



GUIDING PRINCIPLES
ON MEMORANDA OF UNDERSTANDING
BETWEEN KEY STAKEHOLDERS AND
LAW ENFORCEMENT AGENCIES
ON COUNTER-TRAFFICKING COOPERATION

UN.GIFT

Global Initiative to Fight Human Trafficking

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IOM International Organization for Migration

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MARCH 2009

Expert Group Initiative
on Stakeholder Cooperation with Law Enforcement
implemented by IOM Vienna

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As intergovernmental body, IOM acts with its partners in the international community to assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

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.: Foreword

Trafficking in human beings is a serious and complex crime which violates human rights and therefore calls for close, active and long term cooperation between all actors working on countering the phenomenon. In addition to the commonly-known 3 P's; the Prevention of the crime; the Protection of the trafficked persons; and the Prosecution of the perpetrators, effective counter-trafficking responses should recognize the necessity of Partnerships as a fourth 'P', alongside the 3 Ps.

IOM has supported several global-level initiatives to counter trafficking, including the Global Migration Group (GMG), the Inter-Agency Cooperation Group Against Trafficking in Persons (ICAT) and the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT).

In recent years, the need for cooperation between stakeholders has been recognized at the local, national, regional and international levels. Nevertheless, cooperation is most often based on personal relationships, and hence is punctual and volatile. While recognizing that these methods of cooperation have sometimes brought success, without formal cooperation agreements/protocols, there are a number of constraints that compromise the cooperation between stakeholders and their different roles within the overall fight against human trafficking. Continuity is secured by written partnership agreements which transcend time and changing personnel without, of course, dismissing the importance of direct personal contacts and relations.

In order to produce and implement Memoranda of Understanding, an example of such formalized cooperation agreements and protocols, IOM Vienna has developed this "*Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking Cooperation*" in the framework of the UN.GIFT Expert Group Initiative on "Stakeholder Cooperation with Law Enforcement".

The Guiding Principles intend to serve as a practical tool that will help stakeholders when developing counter-trafficking agreements. By stakeholders we understand all actors to play a role in combating and preventing human trafficking, from law enforcement agencies to specialized service providers, NGOs, trade unions, the judiciary, the prosecution services, faith based organizations, etc.

This initiative and the Guiding Principles have fostered many discussions and provoked much interest for stakeholders in possibly engaging into formalized cooperation agreements. Countries which, until now, had not shared their already existing MoU(s) have come out of the shadows to share their knowledge and experience. This initiative then permitted the emergence of a global cooperation in counter-trafficking, providing a place where experts from around the world could meet and exchange on their formalized cooperation needs or experiences.

We would like to thank the United Nations Global Initiative to Fight Human Trafficking and all the experts who participated in this initiative, bringing in their knowledge, experience and expertise.

We invite all counter-trafficking actors to make good use of the Guiding Principles. We will gratefully receive your feedback on the Guiding Principles and we will happily support any related counter-trafficking initiatives.



Pier Rossi-Longhi
Officer in Charge
IOM Vienna

.: Acknowledgements

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Special thanks go to the UN.GIFT Steering Committee Members who have supported and dispatched their most knowledgeable and experienced experts to this initiative: the United Nations Office on Drugs and Crime (UNODC), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organization for Security and Co-operation in Europe (OSCE) and the International Labour Organization (ILO).

In January 2009, 25 national and international experts from law enforcement agencies, NGOs and Intergovernmental Organizations participated in the Expert Group Working Meeting organized by IOM Vienna to discuss the *“Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking”*. We would like to thank all the participating experts for their valuable contributions and support. We would like to express our gratitude to: Joana Adesuwa Reiterer (NGO Exit, Austria), Eva Kaufmann (LEFÖ/IBF, Austria), Helmut Sax (Ludwig Boltzmann Institute of Human Rights, Austria), Johannes Steiner (Criminal Intelligence Service/Federal Ministry of the Interior, Austria), Salma Ali (National Women’s Lawyer’s Association, Bangladesh), Irena Konečná (La Strada, Czech Republic), Maria Elena Moreira (Embassy of Ecuador in Austria), Thania Moreno Romero (Pichincha’s Prosecutor’s Office, Ecuador), Veronica Supliguicha Cárdenas (Fundación Nuestros Jóvenes and Pichincha’s Counter Trafficking Network “Ayuda-T”, Ecuador), Duco van Heel (FRONTEX), Marilyn La Tona (International Alliance of Women), Verica Stamenkova-Trajkova (NGO For a Happy Childhood, Macedonia), Muhammad Babandede (National Agency for Prohibition of Traffic in Persons, Nigeria), Alfredo Abel (Department of Immigration, Timor Leste), Vijaya Souri (IOM Headquarters), Mariana Katzarova (Office of the United Nations High Commissioner for Human Rights), Anette Keloneva (OSCE), Silke Albert (UNODC), Livia Drha (UN.GIFT/UNODC), Julie Kvammen (UNODC), Narue Shiki (UN.GIFT/UNODC), and Riikka Puttonen (UNODC).

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.: List of Abbreviations

ASEAN	Association of Southeast Asian Nations
Art.	Article
AU	African Union
CoE	Council of Europe
ECCAS	Economic Community of Central African States
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
GAATW	Global Alliance Against Traffic in Women
ICMPD	International Centre for Migration Policy Development
i.e.	Id est/that is
IGO	Inter-Governmental Organization
ILO	International Labour Organization
IOM	International Organization for Migration
IO	International Organization
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
NRM	National Referral Mechanism
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
ODHIR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
Para.	Paragraph
SAARC	South Asian Association for Regional Cooperation
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

.: Introduction

One of the main objectives of the **United Nations Global Initiative to Fight Human Trafficking** (UN.GIFT) is to prosecute the perpetrators involved in trafficking in human beings while protecting the rights and well-being of trafficked persons. In order to achieve this goal, effective formalized cooperation between a broad range of stakeholders, such as law enforcement agencies and specialized service providers,¹ is essential. Cooperation between similar agencies and intra-agency cooperation is also essential.

Fostering cooperation between law enforcement agencies and other stakeholders in fighting human trafficking has been a major component of the comprehensive approach taken by the **International Organization for Migration** (IOM) towards combating trafficking in human beings, particularly, the building of operational and institutional links between specialized service providers, labour inspectors and other law enforcement agencies.

IOM's experience has demonstrated that personal relationships based on trust often play the most important role in enabling effective and open cooperation between different institutions and law enforcement agencies. While informal cooperation has often brought success, it is hazardous in the absence of clear protocols for cooperation, and does not contribute to the longer term goal of establishing multi-stakeholder systems and structures.

Formalized cooperation, such as Memoranda of Understanding (MoU), clearly identifies the driving principles of such cooperation, and contributes to the building of mutual trust and the development of a common understanding on the objectives and policies of the different parties.

A. Overview of the project: objective and outcome

As highlighted in several international instruments, such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,² cooperation measures between governmental and non-governmental organizations, as well as other relevant organizations and other elements of civil society, should be implemented in order to guarantee the well-being and protection of the trafficked person.

In the framework of the UN.GIFT, of which the International Organization for Migration is one of the Steering Committee Members, IOM Vienna carried out an **Expert Group Initiative** (EGI) on cooperation between stakeholders and law enforcement agencies as an effective means to combat trafficking in human beings. The objective of the EGI was to encourage cooperation between a range of key stakeholders and law enforcement agencies by establishing principles for each identified stakeholder. This publication – *Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking Cooperation*³ – is the main output of this Expert Group Initiative.

The Guiding Principles aim to produce both short and long-term results that will, in turn, contribute to more effective cooperation between stakeholders. This can be achieved through the development and implementation of formalized cooperation agreements, such as MoUs between the various counter-trafficking actors with a view to effectively prevent trafficking in human beings, protect the rights of trafficked persons and prosecute the perpetrators involved.

¹ Specialized service providers can be non-governmental organizations (NGOs) and governmental service providers such as specific child care facilities.

² In the following: UN Trafficking Protocol.

United Nations (2000b): *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime*

³ In the following: Guiding Principles.

The Guiding Principles are to be seen as a set of recommendations that lead states and stakeholders through the necessary steps for developing and implementing a formalized cooperative relationship on preventing and combating trafficking in human beings. These Guiding Principles focus on the assistance to trafficked persons. Furthermore, the Guiding Principles may serve as a reference tool for the various institutions working in issues related to human trafficking (prevention, prosecution, protection and partnership) when developing MoUs or other cooperation agreements.

Target audience:

The Guiding Principles strive to assist **stakeholders** with different roles in combating trafficking in human beings when developing MoUs, namely:

- Police
- Immigration authorities
- Judiciary
- Prosecutors
- Border guards, customs and tax authorities
- Health services
- Social services
- Labour inspectors
- Workers' organizations
- Employers' organizations
- Trade Unions
- Relevant Ministries
- Specific governmental institution(s) on fighting trafficking in human beings
- Embassies and Consulates
- NGOs and other specialized service providers
- Civil Society
- International Organizations
- Churches, church and faith-based organizations
- Other relevant actors in preventing trafficking, protecting trafficked persons and prosecuting the perpetrators, depending on the national context

A **multidisciplinary Expert Group**, consisting of international representatives from law enforcement agencies, research institutes, civil society and international organizations, was asked to contribute to the elaboration of the Guiding Principles drafted by Julia Planitzer, **Ludwig Boltzmann Institute of Human Rights**. The members of the Expert Group and other experts around the world were consulted through the IOM field offices for their input to this document, which was taken into consideration when elaborating the Guiding Principles. Additionally, they provided information on existing practices concerning the cooperation of key stakeholders and law enforcement agencies on preventing and combating trafficking in human beings and/or assisting trafficked persons. The Expert Group met on the 26th and 27th January 2009 in Vienna, Austria.

B. Terminology used in the Guiding Principles

One of the major steps towards building cooperation agreements on trafficking in human beings is agreement on common definitions. For the purpose of the Guiding Principles, the members of the Expert Group have agreed on the following terms. This terminology is recommended to be used in accordance with national, regional and international legislation already in force.

Trafficking in Human Beings

The **UN Trafficking Protocol** defines trafficking in persons as:

(a) "...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) 'Child' shall mean any person under eighteen years of age."⁴

Smuggling of Migrants

The **UN Smuggling Protocol** defines the smuggling of migrants as:

"...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."⁵

Trafficked person/Victim of human trafficking

"An individual who is a victim of the crime of trafficking in persons."⁶

Note: In the Guiding Principles the term agreed to use is trafficked person. This is seen as a recommendation in line with the national context.

⁴ United Nations (2000b): Art. 3.

⁵ United Nations (2000c): *Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime*, Art. 3, para. (a).

⁶ IOM (2004): *Glossary on Migration*, International Migration Law n° 1, Geneva, p. 69.

C. Structure of the Guiding Principles

The **Guiding Principles** contain specific principles for law enforcement agencies including labour inspectors, and specialized service providers. The publication is divided into two parts. Chapter I refers to the cooperation between law enforcement agencies and key stakeholders, detailing the benefits, the general principles and the components of an MoU. Chapter II provides the details of the cooperation procedure from the perspective of law enforcement agencies, specialized service providers and labour inspectors.

A checklist of components of an MoU and the summarized key principles of cooperation can be found at the end of the publication in view of outlining the components of an MoU and the principles of cooperation for each identified stakeholder.

For some of the identified principles of cooperation, existing practices from all over the world have been collected through the Expert Group Initiative and have been included in the Guiding Principles in order to illustrate examples of formalized cooperation already in place. Selected public MoUs cited in the Guiding Principles are available in the **Annex** of the electronic version of this publication and can be downloaded from the UN.GIFT (<http://www.ungift.org>) and the IOM Vienna (<http://www.iomvienna.at>) websites.

For easy reference, the following symbols have been introduced throughout the text:



Important!



Example

I. Cooperation between law enforcement agencies and specialized service providers

A. General remarks

Acknowledgment of the necessity of cooperation marks the first step towards formalized cooperation between law enforcement agencies and specialized service providers. Formalized cooperation can be established by an internal directive or, for example, by an MoU. Cooperation between all actors involved, especially between law enforcement agencies and specialized service providers, builds the basis for a successful and effective strategy to prevent trafficking in human beings, as well as a basis for investigating and prosecuting traffickers. Overall, such cooperation ensures the safety and protection of the rights of trafficked persons. Successful cooperation can also be established by an MoU signed by the governmental actors of two or more states.⁷

Through cooperation, different interests of various actors can be met. At the same time, common goals can be reached. Cooperation between these actors can have various objectives related to prevention of trafficking in human beings, protection of trafficked persons and prosecution of traffickers. These objectives can encompass cooperation regarding awareness-raising measures, training or research. These Guiding Principles focus on the protection of the rights of trafficked persons which can include defined objectives for the improvement of assistance to trafficked persons, the facilitation of cooperation between trafficked persons and law enforcement officials, or the role of trafficked persons as witnesses in criminal proceedings.

Several international instruments that are relevant to trafficking in human beings underline the necessity for law enforcement agencies and specialized service providers to cooperate.

The **United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**, supplementing the United Nations Convention against Transnational Organized Crime, calls upon State Parties to establish programmes, policies and measures to combat and prevent trafficking in human beings and to protect trafficked persons (Art. 9). In order to adhere to these programmes, policies and measures, State Parties should cooperate with NGOs, other relevant organizations and other elements of civil society. In addition, State Parties shall consider cooperating with NGOs to provide for the physical, psychological and social recovery of the trafficked person (Art. 6). These provisions underline the role of NGOs as an important knowledge base. Additionally, the independence of NGOs helps to build a bridge between the trafficked person and law enforcement agencies.⁸

⁷ Examples of this are: *Memorandum of Understanding between the Ministry of Internal Affairs of the Republic of Belarus and the Ministry of Internal Affairs of the Republic of Turkey on Cooperation in the Field of Fight against Trade of Persons and Illegal Migration*. Done at Minsk on 28 July 2004, *Natsional'nyi Reestr Pravovyykh Aktov*, 2004-11-03, No. 171, pp. 19-20, and the *Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Cooperation to combat Trafficking in Persons, especially Women and Children*. Done at Bangkok on 13 July 2005.

⁸ UNODC (2004): *Legislative guide for the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, para. 95.

The **Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**⁹ similarly underlines the promotion of international cooperation and coordination between national authorities, national and international non-governmental organizations and international organizations.

The **ILO Worst Forms of Child Labour Convention** (No. 182, 1999)¹⁰ calls for the consultation of other actors concerned with designing and implementing programmes, such as NGOs or competent community-based groups (Art. 6).¹¹ With regard to labour inspection, the **ILO Labour Inspection Convention** (No. 81, 1947)¹² states in Art. 5 that “effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities” needs to be promoted.

At regional level, the **Council of Europe Convention on Action against Trafficking in Human Beings**¹³ addresses the importance of cooperation with NGOs and calls on the State Parties to involve NGOs in measures to prevent trafficking in human beings (Art. 5) and emphasizes the cooperation with NGOs regarding the assistance to trafficked persons in their physical, psychological and social recovery (Art. 12) and during criminal proceedings (Art. 27). In addition, the Convention explicitly states that State Parties have to encourage state authorities and public officials to cooperate with non-governmental organizations (Art. 35) and recommends the drafting of Memoranda of Understanding between national authorities and NGOs for providing protection and assistance to trafficked persons.¹⁴

Additionally, the **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution**¹⁵ holds in Art. IX that State Parties may authorize NGOs to establish shelters and shall encourage them in efforts aimed at prevention, intervention and rehabilitation.

The **Joint ECCAS/ECOWAS Plan of Action against Trafficking in Persons, especially Women and Children in West and Central Africa**,¹⁶ states that the National Task Forces should cooperate closely with NGOs and other relevant representatives of the civil society in carrying out activities. The **OAS** mentions that a broad strategy should also include support for cooperation efforts and the projects of the civil society organizations.¹⁷

The **OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**¹⁸ point out the importance of cooperation with regard to identification and provision of assistance to trafficked persons and underline formalized cooperation (Guideline 2). In addition, cooperation is recommended with regard to safe and adequate shelter and health care (Guideline 6).

⁹ United Nations (2000d): *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.

¹⁰ ILO (1999): *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182*.

¹¹ Sanna, S. (2008): *Slavery and Practices Similar to Slavery as Worst Forms of Child Labour: A Comment on Article 3(a) of ILO Convention 182*, in Nesi, G. et al., *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, p. 127.

¹² ILO (1947): *Convention concerning Labour Inspection in Industry and Commerce*, No. 81.

¹³ Council of Europe (2005): *Council of Europe Convention on Action against Trafficking in Human Beings*, CETS N° 197.

¹⁴ Council of Europe (2005): *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, para. 353.

¹⁵ South Asian Association for Regional Cooperation (SAARC) (2002).

¹⁶ Joint ECCAS/ECOWAS Plan of Action against Trafficking in Persons, especially Women and Children in West and Central Africa (2006), Point 9.

¹⁷ OAS (2004): *Fighting the Crime of Trafficking in Persons, especially Women, Adolescents and Children*, AG/RES. 2019 (XXXIV-O/04).

¹⁸ OHCHR (2002): *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1.

Furthermore, the ILO recommends that cooperation between service providers, law enforcement agencies and the social partners needs to be strengthened.¹⁹

The Organization for Security and Co-operation in Europe (OSCE) calls on the participating states with regard to trafficking in human beings for labour exploitation to “*support and promote partnerships between civil society, including NGOs, and State agencies with a labour protection mandate to monitor working conditions, to provide, among others, assistance to victims and prevent trafficking for labour exploitation and violation of labour laws (...)*”²⁰

The vulnerability to trafficking in human beings intensifies during conflict situations, which further exacerbates conditions existing prior to the conflict, such as poverty, corruption and/or discrimination against women. Trafficking in human beings does not only generate enormous profits: it can also contribute to other non-pecuniary, political war aims. Consequently, it becomes a weapon of war by dehumanizing the trafficked persons.²¹ In a post-conflict environment trafficking in human beings increases, based on factors such as social disruption, economic collapse, corruption and the complete absence of the rule of law.²² Counter-trafficking measures have to be tailored to a specific environment or to a specific situation in a country. Thus, cooperation needs to be adjusted to the specific situation and can be an important tool in order to combat trafficking in human beings in conflict and post-conflict situations.

B. Benefits of concluding a Memorandum of Understanding

Cooperation between law enforcement agencies and specialized service providers has proven to be an effective response to trafficking in human beings in many countries, as reinforced in the various international instruments. Cooperation is a central element to the protection of the rights of trafficked persons. Cooperation can be implemented by states through various means such as legislation, regulations or directives.

Formalized cooperation is recommended in order to frame the cooperation successfully, to combine the different roles and objectives of the actors and to avoid possible conflicts..

The most common starting point in formalizing cooperation is to conduct a roundtable discussion of the practitioners who are dealing with cases of trafficking. This roundtable should be open to all actors and volunteers that are responsible for the protection of the rights of trafficked persons and provide assistance to trafficked persons.²³ It is recommended that further development of the formalized cooperation be carried out through a specific assessment of the actors involved. Specialized service providers need to be adequate partners for cooperation and therefore need to meet certain standards.

Formalized cooperation is a strategy that has been used effectively in other contexts for many years, such as in the case of domestic violence and all forms of sexual offences.²⁴ In these cases, the

¹⁹ ILO (2005a): *A Global Alliance against Forced Labour, Report of the Director-General, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, para. 279.

²⁰ OSCE (2007): *Decision No. 8/07 of the Ministerial Council, Combating Trafficking in human beings for labour exploitation*.

²¹ Vandenberg, M. (2005): *Trafficking in Armed and Post-Conflict Situations*, in *Challenging Trafficking in Persons, Theoretical Debate & Practical Approaches*, p. 69.

²² *Ibid.* p. 72.

²³ Sorrentino, L. (2005): *Cooperation for Protection – National Referral Mechanism*, in *Challenging Trafficking in Persons, Theoretical Debate & Practical Approaches*, p. 112.

²⁴ David, F. (2007): *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice, Trends & Issues in Crime and Criminal Justice*, No. 347, p. 4.

value of formalized cooperation is recognized by law enforcement agencies and is an established and positive practice.

Benefits of formalized cooperation:

- Development of a common understanding of objectives, policies and roles of different parties.
- Increasing knowledge and defined information exchange.
- Agreed principles of procedure in cooperation, which avoid misunderstandings.
- Building a certain level of mutual trust by cooperating on a regular basis.
- Possibility of law enforcement agencies and specialized service providers to react faster: ensuring that law enforcement agencies refer presumed trafficked persons to an adequate specialized service provider.
- Improved protection and support to trafficked persons: a proven technique whereby a trafficked person assisted by a specialized service provider is more likely to cooperate with law enforcement agencies.²⁵

In general, formalized cooperation results in a directive or in a formal MoU. Directives issued by the relevant ministry allow a certain flexibility which can have positive effects and gives authorities the possibility to cooperate with different specialized service providers. However, the most common form of **formalized cooperation** is the MoU.

Benefits of Memoranda of Understanding:

- The parties of the agreement are defined and recognize their mutual rights and responsibilities.²⁶ MoUs form a mutual agreement and are not an obligation formulated by one side, unlike a directive.
- The responsibilities and roles of the parties are clearly defined.
- Further possible misunderstandings are avoided: ideally, MoUs contain clear delineations and foster understanding of different responsibilities.
- MoUs support the process of building trust between the parties.
- MoUs provide for transparency and less bureaucracy,²⁷ hence a swifter and more effective response can be achieved.
- This response leads to adequate assistance and stabilization of the trafficked person which increases the possibility of cooperation with law enforcement agencies.
- MoUs offer an objective frame of reference which helps to measure progress.²⁸
- MoUs reinforce accountability on both sides.
- MoUs recognize partners' limitations and commitments.
- MoUs offer the possibility of evaluating the results of the cooperation.

²⁵ United Nations (2008): *The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) - The Vienna Forum Report: A Way Forward to Combat Human Trafficking*, p. 45.

²⁶ Kroeger, T., Malkoc, J., Uhl, B.H.(2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR, pp. 65-66.

²⁷ United Nations (2008): *UN.GIFT - The Vienna Forum Report: A Way Forward to Combat Human Trafficking*, p. 46.

²⁸ David, F. (2007): *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice*, p. 4.

C. General principles

As an overall guiding principle of MoUs between stakeholders and law enforcement agencies, the primacy of human rights according to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking should be enforced. In other words, the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking in human beings and to protect, assist and provide redress to trafficked persons.²⁹

Law enforcement related to trafficking in human beings should act in line with human rights standards to ensure that no contradiction will arise between the protection of the rights of the trafficked person and effective law enforcement measures.³⁰

Additionally, the Principles and Guidelines stipulate that *“appropriate protection and support should be extended to all trafficked persons without discrimination”*.³¹ As highlighted in the Council of Europe Convention on Action against Trafficking in Human Beings, the internationally recognized principle of non-discrimination states that the measures to protect and promote the rights of the victim shall be carried out *“without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*.³²

Providing support and protection services that are accessible by all trafficked persons³³ also includes presumed trafficked persons. The term “presumed trafficked person” refers to those who are likely to be a trafficked person and should also benefit from counter-trafficking programmes and services.³⁴ The Council of Europe Convention on Action against Trafficking in Human Beings points out that as long as there are *“reasonable grounds to believe that a person has been victim of trafficking in human beings”*, this person shall not be removed from the territory until the end of the identification process and shall receive assistance.³⁵ Although this principle is not yet universal, it takes into account that it can be difficult to assess whether an individual has been trafficked.³⁶

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking also point out that trafficked persons should not be *“prosecuted, detained or punished for the illegality of their entry or residence”*³⁷ or for activities deriving from the trafficking situation. Therefore, it is recommended that the trafficked person be exempt from criminal investigations of crimes the person committed during the period of trafficking in human beings by a “non-punishment clause”.

The partners of the MoU play their own role and have their own responsibilities according to their mandate/values. The MoU should affect neither the independent role nor the autonomy of law enforcement agencies and specialized service providers.

²⁹ OHCHR (2002): Para. 1.

³⁰ OSCE/ODIHR (2004): *Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking (Conference Report)*, p. 155.

³¹ OHCHR (2002): Guideline 6.

³² Council of Europe (2005): Art. 3.

³³ Kroeger, T., Malkoc, J., Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 24.

³⁴ *Ibid.* p. 17.

³⁵ Council of Europe (2005): Art. 10.

