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# FRAMEWORK DOCUMENT

Developing standard operating procedures to facilitate the identification and protection of victims of trafficking

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# 1.

## INTRODUCTION

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### 1.1 Objective

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The overall objective of this Framework Document is to strengthen cooperation between IOM and UNHCR with respect to the identification, referral, protection and assistance of victims of trafficking. Specifically, this document intends to encourage the development of standard operating procedures (SOP) between IOM and UNHCR at field level, and suggests a procedure for cooperation to ensure that the available expertise, capacities, and potential of each organization are effectively employed and coordinated to deliver the best possible protection and assistance for victims of trafficking.

The Framework Document highlights key areas for coordination and cooperation that are global in nature and should be adapted to particular operational contexts.

This document updates the former IOM-UNHCR *Framework Document on Developing Standard Operating Procedures to Facilitate the Protection of Trafficked Persons*, developed in 2009.

The Framework Document shall be implemented in a manner that supports and complements existing institutional frameworks and coordination mechanisms developed at national and regional levels for the identification and protection of victims of trafficking, when those mechanisms or frameworks are operating effectively and comply with the requirements of applicable international and national law. IOM and UNHCR should seek to make use of and leverage existing mechanisms and frameworks such as national referral mechanisms when seeking to ensure the protection of victims of trafficking who fall within their mandate and remit.

The Framework sets out ways in which the concerned international organizations seek to support and complement States' efforts to comply with their obligations under national and international law. In cases in which existing mechanisms and frameworks are inadequate or do not meet the requirements of international and of national law, the document can be viewed as a guideline for improving the existing practices only, and should in no circumstances supplant them.

### 1.2 Intended audience

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This document is intended for all IOM and UNHCR staff who, in the course of their work, may come into contact with victims of trafficking and potential victims. The document is also intended as guidance for individuals, national institutions, and organizations working in partnership with IOM and UNHCR in the context of assisting such vulnerable persons.

### 1.3 Definition

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The crime of trafficking in persons is prohibited in international law and criminalized by the national legislation of a growing number of States. Although several international and regional instruments, in particular some of the human rights conventions, are relevant to action against trafficking in persons, the key international treaty is the United Nations Convention on Transnational Organized Crime and its supplementary Protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) ('Trafficking in Persons Protocol').



“Trafficking in persons” is defined in Article 3 of the Trafficking in Persons Protocol by reference to three essential elements: Act, Means and Purpose. It is the intention to exploit the individual concerned that underpins this crime and which distinguishes it from other forms of criminal acts, including the smuggling of migrants. The full text of Article 3 is extracted below:

**1.3(a) “Trafficking in persons”** shall mean 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;

**1.3(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;

**1.3(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;

**1.3(d) “Child”** shall mean any person under eighteen years of age.

## 1.4 The asylum, migration, and trafficking nexus

Migrants, asylum-seekers, refugees, stateless persons and those internally displaced, including unaccompanied and separated children<sup>1</sup> are at risk of falling victim to traffickers. The lack of regular migration pathways, limited family and/or community support structures, the lack of identity documentation, limited knowledge of a local language and/or understanding of their rights, limited access to viable livelihood opportunities and quality education, and restrictions on freedom of movement are a number of reasons why these persons may be at risk of becoming trafficked. Migrants and refugees who have been trafficked may also face barriers in accessing protection and assistance services.

Humanitarian crises tend to exacerbate exposure to risks, threats, abuse, and exploitation, including trafficking in persons. Armed conflicts and natural disasters may therefore lead to increased instances of trafficking in persons among crisis-affected populations, such as internally displaced persons (IDP), migrants, refugees, asylum seekers, returnees, and stateless persons. In some cases, humanitarian crises generate forms of trafficking in persons that are specifically induced by the crisis itself such as forced recruitment into armed forces, or sexual exploitation by actors to the conflict.<sup>2</sup> Human trafficking, sexual slavery and conjugal slavery/forced marriage, are also common forms of persecution in many situations of armed conflict and violence that can contribute to refugee movements.<sup>3</sup>

Trafficking in persons or the fear of being trafficked can also be a form of persecution that may compel persons to flee across international borders and seek asylum in the first place. Apart from the persecution experienced by individuals in the course of being trafficked, they may also fear reprisals, re-trafficking, severe stigmatization, discrimination or punishment should they be returned to the country from which they fled or resided, because they are a known victim of trafficking. For these reasons, all trafficked persons should have access to asylum procedures and the possibility to obtain international protection.<sup>4</sup>

## 1.5 Protection and assistance needs of victims of trafficking

Victims of trafficking are in need of a range of short-term and long-term protection and assistance services, including but not limited to shelter and accommodation; water, sanitation and hygiene; food and nutrition; personal safety and security; health and well-being; education and training; livelihoods, employment, and income generation; family tracing, assessment, and reunification; and access to justice.

