

PUTTING VICTIMS FIRST

The 'social path'
to identification
and assistance



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The Organization for Security and Co-operation in Europe (OSCE) is a pan-European security body whose 57 participating States span the geographical area from Vancouver to Vladivostok. Recognized as a regional arrangement under Chapter VIII of the United Nations Charter, the OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area. Its approach to security is unique in being both comprehensive and co-operative: comprehensive in that it deals with three dimensions of security – the human, the politico-military and the economic/environmental. It therefore addresses a wide range of security-related concerns, including human rights, arms control, confidence- and security-building measures, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.

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Acronyms

CoE	Council of Europe
CPTV	Centre for the Protection of Trafficking Victims (Serbia)
EMA	Greece's National Reporting Mechanism: Εθνικό Μηχανισμό Αναφοράς, also referred to as the National Referral Mechanism for the Protection of Victims of Trafficking in Human Beings
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IOM	International Organization for Migration
MoU	memorandum of understanding
NGO	non-governmental organization
NMI	Ukraine's NRM: National Mechanism for Interaction of the Agents for Combating Trafficking in Human Beings
NRM	National Referral Mechanism for Victims of Trafficking
OAS	Organization of American States
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
OSR/CTHB	Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
SOPs	standard operating procedures
THB	trafficking in human beings
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office for Drugs and Crime

Foreword



The State obligation to promptly identify and assist victims of human trafficking is sacrosanct. It is enshrined in international legal documents and is a key commitment of the OSCE participating States. It is embedded in the OSCE Action Plan to Combat Trafficking in Human Beings and its Addenda, as well as in a number of OSCE Ministerial Council Decisions. However, insufficient protection for victims remains a major persisting challenge in today's anti-trafficking efforts. This manifests in low identification numbers, lack of tailored rehabilitation services, unclear prospects for (re)integration, and – tragically – the re-trafficking of victims.

To address these deficiencies, particularly in the context of the humanitarian crisis related to the war against Ukraine, in April 2022, my Office's annual Alliance against Trafficking in Persons conference focused entirely on victim protection issues. The conference took stock of existing protection systems and their capacity to provide comprehensive assistance to victims of human trafficking. It addressed the myriad vulnerabilities that must be accounted for to ensure that State protection efforts are effective and inclusive, such as with regard to victims' age, gender and citizenship, their social, economic, cultural, ethnic or religious background, or their disabilities. It outlined existing gaps in State identification and assistance mechanisms, and proposed potential solutions for filling these gaps.

One of the key takeaways of the conference is that there is a growing need to separate assistance to victims from their participation in criminal justice investigations and processes. This remains a major obstacle to effective identification and protection. There is a plethora of reasons why victims do not want to engage with law enforcement, starting from fear of retaliation and loss of agency, to distrust of authorities or lack of long-term solutions after criminal proceedings. These factors should not preclude assistance; indeed, they only emphasize its importance. Thus, it is high time that we, as anti-trafficking professionals, abandoned the concept of 'coercing' victims into co-operation by making access to services contingent on such co-operation. Instead, the focus should be on ensuring victim identification and assistance independent of criminal justice systems.

The publication you have in front of you provides a discussion for States on how to change the current state of affairs by adopting a 'social path' approach to identification and assistance. The 'social path' is a viable protection avenue that frees victims from the requirement to co-operate with the criminal justice process in order to access support and protection. It offers long-term assistance to all victims without discrimination. It is a path to victim recovery that, if implemented effectively, will ultimately lead to reduced vulnerabilities, fewer re-trafficking cases, more credibility of State protection systems, and safer communities.

A key first step toward achieving the above is understanding the relevant policy options and their rationale; this paper aims to support States in this regard. My Office stands ready to help States take further action to protect and support the people who need – and are entitled to – such help.

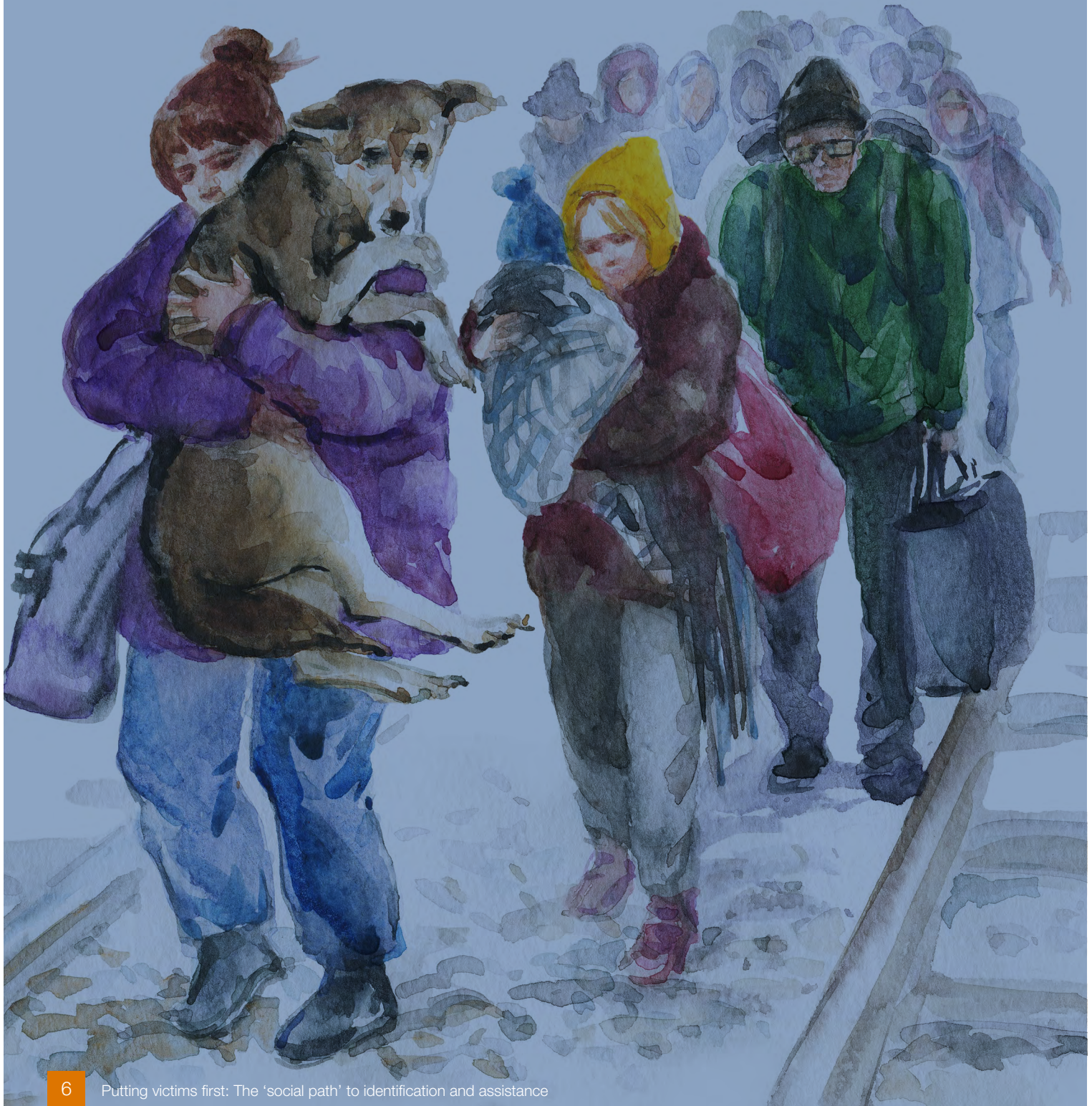
Valiant Richey

OSCE Special Representative and Co-ordinator
for Combating Trafficking in Human Beings

1

Introduction

Identification of victims of trafficking in human beings is a cornerstone of an effective anti-trafficking response, and should remain a priority in State policies and measures to combat the crime.



Identifying an adult or child as a victim of trafficking is the first stage of protecting them. In many countries, being identified as a trafficking victim is the gateway to services and support specific to trafficking victims, rather than services and support specific to, for example, refugees or children. The primary purpose of identification is not to gather evidence from potential witnesses or victims of crime, nor to collect data about the number of people who have been trafficked. It is to trigger a State's obligation to provide protection, including all forms of assistance.

This assistance should not be conditional on victims' co-operation with the criminal justice system. It should instead offer them a path toward recovery, rehabilitation and restoration of their rights. Indeed, such assistance increases the likelihood of victims regaining their agency and participating in all aspects of society, including criminal proceedings, with the goal of bringing their traffickers to justice.

Currently, in the majority of OSCE participating States, individuals can only be formally identified as victims of trafficking in human beings within the criminal justice system, usually by law enforcement. A recent OSCE report¹ indicates that in approximately half of the OSCE participating States (29), only officials associated with law enforcement can designate a person as a trafficking victim. Moreover, in eight participating States only law enforcement can refer them to support services. Barely half of the OSCE States reported providing support to victims independent of their co-operation with law enforcement. Particular concerns have been raised about the ability of foreign victims to access justice and remedy, especially when they do not have a legal right of residence.

However, people who have been trafficked are often reluctant to co-operate with the criminal justice system, and are routinely too frightened to provide information to law enforcement officials about the criminals who have trafficked them. There are many reasons for this, all of which combined make it important to offer alternatives. For example, victims may:

- have specific fears about their own safety (if they speak out) or that of their loved ones, particularly a fear of reprisals from traffickers or their associates;
- be traumatized and, therefore, need sufficient time to recover;
- fear being charged themselves with a crime or be fearful that their irregular immigration status will lead to their being deported (and, in some cases, the subject of refoulement²);
- be afraid of contacts with 'people in uniform' on account of prior experiences or a cultural distrust of law enforcement;
- be unable to provide sufficient evidence (even if they do speak to a police investigator or prosecutor), or their evidence is deemed insufficient by law enforcement authorities, and therefore prosecution or conviction does not go ahead, with victims having endangered themselves by coming forward in vain.

