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# National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development



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# National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development

Guofu Liu<sup>1</sup>

## 1. Introduction

Trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being, and may result in slavery for the victims.<sup>2</sup> Hence, finding, identifying and assisting these victims are fundamental to anti-human-trafficking efforts. Governmental authorities, civil society organizations and international organizations are all involved in finding, identifying and assisting victims of human trafficking, so they must cooperate closely, coordinate with each other and support one another. Many developed countries, with international advocacy, have established and improved national referral mechanisms (NRMs) for victims of human trafficking, and are actively referring victims to the corresponding agencies that can help and serve them to better protect their basic rights. Other countries, however, mainly developing countries, have not established NRMs, or have only begun to explore the field. To protect basic rights, actively provide assistance and safely accommodate victims, each State should carefully review and evaluate the form of its anti-human-trafficking efforts, ensure the needs and requirements of a referral mechanism, and establish and improve its NRM, in accordance with relevant international covenants.

## 2. Background

The United Nations, the European Union<sup>3</sup> and other international and regional organizations have adopted a series of legal measures requiring participating members to take positive steps to protect and respect the basic rights of victims by cooperating with civil society organizations, other corresponding organizations and the victims themselves.<sup>4</sup>

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2 Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature 16 May 2005, entered into force 1 February 2008), Preamble.

3 Europe's International instruments on the National Referral Mechanism for Victims of Human Trafficking include:

(a) Organisation for Security and Co-operation in Europe, *National referral mechanisms: Joining efforts to protect the rights of trafficked persons, a practical handbook* (Warsaw, 2004). Available from [http://xueshu.baidu.com/s?wd=paperuri%3A%280478100e1ccf3e3cb71e9df80c265e22%29&filter=sc\\_long\\_sign&tn=SE\\_xueshusource\\_2kduw22v&sc\\_vurl=http%3A%2F%2Fci.nii.ac.jp%2Fncid%2FBA78027654&ie=utf-8&sc\\_us=16225603982682264142](http://xueshu.baidu.com/s?wd=paperuri%3A%280478100e1ccf3e3cb71e9df80c265e22%29&filter=sc_long_sign&tn=SE_xueshusource_2kduw22v&sc_vurl=http%3A%2F%2Fci.nii.ac.jp%2Fncid%2FBA78027654&ie=utf-8&sc_us=16225603982682264142);

(b) Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature 16 May 2005, entered into force 1 February 2008);

(c) The Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; and

(d) European Commission, *EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016)*.

4 The United Nations' international instruments on NRMs for victims of human trafficking include:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000;

(b) Recommended Principles on Human Rights and Human Trafficking, 2002 (the Office of the United Nations High Commissioner for Human Rights);

(c) United Nations Global Plan of Action against Human Trafficking, 2010;

Developed countries are active in exploring NRMs and have achieved much success, providing a beneficial and constructive reference for the international community. The United States has established a referral mechanism for victims of human trafficking based on the needs of the victims, and works cross-departmentally to provide services to identify victims, work with other civil society organizations and offer funds. The United Kingdom established its NRM in 2009. The United Kingdom Home Office published the *Review of the national referral mechanism for victims of human trafficking*<sup>5</sup> in November 2014, systemically analysing the existing problems and offering recommendations to resolve those problems. Australia established a cooperative mechanism between governmental authorities and civil society organizations based on the mechanism of a national anti-human-trafficking round-table meeting centred on identification, assistance and protection of victims of human trafficking.<sup>6</sup>

Taiwan Province of the People's Republic of China has expressed support and encouragement for a partnership among authorities and civil society organizations to fight human trafficking from legal, political and practical societal aspects.<sup>7</sup>

There is no standardized NRM in the world. Generally, the NRM refers to a collaborative effort among governmental authorities, civil society organizations and international organizations to jointly protect the basic rights of victims of human trafficking. Governmental authorities include grassroots agencies, and mid-level and central governments. Civil society organizations include social organizations and individuals. International organizations include intergovernmental agencies and non-intergovernmental authorities.

The basic purpose of the NRM is to respect and protect the basic rights of victims of human trafficking, and refer them to the correct agencies for assistance and services.