³⁶ Dottridge, M. (2008): *Child trafficking for Sexual Purposes (Contribution of ECPAT International to the World Congress III against Sexual Exploitation of Children and Adolescents)*, p. 43.

³⁷ OHCHR (2002): Guideline 4, Art. 5.

Additional underlining principles of MoUs between law enforcement agencies and stakeholders can be:³⁸

- The common purpose of the partners should be emphasized in the MoU. A common purpose could be the reduction and prevention of human trafficking through effective cooperation between the service delivery organization and the law enforcement agency. The specific purpose of an MoU depends on numerous factors, such as the partners or the situation in the respective country. Nevertheless, the partners should define a common goal to be reached through cooperation.
- The partners of the MoU are committed to combat trafficking in human beings and to protect the rights of the trafficked person, and to work towards securing respect for the dignity and well-being of the trafficked person.
- Paramount for all parties to the MoU is the safety and protection of the human rights of the trafficked person and presumed trafficked person.
- The MoU is based on international standards and guidance set out in the UN Trafficking Protocol and the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.
- Unless the safety of another trafficked person is involved, the service delivery organization shall not be required to disclose information without the consent of the trafficked person or in circumstances where the disclosure would not be in the best interest of the trafficked person. The trafficked person can make an informed decision to disclose information or not. The disclosure of information should be possible without breaching the principle of confidentiality or professional secrecy. Nevertheless the MoU should clearly define what kind of information may be disclosed by both partners.



Although the information gathered from NGOs can be very important for law enforcement agencies, information on trafficking incidents and patterns needs to be gathered by law enforcement agencies while preserving the privacy of trafficked persons.³⁹

The collection of personal data is necessary on the one hand for specialized service providers to provide assistance to trafficked persons, and on the other hand for law enforcement agencies to conduct investigations and prosecutors.⁴⁰ Specific data protection standards have to apply regarding personal data. Such data represents information which allows for the identification of a particular individual and encompasses among others, the name, date and place of birth, known address, telephone number and identification number of identity documents.⁴¹ The processing (compilation, recording, storage, correction, erasure and transmission) of personal data shall respect the right to privacy of the person concerned.⁴² Personal data should not be used without the knowledge or unambiguous informed consent of the person.⁴³

³⁸ These guidelines are based on: IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, pp. 287-288.

³⁹ OHCHR (2002): Guideline 3, Art. 7.

⁴⁰ IOM and Federal Ministry of the Interior of Austria (2009): *Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*, p. 18.

⁴¹ *Ibid.* p. 41.

⁴² Sölkner, A.; Uhl, B.H. (2006): *Assessment of Return and Reintegration Assistance*, Activity Report of Activity A.1 of the EU Twinning Project "Strengthening Institutions in the Fight against Trafficking in Human Beings", p. 19.

⁴³ IOM and Federal Ministry of the Interior of Austria (2009): *Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*, p. 89.

At the European level, according to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe,⁴⁴ specific provisions apply for personal data which are automatically processed. Automatic processing includes dissemination.⁴⁵ Data should be correct, relevant and not excessive in relation to the purpose for which they are being stored. The use of data, which includes disclosure, should be carried out in an accurate way.⁴⁶ The Council of Europe Convention on Action against Trafficking in Human Beings states that all personal data regarding trafficked persons shall be used in conformity with the Convention mentioned above.⁴⁷

Confidentiality and anonymity form the basic principles of specialized service providers working with a trafficked person, such as counselling programmes, psychological assistance and support in dealing with authorities. Since trafficked persons fear further stigmatization and marginalization and have sensitive information about criminals, the information shared with the specialized service provider needs to remain absolutely confidential.⁴⁸

Information on patterns, depersonalized data or aggregated data does not necessarily violate the right to privacy of a person.

These basic principles need to be supplemented by specific principles regarding children. With regard to the principle that MoUs are based on international standards and guidance, MoUs which encompass the assistance to trafficked children should be based on the UN Convention on the Rights of the Child (CRC)⁴⁹ and the UNICEF Guidelines on the Protection of Child Victims of Trafficking.⁵⁰

These guidelines contain topics on the identification of children as trafficked persons and the appointment of a temporary legal guardian for each trafficked child separated from the child's parent, parents or legal guardian. In addition, they point out that *“social service authorities with qualified personnel shall provide care for the child victim, in cooperation with competent international organizations and NGOs.”*⁵¹ Since the guidelines recommend written agreements, the formulated procedures would form a good basis for the details of cooperation to be incorporated in the MoU.

At the regional level, initiatives have been taken to adapt the guidelines to regional characteristics. For example, Southeast Asian guidelines have been developed by the NGO Asia ACTs Against Child Trafficking⁵² and have been formally adopted by ASEAN Ministers for Social Welfare and Development in 2007. These regional guidelines take into account specialized care and protection for the staff of specialized service providers and the capacity building of communities.⁵³

⁴⁴ Council of Europe (1981): *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*. CETS-N° 108.

⁴⁵ *Ibid.* Art. 2 c.

⁴⁶ IOM and Federal Ministry of the Interior of Austria (2009): *Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*, p. 124.

⁴⁷ Council of Europe (2005): Art. 11.

⁴⁸ Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, pp. 77-78.

⁴⁹ United Nations (1989): *Convention on the rights of the Child (CRC)*.

⁵⁰ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*.

⁵¹ *Ibid.* p. 22.

⁵² Asia ACTs against Child Trafficking (2007): *Protecting the Rights and Dignity of the Trafficked Children in South East Asia*.

⁵³ Dottridge, M. (2008): *Child trafficking for Sexual Purposes*, pp. 40-41.

General Principles of MoUs

Summary:

- Primacy of human rights according to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking
- Principle of non-discrimination
- Recommendation of including presumed trafficked persons
- Recognizing the independence and autonomy of the partners of the MoU
- Defining a common purpose of the partners
- Commitment to combat trafficking in human beings and to protect the rights of trafficked persons
- Ensuring safety and protection of the human rights of the trafficked person
- Disclosure of information: No disclosure without the consent of the trafficked person and neither if it is not in the best interest of the trafficked person
- Clear definition of what information is exchanged by the partners of the MoU
- Recognizing the principles of confidentiality and anonymity
- Preserving the right to privacy of the person concerned by applying data protection standards
- Including specific principles regarding trafficked children based on the CRC and the UNICEF Guidelines on the Protection of Child Victims of Trafficking

D. Components of the Memorandum of Understanding on cooperation and examples of existing practices

This chapter outlines various components of an MoU. The components are based upon the National Referral Mechanism (NRM) developed by the OSCE/ODIHR.⁵⁴ In the following section the components are set out and explained. In addition, examples of existing MoUs regarding the components are given in order to show the implementation of the components in practice.

An MoU should include the following components:⁵⁵

- Partners
- Definition of purpose
- Principles of cooperation
- Target group
- Detailed definition of different responsibilities and details of cooperation procedure between partners
- Mutual communication of information
- Duration of support
- Funding of the cooperation
- Time when the MoU comes into effect
- Monitoring of the MoU
- Amendment and expansion of the MoU
- Evaluation of the MoU
- Settlement of disputes
- Termination of the MoU



These components provide a certain framework for developing an MoU. For each proposed component, the following considerations should be taken into account when establishing an MoU:

• Partners

The first step is to identify the relevant partners for an MoU. The MoU should be based on already existing mechanisms of cooperation or non-formalized cooperation. MoUs are normally concluded between governmental and non-governmental stakeholders. This includes MoUs between the police and NGOs or other service providers supporting trafficked and presumed trafficked persons. Another example would be an MoU between labour inspectors and a NGO working in the field of undocumented migrants. Nevertheless, both partners of the MoU can be law enforcement agencies. This can be the case if the police and labour inspectors or different actors within the police⁵⁶ decide to cooperate on a formalized basis. Another possibility would be an MoU between the police and a governmental service provider, especially regarding child care. Labour inspector agencies may also conclude an MoU with governmental social service institutions. In addition, cooperation agreements exist between IGOs, governmental institutions and NGOs as well as between law enforcement agencies or prosecutors and relevant private entities.

⁵⁴ Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 66.

⁵⁵ The components are based on: Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*. Components are drawn from the draft MoU developed by the OSCE Mission to Serbia and Montenegro in 2002, p. 66.

⁵⁶ Example: Italian Guidelines for the approach to potential victims of trafficking in human beings or exploitation, and of aiding and abetting illegal immigration agreed between the Public Prosecutor's Office, Teramo Court of Justice, Chief of Police of Teramo, Provincial Chief of the Teramo Carabinieri, Provincial Chief of the Teramo Financial Police and the Officers of the Judiciary Police Divisions – Headquarters.

Possible partners of the MoU can be stakeholders with different roles in combating trafficking in human beings:

- Police
- Immigration authorities
- Judiciary
- Prosecution
- Border guards, customs and tax authorities
- Health services
- Social services
- Legal services
- Labour inspectors
- Workers' organizations
- Employers' organizations
- Trade Unions
- Relevant Ministries
- Specific governmental institution(s) fighting trafficking in human beings
- Embassies and Consulates
- NGOs and other specialized service providers
- Civil Society
- International Organizations
- Churches, church and faith-based organizations
- Other relevant actors in preventing trafficking, protecting trafficked persons and those that bring criminals to justice depending on the national context



The identification of partners is linked to the definition of the purpose. The definition of a focal point within the parties of the MoU may support cooperation in practice.⁵⁷

Since MoUs are more likely to be signed on a very high level within the respective structure, the identification of departments or focal points connected to a specific function for the daily practical work is advisable. In addition, it is recommended that the partners have been involved in the preparation of the MoU and have meetings on a regular basis.

• **Definition of purpose**

A common purpose or objective of the MoU needs to be defined, since the MoU partners could have different responsibilities or mandates. The common purpose determined by the partners is mostly kept very general.

The purpose describes the aims the partners would like to reach through cooperation, such as the prevention of a specific form of trafficking in human beings, the improvement of the identification of trafficked persons, the comprehensive victim support and/or prosecution of perpetrators, and other related counter-trafficking activities such as: awareness-raising, advocacy, monitoring, research, network and policy development. Additionally, the purpose should underline the importance of the general principles, primarily the protection of human rights of all persons concerned or the improvement of coordination and referrals.

⁵⁷ OSCE/ODIHR (2004): *Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking*, p. 155.

Furthermore, the purpose of the MoU should be in line with the regional and national laws that are already in force and strategies such as national action plans.

Example

"This agreement is principally aimed at promoting joint operations between Bangladesh Police and NGOs in providing appropriate, professional and timely assistance to victims of crime by removing any obstacle in practical operations."

Art. 3.1 of the Memorandum of Agreement signed between the Bangladesh Police and Bangladesh National Woman Lawyer's Association (BNWLA), 2008, Bangladesh.



• Principles of cooperation

A key principle of the MoU is the agreement to cooperate in order to combat human trafficking. A cooperative approach ensures that all signatories of the MoU are equal partners. The principle of cooperation should not be an obstacle since the partners decided to work cooperatively and developed an MoU together in accordance with national legislation.

Examples:

Example 1

"Aware of the need for an efficient cooperation between them [the parties] in order to enhance the fight against sexual exploitation of children."

Preamble of the European Model Protocol of Cooperation between Law Enforcement and Civil Society Organizations in Cases of Sexual Exploitation, 2003.⁵⁸

Example 2

"(...) the need to establish a continuous, equal and mutual cooperation between public authorities, law enforcement bodies, civil society and international community."

Preamble of the MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor's Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization for Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for Protection and Promotion of Women's Rights "La Strada", Republic of Moldova.



⁵⁸ Vermeulen, G.; De Pauw, H. (2003): *Cooperation between civil society organizations and law enforcement services in the area of missing and sexually exploited children. Possibilities and limits from a European legal perspective.*

The principle outlining cooperative action also allows the partners of the MoU to keep their independence and autonomy and mutually recognized mandates.

Example:

“Recognizing that establishment of cooperation does not grant any of the Parties the right to interfere without justification in the activity of another Party, except for the cases strictly provided in this Memorandum.”

Preamble of the MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor’s Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization for Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for the Protection and Promotion of Women’s Rights “La Strada”, Republic of Moldova.

- **Target group**

In order to guarantee a successful referral, the target group needs to be defined. Since the target group in trafficking in human beings is diverse, different MoUs focusing on specific target groups can be concluded. Trafficked persons have different needs; therefore, MoUs should aim at providing tailored assistance. One possibility is to conclude one general MoU with specific regulations for specific groups of trafficked persons, (i.e. females under 18 years). It is likely that the partners of the specialized service providers will differ with regard to different groups of trafficked persons.

As mentioned above,⁵⁹ support and protection services should also be accessible for presumed trafficked persons. For example, the Council of Europe Convention on Action against Trafficking in Human Beings⁶⁰ states that if the authorities have “reasonable ground” to believe that a person has been trafficked, assistance has to be provided until the identification process is complete.

With regard to specific categories of trafficked persons, a German MoU provides an example on how to define different categories of trafficked persons.

Example:

The Coordination Centre against Trafficking in Women in Germany (KOOFRA) developed an MoU with the police which includes the principle that all categories of trafficked persons are entitled to receive assistance. The MoU includes of three categories of trafficked persons: victims who are witnesses, victims who decided not to testify and those who have thus far not made up their minds. Depending on the category, the main responsibility shifts between the police and KOOFRA. In case the trafficked person is a witness, the main responsibility rests with the police, but KOOFRA provides counselling in the native language and regular contact with a cultural mediator. With regard to the other categories KOOFRA has the main responsibility and cooperates, if necessary, with the police.⁶¹

⁵⁹ See Chapter I.C.

⁶⁰ Council of Europe (2005): Art. 10 (2).

⁶¹ Aradau, C. (2005): *Good Practices in Response to Trafficking in Human Beings. Cooperation between Civil Society and Law Enforcement in Europe*, p. 92.

Example:

The MoU of the Republic of Montenegro uses the term “potential” victim which is referred in the Guiding Principles as “presumed” victim.

“Memorandum signatories agree that the providing of assistance to potential victims of human trafficking, in accordance with this Memorandum, will not be based on any conditions related to the cooperation that is the potential victim’s participation in the possible criminal procedure for the crime of human trafficking.”

Art. 3 of the Memorandum on Mutual Cooperation signed between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, 2007, Republic of Montenegro.



Trafficked children also form a specific target group as children have special needs and are entitled to special protection measures. If an MoU specifically contains trafficked children as the target group, procedures and responsibilities will differ from those which are targeted at adults and will be based on international standards and guidelines which protect the rights of children, with the CRC at its core. It is recommended that every MoU should systematically contain provisions on trafficked children.

If the MoU does not specifically recognize assistance to children, a specific clause should be included for cases when age cannot be determined and/or in order for trafficked children to be recognized as such. If the trafficked child is presumed to be an adult, the child is unlikely to receive the assistance to which she or he is entitled.⁶² This clause should contain, in case of doubt, a referral to a specialized service provider focusing on the assistance to trafficked children. The UNICEF Guidelines on the Protection of Child Victims of Trafficking encompasses the principle of presumption, which presumes that when the age of the child is uncertain and there are reasons to believe that the trafficked person is a child, the person will be treated as a child. Should the age of the trafficked person be unclear, he or she should be treated as a child and receive special protection measures.⁶³

- **Division of tasks and responsibilities and details of cooperation procedure**

The definition of responsibilities, roles, tasks or obligations as well as limitations of the cooperative relationship needs to be part of an MoU in order to reduce potential conflict. A detailed definition of this relationship is the foundation for cooperation between partners and contributes to the strengthening of trust between them.

The operational responsibilities and procedures that should be followed by the partners form an integral part of the MoU. These should be clearly articulated, highlighting certain “key” principles, and the formulation of which depends on various factors, such as the nature of the partnership and the extent of the MoU. These key principles will be elaborated in the following chapters for law enforcement, including labour inspectors, and specialized service providers.

⁶² Dottridge, M. (2008): *Child trafficking for Sexual Purposes*, p. 41.


⁶³ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*, p. 15.

In order to give an example of a possible cooperation procedure, the MoU of the Republic of Montenegro and the MoU of the Republic of Moldova are used. They present possible structures of MoUs and the management of various cooperation procedures including the detailed points of cooperation.

MoU of the Republic of Montenegro

The Montenegrin Memorandum on Mutual Cooperation between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus” in cooperation with the Office of National Coordinator for Fight on Human Trafficking and the OSCE Mission to Montenegro was adopted in 2007. This MoU is contained by one “umbrella” MoU which is complemented by five specific MoUs.

The purposes of this MoU are multiple and not limited to cooperation between law enforcement agencies and specialized service providers. It reads as follows:



“The purpose of this Memorandum is the cooperation on prevention, education, reporting and criminal prosecution of the perpetrators, and protection of potential victims of human trafficking, with utmost respect of their human rights with the goal of securing them physical, psychological, health, social and child protection and facilitating their integration into the new community, or reintegration in cases of voluntary return to the country of origin.”

Art. 1 of the Memorandum on Mutual Cooperation between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, 2007, Republic of Montenegro.

The five specific MoUs are annexed to the “umbrella” MoU and cover different areas, which are relevant to trafficking in human beings. Each of the five specific MoU defines the duties and obligations of the respective partner under the “umbrella” MoU and forms an integral part of the “umbrella” MoU.

The specific MoUs are related to:

- NGO activities on prevention and protection of potential trafficked person adopted by the NGOs: “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”
- health, social and child protection adopted by the Ministry of Health, Labour and Social Welfare
- education and upbringing of trafficked children adopted by the Ministry of Education and Science
- prevention, criminal prosecution and protection of potential trafficked persons adopted by the Police Directorate
- criminal prosecution of perpetrators of specific offences adopted by the Supreme State Prosecutor

The “umbrella” MoU forms an overarching framework that contains regulations binding for all parties of the MoU. The principles of respect, transparency and a clear specification of obligations are also laid out. All parties agree that providing assistance to a potential trafficked person does not depend on the cooperation of the potential trafficked person with law enforcement. The Office

of National Coordinator for Fight on Human Trafficking is mandated with the coordination and monitoring of the implementation of the MoU.

The cooperation between law enforcement agencies and specialized service providers is not combined under one MoU but divided into specific MoUs which are linked to the “umbrella” MoU.

The specific Montenegrin MoU on Prevention, Criminal Prosecution and Protection of Potential Trafficked Persons contains a list of actions the police must take when they are informed of the presence or identification of a presumed trafficked person:

1. *„Potential victim will be given the opportunity to go to the shelter for the trafficking victims run by “Crnogorski ženski lobi”, “Sigurna ženska kuća” or “Centar plus”; should the victim decide to go to one of these shelters, the Police will immediately inform the shelter staff of the victim’s decision and escort the victim to the shelter;*
2. *If the potential victim is a minor, the Police will inform the competent Social Welfare Centre;*
3. *To the persons for which there is an assumption that they are potential victims of trafficking in human beings, the Police will provide complete information of the services rendering assistance to the victims, in the language that the potential victim understands, in order to enable that person to make a decision which is in his/her best interest, regardless of the fact whether he/she is willing to testify or not;*
4. *The Police will respect privacy and identity of potential victims;*
5. *The Police will secure a professional treatment of the potential victims of trafficking in human beings, based on their human rights;*
6. *The Police will secure the creation of optimal conditions under which the potential victim can give a deposition with maximum reduction of further traumatization;*
7. *The Police will, within its authority, provide the appropriate measures of protection to the potential victims of trafficking in human beings, their close ones, and the staff of the shelters, before, during and after the activities taken as part of the criminal investigation of the scene, during the informative interviews with the citizens, the hearings of witnesses, and until the moment of victim’s return to the shelter.”*

Art. 5 of the Annex relating to the area of prevention, criminal prosecution and protection of potential victims of trafficking in human beings, Memorandum on Mutual Cooperation between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, 2007, Republic of Montenegro.

At the same time, the MoU concerning NGO activities on the prevention and protection of potential trafficked persons contains a list of services the NGOs have to provide including:

- The provision of psychological and material assistance including appropriate residence, food and clothing and if possible, assistance in finding employment (Art. 3)
- The NGO will inform the Police Directorate, or the competent State Prosecutor, as well as the National Coordinator, of all findings related to new potential victim and the need for their physical protection, as well as the protection of the shelter staff (Art. 4)

- The provision of advice and information in a language the potential trafficked person understands (Art. 6)
- The protection of data related to the identity of the potential trafficked person (Art. 8)

There are two MoUs addressing the needs of trafficked children. The MoU regarding education and upbringing provides for the “*appropriate lodgings and continuation of education in public education institutions*” (Art. 2); and the MoU on health, social and child protection provides for medical assistance, prevention and treatment of infectious diseases, cases of childbirth and maternity of the potential trafficked person. The chapter on social and child protection outlines the appointment of a guardian and how the development of individual protection plans should be determined on the basis of legal grounds in Art. 12.

In addition to the above provisions, specific standards in health services for potential trafficked persons are also given:

“Health services shall, in all cases of suspicion that a person is a potential trafficking victim, apply only the necessary identification standards in order to respect the following:

a) Right to privacy of the potential victim, especially with regards to the questions of personal nature and traumatic questions which are not necessary in order to provide health protection.

b) Right of the potential victim to complete information regarding his/her health status, the extent to which his/her health is endangered, methods of treatment and medical interventions.

c) Providing of health services must not be conditioned by the lack of identification documents.”

Art. 7 of the Annex relating to the area of health, social and child protection Memorandum on Mutual Cooperation between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, 2007, Republic of Montenegro.



The MoU also clearly defines which institution will bear the costs for the health services of the potential trafficked persons depending on whether or not the person is a Montenegrin citizen, and, if not, whether there exists a bilateral agreement on social insurance with the respective state of citizenship of the potential trafficked person.

MoU of the Republic of Moldova

This MoU is an agreement between the Ministry of Internal Affairs (MIA), the General Prosecutor’s Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and the IOM, the Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW) and the International Centre for Protection and Promotion of Women’s Rights “La Strada”. In comparison to the example of the Republic of Montenegro this MoU does not contain an “umbrella” MoU with more specific MoUs attached.

This example lists the specific responsibilities of each of the six partners and divides responsibilities between the parties regarding assistance and protection of the rights of the trafficked persons and responsibilities of the parties regarding information exchange.

In cases where trafficked persons are identified, the Centre for Combating the Trafficking in Persons (CCTP), on behalf of the Ministry of Internal Affairs, will take the following steps:

"a. identify and refer beneficiaries,⁶⁴ with their consent, to the National Coordination Center (NCC) within MSPFC [Ministry of Social Protection, Family and Child] in order to ensure their access to assistance and protection programs offered by the Parties of this Memorandum, and in emergency situations – directly to the Parties, followed by a notification of NCC;

b. ensure that referral of beneficiaries to assistance and protection is not conditioned by their will to make declarations and participate in the criminal prosecution of the offenders;

c. ensure beneficiaries' access to information about their rights, about authorities, organizations and institutions that offer assistance and protection;

d. undertake all legal measures to ensure the protection of the beneficiaries;

e. undertake special measures for protection of children – victims of trafficking in human beings, including immediate informing of the specialized child care institution, which shall designate a tutor/guardian for the child;

f. inform the Parties about existing dangers for the beneficiaries included in their assistance and protection programs, and, if necessary, undertake necessary beneficiaries' protection measures, upon request of the Parties;

g. notify in advance (via fax or e-mail) the contact persons appointed by the Parties about the planned procedural acts with participation of beneficiaries, included in assistance programs of the Parties;

h. avoid conducting criminal procedure acts with the participation of beneficiaries during the night time, in absence of attorneys, legal representatives or parents, depending on the case;

i. cooperate in view of obtaining information about cases/possible cases of trafficking possessed by the Parties (through dedicated telephone lines, assistance and direct counselling, etc.) and investigation of reported cases;

j. coordinate and mediate contacts between the Parties and subjects responsible for combating and prevention of trafficking in human beings within territorial or specialized police offices;

k. provide assistance in repatriation of beneficiaries, upon request of the Parties;

l. submit information of common interest upon request of the Parties for monitoring the current situation of beneficiaries involved in criminal procedure acts and for planning of long term assistance; (...)"

The MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor's Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization for Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for Protection and Promotion of Women's Rights "La Strada", Republic of Moldova.

⁶⁴ The term "beneficiaries" encompasses according to the definition given in this MoU "victims and potential victims of trafficking in human beings".

- **Mutual communication of information**

As mentioned above regarding the partners of the MoU, it is highly recommended that departments or contact points are nominated by each of the partners connected to a specific function relevant to the MoU. An advantage of formalized cooperation is that the cooperation does not depend solely on personal contacts as informal cooperation between specific persons may be interrupted when changing personnel.