A current member of the Group of Experts on Trafficking in Human Beings (GRETA), the treaty-monitoring body which has been established by the Council of Europe Convention on Action against Trafficking in Human Beings,³ has summed up the situation as follows:

"Although understandable from a police perspective, involving the police in the identification of victims entails the risk of false negatives (victims not being identified while they are victims), as the lack of law enforcement indications does not necessarily reflect a lack of victimhood The current system (in which a residence permit is linked to the willingness to co-operate, and indicators to start criminal investigations are collected during the reflection period⁴) creates pressure on victims to make a statement against the traffickers at an early stage in the process. Such pressure is undesirable given the needs, problems, and fears of victims immediately after they have left the situation of exploitation."⁵

Some OSCE participating States apply a procedure for the formal identification of trafficking victims that is outside the criminal justice system, identification that then triggers various benefits for victims, such as short-term or long-term assistance, temporary residence and work permits, and suspension of expulsion orders. This identification procedure is based on the approach that can be referred to as the ‘social path’⁶ for identifying people who have been trafficked. The term reflects the identification process involving social service agencies or civil society rather than the criminal justice system.

The ‘social path’ to identification offers a framework that substantially reduces the pressure on victims to prove their trafficking situation, and provides unconditional access to assistance and protection. It maximizes the potential of State social protection agencies and re-enforces their mandate to assist vulnerable populations, including victims of trafficking in human beings, by vesting in such agencies the authority to formally identify victims and use existing protection mechanisms to help them fully recover. Moreover, the availability of a ‘social path’ does not prevent a potential victim-witness from opting to provide testimony to law enforcement officials at any time they wish or feel ready to do so. Indeed, timely identification and assistance can greatly facilitate co-operation with law enforcement and the provision of useful evidence.

This report aims to examine and promote the ‘social path’ to identifying victims of trafficking in human beings for assistance purposes, and is a reference and advocacy tool to support the introduction of the ‘social’ path framework in OSCE participating States. It is based on a review of international law, engagement between the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and the OSCE participating States, and a desk review of the information available about the ‘social path’ approach toward the identification and protection of human trafficking victims.

Chapter 1 of the report summarizes relevant provisions in international and regional legal instruments and policy frameworks, including recommendations made by the OSCE, concerning the identification of trafficking victims. It cites specific references to the non-conditionality of assistance to victims in relation to their willingness to participate in criminal proceedings, and provides a legal basis for the ‘social path’ model.

Chapter 2 presents a rationale for the ‘social path’ to identification of trafficking victims and outlines specific reasons and situations where this model offers distinct advantages in ensuring effective and comprehensive implementation of a victim-centred approach.

Chapter 3 contains an analysis of emerging practices in the OSCE region to illustrate how this approach is being addressed in four OSCE participating States: Greece, Italy, Serbia and Ukraine. It provides an overview of procedures that have been developed, this supported by available recent victim identification data, and concludes by highlighting some of the salient features that the practices have in common.

Finally, **Chapter 4** of the report offers concluding considerations and recommendations that should be taken into account for the ‘social path’ procedure to be introduced and subsequently implemented in a given State.

The report concludes that the ‘social path’ approach has the benefit of promoting trust in State protection systems by prioritizing the obligation to assist victims of trafficking and uphold their rights. This approach provides a critical route to long-term assistance and recovery, irrespective of a victim’s ability or willingness to co-operate with law enforcement officials or the existence of a criminal case. The report argues that, in the longer term, victims identified outside the criminal justice system for the purpose of long-term assistance will be more willing to contribute to a criminal investigation and the possible prosecution of suspected traffickers. The ‘social path’ to identification offers more victims unimpeded access to services, thus increasing the likelihood of their further engagement.

2

International standards to identify and protect trafficking victims independent of criminal proceedings

International legal obligations and political commitments place a special emphasis on the State's duty to assist and protect victims of trafficking in human beings in line with a victim-centred and human rights-based approach. A number of international instruments from the United Nations, the OSCE, the Council of Europe, the EU, the Bali Process, and the Organization of American States present a solid framework that detaches such assistance from the criminal justice system.



United Nations

The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁷ supplementing the UN Convention against Transnational Organized Crime (2000), states that one of its purposes is “To protect and assist the victims of such trafficking, with full respect for their human rights” (Article 2). By implication, each State Party requires procedures to identify who such victims are. However, it does not specify the process by which victims of trafficking may be identified.

The Protocol also states *inter alia* (in Article 6) that “Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons” and “Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory”. It does not limit these protection and assistance measures to individuals who have been formally ascribed the status of a victim of crime following the conviction of the criminal(s) who victimized them, or to individuals who have agreed to provide evidence against their alleged trafficker.

Concerning children who are trafficked, the UN Convention on the Rights of the Child (1989) requires States Parties to “protect the child from all forms of sexual exploitation and sexual abuse” (Article 34), “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form” (Article 35), and “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse ...” (Article 39). As is plainly clear from the text, these obligations exist independent of criminal proceedings and may not be made conditional on a young person (or their legal representative) agreeing to provide information to law enforcement investigators.



In 2014, the United Nations Special Rapporteur on trafficking in persons, especially women and children, commented in her annual report:

“In line with the rights-based and victim-centred approach, the mandate holders have focused strongly on elaborating the legal dimensions of the rights of victims to assistance, protection and support, and in considering the extent to which those rights are respected and protected in practice. It is abundantly clear that States are indeed required to provide immediate assistance and support to victims of trafficking within their jurisdiction and to protect them from further harm. In order to achieve this, a swift and accurate identification of victims is fundamental to the realization of the rights to which they are legally entitled ...”⁸

A subsequent UN Special Rapporteur went further and asserted in 2019 that “services and residence status should be not only non-conditional, but also should be disconnected from the very existence of criminal proceedings.”⁹

Organization for Security and Co-operation in Europe



In 2003, the OSCE adopted its first Action Plan to Combat Trafficking in Human Beings. It recommended that at the national level guidance should be provided “to facilitate the accurate identification and appropriate treatment of the victims of THB, in ways which respect the views and dignity of the persons concerned.”¹⁰

The following year, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued its Handbook on National Referral Mechanisms (2004), noting that

“Locating and identifying trafficked persons is a fundamental problem in all anti-trafficking strategies. For a variety of reasons, those caught up in human trafficking often do not want to reveal their status or experiences to state authorities. Victims may harbour deep feelings of mistrust towards official bodies, stemming from experiences in their country of origin. Frequently, victims fear violent retaliation by traffickers against themselves and family members in their countries of origin. Such threats of violence once they return home can enhance victims’ fear of deportation because of their illegal status. Because victims of trafficking are often reluctant initially to identify themselves as such, the term ‘presumed trafficked persons’ is generally used to describe persons who are likely to be victims of trafficking and who should therefore come under the general scope of anti-trafficking programmes and services.”¹¹

The Handbook also notes:

“The identification of a trafficked person can be a complex and time-consuming process requiring professional guidance and support structures to create a safe space for the victim. Sometimes it is a question of weeks or months before a trafficked person overcomes posttraumatic stress syndrome and is able to speak out. Therefore, the concept outlined in this handbook incorporates the identification process as part of a protection and support programme.”¹²

Almost a decade later, the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings recommended that, with respect to identification and assistance at national level,

“relevant State authorities identify individuals as trafficked persons, who have suffered human rights abuses, as soon as there are reasonable grounds to believe that they have been trafficked, and, in accordance with national law, ensure that victims of THB are provided with assistance even before the investigation is initiated; ensuring that this assistance is not made conditional on the victim’s willingness to participate in legal proceedings, without prejudice to the national regulations on the conditions of the residence of the victim in the territory of the State.”¹³

The same Addendum recommended that “relevant NGOs, trade unions and social welfare services” be empowered to initiate referrals for the assistance of victims of all forms of trafficking,¹⁴ through a National Referral Mechanism (NRM) or other relevant structures. It urged that relevant NGOs should be able to “access State facilities, including social service and immigration reception centres, prisons and detention facilities, to contribute to the timely identification of trafficked persons.”¹⁵ Finally, it included a specific recommendation concerning the identification of trafficked children, calling for “the capacity of police, social workers and other public authorities who may come in contact with children and other individuals trafficked and exploited in forced and organized begging” to be enhanced, “to ensure prompt response to their particular needs, with the objective to immediately remove, where possible, victims from harmful and exploitative situations.”¹⁶

As a practical step to assist participating States in implementing the above provisions, the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) addressed the need for an alternative path of identification of trafficking victims in the context of its migration-related work in the 2019 publication *Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region*.¹⁷ Re-affirming the importance of multi-agency co-operation, this publication synthesized the findings of the Special Representative’s assessment visits to a number of migrant and refugee reception facilities, as well as the outcomes of consultations with practitioners working in the States most affected by mixed migration flows. Emphasizing the critical necessity of a ‘social path’ for identifying trafficked victims in mixed migration flows, the Guidelines argue that this approach builds positive, assistance-based relationships with victims, and that it has long-term potential for actually improving future co-operation in investigations. Systems that make assistance conditional on co-operation often only alienate and isolate victims.

