



Tieslietu ministrija

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**Training course “Recognition,
investigation and prevention of human
trafficking as an effective tool for the
termination of the phenomena”**

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National Referral Mechanism

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Legal Framework

- Purpose of the *Council of Europe Convention on Action against Trafficking in Human Beings* (“the Trafficking Convention”):
 - prevent and combat trafficking in human beings
 - protect and assist the victims of trafficking and respect their human rights
 - ensure effective investigation and prosecution of traffickers
 - promote international cooperation to meet these objectives and to secure action against trafficking in human beings

Definition of National Referral Mechanism (NRM)

“A National Referral Mechanism (NRM) is defined as a co-operative framework through which State actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.”

p.14, National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook (OSCE/ODIHR, 2004)

Aims of an NRM

- Basic aims of an NRM are:
 - ensure that the member State's obligations under the Palermo Protocol and Trafficking Convention are met;
 - work to help improve national policy and procedure on a broad range of victim-related issues
 - establish national plans of action;
 - set benchmarks to assess whether goals are being met;
- Human-rights based approach

The Act of Human Trafficking

- Article 4 of the Trafficking Convention
- Definition broken down into three core elements:
 1. the act;
 2. the means; and
 3. the purpose
- Consent in an adult is rendered irrelevant if they consented in prohibited circumstances
- Children: where the act and the purpose are present, no legal requirement to establish that any of the means were used. A child cannot consent to be trafficked

The Trafficking Convention and Victim Protection

- The principal obligations in the Trafficking Convention in terms of victim protection are:
 - Identification and a commitment that a victim should not be removed from the territory until identification process is complete (Article 10)
 - Assistance for victims (Article 12)
 - Minimum 30 day reflection and recovery period during the two stages of the identification process (Article 13)
 - Residence permits in specified circumstances for identified victims of trafficking (Article 14)
 - Legal assistance and compensation for victims (Article 15)

Partnership in Victim Identification

- Effective NRMs require good cooperation between government agencies and civil society
- Broad range of people and institutions who can identify victims of trafficking, particularly if trained and a system of referral is in place. These can include:
 - law enforcement
 - government agencies
 - NGOs
 - local social welfare organizations
 - hospital staff and psycho-social medical specialists
 - labour unions
 - labour inspections and other labour-related agencies
 - embassy officials

Process of Victim Identification

- Core of NRM to identify presumed trafficked person
- Problem of mistrust of official bodies
- Role of Competent Authority (CA)
 - Article 10 of Trafficking Convention
 - UK has two CAs
 - UK Borders Agency (UKBA)
 - UK Human Trafficking Centre (UKHTC)

First Responders

- NRM envisages that victims will be identified by 'first responders' who can refer to CA to carry out the formal identification process
- Adult victim needs to give consent
- Designated organisations in the UK

Two Stage Process

- Article 10 creates two-stage process by which decisions by the CA on the identification by of a trafficking victim are made :
 1. Reasonable Grounds test
 2. Conclusive Decision - should be taken in reflection period

Stage One – Reasonable Grounds

- Following referral by First Responder, the CA will apply ‘reasonable grounds’ test to decide whether a person is a victim of trafficking
- If positive, potential victim of trafficking is granted a minimum 30 day recovery and reflection period (Art.13 of Trafficking Convention)
- Standard of Proof for ‘reasonable grounds’
 - Intended to be very low to enable rapid identification and swift assistance to the presumed victim
 - *Rantsev v Cyprus and Russia* [2010] ECHR 22 at [286]:
“...were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited...”
 - UK standard of proof = reasonable suspicion

Stage Two – Conclusive Decision

- Final decision as to whether the potential victim is to be accepted as an actual victim of trafficking.
- Should be taken within reflection and recovery period identified by Art.13
- Standard of proof
 - Trafficking Convention silent on the appropriate standard of proof
 - Complexities in reaching full identification decision
 - UK standard of proof = balance of probabilities
 - Different standard of proof applied in asylum claim

The NRM in the UK

- Operated since 1st April 2009. NRM created by policy, not law
- Not a referral body, identification purposes only
- Perceived failure to use specialist or support bodies to assist in identification
- Lack of awareness in key agencies
 - *OOO & Others v Commissioner of Metropolitan Police* [2011] EWHC 1246 (QB)
- The report, *It Happens Here*, Centre for Social Justice, March 2013) recommends:
 - Establish Anti-Slavery Commissioner
 - Creation of Two-Tier NRM (anonymous referral and named referrals)
 - Removal of UKBA as Competent Authority
 - Single training package for First Responders
 - Police to develop links with NGOs, allowing experienced workers to accompany police on visits

Future Developments

- *EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)*. Set of practical measures to be implemented over the next five years, based on five key priorities:
 - Identifying, protecting and assisting victims of trafficking;
 - Stepping up the prevention of trafficking in human beings;
 - Increased prosecution of traffickers;
 - Enhanced coordination and cooperation among key actors and policy coherence;
 - Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.
- Establishment of EU Transnational Referral Mechanism?

Source Materials

- *National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE/ODIHR, 2004)
- *Trafficking in Human Beings: Identification of Potential and Presumed Victims, A Community Policing Approach* (OSCE, June 2011)
- *European Commission website: <http://ec.europa.eu/anti-trafficking/>*
- *EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)*
- *GRETA Report on Latvia* (January 2013)
- *It Happens Here: Equipping the United Kingdom to fight modern slavery*, Centre for Social Justice, March 2013