The underlying principle for the expert counsellors when assisting the trafficked person is confidentiality. Therefore, confidentiality protocols and information-sharing procedures should be clearly defined within the scope of the MoU. The counsellors need protection regarding the obligation of passing on confidential information against the will of their clients.⁶⁵

A possible regulation could be that *“unless the safety of another victim is involved, the service delivery organization shall not be required to disclose information without the consent of the victim or in circumstances where the disclosure would not be in the best interests of the victim.”*⁶⁶

In addition, the fact that law enforcement agencies are also bound by professional secrecy needs to be taken into account.

It is also recommended that the following principles be included:⁶⁷

- A declaration that the intelligence being retained and exchanged is in compliance with the relevant data protection and confidentiality legislation.
- The clear description of the process and means through which intelligence will be exchanged. This may include a specific position within each organization or may relate to a named individual.
- A timetable of scheduled meetings, where appropriate.
- The terms of the intelligence exchange, to include both personal data and thematic intelligence.
- A description of the process that will be used to resolve difficulties and differences of interpretation.
- A description of how the confidentiality of the personal data exchanged will be protected.



With regard to personal data and its collection, the fundamental principles of confidentiality and data protection standards have to be applied. The processing (compilation, recording, storage, correction, erasure and transmission) of personal data shall be in respect of the right to privacy of the trafficked person and always based on the person's consent. Data sharing will be based on stringent procedures in order to ensure the integrity of personal data.⁶⁸

In order to have a fruitful cooperative arrangement, exchange of information is crucial, and would contribute to the furthering of ongoing investigations. However, a protocol must be developed that would regulate the recording, evaluation and exchange of information between the partners, keeping in mind their commitment to the principles of confidentiality and professional secrecy.

⁶⁵ Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 95.

⁶⁶ IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 288.

⁶⁷ UNODC (2008): *Toolkit to Combat Trafficking in Persons, Global Programme against Trafficking in Human Beings*, p. 77.

⁶⁸ Sölkner A.; Uhl, B.H. (2006): *Assessment of Return and Reintegration Assistance*, p. 19.

The development of a common format for intelligence gathering which can be used by both partners is recommended.⁶⁹

When partners are disseminating data to other stakeholders which are not partners of the MoU, data protection principles have to be applied regarding personal data. Unlike personal data, aggregate data represent the total numbers of cases of a certain category. In cases where the aggregated number is high enough and the individual cannot be traced through the aggregate data, data protection laws are not applicable.⁷⁰ In general it is recommended to revert, whenever feasible, to non-personalized/anonymous data.⁷¹

Examples:

Example 1

The Ministry of Internal Affairs, represented by the Centre for Combating the Trafficking in Persons (CCTP) and the General Prosecutor's Office will:

"ensure strict confidentiality of the identity of information sources and the role of other Parties in forwarding the information, as well as non-disclosure to other agencies in the country or abroad, except for the cases when previously the Parties and source of information agreed otherwise;"

MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor's Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization for Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for Protection and Promotion of Women's Rights "La Strada", Republic of Moldova.

Example 2

The responsibility of the Association of Women in Legal Careers/The Centre for Prevention of Trafficking in Women is to *"collect, analyze and pass the information to CCTP of MIA (Center for Combating the Trafficking in Persons of Ministry of Internal Affairs) about cases of trafficking in human beings, especially about traffickers, and, only upon expressed consent of the involved victims of trafficking in human beings, with indication of the information source;"*

MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor's Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization for Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for Protection and Promotion of Women's Rights "La Strada", Republic of Moldova.



⁶⁹ Holmes, P. (2002): *Discussion Paper "Law Enforcement Co-operation with Non-Governmental Organisations, with reference to the Protection of Victims and Victims as Witnesses"*, p. 21.

⁷⁰ IOM and Federal Ministry of the Interior of Austria (2009): *Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators*, p. 44.

⁷¹ *Ibid.* p. 89.



Example 3

“In course of implementation of this Agreement, Bangladesh Police and the NGO will treat all types of activities related information as confidential and under no circumstances pass it to a third party without permission of the Bangladesh Police.”

Art. 14 of the Memorandum of Agreement signed between the Bangladesh Police and Bangladesh National Woman Lawyer’s Association (BNWLA), 2008, Bangladesh.

With regard to children, it should be pointed out that specialized service providers should always consider the child’s best interests.⁷² The primacy of the best interest of the child can also lead to advising a child not to give evidence.⁷³

- **Duration of support**

The duration of support offered to trafficked persons could depend on the country’s national legislation regarding residence permits and on the budget received by specialized service providers. In addition, it depends on the recommended implementation of a recovery and reflection period as incorporated in the Council of Europe Convention on Action against Trafficking in Human Beings.⁷⁴

- **Funding of the cooperation**

In general, an MoU contains measures of cooperation for a longer time period; but financial pressures and resource constraints may jeopardize the aims of the MoU. Since NGOs offering assistance and protection services normally depend on outside donor support, their long-term secure funding often cannot be guaranteed. Consequently, financing provisions are important considerations to ensure cooperation and that both partners can fulfil their responsibilities.⁷⁵ In order to ensure the autonomy of NGOs, it is recommended that the partners in the MoU avoid the situation whereby the partner in the MoU is simultaneously funding the NGO.

The German Cooperation concept states that *“the implementation of cooperation concepts requires (...) permanent financing of the counselling services.”*⁷⁶

The funded services within the MoU need to be well defined and carefully considered as it is recommended that presumed trafficked persons should have access to assistance and protection services. For instance, formal determinations of trafficked persons in Bosnia and Herzegovina are made by the prosecutor and the amount of funding is linked with the number of “identified” or recognized trafficked persons. This can have negative effects for specialized service providers. Many costs are incurred in supporting presumed trafficked persons who may ultimately not be formally

⁷² See CRC, Art. 3.1: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

⁷³ Dottridge, M. (2004): *Kids as Commodities? Child Trafficking and what to do about it*, p. 51.

⁷⁴ Council of Europe (2005): Art. 13.

⁷⁵ Aradau, C. (2005): *Good practices in Response to Trafficking in Human Beings. Cooperation between Civil Society and Law Enforcement in Europe*, p. 93.

⁷⁶ German Federation-State Working Group on Trafficking in Women (2007): *Cooperation concept for counselling services and the police concerning the protection of witnessing victims of traffic in human beings for the purpose of sexual exploitation*, p. 2. This cooperation concept serves as a basis for the individual German states to develop their own concepts or to revise existing ones.

recognized as trafficked persons, but funding is secured for formally “identified cases” only.⁷⁷ The recommendation that presumed trafficked persons should also get access to assistance and protection services should be taken into account when determining funding.

- **Time when the MoU comes into effect**

In general, the MoU comes into force upon the signature of the representatives of all parties of the MoU. It is also recommended that a certain time frame of effectiveness of the MoU is stipulated. The specific duration of the MoU allows amendments to the MoU.

- **Monitoring of the MoU**

Ideally, the monitoring of the implementation of the MoU should be done by an institution not directly involved in the MoU as an implementing partner, preferably by an independent institution. This would ensure an objective monitoring.

Example:

“Office of National Coordinator for Fight on Human Trafficking is obliged to monitor the implementation of this Memorandum and to coordinate the work of the Memorandum signatories.”

Art. 5 of the Memorandum on Mutual Cooperation between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, 2007, Republic of Montenegro.



- **Amendment and expansion of the MoU**

MoUs should be “living guidance documents” and should incorporate a certain margin of flexibility, in addition to monitoring and evaluation provisions. Experience has shown that while a structured cooperation agreement can highlight key fundamental principles and concepts that are generally applicable, they often cannot address the range and diversity of needs of the individual trafficked person in detail. Since trafficking in human beings is a dynamic and diverse phenomenon, the response to trafficking in human beings has to be equally diverse and dynamic.⁷⁸ In order to be able to take experiences, lessons learned and unforeseen challenges into account, the MoU should contain provisions on the possibility of reviews and amendments.

⁷⁷ Limanowska, B. (2007): *Bosnia and Herzegovina, in Collateral Damage, The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance Against Trafficking in Women, p. 68.

⁷⁸ United Nations (2008): *UN.GIFT - The Vienna Forum Report: A Way Forward to Combat Human Trafficking*, p. 46.

Examples:

Example 1

“The Parties are entitled to request modification of this Memorandum depending on managed and implemented programs and projects, upon prior written notice of the Parties.”

MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor’s Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization of Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for Protection and Promotion of Women’s Rights “La Strada”.

Example 2

“In case that the circumstances occur which render the feasibility or legality of the programme questionable, or the signatories decide to make major changes or adjustments to their objectives, each of the Memorandum signatories can request the amending of it through the NC Office [Office of National Coordinator for Fight on Human Trafficking]”.

Art. 8 of the Memorandum on Mutual Cooperation signed between the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Crnogorski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, 2007, Republic of Montenegro.

Example 3

“The present Protocol may only be amended with mutual consent expressed in written agreement of both Parties.”

Art. 20 of the European Model Protocol of Cooperation between Law Enforcement and Civil Society Organizations in Cases of Sexual Exploitation, 2003.

- **Evaluation of the MoU**

It is recommended that a provision on evaluation is included in the MoU. A certain time frame of effectiveness of the MoU allows an evaluation after each period which leads to improvement. It is also recommended that a mid-term evaluation is conducted. It is preferred that the evaluation is performed by an independent body which is not part of the MoU.

Example:

"The sub-committee established (...) will monitor and evaluate the implementation of this MoU (...)."

Art. 4.1 of the MoU on Operations between State Agencies and Non-Governmental Organizations (NGOs) Engaged in Addressing Trafficking in Children and Women in Thailand, Thailand, 2003.



- **Settlement of disputes**

Although the MoU aims to avoid any misunderstandings, a regulation on the settlement of disputes should be included in the MoU.

Examples:

Example 1

"Any disputes or disagreements between the Parties with respect to the interpretation or implementation of this Protocol shall be resolved by good faith negotiations between the Parties."

Art. 21 of the European Model Protocol of Cooperation between Law Enforcement and Civil Society Organizations in Cases of Sexual Exploitation, 2003.

Example 2

"Any dispute related to or arising out of this Agreement will be settled through mutual discussion and understanding. If necessary, the conflicting matter shall be referred to the Steering Committee⁷⁹ for an appropriate decision. Decision of the Steering Committee is final and binding on both the parties."

Art. 13 of the Memorandum of Agreement signed between the Bangladesh Police and Bangladesh National Woman Lawyer's Association (BNWLA), 2008, Bangladesh.



- **Termination of the MoU**

All parties of an MoU should have equal rights to terminate the MoU. It is recommended to include a clause regarding the procedure of termination of the MoU.

⁷⁹ The Steering Committee consists of 17 members who are specified in the same MoU.

Example:

“This Memorandum shall enter into force upon signature and remains in force until expression by any of the Parties of the intention to terminate the Memorandum, by giving a prior written notice, which shall be presented to the Parties no later than 30 days before the date of termination.”

MoU between the Ministry of Internal Affairs (MIA), the General Prosecutor’s Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC) and International Organization for Migration (IOM), Association of Women in Legal Careers/the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Centre for Protection and Promotion of Women’s Rights “La Strada”, Republic of Moldova.



II. Details of cooperation procedure

This chapter will elaborate the importance of concluding MoUs by the relevant actors. Since the relevant actors have different priorities according to their mandates and strategies, the interests in concluding an MoU could differ. There are numerous stakeholders which can conclude MoUs regarding trafficking in human beings, for example institutions concerned with medical support, education, integration in the labour market or trade unions. These Guiding Principles focus on law enforcement agencies, including labour inspectors, and specialized service providers.⁸⁰ Whereas the previous chapter aimed at giving an overview of the different components an MoU should include, this chapter focuses on the details of cooperation and its procedure between the partners.

A. Cooperation from the perspective of law enforcement agencies

1. Benefits of cooperation for law enforcement

The benefits of concluding an MoU have been set out above. Reaching a fair balance between different interests and cooperation between different actors with clear accountability and transparency are only some of the advantages of formalized cooperation. In this chapter the specific reasons and interests why law enforcement agencies should cooperate with specialized service providers are pointed out.

Benefits of cooperation for law enforcement agencies include:

- Increasing identification of presumed trafficked persons:
 - Since the identification of presumed trafficked persons is often the primary impetus for initiating the counter-trafficking response, including cooperation between relevant agencies, there is a need to have a clear understanding of the respective roles, perspectives and responsibilities among the partnering agencies.
 - The identification of presumed trafficked persons can be performed by different actors in addition to the police, such as specialized service providers, labour inspectors, other stakeholders and civil society. Research indicates that a degree of identification of all trafficked persons is performed through outreach work by NGOs, local authorities and hotlines.⁸¹
 - This underlines that cooperation with specialized service providers which run a hotline, for example, or conduct outreach work, are very valuable partners in the identification of presumed trafficked persons.



⁸⁰ In addition to the stakeholders already mentioned, the tool of MoU is used by a wide range of stakeholders.

⁸¹ Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 59. See On the Road (2002): *Article 18: Protection of victims of Trafficking and the Fight against Crime (Italy and the European Scenarios)*.



- Sharing of tasks and duties:
 - Once a presumed trafficked person has been identified, law enforcement agencies benefit from formalizing cooperation with specialized service providers when it comes to facilitating and providing accommodation and assistance.⁸²
 - The sharing of tasks and duties with partners gives law enforcement agencies the possibility to concentrate on their main tasks of investigation and prosecution.
- Increased cooperation between the trafficked person and law enforcement:
 - Trafficked persons assisted by civil society are more likely to cooperate with law enforcement.⁸³ The cooperation of the trafficked person with law enforcement agencies significantly increases the chances of successful prosecution and is therefore of vital interest to law enforcement.

2. Key principles of cooperation procedure

The following chapter offers an overview of key principles that law enforcement agencies should take into account when forging operational cooperation with specialized service providers.

Cooperation starts with the identification of presumed trafficked persons. With regard to victim identification by law enforcement agencies the following key principles should be addressed:

- **Information provided by law enforcement agencies to the specialized service provider**

When possible and where law enforcement interests are not compromised, the Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants recommends alerting the cooperating specialized service provider to planned controls or raids. This information is important for the specialized service provider so that they can prepare facilities and services accordingly and provide relevant staff for counselling, interpretation or other such support.⁸⁴ Law enforcement interests are observed when the information given need not be specific, utmost secrecy is ensured and no risk of leakage of information is given.

Law enforcement agencies should inform the specialized service provider whether the presumed trafficked person faces danger from the trafficker or not.⁸⁵ In turn, the specialized service provider should inform law enforcement agencies of any dangerous cases.

⁸² IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 274.

⁸³ United Nations (2008): *UN.GIFT - The Vienna Forum Report: A Way Forward to Combat Human Trafficking*, p. 45.

⁸⁴ Swiss Coordination Unit against the Trafficking of Persons and Smuggling of Migrants (KSMM) (2005): *Guidelines „Cooperation Mechanisms to Combat Trafficking in Human Beings“*, p.13.

⁸⁵ Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 67.

- **Recommendation to include presumed trafficked persons in the procedure of cooperation**

A person is a presumed trafficked person if circumstances suggest that he or she may have been trafficked. The inclusion of presumed trafficked persons as part of the target group is recommended in the cooperation procedure.⁸⁶

After the first contact between the law enforcement agency and the presumed trafficked person, law enforcement agencies should provide information to the trafficked person on any assistance and support available from the specialized service provider.

- **Appointment of a guardian**

Whenever a child is identified as a trafficked child, the nationally designated authorities, such as social services or child protection agencies, have to appoint a guardian who accompanies the child throughout the entire process until a durable solution in her or his best interests has been identified and implemented. The appointment is necessary when the trafficked person is an unaccompanied minor, such as when the identified child is separated from a parent, parents or legal guardian.

In cases where the child has been trafficked within the home country and the parent, parents or legal guardian have not been implicated in the trafficking, the appointment of a guardian is usually not appropriate.⁸⁷

Generally, law enforcement agencies are not the competent authority for the appointment of a guardian; therefore the MoU should include a clause regarding the handling of children and the need to involve the relevant child and youth protection authorities; and the inclusion of these authorities in the subsequent stages of the process. These later stages regarding trafficked children require that the competent authority be defined for appointing the guardian (i.e. guardianship service), the legal status of the guardianship (i.e. legal guardian, temporary guardian, adviser/representative, social worker or NGO worker), and all the necessary protocols and procedures.⁸⁸ The principle that a trafficked person should be treated as a child in case of uncertainty of age must be observed.⁸⁹

- **Informing the trafficked person about the possibility of assistance**

Law enforcement agencies should inform the presumed trafficked person (orally and in writing) about the opportunity for assistance from a specialized service provider.⁹⁰ The information should be provided in a language the presumed trafficked person understands.⁹¹ This makes translation and/or the availability of written information in various languages necessary. It is recommended that the availability of independent translators/interpreters who are trained specifically for these cases of trafficking in human beings is ensured.

⁸⁶ Kroeger, T., Malkoc, J., Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 67

⁸⁷ UNICEF (2006): *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, p. 52.

⁸⁸ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*, p. 16.

⁸⁹ *Ibid.* p. 15.

⁹⁰ Kroeger, T., Malkoc, J., Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 67.

⁹¹ OHCHR (2002): Guideline 4, Art. 8 and Guideline 6 Art. 5.

Research verifies the importance of providing trafficked persons with comprehensive information since clear and accurate information plays an important role in the decision of the presumed trafficked person to accept, or not, the kind of support offered.⁹²

With regard to trafficked children, the appointed guardians, in cooperation with the competent authorities and NGOs, should make an assessment of the needs of the child and provide recommendations for immediate actions and long-term solutions.

Trafficked children have the right to receive immediate care and protection. Qualified personnel from the social service authorities shall provide care for trafficked children, in cooperation with competent international organizations and NGOs.⁹³

- **Contacting the specialized service provider**

After the first contact between the presumed trafficked person and law enforcement agencies, the specialized service provider should be contacted and informed whether or not the presumed trafficked person is willing at this stage to cooperate with the law enforcement agency and testify.

- **Providing a recovery and reflection period**

It is recommended that the MoU includes the provision of a recovery and reflection period as long as it is in accordance with national laws.

The recovery and reflection period offers the presumed trafficked person the possibility to gain a certain level of stability and to take an informed decision whether to cooperate with law enforcement agencies or not. The recovery and reflection period allows the presumed trafficked person to attain the capacity for cooperating in legal proceedings. At regional level, this recovery and reflection period is incorporated in the Council of Europe Convention on Action against Trafficking in Human Beings which states that “*during this period it shall not be possible to enforce any expulsion order against him or her*”:⁹⁴ According to the Convention, the period should last at least 30 days. However, a longer period is recommended and expert studies on the health implications of trafficking in human beings provide clear evidence that a minimum of 90 days are needed for trafficked persons to recover⁹⁵.

Although the safety of the presumed trafficked person is paramount to the entire cooperation procedure, it is particularly crucial in the following steps. Safety provisions for the staff of the respective service provider should also be an important law enforcement consideration. States should ensure effective protection from further exploitation and the protection and care shall not be conditional upon cooperation of the person with law enforcement.⁹⁶

- **Interviews for investigation and protection during legal proceedings and the security of shelters**

In order to promote the security of the trafficked persons and staff, the location of shelters should be kept secret. Interviews should not be done at the shelter and it is recommended that police officers are not able to visit the shelters.⁹⁷ However, access should be possible in case of emergency.

⁹² Surtees, R. (2007): *Listening to Victims, Experiences of Identification, Return and Assistance in South-Eastern Europe*, p. 72.

⁹³ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*, p. 22.

⁹⁴ Council of Europe (2005): Art. 13.

⁹⁵ Zimmerman, C. et al. (2006): *Stolen Smiles: The Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*, p. 113. See also the UK Joint Committee on Human Rights (2006): Twenty-sixth report, para. 42.

⁹⁶ OHCHR (2002): Para. 8.

⁹⁷ Holmes, P. (2002): *Discussion Paper “Law Enforcement Co-operation with Non-Governmental Organisations, with*

In case of interviews conducted by law enforcement officials, the person should be accompanied by a counsellor. In addition to safety concerns, the person to be interviewed needs to be informed about the nature of the interview in order to be prepared and self-assured. It is therefore important that the psychological readiness of the individual is carefully addressed - this is normally assessed by the specialized service provider.

With regard to children, they should be questioned about their trafficking experience only in the presence of the appointed guardian. It is recommended that specifically trained law enforcement officials limit the length and scope of questioning in order to avoid further trauma or psychological distress to the child victim.⁹⁸

Summary:

- Cooperation with specialized service providers gives the law enforcement agencies the possibility **to concentrate on investigation and prosecution**. Trafficked persons assisted by a specified service provider are **more likely to cooperate with law enforcement**.
- The trafficked person needs to **be informed about his/her rights and the nature and possibility of assistance**.
- MoUs could consider the possibility of **informing** the specialized service providers of upcoming controls or raids by law enforcement agencies.
- MoUs should include **support to the presumed trafficked persons** in the procedure of cooperation.
- In cases of child trafficking, **a guardian must be appointed** by the competent authorities if the child is unaccompanied or separated from her/his parent, parents or legal guardian. In cases of internal child trafficking and assurance that the parent, parents or legal guardian have not been implicated in the trafficking, an appointment of a guardian is not appropriate.
- Procedural steps should be outlined regarding communication and referral between law enforcement agencies and the cooperating **specialized service provider**.
- **The provision of a recovery and reflection period** in accordance to national law offers the trafficked person time to recover and to take an informed decision about cooperating with law enforcement.
- Law enforcement agencies and specialized service providers should inform each other whether or not the presumed trafficked person **faces danger from the trafficker**.
- Due to **security reasons, the addresses of shelters should be kept secret**. Trafficked persons should **be accompanied by counsellors during questioning for investigations upon consent of the trafficked person, who is protected during legal proceedings**.



reference to the *Protection of Victims and Victims as Witnesses*”, p. 25.

⁹⁸ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*, p. 20.

B. Cooperation from the perspective of specialized service providers

Cooperation between law enforcement agencies and specialized service providers will always face the challenge of balancing any competing priorities/perspectives of the law enforcement agencies and the specialized service provider; especially where specialized service providers are generally victim-assistance focused and law enforcement agencies are prosecution focused. These differing priorities/perspectives can sometimes compromise the smooth handling of cases and create a dilemma. Such complications can arise particularly among the specialized service providers depending on the extent of cooperation which can jeopardize independence on the one hand, or result in criticism from the authorities of insufficient cooperation.⁹⁹ These risks can be diminished by formalizing cooperation. In its MoU, the KOOFRA includes the statement that neutral counselling should be provided to trafficked persons when making an informed decision about testifying.¹⁰⁰

1. Benefits of cooperation for specialized service providers

It is vital to recognize the different roles and responsibilities of the participating actors in the cooperation framework. Cooperation does not imply uniform agreement on all issues that arise.

Benefits of cooperation for specialized service providers include:

- Higher transparency and mutual understanding of the respective roles in the process: autonomy includes being able to disagree on certain issues.¹⁰¹ As long as flexibility is given in the MoU which allows the NGO to follow its basic principles or statutes, NGOs can benefit from cooperation with law enforcement.
- Protection of rights and support of the trafficked person:
 - Specialized service providers working in this field are dedicated to the support of the trafficked person and are likewise interested in securing access to justice for the trafficked person.
 - Specialized service providers are often uniquely positioned to better prepare the trafficked person for criminal proceedings when cooperating with law enforcement.¹⁰²
 - Counselling and support is needed for the stabilization of psychological and physical health, as well as for informing the trafficked person of legal rights and available services, and ensures the protection of the person's rights during criminal proceedings and their access to compensation.
- Cooperation will lead to higher sensitization of law enforcement agencies towards the rights and needs of trafficked persons.
- Through cooperation, the identification of trafficked persons will increase.



⁹⁹ Dottridge, M. (2004): *Kids as Commodities? Child Trafficking and what to do about it*, p. 51.

¹⁰⁰ Aradau, C. (2005): *Good Practices in Response to Trafficking in Human Beings. Cooperation between Civil Society and Law Enforcement in Europe*, p. 91.

¹⁰¹ Van Doorninck, M. (2008): *The Protection of the Rights of Trafficked Persons as the Core of the NRM*, Presentation held at the International Conference «National Referral Mechanisms for the Assistance and Protection of Trafficked Persons – Theory and Practice», Moldova.