Finally, the most recent update of ODIHR’s *Handbook on National Referral Mechanisms*,¹⁸ which introduces and provides guidance on action across the four NRM ‘pillars’ – identification and protection, individual support and access to services, social inclusion, and criminal justice and redress – unequivocally re-affirms that:

“Non-conditional provision of NRM services should be guaranteed to all victims of trafficking who feel unable or are unwilling to proceed with a criminal complaint against traffickers.”

Council of Europe and the European Union

The Council of Europe Convention on Action against Trafficking in Human Beings (2005) requires States to ensure that the identification of trafficking victims is not conditional on their co-operation with law enforcement officials. Article 12.6 specifies that “Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness”.¹⁹

Further, the Explanatory Report accompanying the Anti-Trafficking Convention notes that “The drafters wish to make it clear that under Article 12(6) of the Convention, assistance is not conditional upon a victim’s agreement to cooperate with competent authorities in investigations and criminal proceedings”.²⁰

Commenting on identification procedures, the Group of Experts on Action against Trafficking in Human Beings (GRETA), the treaty-monitoring body established by the Council of Europe Convention, in its Second General Report (2012),

“stresses that a person’s identification as a victim of human trafficking should not depend on the presence of elements necessary to initiate a criminal case or the person’s co-operation with the law enforcement authorities. Any person showing signs that he/she has been subjected to a combination of the three key elements of the definition of trafficking in human beings (action, means and purpose) should be considered as a victim of trafficking. This does not imply that victims must provide proof that they have been injured or financially damaged, but it may involve giving some measure of independent evidence supporting their claim. It might sometimes be difficult for victims to justify one of the elements, e.g. the purpose of exploitation, prior to a criminal investigation, which is why it is important to apply operational indicators of trafficking in human beings (as designed by several international organisations, such as ILO, IOM, UNODC and ICMPD).”²¹

The non-conditionality of assistance is also emphasized in the EU Anti-Trafficking Directive,²² whose Article 11 provides that

“Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC²³ or similar national rules.”

The European Union’s Strategy on Combatting Trafficking in Human Beings,²⁴ issued in April 2021 to cover the years 2021 to 2025, lists a series of challenges to victim identification and assistance in the context of this provision, in particular as related to non-EU citizens:

“Victims who are not EU citizens face additional difficulties. The particular situation of victims of trafficking requires specific consideration when issuing residence permits. Under current EU rules, the granting of a residence permit can be conditional upon the victim’s cooperation in the criminal proceedings. In addition, there are inconsistencies across Member States in the application of reflection periods for victims who are not EU citizens, during which assistance to victims is ensured.”

In light of the above, the Strategy commits to the assessment by the European Commission of how these challenges can be effectively addressed, including “through a strong gender dimension in supporting and protecting victims, the non-punishment of victims for crimes they were compelled to commit, and in relation to the 2004 Council Directive on residence permit for victims of trafficking.”

Finally, the European Court of Human Rights²⁵ has examined a number of cases involving people who have been trafficked but who have not been properly identified or adequately protected by the States involved. The European Court clarified that “Article 4 of the European Convention on Human Rights generates a positive obligation on States to identify possible victims of trafficking and for this purpose, States have to build a legal and administrative framework”.²⁶ In particular, the Court has observed that “(potential) victims [of trafficking] need support even before the offence of human trafficking is formally established, otherwise this would run counter to the whole purpose of victim protection in trafficking cases”.²⁷



Standards in the framework of the Bali Process²⁸

Initiated in 2002, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime operates as a regional forum for policy dialogue, information sharing and practical co-operation for its 49 members. The membership includes three OSCE participating States (Mongolia, Türkiye and the United States) and six Partners for Co-operation (Afghanistan, Australia, Japan, Jordan, the Republic of Korea and Thailand).

In 2015, the Regional Support Office of the Bali Process published two policy guides, one on the identification of victims of human trafficking and the second on their protection.²⁹ Developed for practitioners and policy makers, these documents provide an overview of international and regional standards for the identification and protection of trafficking victims. They also present good practices from member countries of the Bali Process.

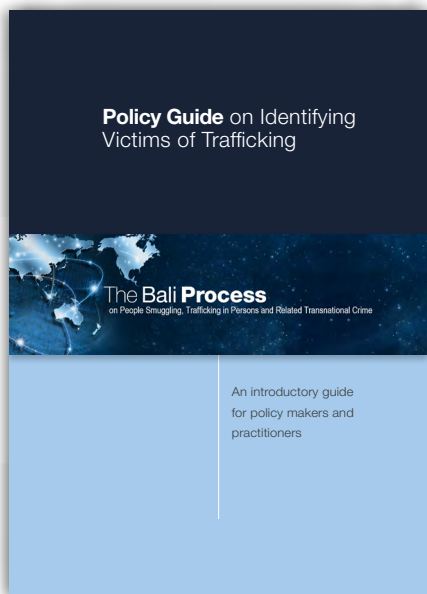
The Identification Guide points out that:

“Failure to identify victims of trafficking results in their continued exploitation and their inability to access the assistance and protection to which they are entitled. It may also result in authorities being unable to gather information and evidence necessary to bring traffickers to justice. Identification is therefore an essential part of the process to prevent and prosecute this serious crime, and to assist and protect its victims.”

The Identification Guide clearly underlines that the primary responsibility for identifying trafficking victims lies with the State. It encourages States to apply a low threshold for identification, especially during a first contact before there has been time for authorities to build the trust of the person in question, and to ensure that presumed victims receive appropriate assistance and protection. This also refers to those States where social welfare services hold responsibility for the processes of presuming, verifying and confirming a person’s status as a victim of trafficking.

The Guide also reiterates that “States should uphold their obligations to protect victims, irrespective of their migration or other status, and their willingness to participate in criminal justice proceedings”, and offers advice on implementing sustainable protection solutions, including integration, voluntary return or reintegration. It states that:

“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. 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. 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.”



Principles and guidelines of the Organization of American States (OAS)³⁰

The OAS brings together all 35 independent States of the Americas and is a political, juridical, and social governmental forum in the Hemisphere. Its membership includes two OSCE participating States (Canada and the United States). Its mandate on trafficking in human beings is based on a number of OAS resolutions, as well as the Second Work Plan to Combat Trafficking in Persons in the Western Hemisphere and the Hemispheric Plan of Action against Transnational Organized Crime.³¹

The Work Plan was developed as a reference to guide actions by member States and the OAS General Secretariat in assisting States in combating trafficking in persons in the 2015–2018 period. Several guidelines in Chapter V of the document serve as a foundation for applying the principle of non-conditional protection and assistance. Guidelines No. 51, 51, 58 and 59 read as follows:

“Promote the creation of suitable emergency, transitional, and long-term housing for victims of trafficking in persons, taking into account gender, age, and other relevant factors, or, as the case may be, expand existing ones.

Devise policies and programs to protect victims of trafficking in persons, based on respect for human rights and taking into consideration gender, age, health, and other factors, and based on input from survivors of trafficking in persons.

Adopt policies to ensure that victims of trafficking in persons with irregular migration status have access to the same protection extended to nationals who are victims, and that they be permitted to remain in the territory, either temporarily or permanently, as appropriate.

Encourage the adoption of laws and procedures such that judicial deportation and/or immigration proceedings are not instituted against trafficking-in-persons victims, regardless of their co-operation with law enforcement authorities or participation in the trial process against human traffickers.”

Conclusion

As the above review demonstrates, there is a strong legal and political foundation for States to introduce and implement a ‘social path’ toward identification that guarantees assistance irrespective of trafficking victims’ participation in criminal proceedings. Such identification procedures will uphold victims’ rights, ensure equal treatment of all victims, in particular with respect to their origin, and serve as an operational framework for designing and implementing sustainable protection solutions for victims. The chapters that follow provide arguments and concrete examples in support of the ‘social path’ approach.



3

Advantages of the 'social path' to identification

This chapter sets out some of the key reasons why the 'social path' offers distinct advantages over identification procedures that rely on criminal justice systems (and criminal justice system actors) to identify victims of trafficking.

These advantages include:

1. Ensuring identification as a pathway to mid- and long-term assistance irrespective of victims' participation in criminal proceedings;
2. Providing protection without exposing trafficking victims to risks of retaliation;
3. Lowering of the evidentiary threshold from that required to prove a crime versus the information needed to initiate protection and assistance;
4. Continued support of victims upon return to their country of origin or habitual residence;
5. Vesting conclusive identification with the State social protection system, thereby building the trust of victims and thus leading to more identifications;
6. Creating conditions for more prosecutions.

Ensuring identification as a pathway to mid- and long-term assistance irrespective of victims' participation in criminal proceedings

The OSR/CTHB 2021 Survey Report revealed an increase in legislative or policy provisions that allow a victim to be provided with assistance without, or prior to, a formal status determination (89 per cent of respondents).³² This indicates that actors in most States are now able to make at least a provisional identification of victims of trafficking and respond to their most urgent needs while the victim enters a short “reflection period” to begin rehabilitation and consider whether to co-operate with law enforcement.

However, such immediate assistance is only the first step towards a victim's full recovery. In many cases, the end of such reflection periods still leaves victims with a choice: either can they choose to co-operate with law enforcement and testify, or they are returned to their country of origin or habitual residence. This means that *de facto* continuation of assistance and protection efforts (at least in the country of destination or identification, and in particular for foreign victims of trafficking) can still be fully dependent on a victim's formal engagement in criminal proceedings.³³ Moreover, if criminal proceedings do not result in a successful prosecution of a THB case, it can deprive a presumed victim of formal status and lead to their return to the situation or circumstances that made them vulnerable to exploitation in the first place.

