.

<sup>44</sup> *National Referral Mechanisms, Joining efforts to protect the Rights of Trafficked Persons: A Practical Handbook*, OSCE/ODIHR, 2004, p.15.

<sup>45</sup> See *Human Trafficking: Joint UN Commentary on the EU Directive - A Human Rights-based Approach*, OHCHR/UNHCR/UNICEF/UNODC/UN Women and ILO, 2011, p.50 and *Current NRM Developments in the OSCE Region*, ODIHR, 2008.

## Operationalizing political commitments to strengthen coordination in protection of victims of trafficking

Effective political commitments (including MOUs) mention several key elements, including:

- **Partners** to the commitment, their **mandates** and the areas they will operate
- The basic **principles and purpose** of the cooperation
- The **target groups** to benefit from the commitment
- Arrangements for safe and confidential **communication and information exchange**
- Procedures for **cooperation**
- Appropriate measures for minors.

In practice, political commitments are operationalized where partners to them take the following actions to protect victims of trafficking:

- ▶ Political commitments are supported by sufficient financial commitment
- ▶ Persons who are suspected to be victims of trafficking, are treated as if they are victims of crime for the purpose of initial assistance and protection, regardless of their migration status or their involvement in criminal acts that are a consequence of their trafficking
- ▶ Presumed victims of trafficking are informed orally and in writing, in a language they understand, of opportunities for protection and support
- ▶ Presumed victims of trafficking are afforded a period of reflection
- ▶ Safe accommodation and necessary support services are made available to presumed victims of trafficking, irrespective of migration status or their willingness to participate in a criminal justice investigation
- ▶ Relevant State and NGO protection partners consult on protecting persons who decide to cooperate with criminal justice authorities or decide to return to countries of origin
- ▶ State and NGO partners consult with each other on whether the presumed victim of trafficking faces dangers from the trafficker
- ▶ Presumed victims of trafficking are informed orally and in writing, in a language they understand, of the future course of legal proceedings
- ▶ Presumed victims of trafficking are accompanied by service providers before, during and after legal proceedings
- ▶ Victims of trafficking receive support for the provision of compensation, financial assistance, or reparation in recognition of the injury, loss or harm experienced
- ▶ The protection needs of victims of trafficking are considered after the conclusion of any criminal justices process to support their sustainable social and economic reintegration and reduce the risks of retaliation and re-trafficking.



# Section 4:

## Summary of tips for protecting victims of trafficking

- ✓ **Follow key principles for protecting victims of trafficking:**
  - Victims should not be detained, charged or prosecuted for irregularly entering or remaining in a State, or for crimes they have committed as a direct result of being trafficked
  - Victims should have access to adequate physical and psychological care
  - Victims should be provided with legal and other assistance through any criminal, civil or other proceedings
  - Child victims of trafficking should be provided with appropriate assistance and protection, in accordance with their special vulnerabilities, rights and needs
  - Victims should be guaranteed safe (and where possible, voluntary) return by receiving and origin States
  - Victims should be given access to effective and appropriate legal remedies.
- ✓ **Operationalize the protection provisions in international law:** States are encouraged to follow the example of those States that go beyond the minimum standards provided for in the Trafficking in Persons Protocol, for example by introducing compensation schemes outside of and in addition to criminal proceedings.
- ✓ **Ensure that approaches to protection are victim-centred:** Ensure that approaches to protecting victims of trafficking are victim-centred, taking into consideration the safety of victims and their families, and the confidentiality of information pertaining to them. Victim protection programs should apply to all victims of trafficking on a non-discriminatory basis and should flexibly adapt to the individual needs of victims, including through effective cooperation with specialized non-governmental organizations.
- ✓ **Protect victims whether they cooperate or not:** States should uphold their obligations to protect victims, irrespective of their migration or other status, and their willingness to participate in criminal justice proceedings.
- ✓ **Provide reflection periods to victims of trafficking:** Provide reflection periods to victims of trafficking to enable them to begin to recover from their experience. Reflection periods and associated support, including temporary visas for victims of transnational trafficking, should be provided irrespective of a victim's willingness to participate in criminal justice proceedings against traffickers.

- ✓ **Protect victims of human trafficking in accordance with best practice:** Guideline 6 of the Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking advises that states, and where relevant intergovernmental and non-governmental organizations, should consider:
  - Ensuring that victims are not held in any form of immigration or other detention
  - Ensuring that victims are not obliged to accept any protection or assistance services they do not consent to receive
  - Informing victims of their rights to access diplomatic and consular representatives from their State of nationality
  - Protecting victims from threats, harm or retaliation from traffickers, including by respecting their privacy and not disclosing their identity.
- ✓ **Conduct risks assessments throughout the criminal justice process:** The protection needs of victims will differ before, during and after trials. Accordingly, best practice is for States to conduct risk assessments at each stage of the process to ensure that protection services being provided to victims are adapted to effectively address their changing protection needs.
- ✓ **Provide pre-trial support to victims and witnesses of human trafficking:** The protection provisions of the Trafficking in Persons Protocol provide the minimum standards for pre-trial support to victims and witnesses of human trafficking. States should put in place a formal process to provide such support. Competent NGOs and civil society organizations that understand the criminal justice system and have specialist training in providing support to victims may be able to assist in the provision of such support services.
- ✓ **Support victims throughout the criminal justice process:** States should provide victims with comprehensive information, in a language they understand, on options that are available to them including as witnesses in court proceedings. States should also strive to provide victims with access to independent legal counsel to assist them in understanding their legal rights and obligations.
- ✓ **Put protection measures in place for child victims and witnesses of trafficking:** States may consider making measures and testimonial aids for protection of vulnerable persons, automatically available for child victims. Additional protections may also be considered, such as allowing submission of video recordings of police interviews with child victims and/or witnesses as evidence in chief. However, child victims should not be required to participate, especially when they have experienced extreme trauma.
- ✓ **Ensure assistance and protection measures are not inducements to participate:** Assistance and protection measures should be provided in a way that does not amount to any form of inducement that could undermine the case of the prosecution. Anything provided to witnesses, including accommodation and visas, for example, should be recorded and rationalized, and any abuse of support identified and addressed promptly.



- ✓ **Provide effective compensation as part of sustainable protection solutions:** States should consider making sources of compensation available to victims of trafficking, outside of criminal justice proceedings. Consideration should be given to ensuring that compensation is accessible to victims of trafficking who are non-citizens.
- ✓ **Formalize national coordination mechanisms for protecting victims of trafficking:** National coordination mechanisms are more likely to be effective where they are entered into formally, for instance through the signing of MOUs that outline specific roles and duties of each stakeholder.
- ✓ **Operationalize coordination mechanisms:** Operational level coordination to ensure inter-agency collaboration is a prerequisite for the success of any national or local strategy to prevent and combat human trafficking. Good practice examples include standard operating procedures, regular meetings as well as evaluation and monitoring mechanisms agreed upon and utilized by different stakeholders.



# The Bali Process



## Contact

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on People Smuggling, Trafficking in Persons and Related Transnational Crime