¹⁰² Albert, S. (2008): *Trafficked Persons and Criminal Justice – Reconciling their Potentially Conflicting Interests in the Framework of NRM*, Presentation held at the International Conference «National Referral Mechanisms for the Assistance and Protection of Trafficked Persons – Theory and Practice», Moldova.

- The recognition of the specialized service provider as a relevant partner for the law enforcement agencies will lead to better communication between the partners and can have a positive impact in other areas such as access to funds for equipment for the specialized service provider, for example.



2. Risks to specialized service providers

The strategic risks that arise for a specialized service provider depend on the extent and nature of cooperation and the form of assistance provided. The treatment of trafficked persons should be based on international standards and guidance as set out in the UN Trafficking Protocol and the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.¹⁰³ These principles and guidelines contain the recommendation that law enforcement agencies should work *“in partnership with nongovernmental agencies in order to ensure that trafficked persons receive necessary support and assistance.”*¹⁰⁴ The establishment of specialist counter-trafficking units within law enforcement agencies is recommended for improved cooperation.¹⁰⁵ In addition, states *“should encourage and support the development of proactive investigatory procedures that avoid over-reliance on testimony of trafficked persons”*¹⁰⁶ and, if possible, all information should be confirmed by material evidence.

Possible risks to specialized service providers:

- Balancing different interests of the partners and the principle of confidentiality
- Safety of trafficked persons and staff of the specialized service providers



Possible risks are related to:

- Balancing different interests of the partners and the principle of confidentiality: Specialized service providers can play an important role in developing a balanced, victim-centred response to trafficking in human beings. On the one hand, specialized service providers have to provide support and assistance to the person concerned and cooperate with law enforcement; on the other hand they have to protect the trafficked person from being used as a mere source of evidence. Due to the bond of confidentiality with clients, NGOs might not always want to share all information, as this might lead to the loss of trust of the trafficked person. In order to enable NGOs to keep their autonomy, different tasks and responsibilities have to be defined.¹⁰⁷ The specialized service providers and the law enforcement agencies should collaborate on an assessment of the information both sides are

¹⁰³ IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 287.

¹⁰⁴ OHCHR (2002): Guideline 5, Art. 9.

¹⁰⁵ *Ibid.* Guideline 5, Art. 4.

¹⁰⁶ *Ibid.* Guideline 5, Art. 3.

¹⁰⁷ Van Doorninck, M. (2008): *The Protection of the Rights of Trafficked Persons as the Core of the NRM*, Presentation held at the International Conference «National Referral Mechanisms for the Assistance and Protection of Trafficked Persons – Theory and Practice», Moldova.

able to share. The impartiality of the organization dedicated to assisting trafficked persons, the unequivocal commitment to human rights and the victim-first philosophy shall not be confined.¹⁰⁸

- Safety of trafficked persons and staff of the specialized service providers:
 - Cooperation between law enforcement agencies and specialized service providers may cause risks with regard to the personal safety of trafficked persons and staff, since traffickers can pose serious threats should they be part of an organized criminal group.
 - The establishment of safe places/housing and shelters are an integral part to the recovery and safety of the trafficked person. It is important that the shelter is secure and that locations of the safe places/houses/shelters are kept strictly confidential. The location should change at regular intervals, preferably not to an isolated venue.
 - Interviews with the trafficked persons by the law enforcement agency should not be conducted in the safe place/shelters. Whenever the trafficked person decides to cooperate with law enforcement agencies, the protection of the trafficked person requires tailor-made solutions in close cooperation between police, specialized service providers, prosecutors and judges.¹⁰⁹
 - There should be clear management procedures to regulate visits and checking-in/checking-out rules.
 - The freedom of movement of residents should not be restricted. An exception can be made during the night. It is recommended that the specialized service provider has a check-in and check-out policy for security reasons. Additionally, at least one staff member should be present to supervise the shelter all times and to assist in emergency situations.¹¹⁰
 - With regard to children, an initial risk assessment is recommended in order to decide whether or not restricting freedom of movement is necessary. The child's best interests can take precedence over the child's right to freedom of movement whenever protection is endangered. Secondly, the risks of the child in the shelter need to be assessed and thirdly, shelters should separate children whose movements have been restricted from others.¹¹¹
 - In order to guarantee the safety of the trafficked person, cooperation with law enforcement agencies and other competent institutions is needed and a risk assessment regarding the safe place is recommended.¹¹²

3. Key principles of cooperation procedure

The NRM developed by the OSCE/ODIHR¹¹³ recommends that the following points should be incorporated with regard to the actions taken by specialized service providers:

- **The presumed trafficked person should be immediately and fully informed about the institution and its mandate and should receive any available information on the likely future course of legal proceedings (both orally and in writing)**

¹⁰⁸ IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 276.

¹⁰⁹ ICMPD (2007): *Transnational Referral Mechanism for the Victims of Trafficking – Draft*, p. 64.

¹¹⁰ GAATW (1999): *Human Rights in Practice, A Guide to Assist Trafficked Women and Children*, p. 56.

¹¹¹ Dottridge, M. (2008): *Child trafficking for Sexual Purposes*, p. 47.

¹¹² Kroeger, T.; Malkoc, J.; Uhl, B.H. (2004): *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, p. 78.

¹¹³ *Ibid.* p. 67.

States cooperating with specialized service providers should ensure the provision of safe and adequate shelters. The provision shall not depend on the willingness of the trafficked person to give evidence in criminal proceedings.¹¹⁴ Additionally, protection and support should be accessible to all trafficked persons without discrimination. In order to identify the appropriate assistance options for a specific type of exploitation, the specialized service provider will conduct an in-depth interview once the trafficked person has been referred.

For a number of services, such as medical examination or health assessments, the specialized service provider needs to obtain informed consent or informed decision by the trafficked person. The informed consent is an agreement to take action or to allow action to be taken, made with complete knowledge of all relevant facts, such as the risks involved or any available alternatives.¹¹⁵ In order to reach an informed decision several barriers have to be taken into account such as linguistic or cultural differences. Furthermore, the fact that the person in question may want to end an uncomfortable or stressful situation should be taken into account.¹¹⁶

Trafficked children shall be provided with safe and suitable accommodation immediately after their identification; care centres should have specific rules of child protection/codes of conduct. In addition, children should not be in a shelter with adults who are unrelated to them. Nevertheless, there might be cases where living together with adults who have had similar experiences may be more appropriate than referring the child to a children's facility which may not meet the specific needs of adolescents who have been trafficked.¹¹⁷

- **The institution should provide accommodation and the necessary services for physical and psychological rehabilitation**

Art. 6 of the UN Trafficking Protocol contains the provision for appropriate housing, counselling and information, with particular regard to the trafficked person's legal rights, medical, psychological and material assistance and employment, educational and training opportunities in cooperation with NGOs, other relevant organizations and civil society.

- **The institution should establish contact with the police in the event that the presumed trafficked person takes the informed decision to cooperate with the criminal justice authorities**

Counselling offered by the respective organization should support the trafficked person in making an informed decision. The institution should inform the trafficked person about her or his legal rights. Afterwards, the trafficked person may choose to cooperate with law enforcement.¹¹⁸

- **With the trafficked person consent, when an informed decision is made to return to his/her country of origin, the applicable agencies or institutions should be contacted**
- **Cases of trafficked children have to be individually assessed on the basis of the best interest of the child**

¹¹⁴ OHCHR (2002): Guideline 6, Art. 1.

¹¹⁵ IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 333.

¹¹⁶ *Ibid.* p. 315.

¹¹⁷ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*, p. 23.

¹¹⁸ IOM (2007): *The IOM Handbook on Direct Assistance for Victims of Trafficking*, p. 293.

Thereafter an appropriate solution can be determined. The assessment includes the following steps:

- Tracing: includes information on nationality, identification and location of family members.
 - Risk assessment: when tracing proves to be successful, a risk assessment should indicate whether the reunification with the family is in the best interest of the child.
 - Best interest determination: after these steps have been followed, which should result in a durable solution (i.e. local integration, voluntary repatriation and re-integration to the country or place of origin, resettlement and integration in a third country) the needs of the trafficked child must be assessed by the competent authorities in order to determine the best solution, in consultation with the child.¹¹⁹
- **In case the presumed trafficked person is involved in legal proceedings, she/he should be supported by the arrangement of legal representation and accompanied during and after court proceedings.**

Example:

“Measures of the counselling services:

6.1 Following consultation with the police, the counselling service decides about the future place for the persons affected to stay. The counselling service accommodates the persons affected in appropriate facilities.

6.2 The counselling services and the police handle the formalities with the appropriate authorities in close cooperation.

6.3 The counselling service provides continuous psycho-social support for the persons affected and arranges for medical care.

6.4 Female counsellors are present at interviews of the persons affected if so desired by the latter.

6.5 Female counsellors render assistance to the persons affected before, during and after crime scene inspections, interviews and court hearings, and they provide psycho-social support.

6.6 The counselling service arranges education and training measures for the purpose of integration. If necessary, the counselling services provide support with regard to the return of the persons affected to their countries of origin.

6.7 If required, the counselling services continue to support the persons affected after the conclusion of the criminal proceedings.”

German Federation-State Working Group on Trafficking in Women (2007): Cooperation concept for counselling services and the police concerning the protection of witnessing victims of traffic in human beings for the purpose of sexual exploitation, p. 12.



¹¹⁹ UNICEF (2006): *Guidelines on the Protection of Child Victims of Trafficking*, pp. 25-27.

Summary:

- Regarding the benefits of cooperation, it is recognized that a **higher transparency** and **mutual understanding of the respective roles** can be reached. Dedication **to the support** of the trafficked person ensures **protection of the rights of trafficked persons** and **access to justice**. Specialized service providers play an important role in developing a **balanced, victim-centred response to trafficking in human beings**.
- NGOs need to be able to retain **autonomy** and specialized service providers are bound to the **principle of confidentiality with clients**.
- Cooperation can impose risks with regard to the **personal safety of the trafficked persons and the staff**; therefore **certain security measures** have to be in place.
- The presumed trafficked person should be **fully informed** about all institutions/agencies providing assistance, their mandates and roles in legal proceedings (both orally and in writing) and about remedies in judicial and administrative proceedings. The information should not contain promises which are not possible to keep.
- Specialized service providers are concerned about **accommodation and services for physical and psychological rehabilitation**.
- The institution should **contact the police** whenever the presumed trafficked person wants **to cooperate** with the criminal prosecution authorities. The specialized service provider should inform the trafficked person about his or her legal rights.
- **With the consent of the trafficked person**, the specialized service providers should **contact the applicable agencies or institutions** when the trafficked person returns to the country of origin and **the details of the return should be organized by the specialized service provider**. With regard to **trafficked children** the cases regarding return have to be individually assessed on the basis of the **best interest of the child**.
- In legal proceedings, the trafficked person should be supported by **legal representation during and after court proceedings**.



C. Cooperation from the perspective of labour inspectors

The role of labour inspectors in combating trafficking in human beings is vital, especially in the field of trafficking for labour exploitation and forced labour.

Forced Labour

The ILO Forced Labour Convention (No. 29, 1930) defines forced labour as:

“all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹²⁰



¹²⁰ ILO (1930): *Convention concerning Forced or Compulsory Labour*, No. 29, Art. 2.

It should be noted that not all cases of forced labour are a result of trafficking in human beings, but almost all trafficking results in forced labour.¹²¹ A distinction should also be drawn between forced labour and labour exploitation. Labour exploitation can exist without coercion. People may take up work voluntarily but still work under unacceptable, exploitative working conditions.¹²² If they subsequently find that, due to some form of coercion applied by the employer, they are unable to leave the work, they are in a situation of forced labour.

The complexity of the different definitions makes it important to develop clear indicators and operational guidelines for labour inspectors¹²³ so that they can identify cases of trafficking and take appropriate remedial action, as well as undertake effective prevention strategies.

Strategies and policies of states tend to be developed in response to trafficking for sexual exploitation and consequently neglect trafficking for labour exploitation. The current focus on commercial sexual exploitation of women and girls needs to be broadened to include the labour dimensions of trafficking. In the past, policy-makers and law enforcement have given relatively limited attention to trafficking for labour exploitation, although this is gradually changing. With regard to assistance to trafficked persons for labour exploitation, interests and needs might differ from trafficked persons for sexual exploitation and consequently, appropriate mechanisms to assist trafficked persons for labour exploitation have to be found.¹²⁴ In order to adapt existing mechanisms, all relevant actors regarding labour such as labour inspectors, NGOs working for undocumented migrant workers, trade unions and representatives of relevant business sectors, have to be included in coordination and cooperation mechanisms.

The work of labour inspectors can be supported by cooperation with various partners since cooperation ensures an enhanced system of prevention, prosecution, protection of the rights of trafficked persons and information management. While labour inspectors have tended to play a limited role in combating human trafficking in the past, there is a clear need and potential for enhanced involvement on their part.

Functions of labour inspectors

A definition of the functions of labour inspectors can be found in the ILO Labour Inspection Convention (No. 81, 1947) which states that the functions shall be:

- a) *“To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;*
- b) *To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;*
- c) *To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.”¹²⁵*



¹²¹ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, p. 5.

¹²² Plant, R. (2006): *ILO Conventions on Forced Labour*, OSCE, Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims, Report of the 5th Alliance against Trafficking in Persons Conference, p 36.

¹²³ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, p. 5.

¹²⁴ Brasoveanu, A. (2008): *NRM Implementation – Lessons Learned*, Presentation held at the International Conference «National Referral Mechanisms for the Assistance and Protection of Trafficked Persons – Theory and Practice», Moldova.

¹²⁵ ILO (1947): Art. 3.

National strategies against trafficking in human beings tend to be formulated without the input of labour inspectors; consequently, no specific role is defined for them. The mandate of labour inspectors needs to be integrated into national law and administrative regulations.¹²⁶ It is recommended that the primary role of labour inspectors in protecting workers, including irregular migrant workers, be strengthened by giving them the relevant duties to accomplish this task, rather than enforcing immigration law. Workplace inspection should be independent of immigration status checks in order to give workers the possibility to file a complaint against an abusive employer without the threat of being expelled.¹²⁷ Labour inspection also plays an important role in the protection of the health, safety and welfare of children at work. It is important that labour inspectors have powers to monitor and investigate the position of all children at work, ensuring they are above the minimum age for entry into employment according to national legislation, and that the work they are doing is appropriate for their age and stage of development. Labour inspectors should also be equipped to identify trafficked children, and to take appropriate action to protect and withdraw them.

As mentioned in the first chapter, along with police and specialized service providers, potential partners of cooperation could be immigration authorities, border guards, customs and tax authorities and social security and social insurance institutions. Cooperation with workers' organizations and employers' organizations is essential. Workers' organizations are important for the identification of trafficked persons and to support them in filing complaints. In addition they can provide legal advice to migrant workers. Employers' organizations can have a valuable role in informing labour inspectors on likely offenders and in taking preventive action including raising awareness of the risks of trafficking for labour exploitation.¹²⁸

In Belgium, a Collaboration Protocol was concluded in 2001 between the labour inspection and the inspection on social laws, which lead to controls conducted in practice with the assistance of the police, a representative of the Foreign Office and other services.¹²⁹

The development and future implementation of an MoU ensures effective interagency cooperation between all these actors. This agreement helps to define the rights and responsibilities of each actor involved and the measures they have to take.¹³⁰

In the following text, the focus will be on the cooperation between two law enforcement agencies, the police and labour inspectors, and cooperation between labour inspectors and specialized service providers.

¹²⁶ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, p. 13

¹²⁷ OSCE/ODIHR (2007): *Report on Civil Society Meeting (24th April 2007), The NRM Approach to Trafficking and its Application to Trafficking for Labour Exploitation*, p. 9.

¹²⁸ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, pp. 27-28.

¹²⁹ Beekman, S. (2006): *Victim Assistance, Pag-Asa Belgium*, OSCE, Human Trafficking for Labour Exploitation/Forced and Bonded labour: Prosecution of Offenders, Justice for Victims, Report of the 5th Alliance against Trafficking in Persons Conference, p. 40.

¹³⁰ ILO (2005b): *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement*, p. 60.

1. Importance of cooperation for labour inspectors

Importance of cooperation between specialized service providers and labour inspectors:

- No mandate or jurisdiction to inspect private dwellings: One major challenge for labour inspectors is gaining access to private residential premises where trafficked persons may be forced to work. In relation to private homes, the consent of the employer, the occupant or a judicial authority is generally required in order to protect the principle of inviolability of the home, which is guaranteed in national legislation (i.e. France, Malawi, Morocco, Mexico, Tunisia and Venezuela).¹³¹
- Difficulty for labour inspectors to inspect domestic work or agricultural work that may take place in private residences.
- Other techniques of identification have to be used in these cases, such as cooperation with NGOs, law enforcement or trade unions.¹³² Since some sectors such as domestic work and sex work often fall beyond the scope of labour inspectors, cooperation with NGOs is recommended in order to increase the identification of trafficked persons, or increase the prevention of trafficking in human beings through a hotline, for example.¹³³
- Labour inspection needs cooperation with specialized service providers when identifying presumed trafficked persons in order to ensure that they receive the right medical, legal or psychological assistance.¹³⁴



¹³¹ ILO (2006): *International Labour Conference, 95th Session, Report III (Part 1B), Labour inspection*, p. 85.

¹³² Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, p. 20.

¹³³ *Ibid.* p. 28.

¹³⁴ *Ibid.*

Importance of cooperation between labour inspectors and the police:

- Support of police when labour inspection is obstructed: cooperation between labour inspectors and the police can be very fruitful and should be further enhanced. Of special importance is the support of the police when labour inspectors are obstructed in the performance of their duty. Support of the police allows a rapid and smooth implementation of planned inspections. Provisions in this regard exist in the legislation of many countries (i.e. Bolivia, China (Macau Special Administrative Region), Costa Rica, Mauritania, Oman, Senegal, Slovakia, Tunisia and Turkey).¹³⁵
- Overlap of criminal and labour laws: Criminal and labour laws may overlap with regard to labour exploitation and trafficking in human beings, therefore it is important that labour inspectors and police cooperate closely.¹³⁶
- Enforcement measures: in some countries labour inspectors have a very weak status that makes it difficult to conduct enforcement measures. In this regard, cooperation with the police in carrying out inspections would support the inspection as the police can apply effective legal sanctions.¹³⁷
- Safeguarding the inspector's physical safety: since forced labour and trafficking for labour exploitation are often linked to organized crime, support of the police through safeguarding the inspector's physical safety is essential. Allowing labour inspectors to call on the support of the police when they are obstructed or threatened will safeguard the inspector's own physical safety.¹³⁸



Examples:

Example 1

A successful example for cooperation between police and labour inspectors can be found in Brazil. A special mobile inspection unit that combines labour inspectors and federal police officers investigates allegations of forced labour on "fazendas". The centralized organizations of the unit and the absolute secrecy in planning the operations have resulted in success. In one part of the country, a commission will be installed that will negotiate with landowners and intermediaries in cases of allegations of forced labour. Whenever these negotiations are not successful, the unit will conduct an inspection.¹³⁹



¹³⁵ ILO (2006): *International Labour Conference, 95th Session, Report III (Part 1B), Labour inspection*, p. 53.

¹³⁶ ILO (2005b): *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement, Special Action Programme to Combat Forced Labour*, p. 50.

¹³⁷ *Ibid.* p. 51

¹³⁸ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, p.27.

¹³⁹ ILO (2005b): *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement, Special Action Programme to Combat Forced Labour*, p. 50.

Example 2

Another example is the “Carabinieri Command for the Protection of Labour” in Italy.

Operating under the Ministry of Labour, the main task of the command is to fight against illegal and disguised employment, exploitation of labour in “sweatshops”, trafficking in human beings and the elimination of inhuman working conditions, including slavery. The personnel of the command are qualified as labour inspectors as well as agents and officers of the judiciary police.¹⁴⁰ The command can carry out operations autonomously or with police territorial units and with other authorities, mainly labour inspectors¹⁴¹.

2. Key principles of cooperation procedure

The key principles of cooperation procedure from a perspective of law enforcement agencies can be applied¹⁴² in cases where the labour inspectors cooperate with relevant specialized service providers.

(a) Cooperation between labour inspectors and specialized service providers

Since labour inspection forms part of law enforcement, their position can be compared to the position of the police when getting in touch with presumed trafficked persons.

The key principles of cooperation procedure from a perspective of law enforcement agencies are:

- Information provided by law enforcement agencies to the specialized service provider regarding upcoming controls or raids
- Recommendation to include presumed trafficked persons in the procedure of cooperation
- Appointment of a guardian in cases of child trafficking
- Informing the trafficked person about his/her rights and the possibility of assistance
- Contacting the specialized service provider
- Providing a recovery and reflection period
- Questioning for investigation and protection during legal proceedings

In addition to the key principles mentioned above, labour inspectors should take into account the following points when cooperating with specialized service providers:

- When cooperating with specialized service providers, labour inspection agencies should consider formulating different MoUs with different organizations. For example, NGOs with a broader focus on assistance for undocumented migrants can be very important partners to labour inspection agencies, as they are well posi-

¹⁴⁰ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, p.30.

¹⁴¹ OSCE (2006): *Statement by the Delegation of Italy on Carabinieri Command for Protection of Labour, 5th Alliance against Trafficking in Persons Conference.*

¹⁴² See Chapter II.A.2

oned to provide assistance to foreign trafficked persons should labour inspectors become aware of such persons during the course of their inspections. Similarly, NGOs specializing in providing assistance to women and children can also play a valuable support role.

- Since the distinction between illegal employment and trafficking for labour exploitation can be difficult to ascertain, the principle of inclusion of presumed trafficked persons in the procedure of cooperation¹⁴³ is of utmost importance for cooperation between labour inspectors and specialized service providers.
- In addition, the cooperation between labour inspectors and specialized service provider should include a clause that ensures workers can safely file a complaint against the abusive employer without being threatened with expulsion.¹⁴⁴

(b) Cooperation between labour inspectors and other law enforcement agencies

Again, when labour inspectors cooperate with other law enforcement agencies, such as the police or immigration authorities, the points of cooperation procedure from a law enforcement perspective can be applied. Although two governmental actors cooperate and a form of cooperation probably already exists, the cooperation procedure needs to be defined.

The extent of cooperation between these actors can vary and can encompass cooperation in investigation or cooperation in labour inspections. For cooperation between labour inspectors and other law enforcement agencies, the following points should be considered in an MoU:

- **Information**

The labour inspection agency should inform the police whether a joint inspection is necessary due to security reasons or in cases when the employers might obstruct the inspection.

- **Recommendation to include presumed trafficked persons in the procedure of cooperation**

In developing cooperation frameworks between these two agencies, assistance to presumed trafficked persons should also be addressed. It is crucial that both are using the same checklists with indicators to identify trafficked persons for labour exploitation. The indicators proposed by ILO of a forced labour situation¹⁴⁵ as well as the indicators developed by UNODC¹⁴⁶ could be a basis for indicators of trafficking for labour exploitation.

In addition, it is also very important that labour inspectors and other law enforcement agencies, in this case the immigration authorities, conclude in the agreement that both respect the right of the workers to safely file a complaint against the employer thus, disassociating immigration status with workplace inspection.¹⁴⁷

¹⁴³ See Chapter II.A.2

¹⁴⁴ OSCE/ODIHR (2007): *The NRM Approach to Trafficking and its Application to Trafficking for Labour Exploitation*, p. 9.

¹⁴⁵ Andrees, B. (2008): *Forced Labour and Human Trafficking, Handbook for Labour Inspectors (ILO)*, pp. 18-19. The six over-arching indicators are: Physical violence, including sexual violence, restriction of freedom of movement, threats, debt and other forms of bondage, withholding of wages or no payment of wages, retention of identity documents.

¹⁴⁶ UNODC: *Human Trafficking Indicators*.

¹⁴⁷ OSCE/ODIHR (2007): *The NRM Approach to Trafficking and its Application to Trafficking for Labour Exploitation*, p. 9.