The implementation of the ‘social path’ of identification thus has powerful implications for mid- and long-term assistance purposes. Separating access to assistance from the criminal justice system can eliminate such situations and make victim protection truly unconditional. Moreover, detaching the formal recognition of trafficking victims from the criminal justice system will enable States to implement a full menu of sustainable protection solutions, including integration and relocation to a third country. It will increase victims' trust in State protection systems and significantly reduce risks of re-trafficking and re-victimization.

Providing protection without exposing trafficking victims to risks of retaliation

Trafficking victims can face significant risks of retaliation if they report their victimization or co-operate with the police. Fear of such reprisals can discourage victims from coming forward, thereby undermining their identification as victims and subsequent access to assistance. Although there was little public acknowledgement of the scale of such risks by prosecutors and other law enforcement experts at the time that the UN Trafficking Protocol was adopted in 2000, it soon became apparent that trafficking victims who did not feel safe and protected are often unwilling to take the risk of providing information to police investigations or prosecutors.

The OSCE/ODIHR *Guiding Principles on Human Rights in the Return of Trafficked Persons* outlines a number of situations in which such reprisals can manifest themselves:

“... for example, whether family members/friends or associates in the country of origin have been contacted and/or threatened by (associates) of the trafficker/trafficking network (note that, while in a number of cases, it is the country of origin that will conduct a risk assessment, in cases where stateless persons are concerned, the place of habitual residence would be responsible for conducting the risk assessment. In certain instances under the Dublin Regulations, for example, the person may also be returned to a transit country); whether the trafficked person her/himself has been threatened during her/his stay in the country of destination or during legal proceedings; whether the place of residence of the trafficked person and/or her/his family is known to (associates of) the trafficker/trafficking network; and whether the trafficker made up part of the social circle of the trafficked person in the country of origin.”³⁴

Adopting a ‘social path’ approach makes identification (and subsequent protection) possible without exposing a victim to the risks involved in testifying against traffickers. If victims can gain access to crisis counselling, confidential accommodation or other services without the challenging first step of reporting to law enforcement, this can give them greater security and confidence. If such services are contingent on co-operation, a fearful victim may choose to forgo that first step.

Lowering of the evidentiary threshold required to categorize a trafficking victim as a ‘victim of crime’

When identification and assistance is tied to the criminal justice process – in particular, the existence of viable evidence for investigation or prosecution – any deficiency in that criminal justice process can mean that the victim may not be conclusively identified or may lose access to assistance.

The ‘social path’ approach makes it possible for a State to identify individuals who have been abused in the course of being trafficked and to fulfil the State’s international obligations to protect such people even when insufficient evidence is available to initiate criminal proceedings. This is because the amount of evidence required to conclude that a particular individual has been victimized is significantly less than the standard of proof required to convict those responsible for committing abuse. In general, the standard of proof deemed appropriate when examining human rights violations is ‘proof of the balance of probabilities.’ This is a lower standard than the one required to convict someone of a criminal offence, which, in the case of common law systems is ‘proof beyond a reasonable doubt.’³⁵

Continued support of victims upon return to their country of origin or habitual residence

When people who have been trafficked leave the State where they have been exploited or identified and return to their country of origin or habitual residence, a procedure is needed in that country for recognizing their particular rights and needs as a victim of trafficking.³⁶ The circumstances of return vary. Some victims are assisted by governmental or intergovernmental organizations. However, some victims prefer to avoid all contact with police or people perceived to be ‘law enforcement officials’ for fear of repercussions.³⁷ Among persons who are formally identified as trafficking victims while abroad, some thus prefer that the authorities in their own country not be informed. However, they may subsequently desire or need assistance to recover fully. In such circumstances it may be appropriate and useful to introduce identification procedures that do not involve criminal justice system actors.

For example, victims who have returned to their home country of their own volition should be able to seek appropriate assistance to recover from their experience. While some victims may want to present law enforcement officials in their own country information about individuals in their country who were complicit in their having been trafficked, others may prefer to have no such contact. As pointed out in the *Guiding Principles on Human Rights in the Return of Trafficked Persons*: “Trafficked persons who are provided with appropriate post-return assistance aimed at promoting their well-being and supporting their effective reintegration are much

More identifications can lead to stronger cases and more prosecutions

less likely to be re-trafficked. They may also, depending on the nature and quality of support provided, be less vulnerable to intimidation, retaliation, social isolation and stigmatization.”³⁸

A ‘social path’ to identification and assistance can help resolve these issues by ensuring that all victims have their needs met, not only those prepared to co-operate with criminal justice proceedings.

Vesting conclusive identification with the State social protection system, thereby building the trust of victims and thus leading to more identifications

Social protection systems are designed to help vulnerable populations. Such systems “should respect and promote the principles of non-discrimination, gender equality and responsiveness to special needs; social inclusion (including those persons in the informal economy); and respect for people’s rights and dignity.”³⁹

According to the OSR/CTHB 2021 Survey Report, social welfare agencies are able to identify presumed victims of trafficking in human beings and refer them to support services in 31 OSCE participating States. However, in only 2 States do these agencies have the authority to formally recognize trafficking victims.⁴⁰

These data manifest that social protection actors are often at the forefront of victim assistance efforts and serve as a first point of contact for victims: not only do they initially identify and refer them to services, but in many instances they also operate as case managers and oversee the overall implementation of an assistance plan. By engaging with victims from a very early stage, social workers are in a favourable position for establishing trust and helping victims open up and reveal the circumstances of their exploitation. Yet, in most OSCE participating States these same agencies are not in a position to make decisions about mid- and long-term assistance for victims. The ‘social path’ approach aims to resolve this discrepancy.

The ‘social path’ approach creates a legal foundation for substantive and direct engagement that treats victims primarily as right holders rather than as a source of information in criminal proceedings. Moreover, the approach offers the possibility for victims to build confidence in State protection systems, which will ultimately lead to more victims being identified and their rights being restored. Vesting conclusive identification of trafficking victims with State social protection/welfare agencies can turn this possibility into reality.

One argument for a criminal justice-based identification system is that making assistance contingent on co-operation can be an incentive for co-operation, which will lead to more prosecutions. In reality, however, such a coercive approach to assisting victims can actually have the opposite effect. It can discourage victims by not giving them immediate support, making them hesitant to co-operate and leading them to avoid the criminal justice system altogether.

The ‘social path’ to identification can help resolve these tensions by focusing first and foremost on supporting victims and meeting their needs, thereby building the confidence of victims and increasing their readiness to engage with the criminal justice system. Countries with a ‘social path’ approach consistently identify far more victims of THB. Potentially, such ‘social path’ identifications – through appropriate attention to and support for victims – can lead to criminal investigations that would otherwise have been missed.

The ‘social path’ approach does not create any obstacles for law enforcement officials to perform their primary duty of investigating a crime. It also does not prevent social welfare actors from sharing the circumstances of a THB crime with investigators and prosecutors. This can be done without revealing the personal information of formally recognized victims if they choose not to be part of criminal proceedings. It also does not exclude the possibility for such victims to co-operate at a later stage, once they have regained their agency.

In sum, by lowering the threshold for victims to access State-led long-term assistance, not only can the ‘social path’ to identification increase the number of identified victims, it can also have a positive impact on prosecution rates.

Conclusion

As can be seen from the above, the ‘social path’ to identification of trafficking victims is a means for establishing a protection framework that enables States to fully uphold a victim-centred and human rights-based approach, and to ensure long-term assistance to all victims without discrimination. It relieves THB victims of the burden of proof that their participation in criminal proceedings often entails, and guarantees their protection irrespective of the outcomes of these proceedings. The following chapter explores victim identification procedures in OSCE participating States where, to varying extents, principles of the ‘social path’ approach are incorporated.

4

Emerging practices in the OSCE region

A number of OSCE participating States have developed procedures for identifying and protecting trafficking victims that incorporate elements of the 'social path' approach. This chapter discusses the experience of four OSCE participating States, which may offer some guidance and lessons learned to other States.



Ukraine
Serbia
Greece
Italy



Greece

Greece developed a framework for identifying trafficking victims relatively recently. Following the adoption of its “Law on prevention and combating human trafficking and protection of its victims and other provisions” (L.4198/2031), the 2016 Joint Ministerial Decision 30840/2016 laid the foundation for setting up a mechanism to organize and co-ordinate the identification of trafficking victims and their subsequent referral to appropriate services. Known as Εθνικό Μηχανισμό Αναφοράς (EMA), the mechanism is managed by the National Centre for Social Solidarity (EKKA),⁴¹ an agency of the Ministry of Labour, Social Insurance and Social Solidarity, and co-ordinated by Greece’s National Rapporteur on Trafficking in Human Beings, which is based in the Ministry for Foreign Affairs.

Prior to this Decision, formal identification of THB victims was entirely the responsibility of a public prosecutor. GRETA described the earlier process as follows:

“The Public Prosecutor’s Office is the only authority competent to grant victim status (so-called ‘act of identification’), on the basis on documents sent by the police which include a statement (complaint) from the presumed victim. The prosecutor can also grant victim status to a person who does not co-operate with the law enforcement authorities.”⁴²

The implementation of the newly established EMA is based upon four operating principles:

1. State ownership;
2. the involvement of civil society;
3. a victim-centred and human rights-based approach;
4. an interdisciplinary and cross-sectoral approach.

In order to offer practical guidance on implementing EMA, standard operating procedures (SOPs) for the key stages of protection of victims of trafficking in human beings were developed by a special working group comprised of representatives of governmental authorities and non-governmental and international organizations. The key stages are the following:

1. identification (of a presumed victim) and their initial referring to EMA;
2. appointment of a ‘reference actor’ (i.e. a case manager within EMA);
3. first level protection;
4. social integration;
5. voluntary repatriation or relocation to a third country.