The main activities of the NRM are to properly identify, treat and refer the victims, efficiently coordinating their needs with civil society organizations, international organizations, criminal investigation agencies and procuratorate courts, as well as with interdisciplinary and inter-agency administrative anti-human-trafficking agencies.

The core of the NRM is to find, identify and assist victims of human trafficking, as well as to cooperate among governmental authorities, civil society organizations and international organizations.

The absence of advanced NRMs contributes to the limitation on close cooperation, coordination and support among governmental authorities, civil society organizations and international organizations in the world. This absence further leads to the harm caused by wrongful convictions done to victims of human trafficking by governmental authorities. Eventually, it fails to improve the policies and legal statutes on the finding, identifying and assisting of victims of human trafficking, or to fully protect the human rights of victims of human trafficking.

(d) Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement, 2005 (International Labour Organization);

(e) International Organization for Migration, Global Initiative to Fight Human Trafficking, London School of Hygiene and Tropical Medicine, *Caring for Trafficked Persons: Guidance for Health Providers*, Geneva, 2009;

(f) United Nations Office on Drugs and Crime, *International Framework for Action to Implement the Trafficking in Persons Protocol*, New York, 2009;

(g) Effective criminal justice responses to trafficking in persons centred on addressing the protection and assistance needs of different groups and types of victims, with particular reference to victims of trafficking within mixed migration movements, 2017 (United Nations Office on Drugs and Crime). Available from [www.unodc.org/unodc/en/treaties/CTOC/working-group-on-trafficking-september-2017.html](http://www.unodc.org/unodc/en/treaties/CTOC/working-group-on-trafficking-september-2017.html).

5 United Kingdom Home Office, *Review of the national referral mechanism for victims of human trafficking* (November 2014). Available from [www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking](http://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking).

6 Australian Government Working Group of the National Roundtable on Human Trafficking and Slavery, *Guidelines for NGOs Working with Trafficked People* (2015).

7 In 2014, immigration and labour authorities working with civil society organizations set up 24 shelters to better provide protection and settlement for victims of human trafficking. National Immigration Agency of the Ministry of the Interior of Taiwan: *Report on results of anti-human trafficking in 2015* (2016).

### 3. Analysis

Many countries have established or explored NRMs in terms of plans, legal statutes, referral agencies and systems. Although they have gained some success, there remain obvious shortcomings.

#### 3.1. Plans

Some countries formulated anti-human-trafficking plans, adopted work mechanisms and created databases, in which the finding, identification, reporting, assisting, settlement, recovery and return of victims are similar to those of NRMs. However, these action plans, mechanisms and databases are relatively general and lack corresponding regulations on practical operations, accountability or inter-agency coordination. What's more, some countries do not publish anti-human-trafficking statistics, such as the number of victims who were identified and those who received assistance, settlement and recovery services, or the files of implementing action plans, mechanisms and databases, thus making it difficult to evaluate the implementation and enforcement of those action plans, mechanisms and databases.

Afghanistan implemented its National Action Plan to Combat Human Trafficking 2015–2017 and an action plan for public awareness of human trafficking, but it still lacks supervision and reports on the implementation and enforcement of the action plans.<sup>8</sup> Cambodia has at least 9 ministries or committees and 15 departments or bureaus involved in anti-human-trafficking work. It created the Law Enforcement Against Sexual Exploitation and Trafficking of Children database and an information-sharing system on actions and other information for anti-human-trafficking efforts. However, there lacks efficient coordination and comprehensive arrangement between governmental authorities and the informational systems.<sup>9</sup>

#### 3.2. Legal statutes

Some countries have passed anti-human-trafficking legal statutes which cover their NRMs. The number of countries with legal statutes criminalizing most forms of trafficking in persons in line with the definition used by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children increased from 33 in 2003 to 158 in 2016.<sup>10</sup> However, many legal statutes for NRMs are superficial. They lack implemental regulations or rules, and can hardly resolve the existing problems with referrals for female, underage and disabled victims.<sup>11</sup> For instance, United States law enforcement has failed to achieve the goals, as prescribed in the Victims of Trafficking and Violence Protection Act of 2000, of identifying the victims, tracing and suing the traffickers in the United States and, as prescribed in the Trade Act of 1988, protecting labour rights and eliminating legal statutes on slavery.