Summary:

- Since sectors such as domestic work or sex work often fall beyond the scope of labour inspectors, **cooperation with NGOs is recommended** in order to increase identification or prevention of trafficking for labour exploitation by running a hotline, for example.
- **Cooperation between labour inspectors and the police** allows a **rapid and smooth implementation of inspections** when labour inspectors are obstructed in the performance of their duty.
- When labour inspectors cooperate with the police and specialized service providers, particular attention should be given to the following points:
 - Labour inspectors should **inform the police** prior to the inspection when it is necessary for the police to be involved in the inspection. **Presumed trafficked persons** should be **included in the procedure of cooperation**.
 - It should be possible to **file a complaint safely**. The person should not be threatened with expulsion because of their irregular immigration status, or be left without adequate protection from possible employer reprisals for having lodged a complaint.



III. Checklist of components of an MoU and summarized key principles of cooperation



This chapter summarizes the recommended components of an MoU and the key principles of cooperation. For more detailed information please refer to the appropriate chapter.

Components of an MoU

Partners	<ul style="list-style-type: none">• Identification of relevant partners	<input type="checkbox"/>
Definition of purpose	<ul style="list-style-type: none">• Description of the aims of the partners• Underlining the importance of basic principles such as the protection of human rights of trafficked persons• Accordance to national laws and strategies	<input type="checkbox"/>
Principles of cooperation	<ul style="list-style-type: none">• Decision to work cooperatively• Ensuring independence and autonomy of all partners• Mutual recognition of the mandates of the partners	<input type="checkbox"/>
Target group	<ul style="list-style-type: none">• Definition of target group• Development of different MoUs for different target groups• Children as target group: Taking into account the rights and needs of children• Recommendation to include presumed trafficked persons	<input type="checkbox"/>
Detailed definition of different responsibilities and details of cooperation procedure between partners	<ul style="list-style-type: none">• Clear definition of tasks and responsibilities• Definition of concrete steps to be taken by all partners	<input type="checkbox"/>
Mutual communication of information	<ul style="list-style-type: none">• Nomination of contact points• Recognition of the principles of confidentiality and professional secrecy• Protection of personal data• Stringent procedures of data sharing	<input type="checkbox"/>
Duration of support	<ul style="list-style-type: none">• Depending on national legislation and budget of specialized service provider• Depending on recommended implementation of a recovery and reflection period	<input type="checkbox"/>
Funding of the cooperation	<ul style="list-style-type: none">• Secure funding of the MoU• Avoidance of situation whereby the governmental partner funds the NGO-partner of MoU	<input type="checkbox"/>





Time when the MoU comes into effect	<ul style="list-style-type: none"> • Entry into force upon the signature of the representatives of all parties of the MoU • Stipulation of a certain time frame of the effectiveness of the MoU. 	<input type="checkbox"/>
Monitoring of MoU	<ul style="list-style-type: none"> • Ensuring objective monitoring • Monitoring body should be independent 	<input type="checkbox"/>
Amendment and expansion of the MoU	<ul style="list-style-type: none"> • Inclusion of lessons learned 	<input type="checkbox"/>
Evaluation of MoU	<ul style="list-style-type: none"> • Mid-term evaluation • Evaluation after time frame of effectiveness of MoU 	<input type="checkbox"/>
Settlement of disputes	<ul style="list-style-type: none"> • Negotiations between parties • Decision of a third body (i.e. steering committee, coordinating body) 	<input type="checkbox"/>
Termination of MoU	<ul style="list-style-type: none"> • Ensuring equal rights to terminate MoU of all partners 	<input type="checkbox"/>

Summarized key principles of cooperation

Cooperation from the perspective of law enforcement agencies

Information provided by law enforcement agencies to the specialized service provider: upcoming controls and danger faced by the presumed trafficked person
Informing the trafficked person about his/her rights and the possibility of assistance
Recommendation to include presumed trafficked persons in the procedure of cooperation
Appointment of a guardian in cases of child trafficking
Defining communication and referral between law enforcement agency and specialized service provider
Recommendation of providing a recovery and reflection period
Interviews for investigation: possibility to be accompanied by counsellor
Protection of the rights of the trafficked person during legal proceedings





Cooperation from the perspective of specialized service providers

Recognizing the autonomy and principle of confidentiality with clients

Enforcing security measures

Informing the presumed trafficked person about the institution, mandate and likely future course of legal proceedings (both orally and in writing)

Availability of accommodation and necessary services for physical and psychological rehabilitation and remedies in judicial and administrative proceedings

Contacting the police when the presumed trafficked person takes the informed decision to cooperate with the criminal justice authorities

In the case of informed decision to return to his/her country of origin: organizing details of return

Individual assessment based on the best interest of the child: tracing, risk assessment and best interest determination

In legal proceedings: trafficked person should be supported by arranging legal representation and accompanying her/him during and after court proceedings

Cooperation from the perspective of labour inspectors

Information provided by law enforcement agencies to the specialized service provider

Recommendation to include presumed trafficked persons in the procedure of cooperation

Appointment of a guardian in cases of child trafficking

Informing the trafficked person about his/her rights and the possibility of assistance

Contacting the specialized service provider

Recommendation of providing a recovery and reflection period

Questioning for investigation and protection of the rights of the trafficked person during legal proceedings

Information of other law enforcement agencies on joint inspection (i.e. with police, immigration authorities, prosecutors)

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I. MoUs between key stakeholders

A. Bangladesh: Memorandum of Agreement

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is made at Dhaka on this the 18th day of December of the year Two Thousand Eight of the Gregorian Calendar

BETWEEN

Bangladesh Police, represented by the Assistant Inspector General (Planning and Research), Police Headquarters, Dhaka of the one part

AND

Bangladesh National Woman Lawyer's Association (BNWLA) of 48/3, Monico Mina Tower, Agargaon, Dhaka represented by its Deputy Director (Program) (hereinafter called 'NGO'/'BNWLA') of the other part.

1. WHEREAS:

1.1

Bangladesh, like many countries in the world, is facing a number of challenges in dealing with victims of crime, particularly in relation to impoverished women and children. In the existing socio-economic scenario the incidents of dowry-related violence, acid throwing, trafficking, family violence, rape and sexual abuse are likely to increase. Despite constitutional guarantees, the operational framework dealing with human security in Bangladesh is not congenial to the poor and disadvantaged. This is further exacerbated by the limited capacity of Police to effectively investigate crime resulting in a high percentage of acquittals of perpetrators, particularly in relation to violence against women and children.

1.2

Within the current support framework available for victims of crime there is no existing regulation as to the specific responsibilities and roles of Government, NGOs and Police. Although NGOs and Police have a long history of working together, but the process has not been institutionalized. This has generated or increased the misunderstanding and lack of cooperation and collaboration between the Police and the service provider NGOs. The development of a common platform will significantly enhance the response given by both police and service providers to victims of crime.

1.3

Article 31 of the Constitution of the People's Republic of Bangladesh states "to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is an inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law". Other fundamental rights pertaining to human security and property are also enshrined in Articles 32, 33, 34, 35 and 42 of the Constitution.

1.4

The Government of Bangladesh has ratified the Convention on the Rights of the Child, the Con-

vention on the Elimination of All forms of Discrimination against Women (CEDAW), the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the ILO Convention 182 on Elimination of Worst Forms of Child Labour. Bangladesh has also ratified the SAARC Convention on Preventing and Combating Trafficking in Women, and Children Prostitution.

1.5

Ensuring due respect for the laws and regulations of the country is the primary responsibility of the police and as such the Police are expected to be the primary protectors of human rights and human security. Regulation 33 of the Bangladesh Police Regulations (PRB - Police Regulations of Bengal 1943), enjoins upon all ranks, while on duty, to show forbearance, civility and courtesy towards all classes of the people.

1.6

It is necessary and expedient in the public interest to provide and improve the existing institutional framework and facilities for victims of crime to access justice, encourage the reporting of crime, sensitize Police to victim rights, enhance protection and assist the victims to build their life and to be rehabilitated in family and society.

1.7

To improve the support to victims of crime, Bangladesh Police in collaboration with the Police Reform Programme has established a Victim Support Centre (VSC). The VSC will work in collaboration with community support organizations and the local community in support of victims and also coordinate the response of local Police, service provider organizations and the local community.

1.8

Similar agreements are being signed between Bangladesh Police and other NGOs with the same object of providing services to the victims of crime.

2. Definition of Victims and Eligibility of Service:

2.1

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as *“persons who individually or collectively have suffered harm, including physical and mental injury, emotional suffering, economic loss of substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws prescribing criminal abuse of power”*.

2.2

A person may be considered a victim, under this declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

2.3

Women and Children shall enjoy the services from the VSC.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

3. Aims and objects:

3.1

This Agreement is principally aimed at promoting joint operations between Bangladesh Police and NGOs in providing appropriate professional and timely assistance to victims of crime by removing any obstacle in practical operations.

3.2

The operations of the NGO shall be in the best interests of the victim by providing them with legal assistance and protection of their rights and interests in accordance with the rights under the Constitution and ratified international conventions.

3.3

Bangladesh Police and NGOs agree to establish a Steering Committee, made up of representatives from the relevant NGOs and Bangladesh Police and chaired by Deputy Inspector General (Crime), Bangladesh Police.

4. Duration of Agreement:

4.1

The duration of the Agreement shall be for a period of one year from the date of signing (18 December 2008), which may be extended on the basis of mutual consent of the parties for any further period.

5. Cooperation between Bangladesh Police and NGOs:

5.1

VSC shall be responsible for deciding if a person is a victim of crime by taking into account paragraph two (2) coupled with the facts, evidences and the opinions of concerned persons/agencies responsible for the care of the victim.

5.2

When the decision of VSC differs from the opinion of the concerned agencies, the person shall be treated as a victim until an appropriate decision can be made by the Steering Committee.

5.3

In relation to the investigation of the case, if the agency responsible for the victim has any relevant facts, evidence, and comments, it shall subject to the approval of the victim, deliver same to VSC, for further action.

5.4

VSC, in consultation with the concerned agency, will decide on the referral of the victim for protection, accommodation and rehabilitation. The agency which is informed of the case will be considered as the first qualified agency for the responsibility.

5.5

In the case where more than one agency are involved, in regard to receipt of complaint and search for facts, such agencies can initiate consultations to establish specific guidelines for mutual fact finding, collection of evidence, protection of witnesses and judicial procedures.

6. Responsibilities of VSC:

6.1

The VSC, in its operation, shall be assisted and supported by the NGOs as far as practicable. Bangladesh Police will provide to VSC appropriately trained personnel to ensure a twenty four hour service to victims of crime.

6.2

The VSC will –

a) Provide emergency residential care and support to the victim by ensuring

- Immediate basic support i.e. medical, psychological counselling, accommodation and food;
- Emergency shelter for a maximum time of five days;
- Refer to GO or NGO run shelters for receiving long term care;
- Victim friendly and secure environment;

b) Coordinate with the NGO as and when necessary for

- Receiving immediate and emergency support;
- Legal aid;
- Delivery of long term support;
- Helpline;
- Ensuring case management;

c) Develop a transparent procedure for recording of cases, investigating, reporting and disposing of allegations.

d) Assist in investigation of crime against women and children by arranging/ensuring

- Conducive reporting environment;
- Collection and preservation of physical evidence;
- Rescue of the victim;
- Co-operating with police station in investigation;

e) Endeavour to control and prevent crime against women and children by conducting awareness raising programs via

- Radio and TV;
- Press and Publications;

f) Adopt effective measures to prevent re-victimization, and to that end to extend security cover for the victim, his family and witnesses, among other measures.

7. Responsibilities of Bangladesh National Woman Lawyers' Association (BNWLA):

7.1

BNWLA will work in full co-operation with the VSC and be available to provide assistance and support on a twenty four hour basis. The funding for all services and support rendered by BNWLA will be sourced by themselves.

7.2 The VSC will refer the victims to BNWLA for receiving the following services:

a) Shelter:

- Residential accommodation and other basic needs;

b) Health Care:

- Treatment of illness and diseases, access to health service, medical check-ups, sexual health screening and treatment

c) Legal advice and support:

- Legal counselling during investigation including mediation beneficial to victim;
- Consultations with lawyers;
- Legal aid;
- Provide support in case management and coordination;

d) Psychological advice and counselling:

- Crisis intervention, trauma treatment, access to psychotherapy, counselling;

e) Rehabilitation and Integration:

- Training and capacity building for rehabilitation of the victim.
- Support for integration into family and community;
- Prevention of re-victimization

7.3

BNWLA will provide Lawyer and Psychosocial Counsellor for effective operation of VSC.

8. Coordination Role of VSC on Referral and Networking Services:

- VSC will provide space and access for the service providers/NGO;
- VSC will be responsible for referral services and coordination of the overall activities;
- VSC will be involved from victim identification to integration into family or community in close cooperation with NGOs and other service providers;
- Bangladesh Police will provide necessary support to the whole process with cooperation of 10 NGOs.

9. Financial Management and funding:

BNWLA shall provide all funds necessary for its services (legal aid, long-term support for rehabilitation and integration) and operations. Bangladesh Police will provide logistics and operation for the VSC.

10. Relationship of Parties:

This Agreement reflects a joint collaboration between the parties hereto, who will perform their work as independent bodies. Neither party shall act as an agent or representative of the other or permit the other party to enter into any contract or incur any obligations or liabilities to the other party, nor to commit the other party in any manner.

11. Monitoring:

11.1

The VSC shall be managed by a Steering Committee composed of the members of the Bangladesh Police and representatives from the NGOs providing victim support as follows:

Steering Committee

1. Deputy Inspector General (Crime)	Chairperson
2. Deputy Commissioner HQs, DMP	Member
3. Assistant Commissioner, Tejgaon	Member
4. Officer in Charge, Tejgaon	Member
5. Police Reform Programme, UNDP	Member
6. UNICEF, Bangladesh	Member
7. Ain-O-Shalish Kendra	Member
8. Association for Community Development	Member
9. Association for Correction and Social Reclamation	Member
10. Aparajeyo Bangladesh	Member
11. Acid Survivors Foundation	Member
12. Bangladesh National Woman Lawyers' Association	Member
13. Bangladesh Mahila Parishad	Member
14. Bangladesh Legal Aid and Services Trust	Member
15. Dhaka Ahsania Mission	Member
16. Marie Stopes	Member
17. VSC In-charge	Member-Secretary

11.2

The Terms of Reference of the Steering Committee shall be as follows:

1. Periodically review the activities and management of VSC for effective implementation of victim support services.
2. Develop policy and procedure for ensuring victim friendly environment and prevent re-victimization in all stages.
3. Ensure effective partnership and coordination among the service providers.
4. The Officer in charge of the VSC will be responsible for facilitating the meetings and to prepare minutes of the meetings and forward it to the concerned agencies and the participant organizations.

12. Reporting:

BNWLA will provide information periodically in relation to this MoA.

13. Dispute Settlement:

Any dispute related to or arising out of this Agreement will be settled through mutual discussion and understanding. If necessary, the conflicting matter shall be referred to the Steering Committee for an appropriate decision. Decision of the Steering Committee is final and binding on both the parties.

14. Confidentiality:

In the course of implementation of this Agreement, Bangladesh Police and the NGO will treat all types of activities related information as confidential and under no circumstances pass it to a third party without permission of the Bangladesh Police.

15. Termination:

15.1

Both parties will have the right to terminate this Agreement. Either party may terminate the Agreement by giving one month's notice to the other party.

15.2

Bangladesh Police and BNWLA will abide all the terms and conditions of this Agreement.

16. Entire Agreement:

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other prior agreements and understandings both written and oral, between the parties with respect to the subject matter of this Agreement.

17. Copies:

17.1

This Agreement has been executed in two originals, one for either party.

17.2 **IN WITNESS** whereof the parties hereto have signed this Agreement at Dhaka, Bangladesh on the date, month and year first above mentioned.

B. European Model Protocol of cooperation between law enforcement and civil society organisations in cases of sexual exploitation

- **Preamble**
- **Chapter I General Provisions**
- **Chapter II Description of responsibilities**
- **Chapter III Exchange of data and Protection of personal data**
- **Chapter III Other forms of cooperation**
- **Chapter IV Final Provisions**

PREAMBLE

[name of the civil society organisation] represented by [name of the legal representative of the organisation]

And

[name of the law enforcement unit] represented by [name of the legal representative of law enforcement]

Hereinafter referred to as ‘the Parties’

Aware of the increasing number of cases of sexual exploitation of children,

Aware of the need for an efficient cooperation between them in order to enhance the fight against sexual exploitation of children,

Deeming it useful to be able to share their expertise and experience in the field of sexual exploitation of children,

Considering the Resolution on the contribution of civil society in finding missing or sexually exploited children, 09/10/2001,

Bearing in mind the provisions of the UN Convention on the Rights of the Child

The mission(s) of [name of the civil society organisation] being [description of missions]

HAVE AGREED AS FOLLOWS:

Note: these provisions are suggested as guidelines and may be changed substantially to the wishes of the Parties concerned.

Chapter I – General provisions

Article 1

The Parties hereby establish an agreement of cooperation in cases of sexual exploitation of children

Note: one or more types of sexual exploitation depending on the activities of each Party may replace the term sexual exploitation

Article 2

In general, the Parties shall respect human rights and the rights of the child in particular.

According to article 3 of the UN Convention on the Rights of the Child the Parties shall act exclusively in the best interest of the child.

Article 3

For the purpose of this agreement “sexual exploitation of children” includes cases of:

- sexual assault
- child prostitution
- child pornography
- sex tourism
- child trafficking in view of sexual exploitation

Note: The Parties may add the definition of each type of sexual exploitation according to the national legislation

Article 4

1. [name of the civil society organisation] shall ensure that all members of their staff working with victims have the required qualifications and licenses.

2. [name of the civil society organisation] shall take all possible steps to prevent persons convicted of sexual exploitation of children working in their organisation.

Article 5

To achieve these goals, privileged contacts will be established between both Parties, which will be based on mutual respect between the Parties and their members.

Article 6

1. Efficient cooperation requires knowledge and respect for the different purposes of the Parties. A clear distinction must be made between the investigative tasks of law enforcement and the preventative and social aims of civil society organisations. The respective tasks and responsibilities in cases of sexual exploitation of children must be transparent and clear for each Party.

2. Criminal investigations shall exclusively be governed by law enforcement authorities under the applicable national provisions of the Code of Criminal Procedure and the legislation regulating police actions.

[specify national law]

3. [name of the civil society organisation] shall not conduct any law enforcement analysis of the stored data, only on specific request of law enforcement.

Article 7

Each Party shall take note of and respect the codes of conduct and the rules of confidentiality of the other Party.

Article 8

1. Both Parties shall give equal attention to each case of sexual exploitation taking into consideration the very vulnerable position of the child victim and his family. Each Party shall undertake immediate action following a request for help by the other Party.

2. Both Parties shall use their best endeavours to ensure that the activities and services offered by them are not contrary to domestic law.

Article 9

In order to prevent uncoordinated activities, which might harm the common aim each Party shall consult the other Party before taking action.

Note: these provisions are suggested as guidelines and may be changed according to the wishes of each Party and according to the national legislation

Chapter II – Description of responsibilities**Article 10**

Taking into account article 6.1 of this agreement, [name of the civil society organisation] shall [description of specific responsibilities and tasks of the organisation in cases of sexual exploitation]

Article 11

Taking into account article 6.1 of this agreement, [name of law enforcement unit] shall [description of specific responsibilities and tasks of law enforcement in cases of sexual exploitation]

Chapter III – Information-related cooperation**Article 12**

The Parties shall respect the data protection principles and in particular the provisions of the Recommendation No R (87) 15 of the Council of Europe regulating the use of personal data in the police sector and the European Convention for the protection of individuals with regard to automatic processing of personal data.

Article 13

[name of the civil society organisation] shall take any steps needed to ensure an adequate level of data protection.

Article 14

[name of the civil society organisation] expresses its willingness to [description of each way of co-

operation with [name of law enforcement unit] in concrete cases of sexual exploitation of children aimed at]

Note: the content of this article 14 can be inspired and determined on the basis of the practical checklist. It is recommended to subdivide the aforementioned article depending on the kind of cooperation in view. It has to be noted that national legislation needs to be taken into account.

Article 15

[name of law enforcement unit] expresses its willingness to [description of each way of cooperation with [name of civil society organisation] in concrete cases of sexual exploitation of children aimed at]

Note: the content of this article 15 can be inspired and determined on the basis of the practical checklist. It is recommended to subdivide the aforementioned article depending on the kind of cooperation in view. It has to be noted that national legislation needs to be taken into account.

Chapter IV – Operational cooperation

Article 16

The Parties shall respect the privacy of the persons concerned in accordance with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 17

[name of the civil society organisation] expresses its willingness to [description of each way of cooperation with [name of law enforcement unit] in concrete cases of sexual exploitation of children aimed at]

Note: the content of this article 17 can be inspired and determined on the basis of the practical checklist. It is recommended to subdivide the aforementioned article depending on the kind of cooperation in view. It has to be noted that national legislation needs to be taken into account.

Article 18

[name of law enforcement unit] expresses its willingness to [description of each way of cooperation with [name of civil society organisation] in concrete cases of sexual exploitation of children aimed at]

Note: the content of this article 18 can be inspired and determined on the basis of the practical checklist. It is recommended to subdivide the aforementioned article depending on the kind of cooperation in view. It has to be noted that national legislation needs to be taken into account.

Chapter V – Final Provisions

Article 19

The present Protocol of cooperation shall enter into force upon signature by the duly authorised representatives of the Parties

Article 20

The present Protocol may only be amended with mutual consent expressed in written agreement of both Parties

Article 21

Any disputes or disagreements between the Parties with respect to the interpretation or implementation of this Protocol shall be resolved by good faith negotiations between the Parties

Article 22

The Parties are prepared to evaluate the implementation of this Protocol 1 year after the entry into force and from that moment on every 2 years.

Article 23

Either Party may terminate this Protocol by delivering a written request for termination to the other Party. The termination shall be effective 6 weeks after the delivery to the receiving Party.

C. Germany: Cooperation Concept: German Federation - State Working Group on Trafficking in Women

Cooperation concept for counselling services and the police concerning the protection of witnessing victims of traffic in human beings for the purpose of sexual exploitation

Introduction:

In 1999, a Sub-Working Group of the Federation-State Working Group¹ on Trafficking in Women¹ developed the first concept for cooperation between counselling services² and the police for the protection of witnessing victims who cannot or do not want to be included in the witness protection program as laid down by law. This cooperation concept has become the basis for corresponding models in various German states and is considered best practice at European and international level.

In January 2006, the nationwide "Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (KOK)" (coordination group against trafficking in women and violence against women in the migration process), in cooperation with the Bundeskriminalamt (BKA), the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the humanitarian organization "Gesellschaft für technische Zusammenarbeit (GTZ)" (organization for technical cooperation) met at a closed session to discuss about "Jointly combating traffic in human beings for the purpose of sexual exploitation - intensifying cooperation and securing funds". One of the results of this closed session was that, due to factual and legal changes, it was mandatory to update the 1999 concept.

Thus, to revise the concept, the Federation-State Working Group on Trafficking in Women set up a new Sub-Working Group, consisting of representatives of the KOK, of the counselling services, of the BKA and of various state police forces (Berlin, Rhineland-Palatinate and Lower Saxony).

The present concept is a recommendation of the Federation-State Working Group on Trafficking in Women and is to serve as a basis for the individual German states to develop their own concepts or to revise existing ones. The 1999 concept is replaced by the present one³.

The scientific study „Straftatbestand Menschenhandel - Verfahrenszahlen und Determinanten der Strafverfolgung“ (The crime of trafficking in human beings - case figures and determining factors for criminal prosecution) by Annette Herz and Eric Minthe, published in January 2006, served as a reference for the development of the concept.

With the 37th Criminal Justice Amendment Act which came into force on 19.02.2005, the crime of human trafficking was extended to include the exploitation of persons as workers. The offences of trafficking in human beings for the purpose of sexual exploitation (section 232 German Penal Code) and trafficking in human beings for the purpose of the exploitation of persons as workers (section 233 German Penal Code) are two basically different crime phenomena, which, in many areas, have to be viewed quite differently in respect of the approaches employed to combat them (e.g. detecting suspicious circumstances, presentation of evidence). The suppression of these phenomena involves various police agencies. In addition, little information is as yet available on victim profiles as far as the phenomenon "exploitation of persons as workers" is concerned. The hitherto existing counselling and support concepts of the counselling services also have to be revised and adapted to the present conditions. With regard to this crime phenomenon, the concept needs to be further adapted, but this has to be done at a later date by other actors.

¹ Under the leadership of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federation-State Working Group on Trafficking in Women is composed of specialized non-governmental organizations (counselling services) as well as various Ministries at federation and state level.