The SOPs outline two alternative procedures for the formal recognition of human trafficking victims: one applying to victims who co-operate with prosecuting authorities and the other to those who do not. The EMA Handbook⁴³ provides extensive justification for this legislative approach. In particular, it points out that:

“The victim is treated as a subject of rights and not as a tool/ means to fight crime. The victim’s compulsory participation in criminal proceedings would disregard their particularly vulnerable position, it would violate their will, and it would also involve their re-victimization by forcing him/her to provide information – albeit critical – for the prosecution of the perpetrators.”

The Handbook further suggests that:

“... it cannot be excluded that a victim who has been recognized as a victim of human trafficking without co-operating with the prosecuting Authorities, will at later time give information to the Police, due to their feeling of safety and empowerment, in order [for] the traffickers to be prosecuted.”⁴⁴

If a presumed victim chooses to co-operate with prosecuting authorities, their case file is transferred to a competent prosecutor of the court of first instance, who has the authority to issue an act (order) recognizing them as a victim of THB. If criminal proceedings have not been initiated (for instance, because the level of evidence is deemed insufficient), such an act can still be issued on the basis of a written opinion prepared by two competent professionals outside the criminal justice system. These professionals can be social workers or psychologists working for Protection and Assistance Service, First Reception Service,⁴⁵ a specialized NGO, the International Organization for Migration (IOM), or other specialized protection and assistance bodies recognized by the State.

For presumed trafficking victims who do not wish to co-operate with the prosecuting authorities, an act of recognition can also be issued on the basis of a written opinion of two social protection professionals, similar to the cases when criminal proceedings have not been initiated. The final decision on issuing such an act, however, still lies with a competent prosecutor.

Against this backdrop, in 2021, of 156 initially identified and referred presumed victims, official victim status was granted to 7 victims (4 in 2020), with 1 victim in the process of receiving the status (6 in 2020) and 40 waiting for the beginning of the procedure.⁴⁶ For the first time, in 2020, 1 victim received official status solely on the recommendations of social protection professionals. One reason for such recommendations not being used more often or not leading to official status may be that the final decision is still vested in the prosecuting authority. Section 3 of this report provides a rationale for using a lower level of evidence when recognizing trafficking victims compared to recognizing victims of crime, and that eligibility of THB victims for assistance should not be compromised by the level of evidence required by criminal law. Putting this principle into practice in Greece would require further sensitization and awareness-raising of representatives of the prosecuting authority.



Italy

During the 1990s, irregular immigration to Italy increased substantially. The new arrivals included significant numbers of women from Albania and Nigeria's Edo State who were exploited by pimps and traffickers in prostitution. Italy's 1998 Immigration Law (Law No. 286/98) introduced an innovative provision called 'a residence permit on social protection grounds' for foreigners who had been subjected to violence or exploitation in circumstances where there was concern about their personal safety.⁴⁷ Such permits were available to both foreign trafficking victims who agreed to co-operate with law enforcement officials (the 'judicial path'), and victims who did not want to provide evidence to law enforcement officials or testify at a trial (the 'social path'). These provisions were contained in article 18 of the 1998 Immigration Law; these permits are consequently referred to as 'Article 18' residence permits.

Commenting on the rationale behind the 'social path' option, a publication in 2010 observed that

"There are many reasons behind this social path (e.g. trafficked persons might not have relevant information or the criminals have already been prosecuted) but the most relevant is that at the beginning, people who went through the hard experience of trafficking, are too scared for their own or their relatives' safety to press charges. In the Italian experience, many trafficked persons, after having been reassured and gained new trust in institutions, came to the decision to file a complaint against their traffickers and/or exploiters. This happens because trafficked persons have been granted protection regardless of their immediate co-operation with the law enforcement authorities."⁴⁸

Initially it was expected that the beneficiaries of Article 18 would be mostly women trafficked for the purpose of exploitation in prostitution. However, in 2007, the Ministry of Interior issued a circular letter (dated 4 August 2007) extending the applicability of the Article 18 provisions to cases of labour exploitation.

There were (and still are) two ways of obtaining an Article 18 residence permit. The first option involves providing evidence against a suspected trafficker (the 'judicial path'). In such cases, it is up to the Public Prosecutor to make a decision on whether or not a permit should be issued. The second option (the 'social path') involves either a specialized NGO accredited for this purpose or a local authority social services department submitting a statement containing evidence of the abuse and exploitation experienced by the applicant to law enforcement officials (the *Questura* or local police headquarters, where

immigration officials may also be based). This statement must be accompanied by details about a social assistance and integration programme that the applicant has agreed to follow. On the basis of this statement, the *Questura* is responsible for passing information about the crimes alleged by the applicant on to the local public prosecutor, who is responsible for confirming that the allegations (if accurate) would indeed place the applicant in danger and thus justify an Article 18 residence permit being issued. In such circumstances, law enforcement officials could potentially open an investigation into an apparent case of trafficking on the basis of information provided by the presumed trafficking victim via the 'social path', without that victim being in direct contact with law enforcement officials. In some circumstances, such victims were apparently summoned to provide evidence at a pre-trial hearing known as an '*incidente probatorio*'.

The main conditions in all cases were that an individual granted an Article 18 temporary residence permit was not to resume contact with the individuals who trafficked them and that they were to participate in a social assistance and integration 'programme' run by social services or a specialized NGO.

Article 18 permits allowed someone to remain in Italy for six months and could be renewed for a further year. During this total of 18 months, they were eligible for social assistance payments or access to education and could register their availability for employment and seek work. After 18 months, they could apply for a more permanent residence permit, either to work or to continue their education. The organizations supporting people granted Article 18 permits obtained public funding from Italy's Department for Equal Opportunities by responding to a call for proposals for assistance projects to trafficking victims. New calls occur approximately once a year. The NGOs applying for funding had to involve a local authority as a project partner.

When Italy adopted a new law against THB in 2003, it introduced an additional, short-term 'social path' option known as 'Article 13'. Once again, this was a support programme for presumed trafficking victims, implemented by NGOs and social services and requiring approval by the local *Questura*. It allowed people who said they had been trafficked to benefit from a three-month support programme, renewable once for a further three months. For six months they had access to accommodation, social assistance and health care. At the end of six months, they could seek further assistance by applying for an Article 18 residence permit.

Over the dozen years between 2000 and 2012, both statutory and civil society organizations invoked the Article 18 procedure to assist 65,000 people, of whom 21,378 received residence permits, according to data available in 2013.⁴⁹ Over this period, NGOs and local police developed methods for identification in the absence of any nationally agreed sets of indicators and also in the absence of a National Referral Mechanism. At the local level, the various stakeholders (police, prosecutors, social services and NGOs) could sign memoranda of understanding (to formalize their co-operation) and develop their own lists of indicators.

However, by the time of a 2013 visit to Italy by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, the system was reported to be breaking down. According to civil society actors, the option of allowing presumed trafficking victims to be identified by NGOs under Article 18 was not being implemented effectively: “the granting of a residence permit has been made *de facto* conditional on a victim’s co-operation in criminal proceedings”, noted the OSCE Special Representative.⁵⁰

Over the past eight years, Italy has initiated a series of reforms to improve identification and to use a set of nationally agreed indicators. In 2016, the Government published a *National Action Plan against Human Trafficking and Serious Exploitation*.⁵¹ One Annex in this publication contains ‘Guidelines for the definition of a mechanism for rapid identification of victims of trafficking and serious exploitation’, another sets out a set of ‘Guidelines for Rapid Identification.’⁵² While maintaining an identification procedure that is distinct from criminal justice procedures, these reforms introduced a two-stage identification process: ‘preliminary identification’ and ‘formal identification.’ The first is based on a preliminary screening to check if there are any indicators that an individual has been trafficked (and to provide a response to his or her immediate needs), while formal identification involves an interview and assessment of the information provided.

As a result of dramatic increases in the number of migrants reaching Italy from Libya and elsewhere, Italian authorities gave priority to developing procedures at ports of arrival. In 2017, the Ministry of the Interior, together with the UNHCR, developed and published *Guidelines for Territorial Commissions for the Recognition of International Protection* (also referred to in English as *Guidelines for the identification of victims of trafficking among applicants for international protection and referral procedures*), which were updated in January 2021.⁵³ The prime responsibility of Italy’s Territorial Commissions is to consider asylum requests, not specifically identifying trafficking victims. The intention of these guidelines is to give the Territorial Commissions advice and the expertise needed for identifying trafficking victims among other asylum seekers. The guidelines were summarized in a GRETA publication in 2021 as follows:

“The guidelines contain Standard Operating Procedures (SOPs) with flowcharts, indicators and practical suggestions on how to conduct interviews, plus a list of specialised anti-trafficking NGOs. When indicators of trafficking are detected by the Territorial Commissions for the recognition of international protection during an asylum interview, the caseworker provisionally identifies the person as trafficked, and refers him/her to a specialised anti-trafficking NGO, which carries out the formal identification. While the identification process is on-going, with the person’s agreement, the examination of the asylum claim is suspended in order to allow time for establishing a relationship of trust, and permit the person to reflect (which, according to the Guidelines, corresponds to the recovery and reflection period). The recommended maximum time for suspension of the asylum procedure is four months. After conducting interviews with presumed victims, the NGO sends a report to the Territorial Commission with information to assist it in continuing the consideration of the international protection claim. The two protection procedures can continue in parallel, i.e. a person who is identified and assisted as a victim of trafficking can obtain international protection. The guidelines have led to more victims of trafficking being identified amongst asylum seekers ...”⁵⁴