In terms of compensation, some countries only have general legal statutes not specifically targeted at the victims of human trafficking. Due to the poor financial situations of the offenders, the low education of the victims, and the concealment and interregional aspect of human trafficking, general compensation legal statutes not specifically targeted at the victims could potentially result in a denial of the request for compensation to the victims.

As for the protection of the victims' privacy, legal statutes in most countries focus on the definition of the violation of the privacy and the legal consequences that the offender is responsible for, instead of ways to protect privacy and classified information of the victim. They fail to realize that the unique characteristics of victims of human trafficking thus make it difficult to pinpoint the methods and procedures of protecting the privacy and classified information of the victims.

8 United States Department of State, *Trafficking in Persons Report 2017*, p.56. Available from [www.state.gov/j/tip/rls/tiprpt/2017/](http://www.state.gov/j/tip/rls/tiprpt/2017/).

9 Strategic Information Response Network, *Anti-Human Trafficking Database of Cambodia*, the Third Phase of the United Nations Interagency Project on Human Trafficking. Available from [www.notip.org.cn/Userimages/00000738.pdf](http://www.notip.org.cn/Userimages/00000738.pdf).

10 United States Department of State, *Trafficking in Persons Report 2017*, p.29.

11 United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2014* (United Nations publication, Sales No. E.14.V.10).

### 3.3. Referral agencies

With the guidance of governmental authorities and the participation of civil society organizations, many countries have launched and made some achievements in the establishment of referral agencies for victims of human trafficking, especially agencies for assistance, settlement and recovery. Nevertheless, most countries do not have a specific agency or a specific fund for the protection of these victims, nor have they made the assistance, settlement and recovery of victims of human trafficking part of the daily task or future responsibility of their Governments. In Australia, there were no government-run shelters for victims of human trafficking and very few shelters in the country.

What's worse, civil society organizations have seldom or never worked to build agencies for assistance, settlement and recovery, since they are faced with limitations in mechanism, space, manpower and funding. International organizations are also not able to systematically or continuously refer victims of human trafficking, since there remains a lack of specific legal statutes on international cooperation in this field. For instance, although the United Nations Development Programme–Action for Cooperation against Trafficking in Persons, the United Nations International Children's Fund, Save the Children, World Vision, and the International Organization for Migration have already established cooperation with the Government of China, there is still a lack of systematic management and long-term service provided for the victims.

In addition, many countries lack qualified social workers and psychological consultants to help the victims, and often refer children to general shelters, such as social welfare houses, that are not in the best interest of the trafficked persons.

Local governments lack effective referral partnerships with civil society organizations and international organizations. This lack of partnerships makes it difficult for local governments to find and assist victims, publish information about the special shelters for victims of human trafficking that were built or managed by themselves or the civil society organizations they entrust, or publish files and information on the specific funding that they have allocated to helping victims of human trafficking.

### 3.4. Systems

Many countries actively assist and properly settle victims of human trafficking, protect their basic rights, and make efforts to establish NRM systems, which are embodied in the following aspects:

- a. Participation and advocacy from all walks of life in making and adopting anti-human-trafficking policies and legal statutes;
- b. Participation from all walks of life in assistance to victims, and their settlement, recovery and return to society;
- c. Management of anti-human-trafficking actions;
- d. Jurisdiction over anti-human-trafficking cases;
- e. Special funding for anti-human-trafficking actions;
- f. Determination of the nature of female and child trafficking;
- g. Identification of victims of human trafficking;
- h. Settlement and recovery for victims of human trafficking;
- i. Management of shelters of assistance, settlement and recovery for victims of human trafficking;
- j. Accompanying victims of human trafficking and encouraging them to accept interrogation and investigation, and attend court hearings;

- k. Witness protection for victims of human trafficking;
- l. Assistance for victims of human trafficking with foreign nationality; and
- m. Return of victims of human trafficking with foreign nationality.