² Counselling services are especially qualified non-governmental organizations that have specialized on psycho-social support of victims of traffic in human beings.

³ As decided by the Federation-State Working Group on Trafficking in Women on 07 November 2007.

The cooperation partners in the present concept are the counselling services and the police. When developing concepts for cooperation agreements, cooperation contracts or instructions to this effect for the federal states, further institutions responsible for protection, support, residence and criminal prosecution should be included (e.g. judicial authorities, aliens offices, social welfare offices, employment agencies etc.). Due to regional differences, this would, however, not be purposeful for the present paper.

I. Aims and purposes

It is the aim of this cooperation concept to contribute to the adequate protection of, and help for, the potential victims/witnesses of human trafficking for the purpose of sexual exploitation and, thus, to a much more efficient fight against this crime phenomenon.

Therefore, this cooperation concept should be given nationwide consideration as a model to develop new concepts or to revise existing concepts of the federal states.

The implementation of cooperation concepts requires handling of the criminal offence by particularly specialized, qualified and sensitized police officers in specialized departments as well as reliable human and logistical resources within the police and a nationwide establishment and permanent financing of the counselling services.

II. Addressees of the concept and target group

The addressees of the concept are the counselling services and the police.

The target group of the concept comprises persons affected⁴ by traffic in human beings for the purpose of sexual exploitation.

Definition

The target group consists of persons for whom there are facts or other concrete indications suggesting that they are affected by trafficking in human beings for the purpose of sexual exploitation and who do not fulfill the prerequisites for inclusion in the witness protection program of the police⁵.

In detail, this may concern persons

- who, according to police investigations and/or according to their own statements, are affected by trafficking in human beings

and

- either contacted the police or the counselling services out of their own initiative or
- were picked up by the police on the occasion of checks

⁴ "Persons affected" are the following groups of persons: Victims, witnesses and witnessing victims of traffic in human beings.

⁵ In this connection, please see the Act on the Harmonization of the Protection of Witnesses at Risk.

and

- declared themselves willing to act as a witness until the conclusion of the criminal proceedings or
- have not yet made up their mind as to whether they want to be a witness in a human trafficking case.

III. Preliminary remark

Traffic in human beings is a particularly inhumane form of crime. Statistical surveys show that this type of crime has gained a foothold in the Federal Republic of Germany, with organized crime structures becoming more and more visible as the high profits at relatively low risk are a great incentive.

The victims of human trafficking can be both German and foreign nationals. They are mainly women who are often forced into prostitution in Germany on false pretences or are enticed to come to Germany and then put under pressure there by the offenders by means of threats, violence etc.

They can include:

- victims of violence or force or exploitation of a situation of helplessness due to the fact that they come from abroad
- victims who previously agreed to work as prostitutes, but did so under different conditions (self-determined work, receipt of fair and appropriate payment), or
- victims who are under 21 years of age [irrespective of any difficulties they may have or a situation of helplessness they may be in due to their coming from abroad].

The aim of sections 232, 233a of the German Criminal Code is the protection of personal freedom. According to these penal provisions, even persons who already worked as prostitutes can become victims of human trafficking. This does not mean that every prostitute must be a victim of human trafficking.

Human trafficking is an offence often committed by use of force which causes unforeseeable physical and mental harm to the victims, massively interferes with their right of self-determination and frequently has traumatic effects. For this reason, the victims not only need efficient protection, but also the intensive care of a particularly well qualified counselling service. To this end, a good cooperative relationship between the investigating authority and the counselling service is indispensable.

The fight against trafficking in human beings necessitates coordinated, well-structured and rigorous action by all parties involved, as investigations are difficult and time-consuming. Indictments for these offences are often possible only on the basis of personal evidence, i.e. the statements of the persons affected. For this reason, these statements are of great importance.

Efficient protection and professional care of the persons affected are the basic prerequisites for their stabilization and for obtaining a statement that can be used in penal proceedings. They are an essential step to make sure that proceedings can be initiated and conducted.

This protection must comprise the safeguarding of the victims'

- physical and mental integrity

- accommodation,
- living expenses,
- residence status, and
- human dignity and human rights.

This requires a well-defined cooperation between the police and the counselling services, as laid down in this concept.

IV. Description of the problem

1. From the point of view of the law enforcement authorities

Traffic in human beings is a “controlled crime”. This means that the police get information about criminal offences above all through their own activities, e.g. checks in the red-light district. With the EU’s enlargement to the East, persons from these states do no longer have an illegal residence status, as this was often the case before. This makes it increasingly difficult for the authorities in charge to recognize cases of trafficking in human beings. Proactive presence and checks in the red-light district aiming at confidence-building measures vis-à-vis all actors involved have proven a successful approach.

In addition, it is also difficult to recognize a case of human trafficking when first contact is made because the persons affected, intimidated by the perpetrators, fear for themselves and their next-of-kin and are afraid of the police and any state measures.

Therefore, as a rule, they are not willing to supply details about the offence. Other victims are so much traumatized by the violence they experienced that they are absolutely not able to give evidence.

However, since personal evidence is very important to supply proof of a criminal act and the “principle of immediacy” must be observed in criminal proceedings, the statement of the persons affected is of utmost importance.

Therefore, the persons affected have to be summoned as witnesses.

Quite often however, foreign witnesses are no longer staying in Germany. Summoning these witnesses abroad is often not possible because their addresses cannot be established or they are no longer willing to travel to Germany for the trial. Quite frequently, the perpetrators have meanwhile influenced the persons affected in their willingness to give evidence. If the witnesses do declare to be willing to travel to Germany for the trial, this involves great bureaucratic effort and often pressure as regards time limits.

With respect to the significance of personal evidence, the aforementioned study “Straftatbestand Menschenhandel” says (p. 321):

„The importance of conclusive personal evidence and/or the necessity of the witnesses’ presence in the trial are clearly shown in the dismissal reasons given by the public prosecutor’s offices and the courts, as appears from the files examined. As a rule, the courts dismissed all those cases in which the victims did not appear in court as witnesses and gave personal evidence.“ (English translation)

2. From the point of view of the counselling services

It is the task of the counselling services to render support to persons affected by human trafficking, regardless of their willingness to give evidence in the proceedings. The aim is to restore their physical and mental integrity as soon as possible and to maintain it in the long term. The persons affected receive support in returning to normal everyday life and developing perspectives for the future. They also receive support in the safeguarding of their rights.

In order to enable the counselling service to build up a relationship of trust with the persons affected and potential witnesses and to provide qualified counselling and care, they must be included in the activities of the law enforcement and regulatory authorities from the very beginning. Even if, at the beginning, there is possibly only the suspicion of trafficking in human beings, the counselling service has to be called in without delay. Female counsellors may possibly participate in police checks and raids in the red-light district. Where, for various reasons, this does not appear to be useful, it is still important to inform the counselling services of possible persons affected at an early stage so that they can make plans and get prepared.

The absence of a legally established right to refuse to give evidence is an impediment to the relationship of trust with the persons affected and makes cooperation between the investigating authorities and the counselling services difficult. Cooperation is also difficult because the tasks and approaches of the institutions involved - judicial authorities, police, aliens offices and social welfare authorities - are different and specially trained/named or sensitized points of contact are not available or foreseen in all institutions.

In this connection, there is a risk of the counselling services and the victims being instrumentalized by the law enforcement authorities. This risk is to be countered by the conclusion of a cooperation agreement.

V. Basic understanding

Cooperation between the counselling services and the police is based on the following understanding:

- The crime of trafficking in human beings shall be efficiently prosecuted and the perpetrators shall be indicted and convicted. To this end, witnesses who are at the disposal of the law enforcement authorities over the whole duration of the proceedings may make a considerable contribution. For non-German nationals affected, this implies a right to stay in Germany for at least the whole duration of the proceedings (cf. study „Straftatbestand Menschenhandel“, p. 321).
- According to the Preamble to the Council of Europe Convention No. 197, human trafficking is considered a violation of human rights and an offence to the dignity and the integrity of the human being.
The persons affected therefore have the right to be treated with dignity and to make full use of their rights.
- All parties involved must give equal attention to the situation of the partly traumatized victims and to the penal proceedings as such. In connection with offences of human trafficking, it is generally expected that the persons affected are at risk.
- The willingness of the victims to give evidence is encouraged and more frequently

results in convictions for human trafficking if they are cared for by the counselling services and if assistance is provided by a legal counsel or someone who represents them as a joint plaintiff (study „Straftatbestand Menschenhandel“, p. 341).

- If, upon conclusion of the proceedings, there is any concrete risk which may prevent the victims from returning to their country of origin, it must be possible to extend their right to stay in Germany in accordance with the Residence Act.

- All measures in connection with the present protection program are taken in mutual agreement.

VI. Structural organization

1. The police forces in the federal states

The police forces in the federal states should set up organizational units that are responsible for initiating and coordinating protection measures.

2. Specialized counselling services

It must be ensured that qualified independent counselling services to take care of the persons affected are set up and furthered nationwide in all federal states.

3. Counselling services and police forces of the federal states and the federation

The federal states have to develop and implement education and training concepts -both interdisciplinary and for specific professional groups- with a view to identifying human trafficking victims and having them testify as witnesses and also with a view to protecting them and rendering them assistance. In addition to the further development of the national concepts, the training of the police in the countries of origin of the victims and the perpetrators must continue to be part of the work of the Bundeskriminalamt. Similar to the workshop held at the BKA in 1999, the carrying out of joint training measures of the police and the counselling services is to be institutionalized at the state agencies. Counselling services should receive enough funds for further training measures. In this context, cf. also page 339 of the study „Straftatbestand Menschenhandel“:

„The handling of this complex legal issue, the difficult presentation of evidence particularly with regard to finding victims willing to give evidence as witnesses as well as the necessary special knowledge about the red-light district require a high degree of professionalization on the part of the case workers.“ (English translation)

Continuing cooperation and reflections about the work done are necessary. This can be done in the framework of regular meetings of the actors so that there is a continuing process of revision, evaluation and further development of the cooperation agreements to make them usable in practice and adapt them to changes in legislation.

VII. Structuring of operations

Successful cooperation requires knowledge and acceptance of the different aims of both sides. There must be a clear separation between investigation and the provision of assistance and care. The respective tasks and occupational roles must also be transparent to the persons affected.

1. Decision-making criteria

The inclusion of the persons affected in the witness protection program of the police has priority. If the necessary conditions are not fulfilled, the inclusion of the persons affected in the present program has to be considered.

The following criteria apply:

a) Victim status/witness status:

Are there any indications that the subject is a victim/witness of human trafficking?

b) Indispensability of statement

In the further run, is the subject in a position to make a statement that is relevant to the case and is she/he willing to repeat this statement in a later trial?

c) Risk involved (a risk per se is generally anticipated in cases of human trafficking).

d) Voluntariness:

Does the person agree to be included in the present protection measures?

2. Involvement of the public prosecutor's office

The public prosecutor's consent that the above criteria are fulfilled has to be obtained.

3. Competence to decide

It is within the responsibility of the police to decide on whether or not a witness is admitted to appropriate protective measures.

4. Involvement of the counselling services

When first contact is made by the investigating authorities with a potential victim, the latter has to be informed of the possibility of receiving support from an independent counselling service. When deciding about whether or not the victims should be admitted to the present protection measures, the counselling services have to be involved. The counselling services must be granted the right to be present during all interviews of the persons affected by the police, the public prosecutor and the court, provided that they agree.

5. Measures of the police

5.1 When first contact is made by the investigating authorities with a potential victim, the latter has to be informed of the possibility of receiving support from an independent counselling service. Multilingual information material of the counselling services should be handed out. As soon as the investigating authority suspects that the subject may be a victim of human trafficking, it shall immediately establish contact with the counselling service and the special police unit responsible for protection measures.

5.2 The police and the counselling services handle the formalities with the appropriate authorities in close cooperation; if necessary the police make arrangements to guarantee that no information on the witness is divulged.

5.3 The police carry out the necessary measures for the protection of the persons affected before, during and after crime scene inspections, interviews and court hearings.

5.4 They give advice with regard to the protection of the female counsellors.

5.5 They carry out the mandatory security screenings of the cooperation partners and the necessary undertakings.

5.6 In connection with security issues the police support the counselling services with regard to the return of the persons affected to their countries of origin.

6. Measures of the counselling services

6.1 Following consultation with the police, the counselling service decides about the future place for the persons affected to stay. The counselling service accommodates the persons affected in appropriate facilities.

6.2 The counselling services and the police handle the formalities with the appropriate authorities in close cooperation.

6.3 The counselling service provides continuous psycho-social support for the persons affected and arranges for medical care.

6.4 Female counsellors are present at interviews of the persons affected if so desired by the latter.

6.5 Female counsellors render assistance to the persons affected before, during and after crime scene inspections, interviews and court hearings, and they provide psycho-social support.

6.6 The counselling service arranges education and training measures for the purpose of integration. If necessary, the counselling services provide support with regard to the return of the persons affected to their countries of origin.

6.7 If required, the counselling services continue to support the persons affected also after the conclusion of the criminal proceedings.

7. Information exchange between the counselling services and the police

On the basis of a cooperation in a spirit of trust, the counselling services inform the police of

- any security-relevant developments for the persons affected, also with regard to their countries of origin, or for the female counsellors,
- any important information in connection with the offence of trafficking in human beings,
- any information of relevance to the investigation, if consent for its disclosure has been given by the victims.

On the basis of a cooperation in a spirit of trust, the police inform the counselling services of

- any security-relevant developments for the persons affected, also with regard to their countries of origin, or for the female counsellors,
- any important modifications in connection with carrying out qualified protection.

Recommendations to the federal states

The Federation-State Working Group on Trafficking in Women recommends regular evaluation of all cooperation concepts, which should take place at previously defined time intervals.

It is further suggested to set up clearing offices in the federal states with which cooperation agreements exist. These clearing offices should be addressed when there are problems between the cooperation partners in the practical implementation of the agreements.

D. Moldova: Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

between

the Ministry of Internal Affairs (MIA), the General Prosecutor's Office (GPO), the Ministry of Social Protection, Family and Child (MSPFC), and

the International Organization for Migration (IOM), the Association of Women in Legal Careers / the Centre for Prevention of Trafficking in Women (AWLC/CPTW), the International Center for Protection and Promotion of Women's Rights „La Strada“ (hereinafter called Parties)

RECOGNIZING the responsibility for the situation of trafficking in human beings, borne by the public authorities, the civil society, and as well the international community,

ACKNOWLEDGING that respect and protection of fundamental human rights and the restoring of these rights by consolidating the efforts of prevention and combating of trafficking in human beings shall be objective and of great importance,

STARTING from the need to establish a continuous, equal and mutual cooperation between public authorities, law enforcement bodies, civil society and international community,

ACTING in view of ensuring the right of victims of trafficking in human beings to qualitative assistance, necessary for their rehabilitation and reintegration, based on the principles of respecting confidentiality, forbidding intimidation, discrimination and other principles set in the national and international legislation, regarding development and expansion of the National Referral System (NRS) in the field of protecting and assisting victims and potential victims of trafficking in human beings (hereinafter called beneficiaries),

RECOGNIZING that establishment of cooperation does not grant any of the Parties the right to interfere without justification in the activity of another Party, except for the cases strictly provided in this Memorandum,

BASING ITS COOPERATION in the field of assisting victims of trafficking in human beings on the provisions of: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, ratified by Law of the Republic of Moldova nr. 17-XV of 17.02.2005; Council of Europe Convention on Action against Trafficking in Human Beings, 16.05.2005 Warsaw, ratified by Law of the Republic of Moldova nr. 67-XVI of 30.03.2006; International Convention on the Rights of the Child, of 20 November 1989, New York, ratified by Parliament Decision nr. 408-XII of 12.12.1990 and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 25 May 2000, New York, ratified by Law of the Republic of Moldova nr. 15-XV of 06.02.2004, Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner for Human Rights, from 20 May 2002, New York, Law on preventing and combating of trafficking in human beings nr. 241- XVI of 20.10.2005, Law on public associations, nr. 837-XIII of 17 May 1996, national plans and strategies in the field of preventing and combating trafficking in human beings and illegal migration, other national and international acts in the field,

CONSIDERING the attributions, guarantees and mutual consent of the Parties set in this Memo-

randum and aiming at developing and expanding the National Referral System in the field of protecting and assisting victims and potential victims of trafficking in human beings (hereinafter called “beneficiaries”), have agreed as follows:

I. Responsibilities of the Parties regarding assistance and protection of beneficiaries:

In accordance with the principles and above mentioned legislative and normative acts, the areas of responsibility of the Parties based on this Memorandum are to:

The Ministry of Internal Affairs, represented by the Center for Combating the Trafficking in Persons (CCTP):

- a. identify and refer beneficiaries, with their consent, to the National Coordination Center (NCC) within MSPFC in order to ensure their access to assistance and protection programs offered by the Parties of this Memorandum, and in emergency situations – directly to the Parties, followed by a notification of NCC;
- b. ensure that referral of beneficiaries to assistance and protection is not conditioned by their will to make declarations and participate in the criminal prosecution of the offenders;
- c. ensure beneficiaries’ access to information about their rights, about authorities, organizations and institutions that offer assistance and protection;
- d. undertake all legal measures to ensure the protection of the beneficiaries;
- e. undertake special measures for protection of children – victims of trafficking in human beings, including immediate informing of the specialized child care institution, which shall designate a tutor / guardian for the child;
- f. inform the Parties about existing dangers for the beneficiaries included in their assistance and protection programs, and, if necessary, undertake necessary beneficiaries’ protection measures, upon request of the Parties;
- g. notify in advance (via fax or e-mail) the contact persons appointed by the Parties about the planned procedural acts with participation of beneficiaries, included in assistance programs of the Parties;
- h. avoid conducting criminal procedure acts with the participation of beneficiaries during the night time, in absence of attorneys, legal representatives or parents, depending on the case;
- i. cooperate in view of obtaining information about cases / possible cases of trafficking possessed by the Parties (through dedicated telephone lines, assistance and direct counselling, etc.) and investigation of reported cases;
- j. coordinate and mediate contacts between the Parties and subjects responsible for combating and prevention of trafficking in human beings within territorial or specialized police offices;
- k. provide assistance in repatriation of beneficiaries, upon request of the Parties;

- l. submit information of common interest upon request of the Parties for monitoring the current situation of beneficiaries involved in criminal procedure acts and for planning of long term assistance;
- m. cooperate with Parties on analyzing the causes and conditions that encourage the phenomenon of trafficking in human beings;
- n. appoint contact persons, who will ensure the connection with the Parties of this Memorandum.

The General Prosecutor's Office:

- a. control observation of human rights in cases assigned to the trafficking in human beings category, including of victims of trafficking in human beings;
- b. conduct studies and analyses in order to find and remove the causes and conditions that encourage trafficking in human beings and publication of statistical information and analysis reports on prevention and combating of trafficking in human beings;
- c. identify and refer beneficiaries, with their consent, to NCC within MSPFC in order to ensure their access to assistance and protection programs offered by the Parties of this Memorandum, and in emergency situations – directly to the Parties, with a later notification of NCC;
- d. ensure that referral of beneficiaries to assistance and protection is not conditioned by their will to make declarations and participate in the criminal prosecution of the offenders;
- e. ensure beneficiaries' access to information about their rights, about authorities, organizations and institution that offer assistance and protection;
- f. undertake all legal measures to ensure the physical protection of beneficiaries involved in criminal charges, upon necessity;
- g. provide information about existing dangers for the beneficiaries included in assistance and protection programs of the Parties, and, if necessary, undertake necessary measures of their protection, at request of the Parties;
- h. undertake special measures for protection of children – victims of trafficking in human beings, including immediate informing of the specialized child care institution, which shall designate a tutor / guardian for the child;
- i. cooperate in view of obtaining information about cases / possible cases of trafficking possessed by the Parties (through dedicated telephone lines, assistance and direct counselling, etc.) and investigation of reported cases;
- j. coordinate and mediate contacts between the Parties and subjects responsible for combating and prevention of trafficking in human beings within territorial or specialized prosecution offices;

- k. submit information of common interest upon request of the Parties for monitoring the current situation of beneficiaries involved in criminal procedure acts;
- l. cooperate with Parties on analyzing the causes and conditions that encourage the phenomenon of trafficking in human beings;
- m. appoint contact persons, who will ensure the connection with the Parties of this Memorandum.

The Ministry of Social Protection, Family and Child:

- a. receive the information about the beneficiaries referred by the Parties through NCC;
- b. manage the Data Base focused on victims of trafficking in human beings and analyze the information about assisted beneficiaries;
- c. coordinate repatriation activities of beneficiaries (adults and children);
- d. analyze identified cases and refer them to Social Assistance Services (central and local) or to the Parties, in order to assess the needs of the beneficiaries and to provide necessary assistance;
- e. in crisis situation to refer beneficiaries on urgent basis to the Chisinau Rehabilitation Center, followed by an assessment of their needs;
- f. coordinate permanent monitoring in the reintegration process of beneficiaries;
- g. develop and implement the NRS project, build capacities of existing services and develop the normative basis for creation of the community services;
- h. cooperate with the Parties on analyzing the causes and conditions that encourage the phenomenon of trafficking in human beings;
- i. appoint contact persons (at central and local level) who will ensure the connections with the Parties of this Memorandum.

The International Organization for Migration:

Within its Prevention and Protection Program:

- a. support the Parties in performing activities related to the development and implementation of NRS;
- b. contribute to capacity building of human resources in the field;
- c. provide logistic and financial assistance and involve human resources in repatriation, rehabilitation and reintegration of beneficiaries;
- d. support MSPFC in:

1. co-financing the Chisinau Rehabilitation Center;
 2. interviewing and prompt assessment of primary needs (social questionnaire of beneficiaries referred by the Parties of this Memorandum to NCC);
 3. analysis of cases referred to NCC in order to determine their eligibility for inclusion in rehabilitation and reintegration program managed by IOM, informing the Parties about the decision taken;
 4. placement of beneficiaries (upon necessity);
 5. providing rehabilitation assistance to beneficiaries within Chisinau Rehabilitation Center and management of Protection and assistance program within NRS;
 6. support multidisciplinary teams at local level in their activity of coordination, monitoring and provision of rehabilitation and reintegration services to beneficiaries;
- e. collaborate with the Parties in analyzing causes, conditions and trends of trafficking in human beings phenomenon; develop and distribute information materials in this regard (websites www.iom.md and www.migratie.md; publication of guidelines, brochures, leaflets, posters, etc.) in order to diminish the phenomenon;
 - f. facilitate, organize exchange of experiences and national and international best practices;
 - g. inform the Parties about managed programs and projects in the field of counter-trafficking and services available to beneficiaries;
 - h. appoint contact persons who will ensure the connections between the Parties of this Memorandum and other organizations;

The Association of Women in Legal Careers / The Centre for Prevention of Trafficking in Women:

Within its programs and projects, AWLC/CPTW bears the responsibility to:

- a. cooperate with the Parties in identification and referral of beneficiaries, with their consent to NCC within MSPFC in order to ensure their access to assistance and protection programs offered by the Parties of this Memorandum, and in emergency situations – directly to the Parties, followed by a notification of NCC;
- b. offer legal counselling to beneficiaries referred by the Parties of this Memorandum and other organizations within NRS;
- c. prepare and submit civil cases in court in the interest of the beneficiaries, in view of repairing the material and moral damage caused by the criminal acts;
- d. redirect cases of trafficking in human beings to GPO, MIA and territorial divisions

- responsible for combating trafficking in human beings to initiate and conduct the criminal prosecution;
- e. represent beneficiaries, with their consent, in criminal trials that are conducted in the Republic of Moldova, irrespective of the phase of the trial, offering them legal support and counselling;
 - f. offer legal counselling and assistance in obtaining identity and other documents of beneficiaries, which were lost during the trafficking;
 - g. offer social reintegration assistance to beneficiaries;
 - h. monitor beneficiaries referred by AWLC/CPTW to specialized divisions within NRS project;
 - i. build interdepartmental capacity in order to combat trafficking in human beings;
 - j. cooperate with the Parties in analyzing the causes and conditions that encourage the phenomenon of trafficking in human beings;
 - k. inform the Parties about managed programs and projects in the field of counter-trafficking and services available to beneficiaries;
 - l. appoint the contact persons (at central and local level) who will ensure the connections with the Parties of this Memorandum.