This new procedure continues to rely on the ‘social path’, involving a specialized anti-trafficking NGO in the identification process, although the path has now been integrated into a set of wider procedures for considering applications for international protection (asylum applications and refugee recognition). When listing possible indicators of trafficking that a Territorial Commission should look out for, the Guidelines emphasize that a list of indicators should not be used rigidly as a mandatory check list. They rather represent a “set of indicative parameters”: “In order for it to be reasonable to consider that the person seeking international protection is a victim of trafficking, it is not necessary for these indicators to emerge in their entirety, the Commission may well recognize only a few.”⁵⁵

According to the recent U.S. Department of State Trafficking in Persons Report 2021, the Italian Government had identified 463 THB victims, of whom 16 had been exploited abroad or in transit to Italy. All identified victims were foreign nationals and undocumented migrants. “The law allowed for an initial three to six months of government assistance to all trafficking victims. After initial assistance, foreign victims were eligible to obtain temporary residency and work permits and had a path to permanent residency; additionally, foreign victims were eligible for six months of shelter benefits, renewable for an additional six months only if the victim obtained a job or enrolled in a training program.”⁵⁶



Serbia

The Government of Serbia set up an Agency for Co-ordination of the Protection of Victims of Trafficking relatively early – in 2004 – under the authority of the Ministry of Labour, Employment and Social Policy. The Agency was responsible for identifying victims of trafficking until 2012, when it was succeeded in this role by the Centre for the Protection of Trafficking Victims (CPTV). According to Article 9 of the Centre’s Statute, it was established to:

“... assess the situation, needs, strengths and risks of human trafficking and based on the indicators which point out that a person is a victim, conduct the identification within the legal framework in the field of registered activity. All of this is done in order to provide appropriate help and support for victims, and to assess other significant people in the victim’s environment.”

In effect, the CPTV was established specifically to separate the identification of trafficking victims (and their subsequent protection and assistance) from the criminal justice system. The Centre, like the Agency that preceded it, is part of the Ministry of Labour, Employment and Social Policy. Victim identification is thus based on what GRETA describes as “a social protection approach.”⁵⁷

While both statutory agencies and NGOs can make referrals to the CPTV and provide it with information they have received from or about a presumed victim, they do not play any formal role in the identification of a victim. An NGO report in 2016 noted that

“The system of identification in Serbia is such that the status of a victim is not connected with criminal investigations or the prosecution of traffickers or results of prosecutions. Instead, victims are treated as persons in social need and the provisions of the Social Protection Law and bylaws are applied to them (not the Criminal Code). In that respect, there are more victims identified by the Centre than those registered as injured parties (i.e., possible victims of crime) in criminal reports made by the police.”⁵⁸

A set of national indicators for preliminary identification of victims of trafficking were reportedly agreed upon by the Centre for Victim Protection in 2015, which worked together with the International Organization for Migration (IOM), the Ministry of Education, Science and Technological Development, the Prosecutor’s offices and specialized NGOs. There are four sets of indicators, one each for the police and education systems, and two for social protection professionals (one for adult victims and a second for child victims). GRETA reports that to date, 17 local multidisciplinary teams (known as ‘networks’) have been set up to identify victims and make referrals to the Centre.⁵⁹

Standard operating procedures (SOPs) for identifying victims of trafficking were published in 2018. These confirm the procedures used and role played by the Centre for Victim Protection.⁶⁰

In a section on preliminary identification and referral, the SOPs specify eleven categories of organizations (including ordinary citizens) who are entitled to make a preliminary identification of a trafficked person (and to refer them to the CPTV).⁶¹ It accords particular importance to teams operating at the local level, listing:

- a. Local anti-trafficking teams;
- b. Local councils for migration;
- c. Local security councils;
- d. Local mechanism for prevention of domestic violence;
- e. Local mechanisms in educational institutions;
- f. Local mechanisms for gender equality;
- g. Local mechanisms for social inclusion of Roma men and women; and
- h. Other local mechanisms.⁶²

Organizations responsible for preliminary identification are instructed to consult a series of different indicators, including those published by the ILO and the UNODC, but also indicators devised in Serbia for identifying trafficked children, for use in the education system, for use by social services, etc.⁶³ On this basis, anyone can make a referral. It is not necessary to be part of an accredited agency.

The SOPs also address what they call the ‘formal’ identification procedure by the Centre for the Protection of Trafficking Victims, confirming that, in practice, Serbia also has a two-stage identification process. Although the SOPs do not specify details of the criteria Centre staff are to take into account, they do specify that “the Centre’s specialist assesses the condition, needs, strengths and risks of the alleged victim of trafficking, analyses the context and allegations in the report, collects information from relevant partners and coordinates the victim support process.”⁶⁴ This is expected to be a rapid process, started within 24 hours of receiving a referral and being completed “as soon as possible and without delay”. In some cases, a referral is made while a presumed victim is still under the control of a suspected trafficker. In others, the presumed victim has left their trafficker and is present and interviewed by staff of the Centre, in which case she or he may be accompanied by a “trusted friend”. The SOPs confirm that an initial interview is intended to “establish a relationship of trust” between the Centre’s staff member and the presumed victim and to inform the presumed victim about their rights.⁶⁵

In 2021, the CPTV formally identified 43 victims from 127 presumed victims, compared with 48 victims in 2020. Of these, 23 were victims of sex trafficking, 9 of forced labour, 2 of forced criminality, and 9 of multiple types of exploitation. Overall, there were 21 women, 8 men, 13 girls, and 1 boy. There was 1 foreign victim. The government did not report how many victims co-operated with prosecutions in 2021 (in 2020, 68 victims co-operated with prosecutions).⁶⁶



Ukraine

Following Ukraine's adoption of a comprehensive law on combating trafficking in human beings in 2011, in 2012 the Government issued three Decrees to support the implementation of the law, including No. 417 of 23 May 2012 approving the Procedure for the Declaration of the Status of a Victim of Trafficking in Human Beings.

The victim status procedure requires an applicant to file a request to a local government office to be granted victim status. A responsible official is to interview an applicant within a short time (three days) and fill in a questionnaire prepared by the Ministry of Social Policy. The questionnaire (along with available supporting evidence) is then submitted to the Ministry, where a decision is made and communicated back to the presumed victim via the same local government official. The law specifies the maximum number of working days allowed for each stage of the procedure. If victim status is agreed upon, the applicant is issued a certificate valid for two years and entitled to a rehabilitation programme offered at the place of their residence as well as a small one-off support payment.⁶⁷ In addition, foreign nationals granted victim status in Ukraine are entitled to temporary residence and a work permit for the duration of the status. The responsibility for carrying out a needs assessment and overseeing each victim's recovery is given to social services (the Centre of Social Services for Families, Children and Youth).

In the case of this status being refused, the Ministry can still recommend local officials to consider those concerned as being persons in difficult life circumstances and to offer them relevant assistance. A negative decision by the Ministry can also be appealed in court. Parallel to this procedure, victims continue to have the opportunity to be formally recognized within the criminal justice system if they opt to take part in criminal proceedings. This procedure ensures co-operation with law enforcement agencies through a regular exchange of information on cases under consideration. In multi-agency efforts, there are means for implementing rehabilitation programmes for identified victims at the local level.

In 2016, the 'social path' identification procedure was amended in minor ways, due to continuing concern that applicants were at risk of stigmatization if local government officials leaked information about them. The original 2012 procedure required officials who interviewed presumed victims to confirm in writing that they would not disclose any confidential information. This was strengthened in 2016. Also in 2016, extra questions were added to the interview questionnaire, asking whether the applicant had already participated in law enforcement investigations (also in another country), and whether they wished now to do so in Ukraine.⁶⁸ The one-off support grant to identified victims was also increased. A new set of instructions issued in 2016 jointly by the Ministry of Social Policy and the Ministry of the Interior also establishes a clearer referral process for trafficking victims.⁶⁹

Introduction of the 'social path' identification procedure and the subsequent capacity building efforts to facilitate its implementation has resulted in steady progress in Ukraine. From mid-2012 to mid-2014, 63 people were reportedly identified as trafficking victims using the new procedure, while 70 applications for victim status were rejected. Those recognized included 6 foreign nationals.⁷⁰ The number of people formally identified as trafficking victims via the 'social path' has increased in subsequent years (to 83 in 2015, 110 in 2016, and 198 in 2017, according to a GRETA report⁷¹). At the same time, others were recognized as victims of crime under the terms of the Criminal Procedure Code: 102 trafficking victims were reportedly identified by law enforcement bodies in the context of criminal proceedings in 2015, 86 in 2016 and 367 in 2017.⁷²

In August 2020, the Cabinet of Ministers issued Decree No. 783⁷³ establishing the National Social Service of Ukraine⁷⁴. Among other tasks, the Service assumed responsibility for granting official trafficking status. As part of decentralization reforms in the country, it began devolving this responsibility to the local level.

The most recent data suggest that in 2021, 67 per cent of applications for official victim status were approved (64 of 96), compared to 57 per cent (134 of 235) of applications in 2020.⁷⁵

Referral procedures stipulated in Ukraine in 2012

Ukrainian legislation: VoT Status Procedure



Emergency medical assistance

Consent of the victim

Information about:

- possibility to receive assistance
- types of assistance
- requirements and procedure



Department of the local state administration



Application to declare status of VoT

Refuses to cooperate with LEA

- sharing info about a fact



Interview and questionnaire (3 days)

Avoid repeated victimization and psychological trauma

If a victim of a THB crime (in criminal proceedings)

- no interview

Registration, verification and submission of docs (2 + 7 + 2 days)



Decision on status by MinSocialPolicy and certificate (5 + 5 days)

- Up to two years
- Extended for up to a year

Key features of the different national models

Four characteristics are notable in the countries reviewed.