However, most systems regarding NRMs remain general, regional and pilot, lacking specific prescriptions or detailed procedures, especially external supervision and follow-up reports. The referral of victims of human trafficking is, to a large extent, at the discretion of governmental authorities, which may make referring victims of human trafficking more flexible and unstandardized than it should be. For instance, the United Kingdom lacks simple and uniform standards and methods to identify and refer suspected victims of human trafficking, systematic and comprehensive anti-human-trafficking training, formal audit and supervision over assistance, settlement and recovery service providers, and regulations regarding the accountability of who makes conclusive decisions identifying the victims of human trafficking.<sup>12</sup>

## 4. Conclusion

A sole agency cannot solve the complex social issue of human trafficking. A State needs to establish the NRM to establish the partnership among governmental authorities, civil society organizations and international organizations to fulfil the needs of the victims and protect their rights. Governmental authorities involved in the enforcement of national laws should fulfil their duties in anti-human-trafficking, especially in the assistance, settlement and recovery of the victims. Civil society organizations are on the front line of the fight against human trafficking. With more affinity for the victims than governmental authorities have, they are essential in identifying victims, reporting and evaluating cases, providing services, referring victims and perfecting relevant legal statutes. The international community champions and supports the NRMs. Many countries' cases have proven that human trafficking is best handled only through the NRM.

The NRM shall be established and improved with a foundation of respect for and protection of the basic rights of the victims, especially their rights to be identified and assisted. The former refers to the right to be immediately and accurately identified as a victim of human trafficking; the latter refers to the right to assistance, settlement, recovery and compensation as a victim of human rights violations.

The principle of the NRM is to centre around the victims. We must respect and protect the basic rights of the victims, satisfy their reasonable needs and demands, provide them with assistance, settlement, recovery and compensation services, and help them return to society, integrate into local communities, and live as normal a life as others do.

To establish the NRM, the following six required activities shall be performed satisfactorily:

- a. Actively intervening;
- b. Fulfilling duties in accordance with the law;
- c. Providing one-stop service for the victims;
- d. Expanding the service scope of existing civil society organizations to cover the victims of human trafficking;
- e. Purchasing services related to assistance, settlement and recovery from civil society organization by governments; and
- f. Perfecting the systems and procedures of the NRM.

<sup>12</sup> United Kingdom Home Office, *Review of the national referral mechanism for victims of human trafficking* (November 2014), p.1. Available from [www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking](http://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking).

## 5. Recommendations

Sixteen rules shall be followed for establishing and improving the NRM:

- a. An anti-human-trafficking advisory committee shall be established;
- b. Multiple and immediate early identification shall be carried out;
- c. Efficient and accurate official identification shall be carried out;
- d. Settlements shall be safe and secure;
- e. Comprehensive and professional consultation shall be provided;
- f. Immediate medical and health services with respect for the victims shall be provided;
- g. Necessary translation personnel and language support shall be provided;
- h. Privacy and classified information shall be protected at all times;
- i. Victims of human trafficking serving as witnesses shall receive full protection;
- j. Victims of human trafficking shall be accompanied by someone before accepting interrogation and investigation, or attending court hearings;
- k. Commutation or exemption shall be granted for the legal consequences victims of human trafficking may face due to their illegal activities;
- l. Compensation for losses of victims of human trafficking shall be provided;
- m. Restorative justice for victims of human trafficking and help for them to return to society shall be provided;
- n. Permission for foreign victims of human trafficking to stay, reside temporarily or reside permanently in the country where they are assisted shall be granted;
- o. Safe dispatch for foreign victims of human trafficking to return to their countries with dignity shall be provided;
- p. Special consideration for child victims of human trafficking shall be granted.<sup>13</sup>

The aforementioned 16 rules cover the assistance, settlement, recovery, return to society and other issues regarding the referring of the victims of human trafficking. To respect and secure the basic rights of victims of human trafficking, especially their rights to be identified and to be assisted, it is necessary to uphold the fundamental principle of centring around the victims of human trafficking, and to satisfy the requirements such as actively intervening and fulfilling duties in accordance with the law.

<sup>13</sup> G. Liu, *The Law of Anti-Cross Border Trafficking in Persons and National Referral Mechanism for Trafficking Victims (Fankuajing Renkou Fanyun Falv Zhidu Yu Renkou Fanyun Beihairen Zhuanjie Jizhi)*. (Beijing, World Affairs Press, 2016), p. 431. Available from <http://product.dangdang.com/1154097247.html>.





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