The International Center for Protection and Promotion of Women's Rights „La Strada”

Within its programs and projects, “La Strada” International Center assumes the responsibility to:

- a. monitor the situation in the country related to trafficking in human beings and its evolution trends by conducting studies, research in the field and make the respective information available to the Parties;
- b. develop drafts of normative acts/standards in the field of combating trafficking in human beings, in collaboration with specialists from other organizations active in this area;
- c. provide comments/proposals regarding improvement of legislation in the field of combating trafficking in human beings, upon request of the Parties;
- d. develop, publish and disseminate information materials for the specialists in the field of combating trafficking in human beings and for the at-risk group (specialized or thematic editions, brochures, leaflets, posters, etc.);
- e. conduct activities of professional capacity building of specialists from the countertrafficking domain, organize continuous education seminars, workshops, round tables;
- f. facilitate and organize exchange of experience with specialists from other countries;

- g. cooperate with the Parties in identification and referral of beneficiaries, with their consent, to National Coordination Center (NCC) within MSPFC in order to ensure their access to assistance and protection programs offered by the Parties of this memorandum, and in emergency situations – directly to the Parties, followed by a notification of NCC;
- h. collaborate with GPO, CPTW and other Parties in solving concrete cases of trafficking in human beings, upon their request;
- i. provide psychological support and other kind of assistance to beneficiaries;
- j. monitor cases redirected by “La Strada” International Center to specialized divisions within NRS project;
- k. inform the Parties about managed programs and projects in the field of counter-trafficking and services available to target persons;
- l. appoint the contact persons (at central and local level) who will ensure the connections with the Parties of this Memorandum.

II. Responsibilities of the Parties in the area of beneficiaries related information exchange:

The Ministry of Internal Affairs, represented by the Center for Combating the Trafficking in Persons (CCTP):

- a. manage the information received from the Parties, regarding the beneficiaries, observing confidentiality and security;
- b. ensure strict confidentiality of the identity of information sources and the role of other Parties in forwarding the information, as well as non-disclosure to other agencies in the country or abroad, except for the cases when previously the Parties and source of information agreed otherwise;
- c. use the information received from the other Parties with diligence and confidentiality, in conditions provided by legislation in force, in particular when the respective information resulted from the initiation of a criminal case;
- d. decline using respective information during investigation of a criminal charge in order to not imperil the security of the information source, in cases when beneficiaries refuse to provide information or the Party that offered the information refuses mentioning its role as an intermediary of passing it;
- e. not communicate information received from the Parties to mass media, except for the cases when its release is authorized by the respective Party in written or there is a need to establish the person’s identity (in case of children and retarded persons or persons with other mental deficiencies who do not know their identity);
- f. assume full responsibility in case of injuries, losses borne by the beneficiaries, the Parties of this Memorandum or third parties, resulted from actions taken by MIA

staff violating this Memorandum;

- g. inform the Parties which passed the information regarding taken actions and decisions regarding the particular case –

The General Prosecutor's Office:

- a. manage the information received from the Parties, regarding the beneficiaries, observing confidentiality and security;
- b. ensure strict confidentiality of the identity of information sources and the role of other Parties in forwarding the information, as well as non-disclosure to other agencies in the country or abroad, except for the cases when previously the Parties and source of information agreed otherwise;
- c. inform the Parties which passed the information regarding taken actions and decisions regarding the particular case

The Ministry of Social Protection, Family and Child:

- a. pass the information to the Parties via the contact persons appointed by the Parties, only on the basis of expressed consent of the beneficiary;
- b. maintain confidentiality of the information received from the Parties;
- c. not disclose the information received from the Parties through mass media, except for the cases when such release is authorized in written by the Parties.

The International Organization for Migration:

- a. pass the information to the Parties via the contact persons appointed by the Parties, only on the basis of expressed consent of the beneficiary;
- b. maintain confidentiality of the information received from the Parties;
- c. not disclose the information received from the Parties through mass media, except for the cases when such release is authorized in written by the Parties.

The Association of Women in Legal Careers / The Centre for Prevention of Trafficking in Women:

- a. pass the information to the Parties via the contact persons appointed by the Parties, only on the basis of expressed consent of the beneficiary;
- b. collect, analyze and pass the information to CCTP of MIA about cases of trafficking in human beings, especially about traffickers, and, only upon expressed consent of the involved victims of trafficking in human beings, with indication of the information source;
- c. pass to CCTP of MIA the information about a possible trafficking case received on the phone from an anonymous source;
- d. maintain confidentiality of information and sources of information, protect the

rights and interests of involved victims of trafficking in human beings;

- e. pass the information and the conclusions resulted from the analysis of the trafficking in human beings phenomenon in Moldova and abroad, in order to identify efficient methods to combat this phenomenon.

The “La Strada” International Center:

- a. pass to GPO and CCTP of MIA the information about trafficking cases obtained from the Hotline 080077777 operators, with indication of the source, when possible;
- b. pass the information to the Parties via the contact persons appointed by the Parties, only on the basis of expressed consent of the beneficiary;
- c. maintain confidentiality of the information received from the Parties;
- d. not disclose the information received from the Parties through mass media, except for the cases when such release is authorized in written.

III. Final provisions

No provision of this Memorandum shall affect the immunities and privileges enjoyed by the Parties in the Republic of Moldova, according with the legislation regulating their functioning and activity.

The Parties are entitled to request modification of this Memorandum depending on managed and implemented programs and projects, upon prior written notice of the Parties.

This Memorandum shall enter into force upon signature and remains in force until expression by any of the Parties of the intention to terminate the Memorandum, by giving a prior written notice, which shall be presented to the Parties no later than 30 days before the date of termination.

For the Ministry of Internal Affairs

For the General Prosecutor’s Office

For the Ministry of Social Protection, Family and Child

For the International Organization for Migration

For the Centre for Prevention of Trafficking in Women /
Association of Women in Legal Careers

For the International Center for Protection and
Promotion of Women’s Rights „La Strada”

E. Memorandum of Mutual Cooperation - Montenegro

Pursuant to the UN Convention against Transnational Organized Crime (Palermo Convention), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, ("Official Gazette FRY" no. 6 of 27 June 2001), Strategy of the Government of the Republic of Montenegro for Fight against Human Trafficking, and recommendations for cooperation among the Government sector, Supreme State Prosecutor and the non-governmental organizations (hereinafter: NGO), and in cooperation with the Office of National Coordinator for Fight on Human Trafficking (hereinafter: NC Office) and the OSCE Mission to Montenegro, the following

MEMORANDUM ON MUTUAL COOPERATION

Among the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs "Crnogorski ženski lobi", "Sigurna ženska kuća" and "Centar plus" (hereinafter: Memorandum signatories), and with the aim of better cooperation in fight against human trafficking in practice, through prevention, education, criminal prosecution of the perpetrators and protection of potential victims of human trafficking, especially women and children, is hereby adopted.

Article 1

The purpose of this Memorandum is the cooperation on prevention, education, reporting and criminal prosecution of the perpetrators, and protection of potential victims of human trafficking, with utmost respect of their human rights with the goal of securing them physical, psychological, health, social and child protection and facilitating their integration into the new community, or reintegration in cases of voluntary return to the country of origin.

Article 2

The cooperation is based on principles of respect, transparency and clear determination of obligations established in the annexes to the Memorandum.

Article 3

Memorandum signatories agree that the providing of assistance to potential victims of human trafficking, in accordance with this Memorandum, will not be based on any conditions related to the cooperation, that is the potential victim's participation in the possible criminal procedure for the crime of human trafficking.

Article 4

Memorandum signatories accept the obligation to exchange information, within the limits of their legal authority, which are needed to provide best possible protection to the potential victim in line with Article 2 of this Memorandum.

Article 5

NC Office is obliged to monitor the implementation of this Memorandum and to coordinate the work of the Memorandum signatories.

Activities referred to in paragraph 1 of this Article shall be realized through the contact-persons appointed by the Memorandum signatories.

Article 6

Provisions of this Memorandum shall be applied in line with the provisions of national laws.

Article 7

Individual annexes defining duties and obligations of all Memorandum signatories are the integral part of this Memorandum.

Article 8

In case that the circumstances occur which render the feasibility or legality of the programme questionable, or the signatories decide to make major changes or adjustments to their objectives, each of the Memorandum signatories can request the amending of it through the NC Office.

This Memorandum shall be applied as of the day of its signing.

Article 9

The Memorandum is prepared in nine equivalent copies, out of which each of the signatories keeps one.

In Podgorica, on 18 October 2007

No. 07-139

1. Annex to the Memorandum of Cooperation relating to the area of education and upbringing

Republic of Montenegro
Government of the Republic of Montenegro
Ministry of Education and Science
Number: _____
Podgorica, 18 October 2007

Pursuant to the Memorandum of Cooperation no. 07-139 of 18 October 2007, the Ministry of Education and Science hereby adopts

ANNEX TO THE MEMORANDUM OF COOPERATION RELATING TO THE AREA OF EDUCATION AND UPBRINGING

Article 1

Ministry of Education and Science (hereinafter: the Ministry) shall provide its full contribution in cooperating with other signatories of this Memorandum on its implementation.

Article 2

The Ministry shall provide potential victims of trafficking in human beings, children, who reside legally in the territory of Montenegro, with appropriate lodgings, and continuation of education in public educational institutions, giving them priority over other cases, in line with the rules regulating the appropriate area of education and upbringing, respecting their right to privacy, especially regarding the questions of personal nature and traumatic questions which are not necessary in order to include them into the educational system.

Article 3

Appropriate services of the Ministry, as well as psychological-pedagogical services in public institutes of education and upbringing, will provide swift and efficient inclusion of children into the educational system in the territory of Montenegro.

Article 4

Mechanisms of support and assistance that will be provided to the children – potential trafficking victims will be based on the following:

- Special psychological-pedagogical procedures within the services of institutes of education and upbringing, including the assessment of physical and psychological condition of the children, referral of the children to special-expert treatment, and giving proposals for the designing of special programs, in line with the regulations that govern that particular area of education and upbringing;
- Monitoring of child's behaviour and studying and informing of appropriate services within the system of child protection set by the Memorandum.

Article

5

The Ministry will provide for all necessary expenses related to the children's lodging in the institutes of education and upbringing (students' dormitories) and their access to the education, especially vocational education and specialization leading to the first profession of a child, for the

whole duration of the children's residence in Montenegro.

Article 6

The Ministry shall, through the operations of public institutes of education and upbringing, through the regular and special programs within the Action Plan, continuously monitor the work on education and creation of awareness among children about the human rights, the protection of personal dignity and integrity, the guaranteed gender equality, on the principles based on children's rights, with the overall goal of preventing them from becoming trafficking victims.

The Ministry shall, under prescribed conditions, cooperate with and grant NGOs and other organizations and professionals access to the institutes of education and upbringing as part of the activities aimed at presenting the programs adjusted to children's age and corresponding to the objectives referred to in paragraph 1 of this Article.

Article 7

The Ministry shall continuously work on the development of educational policy and measures of protection and wellbeing of children, especially adolescents, and cooperate with other bodies and organizations on suppressing the human trafficking and protection of human rights, especially children's rights, bearing in mind children's best interest.

The Ministry shall engage itself to the maximum possible extent to realize the objectives referred to in paragraph 1 of this Article, that is, to include the children – members of the exceptionally risky groups, Roma population in particular, into the educational system in the highest possible number, thus fostering their inclusion into the society and improving their social status.

Article 8

The Ministry shall cooperate with NGOs and other competent institutions to establish a strategic partnership in researching the best practice, methods and strategies for the fulfillment of this Memorandum's objectives.

Article 9

The Ministry shall appoint a contact-person to monitor the implementation of activities and measures of the Memorandum.

2. Annex to the Memorandum of Cooperation relating to the area of health, social and child protection

Republic of Montenegro
Government of the Republic of Montenegro
Ministry of Health, Labour and Social Welfare
No: _____
Podgorica, 18 October 2007

Pursuant to the Memorandum of Cooperation no. 07-139 of 18 October 2007, the Ministry of Health, Labour and Social Welfare hereby adopts

ANNEX TO THE MEMORANDUM OF COOPERATION RELATING TO THE AREA OF HEALTH, SOCIAL AND CHILD PROTECTION

Article 1

Pursuant to the Article 7 of the Memorandum of Cooperation signed among the Supreme State Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate, and the non-governmental organizations „Crnogorski ženski lobi“, „Sigurna ženska kuća“ and „Centar plus“, this Annex to the Memorandum regulates duties and obligations of the Ministry of Health, Labour and Social Welfare in the area of health, social and child protection.

a) Health Protection

Article 2

In providing health protection to the potential victims of human trafficking the Ministry of Health, Labour and Social Welfare will secure the appropriate health protection through public health institutes, observing the principles of urgency and priority.

Article 3

Health protection for the persons referred to in Article 2 of this Annex includes urgent medical assistance, prevention and treatment of infectious diseases, and cases of childbirth and maternity for the duration of their residence in the territory of the Republic of Montenegro.

Article 4

Urgent medical assistance service in all public health institutes will provide swift and efficient medical assistance, in the clinics or in the field, 24 hours a day in the territory of the Republic.

Article 5

In all cases in which person's life is not in jeopardy, health protection of the potential victims of human trafficking is provided according to the procedure determined by the law, in primary health care centres, through individual doctors: pediatrician, for adults also gynecologist, and at the secondary and tertiary level based on the referral of a doctor from primary health protection or urgent medical assistance.

Article 6

Mechanisms of support and assistance provided in public health institutes include the following:

- a) Assessment of the status of health of a potential victim of human trafficking, adequate diagnostic checks and therapeutic services, and proposals for further treatment documented with detailed medical records of all findings.
- b) Identification of potential victim and informing of appropriate services within the system of victim protection established by the Memorandum.

Article 7

Health services shall, in all cases of suspicion that a person is a potential trafficking victim, apply only the necessary identification standards in order to respect the following:

- a) Right to privacy of the potential victim, especially with regards to the questions of personal nature and traumatic questions which are not necessary in order to provide health protection.
- b) Right of the potential victim to complete information regarding his/her health status, the extent to which his/her health is endangered, methods of treatment and medical interventions.
- c) Providing of health services must not be conditioned by the lack of identification documents.

Article 8

For potential human trafficking victims which are not insured under the Law on Health Insurance of the Republic of Montenegro, the costs of health protection in cases of urgent medical assistance referred to in Article 4 of this Annex shall be provided for from the Budget through the Health Insurance Fund of the Republic of Montenegro.

In case that the potential victim is a citizen of the state with which Montenegro has a bilateral agreement on social insurance signed, the costs will be covered in accordance with that agreement.

In all other cases the costs of health protection shall be covered by the Office of National Coordinator for Fight against the Human Trafficking.

b) Social and Child Protection

Article 9

In providing of social, child and family protection to the potential victims of human trafficking, both Montenegrin and foreign nationals, the Ministry of Health, Labour and Social Welfare will secure appropriate social, child and family protection through the public institutions – Social Work Centres, with priority over all other cases.

Social Work Centres shall provide swift and efficient assistance to the persons referred to in paragraph 1 of this Article at the entire territory of the Republic.

Article 10

Social and child protection of the foreign nationals referred to in Article 10 of this Annex includes the right to a one-time pecuniary assistance and the right to the appointment of a guardian.

Social and child protection of the Montenegrin citizens referred to in Article 10 of this Annex shall be provided in accordance with the law.

Article 11

Social and child protection, as well as the protection in the area of family relations being provided under this Annex is provided to the potential victims during their stay in the territory of the Republic regardless of their temporary residence location.

Article 12

Mechanisms of assistance include the following:

- a) Social-economic status assessment, as a basis for the approval of one-time pecuniary assistance and other forms of protection regulated by the law,
- b) Determining of legal grounds for the appointment of guardian,
- c) Development of individual protection plans for the potential victims of human trafficking, in cooperation with other signatories of the Memorandum.

Article 13

For persons referred to in Article 10 of this Annex, a Social Work Centre shall initiate the procedure based on the documentation provided by the Ministry of Interior, Ministry of Foreign Affairs, Ministry of Education and Science and other relevant institutions.

Article 14

Social Work Centres shall apply standards of identification in all cases of suspicion that a person is a victim of human trafficking, in order to observe the following:

- a) Right to privacy of the potential victim, especially with regards to the questions of personal nature and traumatic questions which are not necessary for the data collection,
- b) Right of the potential victim to complete information regarding the social, child and family protection, as well as any other possible procedures that can be started for the purpose of his/her protection.

Article 15

The Ministry shall cooperate with the NGOs and other competent institutions on the implementation of the Memorandum.

The Ministry shall appoint contact-persons to monitor implementation of activities and measures of the Memorandum.

3. Annex to the Memorandum of Cooperation relating to the area of NGO activities on prevention and protection of potential human trafficking victims

Number: 50/07

In Podgorica, 18 October 2007

Pursuant to the Memorandum of Cooperation no. 07-139 of 18 October 2007, non-governmental organizations “Crnogoski ženski lobi”, “Sigurna ženska kuća” and “Centar plus”, hereby adopt

ANNEX TO THE MEMORANDUM OF COOPERATION RELATING TO THE AREA OF NGO ACTIVITIES ON PREVENTION AND PROTECTION OF POTENTIAL HUMAN TRAFFICKING VICTIMS

Article 1

This Annex regulates mutual cooperation and defines the role of NGO in prevention, education and assistance to the potential victims of human trafficking (hereinafter: potential victim) and their protection in the shelters.

Article 2

Arrival at the shelter is a voluntary act and will not be conditioned by eventual investigations, legal proceedings and trials.

Potential victim will not be forced to contact with the police if he/she does not want it.

Article 3

NGO provide psychological and material assistance to the potential victim during his/her stay in the shelter: appropriate lodging, residence, food, clothing, footwear, and if possible, assistance in finding employment.

Article 4

NGO inform the Police Directorate, or the competent State Prosecutor, as well as the National Coordinator, of all findings related to new potential victims and the need for their physical protection, and the protection of the shelter staff.

Article 5

NGO provide support to the potential victim in the obtaining of health protection in public health institutes, as well as other types of care during the period of potential victim's recovery.

NGO cooperate with Social Work Centres on the exercising of potential victims' rights in the area of social, child and family-legal protection.

Article 6

NGO provide advice and information to the potential victims, especially in relation to the exercising of their human rights, in the language that they understand.

Article 7

NGO provide support to the potential victims during the entire duration of criminal procedure.

Article 8

NGO protect the data related to the identity of potential victims.

Article 9

NGO provide assistance in integration and reintegration of potential victims in case of their voluntary return to the country of origin.

Article 10

NGO provide assistance in connecting a potential victim with his/her family and maintaining that contact during the stay in and after the leaving of the shelter.

Article 11

NGO conduct programmes for the acquainting of potential victims with origins, methods and consequences of human trafficking.

Article 12

NGO will conduct educations and trainings in cooperation with Memorandum signatories related to the role of NGO during the potential victims' stay in the shelters.

Article 13

As part of the fulfilment of their role within the Memorandum, the NGO will establish and maintain local, regional and international cooperation with similar organizations.

Article 14

NGO shall cooperate with competent authorities and institutions in the area of prevention of human trafficking.

NGO shall be engaged in research, information, campaigning, and other activities, through public media, social and economic initiatives oriented towards prevention of human trafficking.

NGO shall work on raising public awareness of the importance of fight against human trafficking and the role of NGO in recognizing of this phenomenon, its main causes, and identification of victims with the risk assessment in terms of protection from intimidation and retribution.

Article 15

NGO shall prepare and publish reports, keep statistics, maintain databases, and submit the infor-

mation to other signatories.

Article 16

NGO signatories of the Memorandum shall appoint a contact-person to monitor the implementation of activities and measures of the Memorandum.

4. Annex to the Memorandum of Cooperation relating to the area of prevention, criminal prosecution and protection of potential victims of trafficking in human beings

Republic of Montenegro
Government of the Republic of Montenegro
POLICE DIRECTORATE
Number: _____
Podgorica, 18 October 2007

Pursuant to the Memorandum of Cooperation no. 07-139 of 18 October 2007, the Police Directorate hereby adopts

ANNEX TO THE MEMORANDUM OF COOPERATION RELATING TO THE AREA OF PREVENTION, CRIMINAL PROSECUTION AND PROTECTION OF POTENTIAL VICTIMS OF TRAFFICKING IN HUMAN BEINGS

Article 1

Police Directorate shall provide its full contribution to the implementation of the Memorandum of Cooperation in terms of prevention, identification and protection of potential victims of trafficking in human beings, as well as in the criminal prosecution of the perpetrators of criminal acts of this type.

Article 2

Police Directorate shall, together with other signatories, participate in training programs for the purpose of prevention of the criminal acts of trafficking in human beings and detection of their perpetrators.

Article 3

Police Directorate shall, within its legal authority, provide assistance to the potential victims in the process of integration, re-integration, and investigation towards the countries of origin, transit and destination.

Article 4

Police Directorate shall establish mechanisms to make the Police officials available 24 hours a day for the purpose of providing support to other signatories of the Memorandum.

Article 5

Should the Police be informed of the presence of a potential victim of trafficking in human beings, or identify one such victim, it will secure the performance of the following measures and actions, in line the law and this Memorandum:

1. Potential victim will be given the opportunity to go to the shelter for the trafficking victims run by "Crnogorski ženski lobi", "Sigurna ženska kuća" or „Centar plus“; should the victim decide to go to one of these shelters, the Police will immediately inform the shelter staff of the victim's decision and escort the victim to

the shelter;

2. If the potential victim is a minor, the Police will inform the competent Social Welfare Centre;
3. To the persons for which there is an assumption that they are potential victims of trafficking in human beings, the Police will provide complete information of the services rendering assistance to the victims, in the language that the potential victim understands, in order to enable that person to make a decision which is in his/her best interest, regardless of the fact whether he/she is willing to testify or not;
4. The Police will respect privacy and identity of potential victims;
5. The Police will secure a professional treatment of the potential victims of trafficking in human beings, based on their human rights;
6. The Police will secure the creation of optimal conditions under which the potential victim can give a deposition with maximum reduction of further traumatization;
7. The Police will, within its authority, provide the appropriate measures of protection to the potential victims of trafficking in human beings, their close ones, and the staff of the shelters, before, during and after the activities taken as part of the criminal investigation of the scene, during the informative interviews with the citizens, the hearings of witnesses, and until the moment of victim's return to the shelter.

Article 6

Police Directorate shall inform the competent State Prosecutor of all measures and actions taken pursuant to the Article 5 of this Annex.

Article 7

Police Directorate shall continuously take preventive measures in line with the Montenegrin Government's Strategy for Combating Human Trafficking.

Article 8

Police Directorate shall cooperate with other state bodies in the field of immigration, by exchanging information for the purpose of securing the legality of temporary residence of the potential victim of trafficking in human beings, in line with the Instruction on Conditions and Methods of Regulation of Temporary Residence of Foreign Citizens – Potential Victims of Trafficking in Human Beings, issued on 7 December 2005 by the Ministry of Interior.

Article 9

Police Directorate shall, on request of other signatories, initiate the procedure for the resolution of residential status or identification documents in line with the Instruction referred to in Article 8 of this Annex.

Article 10

Police Directorate shall appoint a contact-person to monitor the implementation of the Memorandum on behalf of the Police Directorate.

5. Annex to the Memorandum of Cooperation relating to the area of criminal prosecution

REPUBLIC OF MONTENEGRO
 SUPREME STATE PROSECUTOR
 Pros.no. 537/07
 Podgorica, 18 October 2007

Pursuant to the Memorandum of Cooperation no. 07-139 of 18 October 2007, the Supreme State Prosecutor hereby adopts

ANNEX TO THE MEMORANDUM OF COOPERATION RELATING TO THE AREA OF CRIMINAL PROSECUTION

Article 1

This Annex to the Memorandum regulates the mutual cooperation with the aim of combating human trafficking through efficient criminal prosecution of the perpetrators of the following criminal offences:

- Trafficking of humans from the Article 444 of the Criminal Code
- Trafficking of children for adoption from the Article 445 of the Criminal Code
- Establishment of slavery relations and transport of persons in slavery relations from the Article 446 of the Criminal Code, and
- Brokerage of prostitution from the Article 210 of the Criminal Code.

Article 2

The objective of the Memorandum is the mutual cooperation of its signatories for the efficient detection and criminal prosecution of perpetrators of the offences referred to in Article 1 of this Annex.

Mutual cooperation shall include general prevention of the criminal prosecution for the purpose of suppression of human trafficking.

State Prosecutors shall realize the general prevention by lodging appeals in order to influence the punitive policy of the courts.