1 Responsibility for the 'social path' to identification

All four of the models described above devolve responsibility for initial or preliminary identification to front-line services, both statutory (public bodies) and non-governmental organizations. One (Serbia) has set up a national level, publicly funded institution which is not a law enforcement body to supervise the definitive identification of trafficking victims (as well as something akin to a case management system for identified victims). Another, Ukraine, has allocated responsibility for identification entirely to a ministry (the Ministry of Social Policy) that is also not involved in law enforcement.

In practice, a key characteristic of the 'social path' approach is that the process of identification is not carried out by law enforcement officials. This means that the protection and assistance (immediate, as well as long-term for a sustainable solution) to which presumed victims are entitled is ensured and not delayed while police investigators or prosecutors follow standard procedures for collecting sufficient evidence to determine whether a crime has been committed.

However, it is notable that at the secondary (formal recognition) stage of identification, two countries which are mainly 'destinations' for foreign trafficking victims (Italy and Greece) both consult law enforcement agencies. The implication here is that before granting a presumed trafficking victim who is a foreign national the right to remain in the country, some systems prefer to require a police investigation to confirm the accuracy of the initial identification procedure.

2 Comprehensive interpretation of unconditional access to protection and assistance

Despite the obligation to provide victims with protection and assistance irrespective of their participation in criminal proceedings, in most OSCE participating States (and in particular with regard to foreign victims), such protection is provided from the point of initial identification, through a 'recovery and reflection period' (or equivalent arrangement), and up until the end of criminal proceedings (if a presumed victim chooses to take part in them) and not beyond.

The four quoted models offer a presumed victim a pathway toward long-term assistance beyond a 'recovery and reflection period' or its equivalent. By offering an alternative path for identification, the States ensure that victims are not only formally recognized, but also gain access to a durable solution, including integration into a new society.



3 Indicators used in the identification process

One challenge in the identification process is that the three-part legal definition of the crime of trafficking in human beings (act, means, and purpose) adopted in international treaties can be unwieldy for front-line officials who do not represent law enforcement and who might be less familiar with the legal intricacies of the crime. Hence, in many countries the concept of ‘indicators’ is critical for helping front-line actors identify presumed victims. To ensure that similar methods are used by everyone involved in an identification system, agreeing on appropriate indicators is vital, as is training for relevant stakeholders.

For these reasons, identification processes should be supported by country-specific indicators. The general indicators developed by UNODC⁷⁶ and ILO⁷⁷ can serve as a useful foundation for creating country-specific indicators. How these indicators should be used must be agreed upon by all actors engaged in the process of preliminary identification. This will lead to more referrals to the ‘social path’ procedure for formal recognition and assistance.

4 Co-operation with criminal justice actors

In practice, the ‘social path’ approach has not necessarily ruled out or diminished the role of law enforcement in the context of victim identification. In above examples, criminal justice actors have a variety of responsibilities, ranging from that of final decision-making on victim status, to being part of multi-agency information exchange and being party to the development and implementation of needs-based assistance to victims. However, the involvement of law enforcement agencies does not defeat the strategic objective of ensuring access to long-term assistance outside the criminal justice system for all presumed victims of trafficking in human beings.

5

Conclusions and recommendations

This chapter offers a series of conclusions and recommendations for participating States on adopting and operationalizing the ‘social path’ approach to identifying victims of trafficking in human beings. These considerations offer guidance on standards and approaches that should be taken into account with regard to:

1. A State agency in charge of the implementation of the ‘social path’ framework;
2. Pre-requisites for presumed victims to enter the ‘social path’ procedure;
3. ‘Social path’ referral modalities;
4. Specific considerations for foreign victims of trafficking in human beings;
5. Treatment of child victims of trafficking;
6. Interaction with the criminal justice system.

Assigning a responsible State agency

To ensure that protection of and assistance to all THB victims remains unconditional regardless of a victim’s participation in criminal proceedings, the authority for the ‘social path’ of identification of THB victims should be vested in a statutory social protection agency.

It is essential that once a suitable legal and administrative framework is established, the people staffing it should be able to do the work required and are provided with **sufficient resources** to do so. Further, the State has a **duty to monitor** their activities, both to ensure consistency and to remedy any defects.

Entering a ‘social path’ procedure

A presumed victim’s decision to enter the ‘social path’ of identification should be based on their informed consent. States should develop clear guidelines on the benefits of the ‘social path’ of identification and assistance. Not only should these guidelines be in the language spoken by the presumed victim, they should also be written in language that is plain, clear and not open to misinterpretation.

The **duration of a ‘recovery and reflection period’** or an equivalent arrangement should **not affect** a presumed victim’s **ability to enter the ‘social path’ framework**. Victims should be able to opt for co-operation with the criminal justice system at any stage of their ‘social path’ assistance if they choose to do so; such co-operation should not, however, be the objective of the assistance.

States should stipulate a **realistic timeline** for considering any ‘social path’ applications, whether these are made by the presumed victims themselves or on the basis of a referral. While this timeline should be long enough to enable officials to respect it, it should be short enough to respond to the needs of a presumed victim. Not only must victims be provided promptly with urgently needed assistance, it is essential that victims are not kept in a prolonged state of anxiety. This could compound any mental health problems they might have as a result of being trafficked.

Entering a ‘social path’ procedure should lead to **long-term assistance** that is victim-centred, gender-sensitive, trauma-informed and needs-based.

In the case of negative ‘social path’ decisions, a **viable channel for lodging an appeal** should be available. The person concerned should be able to understand such channels and to access them swiftly, whether through an appeal to a court or to an independent administrative body. The appeal should relate to the substance of the appellant’s case, not only to the question of whether the letter of the law has been observed.

Referral to the ‘social path’

If not already in place, States may consider adopting a two-stage process. The first stage involves preliminary screening to check if there are any signs that an individual has been trafficked (and to provide an immediate response to her or his immediate needs and quick access to immediate assistance). In a second stage, more conclusive identification occurs after an in-depth assessment of the available information.

States should **diversify a range of actors** who can **initially identify and refer** presumed victims to the ‘social path’ framework. To ensure that the non-discrimination principle is observed, it is important that **explicit instructions, uniform indicators** and adequate training is provided to everyone involved in the initial identification of victims. This will guarantee consistency and fairness.

Non-discriminatory treatment of foreign victim of trafficking

Whenever foreign trafficking victims enter the ‘social path’ procedure, it is essential that authorities address the question of their immigration status and **grant a temporary residence permit** to ensure they are not deported while they still need urgent assistance.

The **assistance** that follows the ‘social path’ of identification should lead to one of **three sustainable solutions** aimed at a victim’s full recovery and regaining of their agency: return and re-integration, integration, or reloca-

tion to a third country. Proper **risk assessments** should be carried out before a decision is taken on the implementation of any of these solutions.

In the event that the ‘social path’ procedure results in the decision for a victim to be returned to their country of origin, States should ensure **cross-border information exchange** and continuity of assistance. This should involve assistance for **re-integration** in order to **minimize the risk of re-trafficking**.

Incorporating child-specific procedures

Mechanisms should be in place **to allow for the identification of children** who have been trafficked, also in countries where the protection of children subjected to abuse, exploitation or neglect is the responsibility of a child protection system. Such children not only have special protection rights, but also have experienced forms of abuse that require specialized care and treatment. To attend to their specific needs and rights, the ‘social path’ framework should entail a **child-specific procedure** supported by **appropriate age determination methods**.⁷⁸

Co-operation between the ‘social path’ framework and the criminal justice system

Formal recognition of victims through the ‘social path’ and in the criminal justice system **should not be regarded as self-exclusive**. They can **run in parallel** subject to a presumed victim’s decision.

Everyone who has been trafficked and who seeks to be identified as a victim has a right to have their **personal data and information** about their experience at the hands of traffickers kept **confidential**. **Appropriate measures should be adopted for it to be securely stored**.

States should **develop mechanisms**, including inter-agency instructions and memoranda of understanding, that allow the agency in charge of the ‘social path’ of identification to **share information about the circumstances of a THB crime** without disclosing a victim’s personal details. In this way, any pending or prospective criminal investigation will not be impeded or compromised.