Article 3

Authority, rights and obligations of a State Prosecutor are regulated by the Code of Criminal Procedure ("Official Gazette of the Republic of Montenegro", 71/03 and 47/06), the Law on State Prosecutor ("Official Gazette of the Republic of Montenegro", no.69/03) and the Law on Witness Protection ("Official Gazette of the Republic of Montenegro", no.65/04).

Article 4

Memorandum signatories are obliged to file a report in line with Article 227 of the Code of Criminal Procedure in case they deem that there is a suspicion that a criminal offence referred to in Article 1 of this Annex was committed.

Article 5

Memorandum signatories, that is the authorized persons, shall immediately report to the Police, or to the competent State Prosecutor, any notice of activities containing elements of human trafficking.

Article 6

State Prosecutors shall participate at meetings, seminars and trainings with the Memorandum signatories for the purpose of efficient prevention of criminal offences referred to in Article 1 of this Annex, and the protection of trafficking victims.

State Prosecutors shall, within their legal authority, cooperate with the Memorandum signatories for the purpose of protection of potential victim by providing instructions for taking specific actions in order to secure the potential victim as a witness in possible criminal procedure.

State Prosecutors shall indicate the need for the obtaining and securing the medical and other documentation, as well as the providing of appropriate lodging and treatment of the victim in a shelter, in order to win victim's trust for the purpose of successful conduct of criminal procedure and punishment of the perpetrators of criminal offences referred to in Article 1 of this Annex.

Article 7

Supreme State Prosecutor shall inform Memorandum signatories and the public about the decisions of competent State Prosecutors related to the filed criminal charges for human trafficking in form of an annual report.

Article 8

Supreme State Prosecutor shall appoint, by a special act, a contact-person who will monitor the implementation of the Memorandum on behalf of the Supreme State Prosecutor of the Republic of Montenegro, Higher State Prosecutors and Primary State Prosecutors.

Article 9

To all other relations and communication, which are not determined by this Memorandum, the general provisions of the Code of Criminal Procedure, the Law on State Prosecutor and the Law on Witness Protection shall apply.

II. MoUs between governmental actors on national level

A. Italy: Guidelines for the approach to potential victims of trafficking in human beings or exploitation, and of aiding and abetting illegal immigration

This document is the “Protocol for the Identification of and the Approach to Potential Victims of Trafficking in Human Beings” jointly drawn up by the Public Prosecutor’s Office in Teramo, the Associazione On the Road, the Immigration Office at the Teramo Questura and the other Law Enforcement Agencies, also through the Seminar on this subject held on 30th June 2005. The Protocol was circulated by the Public Prosecutor’s Office in Teramo to all the Law Enforcement Agencies within the province.

**Public Prosecutor’s Office
Teramo Court of Justice
To The Chief of Police of Teramo
To The Provincial Chief of the Teramo Carabinieri
To The Provincial Chief of the Teramo Financial Police
To Officers of the Judiciary Police Divisions - Headquarters**

Subject: Guidelines for the approach to potential victims of trafficking in human beings or exploitation, and of aiding and abetting illegal immigration.

Considering the proceedings of the conference held in Teramo on 16 June 2005 on the subject of integrated actions to combat trafficking in human beings and further victim protection within the province of Teramo, in which various criminal police forces took part, divided also into specific working groups;

Having sought the opinions of the representatives of the various criminal police forces and the Head of the Immigration Office at the Teramo *Questura* (Police Headquarters), who took an active part in the aforementioned seminar;

Considering the Chief Prosecutor’s Directive ***** at the L’Aquila Court of Appeal, Prot. ***** , dated *****;

Considering the Protocol ***** between the Public Prosecutors’ Offices of the Appeal Court district of L’Aquila and the District Anti-Mafia Prosecutor’s Office, signed and dated *****;

Considering the existence of a further district policy project on how to carry out the investigations and develop “good practices” with regard to the subject of trafficking in human beings and the aiding and abetting of illegal immigration, intended to standardise investigative procedures;

Acknowledging that it is necessary to identify common and consistent coordination criteria for the various stages of the approach to potential victims, as well as the subsequent related investigations

The following has been agreed:

Appointment of responsible officers and contact persons

A) The appointment of one or more contact persons (and their substitutes) within the Teramo *Questura* Immigration Office is a matter of priority – in line with Ministerial Circulars. Under the

umbrella of and in line with the objectives set out in Art. 18 of Legislative Decree No. 286/1998, this person or persons would be responsible for:

- a. ensuring that all organisational procedures and administrative regulations are fully explained to the entire staff of the various law enforcement agencies who, by nature of their office, come into contact with potential victims of trafficking and exploitation. To this end, the afore-mentioned contact person may also hold meetings for the purposes of information and planning;
- b. coordinating the activities of the aforementioned members of staff (in relation to the identification and initial support of potential victims of trafficking and exploitation) and any needs and requirements of an administrative nature under Legislative Decree No. 286/98;
- c. maintaining contacts with the referring Counsel for the Prosecution's Office and the accredited public and private social services within their own area of competence.

B) The provincial chiefs of the State Police, the Carabinieri and the Financial Police, each within their own sphere of competence, shall identify one or more officers to be responsible for:

1) procedures for identifying potential victims of trafficking and exploitation; 2) managing inquiries into crimes as detailed in Articles 600, 600 bis, 601, 602 of the Criminal Code, Art. 12 of Legislative Decree No. 286/1998, Art. 3 of Law No. 75/1958 (and related crimes).

The aforementioned officers should always work in tandem with the contact person under Art. 18 of Legislative Decree No. 286/1998 (Immigration Office Contact Person), with a view to planning investigative requirements that dovetail with those of an administrative nature, undertaken by the Immigration Office.

They should, furthermore:

- deal directly with the Counsel for the Prosecution;
- conduct relationships with the accredited public and private social services, heedful of victim management obligations during on-going investigations, and mindful of victim protection and the latter's active collaboration with these investigations.

Criteria for approaching potential victims:

A) When the first contact with a potential victim of trafficking in human beings or exploitation is initiated by members of the law enforcement agencies on the street or in indoor locations, officers shall:

1. not lose sight of the fact that they may be dealing with potential victims of extremely serious crimes;
2. bear in mind the possibility that behind even the simplest case of "illegal" immigration there may lie a story of trafficking, exploitation or aiding and abetting these crimes;
3. avoid intimidating behaviour;
4. keep the Immigration Office contact person fully informed about the person being watched and keep him/her up to date;
5. inform the investigative contact person from the criminal police force in question (obviously the need for this will be obviated when the official contact persons in question are working directly and in the front line such as, for example, where a victim is being accompanied to a police station by one of the protection agencies to make a report);

In any case, moreover, the investigative contact person attached to the criminal force has a duty to:

1. inform the person concerned that information and help are available 24 hours a day on Toll Free Hotline - *Numero Verde* Number 800.290.290, where female me-

- diators who speak all the languages of the victims' main countries of origin are available;
2. inform the social services (accredited public or private services) operating in the field so they can verify whether there are possible situations of exploitation or trafficking;
 3. set the victim identification procedures in motion, based on the "interview" models, subject to contact with the cultural mediator (as per the registers provided by the Immigration Office reporter). The *interview procedures* shall be adopted as the standardised model to be used by the Immigration Office at the *Questura* and, therefore, by all the criminal police forces. They should be drawn up in writing and kept among the official records;
 4. should they consider the person to be a possible victim of trafficking, they shall make contact with an accredited association or the social service. Once contact has been made, the aforementioned referent, subject to agreement with the contact person under Art. 18 of Legislative Decree No. 286/98, should accompany the potential victim to the accredited bodies or invite them, in writing, to appear before the Immigration Officer;
 5. **simultaneously**, they shall **inform, also in writing, the Counsel for the Prosecution (in charge of an existing procedure or whosoever is on duty)** for the adoption of instructions in the case, both in terms of the immediate instigation of the investigations and in terms of the provisions of Art. 18 of Legislative Decree No. 286/98.

B) When the first contact with a potential victim of trafficking or exploitation takes place inside the *Questura* involving members of the Immigration Office staff.

The Immigration Office staff shall:

1. **Inform the contact person at the Immigration Office immediately**, who should then:
 - a. take the possible victim away from the place in which potential traffickers/exploiters or persons who might make contact with them may be found. To this end, a room should be assigned inside the Police Headquarters, possibly free of distinguishing features and in which the victim can be sure that his or her primary needs will be satisfied (possibly overseen by the accredited social services);
 - b. inform the possible victim, in easily-understood language, about the provisions offered by the Italian legal system;
 - c. contact the cultural mediator (on the basis of the aforementioned lists), together with whom a preliminary interview with the possible victim will be conducted, based on the agreed procedures;
 - d. depending on the outcome of the interview, the contact person under Art. 18 of Legislative Decree No. 286/98 shall agree the potential victim management procedure and referral with the accredited association or the social service, in order to plan the follow-up visit to the Immigration Office to submit the relevant documentation in conformity with Art. 18 of Legislative Decree No. 286/98.

The contact person and the Immigration Office employees shall, however:

2. bear in mind the fact that despite appearances they could be dealing with a possible victim of extremely serious crimes;
3. bear in mind the possibility that behind even the simplest case of "illegal" immigration there may lie a story of trafficking, exploitation or aiding and abetting these crimes;
4. set the victim identification procedures in motion in line with the aforementioned interview protocols, above all when dealing with "at risk categories" (children, prostitutes, etc.);

5. within the bounds of the investigation, where there is strong evidence of the distinguishing signs of trafficking or exploitation, advise the investigative contact persons at the flying squad without delay, advising in writing the Counsel for the Prosecution so that the investigative procedures can be instigated.

The following steps shall be followed even outside the interviewing environment:

- a. inform the person about the provisions of the Italian legal system: the workings of “Social Protection” Art. 18 (and the correlative legalisation, which carries no obligation to denounce the trafficker) and assisted voluntary return; inform the person that information and help are available 24 hours a day on Toll Free Hotline – *Numero Verde* Number 800.290.290, where female mediators who speak all the languages of the victims’ main countries of origin are available;
- b. where possible, pamphlets dealing with legal matters and information in several languages should be circulated to and made available in the Immigration Office centres where the desks dealing with the receipt of applications and the consignment of permits are located, as well as in other places that foreign citizens may frequent for whatever reason;
- c. inform detainees that they have a right to the services of a lawyer and possibly also to free legal aid;

- There is clear evidence, even at this stage, that there is a need for (six- monthly) meetings to be organised, on the initiative of any one of the participants, among the Immigration Office contact persons, the responsible investigating officers in each law enforcement agency, the officers of the accredited associations and social services involved to the greatest extent, in order to monitor the results of activities carried out in line with this directive and suggest any updates and/or amendments.

The same directives apply to all cases, whether the potential victim is referred to the Public Prosecutor’s Office or to the Immigration Office by the accredited public or private social services.

Teramo, 2nd September 2005

Public Prosecutor

III. Bilateral MoUs

A. Memorandum of Understanding between the Ministry of Internal Affairs of the Republic of Belarus and the Ministry of Internal Affairs of the Republic of Turkey on cooperation in the field of fight against trade of persons and illegal migration

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTRY OF INTERIOR OF THE REPUBLIC OF TURKEY AND THE MINISTRY OF INTERNAL AFFAIRS OF THE REPUBLIC OF BELARUS ON COOPERATION IN THE FIELD OF COMBATING TRAFFICKING IN HUMAN BEINGS AND ILLEGAL MIGRATION

The Ministry of Interior of the Republic of Turkey and the Ministry of Internal Affairs of the Republic of Belarus, hereinafter referred to as "Parties".

Considering the provisions of the Agreement between the Government of the Republic of Belarus and the Government of the Republic of Turkey on cooperation in combating international organized crime, international illicit trafficking in narcotic drugs and international terrorism, signed in Ankara on July 24, 1996.

Deeply concerned with the growth of global trafficking in human beings and illegal migration,

Realizing the fact that trafficking in human beings as well as illegal migration poses a threat to international and national security, economic stability and promotes complicated criminal activity in the territories of the states` Parties,

Understanding that universal approach in the countries of origin, transit and the destination, including measures on prevention of the given kinds of crimes and punishment of persons, involved in them, is required for effective counteraction against trafficking in human beings and illegal migration,

Emphasizing the importance of rendering legal, psychological and medical aid to victims of trafficking in human beings, assistance in their return to their states,

Considering interaction on combating illegal migration as one of the important means of cooperation of the Parties,

Proceeding from the belief that the present Memorandum will promote prevention and suppression of such crimes,

Have agreed as follows:

1. The Parties shall take measures to prevent the root causes of trafficking in human beings and illegal migration.

2. Taking into account the national security and the protection of personal data, the Parties shall promote the return and acceptance of victims of trafficking in human beings in the states of their citizenship without unreasonable delays.

3. The Parties shall assist in physical, psychological and social rehabilitation of victims of trafficking in human beings, in appropriate cases in cooperation with international and nongovernmental organizations.

4. The Parties, in accordance with their national legislation shall help victims of trafficking in human beings by providing them information on legal and administrative proceedings as well as on the means of protection which enable them to give testimony concerning human trafficking offences.

5. The Parties shall carry out measures with the view to facilitating public awareness of the problem of trafficking in human beings and illegal migration, which includes scientific researches, information campaigns, including those in the mass media.

6. Abiding by the provisions of the national legislation the Parties shall cooperate on information exchange on persons involved in trafficking in human beings and victims of it as well as on means and methods used by the organized criminal groups regarding trafficking in human beings.

7. The Parties shall cooperate in the field of information exchange on migratory control, citizens of the third states, apatrides and citizens of their states illegally crossing borders of their states and staying illegally in their territories, as well as on the revealed channels of illegal migration.

8. The Parties shall exchange information on the current national legislation in the field of trafficking in human beings and migration.

9. With the view of proper implementation of the present Memorandum the Parties shall determine the competent bodies:

For the Ministry of Interior of the Republic of Turkey:

The Department on Foreigners-Borders-Asylum of Turkish National Police.

(Tel: +90-312-412-32-10, +90-312-412-33-05, Fax: +90-312-466-90-11, E-mail: illegalmig@egm.gov.tr, yhidb@egm.gov.tr),

The Department of Anti-Smuggling and Organized Crime of Turkish National Police.

(Tel: +90-312-412-71-00/02, Fax: +90-312-417-06-21, E-mail: kom@kom.gov.tr).

For the Ministry of Internal Affairs of the Republic of Belarus:

The Department on Combating Organized Crime and Corruption (Tel: 375-17-229-78-45, 375-17-229-76-36, Fax: 375-172-26-00-41).

The Department on Controls on Illegal Trafficking in Drugs and Vices Related Crimes (Tel: 375-17-229-71-69, Fax: 375-17-227-87-86, E-mail: unon_mvdp@mail.belpak.by),

The Department on Citizenship and Migration Issues (Tel: 375-17-229-72-36, Fax: 375-17-

229-76-02, E-mail: upvs_mia@tut.by).

10. Each Party shall take all the necessary measures to keep the classified data transferred by the other Party if it is of the confidential nature or if the transferring Party considers undesirable its disclosure. The written approval of the Party transferring these data is necessary in case of need of transfers to the third party of the data received within the present Memorandum.

11. The Parties shall render each other assistance in personnel training on the prevention of trafficking in human beings and illegal migration, which may include the organization of the joint educational programs, exchange of experts in the field of combating trafficking in human beings and illegal migration and shall encourage cooperation among the educational institutions.

12. The Parties shall bear all their expenses, arising in the course of executing the present Memorandum, except any other arrangement has been agreed upon.

13. At the execution of the present Memorandum the Parties will use Russian, Turkish or English language. In case of forwarding information in the state language of the Parties, its translation in English shall be attached.

14. Any disputes regarding interpretation or implementation of the present Memorandum will be settled through consultations.

15. The provisions of the present Memorandum will not be contrary to the rights and obligations of the Parties with regard to other international treaties.

16. The present Memorandum is concluded for an indefinite period and shall enter into force upon notification in written by both Parties to each other that they have completed their national procedures. The Memorandum shall cease to have effect 90 days after reception by one of the Parties written notification about the termination of the validity of the present Memorandum.

There may be changes and amendments to the present Memorandum upon the agreement of the Parties and they enter into force in the same procedure as it is mentioned in the first paragraph of the present point. Such changes and amendments shall be an integral part of this Memorandum.

Signed in Minsk on July 28, 2004 in two original copies each in Turkish, Russian and English languages. All texts are equally authentic. In case of disputes regarding interpretation of the provisions of the present Memorandum the text in English shall prevail.

B. Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Cooperation to combat Trafficking in Persons, especially Women and Children

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC ON COOPERATION TO COMBAT TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

The Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic, hereinafter referred to as "the Parties";

BEING CONCERNED that trafficking in persons, especially women and children, constitutes a serious violation of human rights, undermines human dignity and adversely affects physical, psychological, emotional and moral development of a person and includes jeopardizing social cohesion and values;

AIMING at the prevention and suppression of transnational organized criminal groups and gangs directly engaged in trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime 2000;

RECOGNIZING to the principles contained in the "Bangkok Declaration on Irregular Migration of 1999";

BEING CONVINCED that the suppression of the crime of trafficking in persons, especially women and children, through cooperation in law enforcement and criminal proceedings is an efficient measure;

DESIRING to enhance cooperation of mutual benefit between the two countries,

HAVE HEREBY AGREED AS FOLLOWS:

Scope of the Memorandum of Understanding

Article 1

This Memorandum of Understanding shall apply to combating trafficking in persons, especially women and children, as defined in Article 2 of this Memorandum of Understanding.

Definition

Article 2

For the operational purpose of this Memorandum of Understanding:

a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or re-

ceipt of persons, by means of threat, use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include the exploitation of others through prostitution or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs;

b) “Children” shall mean persons under eighteen years of age, unless the laws of the Parties stipulate otherwise.

Preventive Measures

Article 3

The Parties shall improve their legislation as may be necessary and take appropriate measures to ensure the implementation of its laws and the exercise of their national jurisdictions in conformity with the Universal Declarations or International Conventions to which the Parties have acceded to.

Article 4

The Parties shall provide educational and vocational training programmes for women and children in order to create employment opportunities and reduce the risks of their being trafficked.

Article 5

The Parties shall make their best efforts to take measures to prevent trafficking in persons, especially women and children, by providing educational and vocational training programmes and improved social services, such as employment, income generation and health care for women and children, who are vulnerable to trafficking, and disseminating to the public information regarding the risk factors that lead to trafficking in women and children.

Protection of Victims of Trafficking in Persons, especially Women and Children

Article 6

The victims, especially women and children, shall receive justice and legal protection while awaiting the completion of the procedures for their official repatriation. The concerned institutions of the Parties shall provide temporary housing and appropriate protection to the victims in accordance with the policies of each country.

Article 7

The Parties shall take appropriate measures against traffickers in cases relating to trafficking in persons in accordance with national law of each country and provide due and just legal assistance to the victims, especially women and children.

Article 8

The government agencies concerned shall cooperate with other organizations to provide legal assistance, health care and take other necessary measures to protect the victims, especially women and children and their families in an appropriate manner.

Cooperation in Suppression of Trafficking in Women and Children

Article 9

The Parties' institutions responsible for law enforcement of both countries, in particular in the border areas shall closely cooperate with one another to discover trafficking in persons, especially women and children, both within the territory and across border.

Article 10

The Parties shall individually or jointly provide training programmes for their concerned agencies to enhance their capacity for implementing the laws in force, for the investigation and prosecution of offenders and the protection in the cases relating to trafficking in persons, especially of women and children.

Article 11

- (a) The Parties shall promote bilateral cooperation in order to combat and prevent trafficking in persons, such as the prosecution of transnational traffickers, extradition, mutual assistance in criminal matters; and
- (b) The Parties shall afford one another the widest mutual legal assistance in prosecution in relation to trafficking in women and children in accordance with existing agreements signed by the government of the two countries.

Article 12

The concerned agencies of the two countries shall cooperate in compiling and exchanging data and information and collecting of evidence relating to trafficking in persons, such as routes, places, networks, means and methods of trafficking in persons, including the personal records of the traffickers.

Article 13

The concerned agencies of the two countries shall formulate plans for protection to ensure the safety of victims, especially women and children and witnesses as appropriate from acts of revenge or threats during the conduct of and/or after the conclusion of legal proceedings.

Repatriation

Article 14

(a) In executing the repatriation of the victims, especially women and children, each Party shall inform in advance the names of and data and information relating to the victims to the other Party through diplomatic channels for the purpose of arranging the return and acceptance of the victims, especially women and children, as mutually agreed upon by the Parties in accordance with the provisions of this Memorandum of Understanding.

(b) The victims, especially women and children, must have been registered or have their domiciles or residence in the accepting country or are certified as residents thereof by the local authorities of the latter.

Article 15

(a) The Parties shall assign a government agency, which has relevant responsibilities, to be a focal point for the purpose of executing the return and acceptance of the victims, especially women and children;

(b) The focal point shall have the following responsibilities:

1. Arranging the return and acceptance of the victims, especially women and children;
2. Executing the return and acceptance of the victims, especially women and children according to predetermined schedules;
3. Ensuring the safety of the victims, especially women and children in the execution of their return and acceptance;
4. Monitoring of trafficking in persons, especially women and children;
5. Establishment of information networks for the purpose of monitoring works concerning trafficking in persons, especially women and children, between law enforcement agencies, national and international organizations dealing with the protection of victims, especially women and children and relevant organizations.

Reintegration into Society

Article 16

The Parties shall undertake every measure to help the victims, especially women and children to safely and efficiently reintegrate themselves into society and their families in order that their dignity, freedom, and self-esteem are restored.

Article 17

The Parties shall create vocational training programmes, including training in life skills to increase the opportunities for alternative ways of leading their life and their efficient reintegration into society, awareness-raising programmes for the officials whose functions are concerned with the development of the victims, especially women and children.

Joint Action

Article 18

(a) The Parties shall establish a joint working group for joint operations, drawn from relevant government agencies and organizations dealing with combating trafficking in persons.

(b) The joint working group shall hold ordinary or extraordinary meetings as the need arises.

(c) The joint working group shall have the following functions:

1. Planning of joint action and implementation of the provisions of this Memorandum of Understanding;
2. Taking joint action to combat trafficking in persons, especially women and children;
3. Coordinating with other relevant organizations in drawing up strategic plans guidelines and necessary frameworks in combating trafficking in persons, especially women and children, in accordance with the provisions of this Memorandum of Understanding;
4. Evaluating the joint works of the Parties and regularly reporting the outcome to

- the agencies concerned of each Party;
5. Making proposals for enhancing mutual cooperation between the Parties in combating trafficking in persons, especially women and children; and
 6. Triennially reviewing, together with the other Party, the implementation of this Memorandum of Understanding.

Final Provisions

Article 19

The Parties shall endeavour to settle disputes concerning the interpretation and implementation of this Memorandum through negotiation.

Article 20

This Memorandum of Understanding may be amended by mutual agreement of the Parties.

Article 21

(a) This Memorandum of Understanding shall become effective upon signature.

(b) Either Party may denounce this Memorandum of Understanding at any time by written notification to the other Party through diplomatic channels. Such denunciation shall become effective six months after the date of receipt by other Party of such notification.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Memorandum of Understanding.

DONE at Bangkok, on this 13th day of July 2005, in duplicate in three authentic texts, each in Thai, Lao and English languages. In case of divergence of interpretation, the English text shall prevail.



IOM International Organization for Migration

One of the main objectives of the United Nations Global Initiative to Fight Human Trafficking (UN. GIFT) is to prosecute the criminals involved while protecting the rights and well-being of the trafficked persons. In order to achieve this goal, effective cooperation between different law enforcement agencies as well as cooperation between those agencies including labour inspectors, and other stakeholders, such as victim service providers and trade unions, is essential.

The *“Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking Cooperation”* have been developed in the framework of the UN.GIFT Expert Group Initiative on Stakeholder Cooperation with Law Enforcement implemented by IOM Vienna. Numerous experts have deeply supported and contributed to this initiative.

The Guiding Principles are intended to be a practical tool for counter-trafficking experts from law enforcement agencies to specialized service providers, NGOs, trade unions, the judiciary, the prosecution services, faith-based organizations, etc., on how to build Memoranda of Understanding on between those institutions. The objective is to give the opportunity to formalize cooperation should its continuity be at stake, or alternatively should there be a need for clear and more focused collaboration criteria.

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