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- 2 “Refoulement” involves the expulsion or return of a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. Under the terms of the non-refoulement principle (originally a concept under international refugee law), it is illegal for States to expel or return (“refouler”) refugees who have a well-founded fear of persecution upon their return. This principle is part of customary international law and is considered binding on all States whether or not they are parties to the UN Refugee Convention (1951). The same principle is applied to refugees with a well-grounded fear of being subjected to torture.
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- 4 See Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings. Available at: <https://rm.coe.int/168008371d> (accessed 19 December 2022).
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- 14 Op. cit., para. 1.2.
- 15 Op. cit., para. 1.4.
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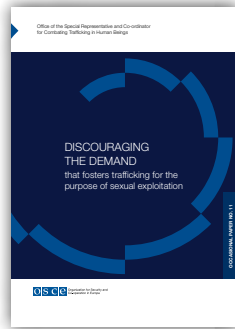
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 3. CSO activists;
 4. employees in international non-governmental and intergovernmental organizations;
 5. employees in institutions in the field of child protection, education, upbringing and health;
 6. public prosecutors, judges in courts of general jurisdiction and misdemeanour courts;
 7. employees in the asylum centre or in other facilities for accommodation of asylum seekers of KIRS;
 8. employees in diplomatic and consular missions of the Republic of Serbia abroad;
 9. employees in labour inspections (Labour Inspectorate within the Ministry of Labour, Employment, Veterans and Social Affairs) and market inspection (Market Inspection Sector at the Ministry of Trade, Tourism and Telecommunications);
 10. employees in other public authorities and all other previously mentioned legal entities; and
 11. natural persons.
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 - b) Indicators of trafficking in human beings of the International Labour Organization (ILO);
 - c) Indicators for preliminary identification of victims of trafficking for the child protection social system;
 - g) Indicators for preliminary identification of victims of trafficking for the social system for protection of adults;
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 - f) Indicators for preliminary identification of victims of trafficking for the police.
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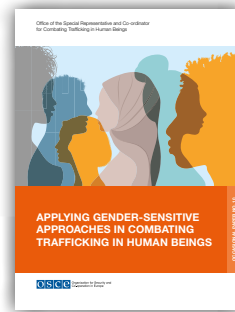
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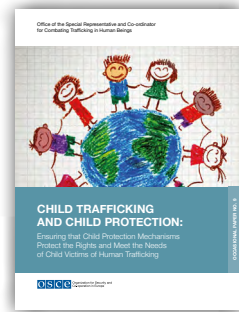
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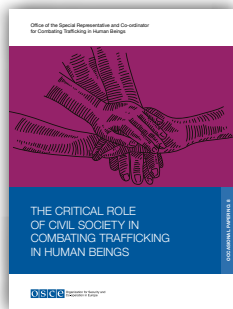
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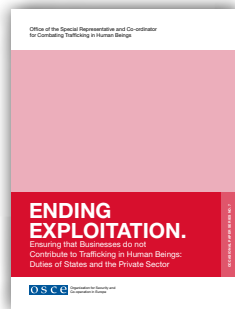
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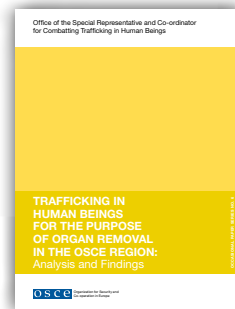
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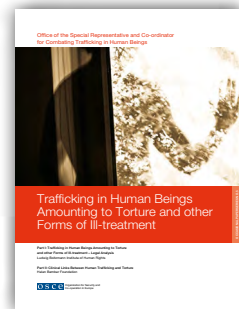
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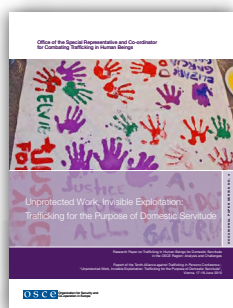
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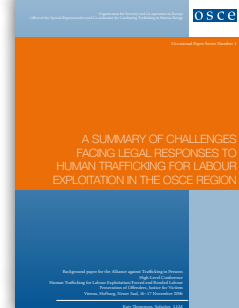
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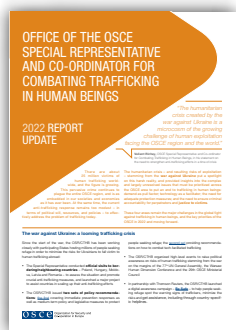


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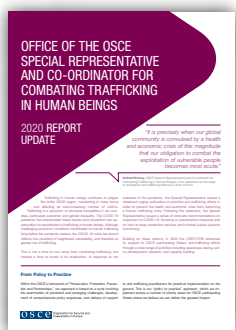
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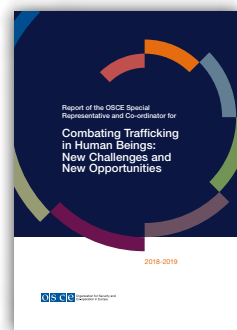
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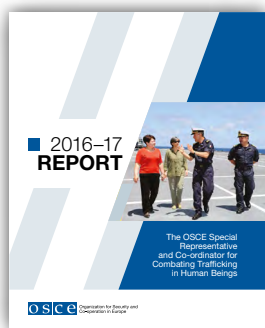
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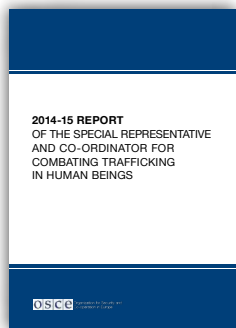
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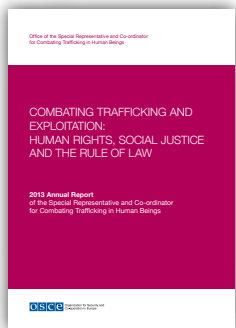
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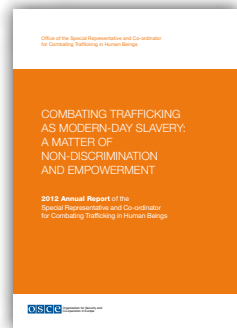
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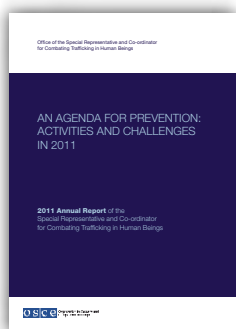
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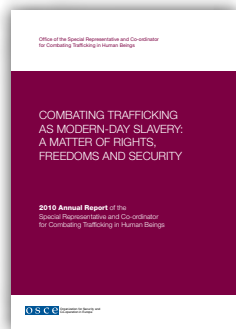
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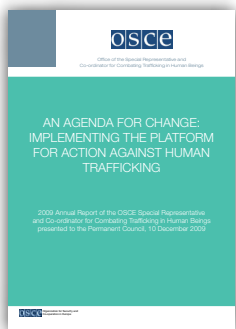
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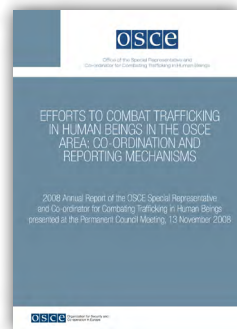
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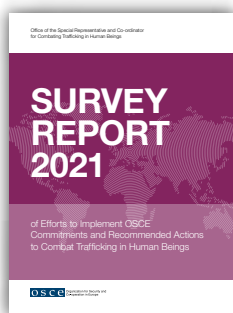


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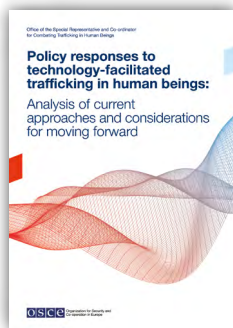


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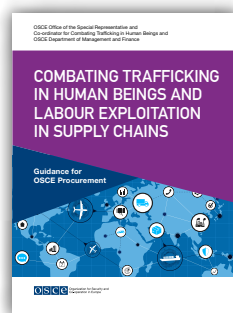
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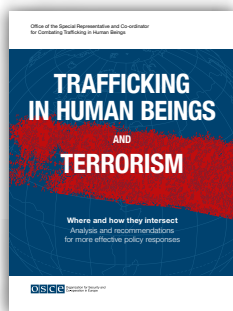
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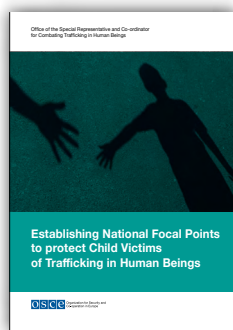
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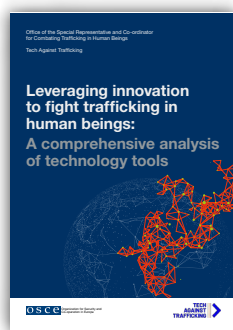
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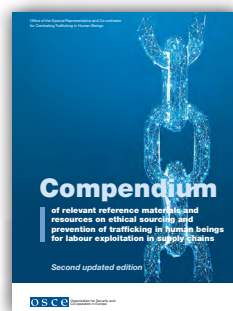
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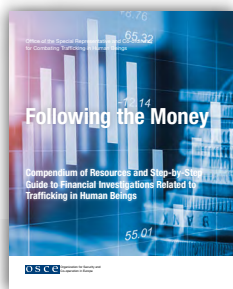
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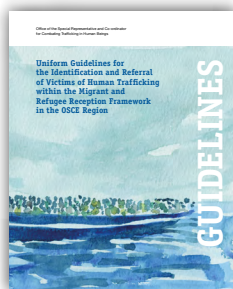
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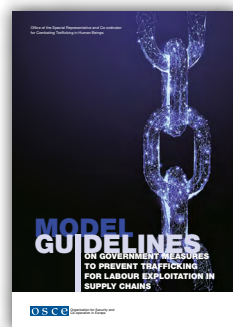
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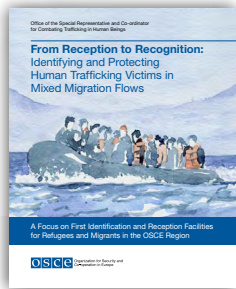
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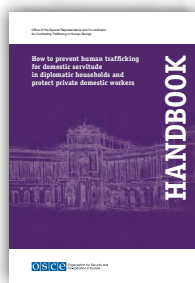
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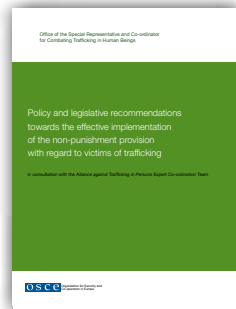
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