Trafficked persons are also in need of sustainable resolution of their situation. For some trafficked refugees or asylum-seekers, voluntary repatriation and reintegration may be an appropriate solution. For some trafficked migrants, voluntary return and reintegration may be an appropriate solution. Trafficked children need specific support and assistance that is in their best interests, including possibilities for alternative care arrangements, and, where they are unaccompanied or separated, the appointment of a guardian and family tracing.<sup>5</sup>

<sup>1</sup> See, inter alia: Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin; Joint general comment No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration.

<sup>2</sup> For further reading, please see the Interagency Coordination Group against Trafficking (ICAT) Issue Brief No 2: Trafficking in Persons in Humanitarian Settings (2017).

<sup>3</sup> See UNHCR Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees and Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions.

<sup>4</sup> See the Interagency Coordination Group against Trafficking (ICAT), Issue Brief No 3: Trafficking in Persons and Refugee Status (2017) (<https://bit.ly/2EIIPTPU>). See also UNHCR, Guidelines on International Protection No. 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006) <http://www.refworld.org/docid/443679fa4.html>.

<sup>5</sup> For further guidance on the specific needs of child victims of trafficking, see the UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006).



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## 1.6 Role of IOM and UNHCR

IOM and UNHCR personnel regularly come into contact with populations that are likely to include victims of trafficking and should ensure that the most appropriate protection, assistance, and solutions are provided to them.

This document focuses on three areas where IOM and UNHCR play a key role in responding to trafficking:

- Identifying victims of trafficking;
- Providing protection and assistance services (including case referrals); and
- Finding solutions.

While the issues and coordination mechanisms addressed in the document are complex, the range of possibilities, risks and solutions presented here are not exhaustive. The appropriate staff at UNHCR and IOM Regional Offices or Headquarters should be contacted when additional guidance is required in order to implement the operating procedures outlined in this document or to receive guidance on related issues that fall outside of its scope.

<sup>6</sup> See MC/INF/245 Trafficking in Persons: Update and Perspectives (2000).

<sup>7</sup> See MC/INF/287 IOM Strategy (2007).

## IOM

According to article 1.1(c) of IOM's Constitution, one of its purposes and functions is "to provide, at the request of and in agreement with the States concerned, migration services such as recruitment, selection, processing, language training, orientation activities, medical examination, placement, activities facilitating reception and integration, advisory services on migration questions, and other assistance as is in accord with the aims of the Organization."

Document MC/INF/245, Trafficking in Persons: Update and Perspectives, recognizes the contribution of IOM's activities to the protection and assistance of victims of trafficking and their return to their countries of origin.<sup>6</sup>

IOM's Strategy<sup>7</sup> provides that the Organization will focus on inter alia: '[the provision of] secure [...] services for persons who require international migration assistance' (point 1); '[...] the effective respect for the human rights of migrants in accordance with international law' (point 2); 'the provision of support to] States, migrants and communities in addressing the challenges of irregular migration [...]' (point 5); and

[...] the development and delivery of programmes [...] on [...] trafficking in persons, in particular women and children, in a manner consistent with international law' (point 11).

IOM's counter-trafficking approach is also underpinned by IOM's Migration Governance Framework (MiGOF). Adopted by the IOM Council in 2015, the MiGOF outlines the essential elements for facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies.<sup>8</sup>

IOM works with governments and non-governmental organizations, UN and other international organizations, the private sector, and development partners, on all aspects of counter-trafficking responses – prevention, protection, prosecution and partnerships. Since the mid-nineties, IOM and its partners have provided protection to more than 100,000 victims of trafficking. IOM's programming seeks to protect the rights of trafficked persons through individualized emergency assistance, health, legal, and other forms of protection and assistance. IOM's approach is based on: Respect for human rights; physical, mental and social well-being of the individual and his/her community; and sustainability, through capacity building and the facilitation of long-term solutions for all beneficiaries.

## UNHCR

UNHCR is entrusted by the United Nations General Assembly to provide international protection to refugees, and to find permanent solutions to their problems.<sup>9</sup> Subsequent General Assembly resolutions have expanded UNHCR's mandate which includes refugees, asylum-seekers, stateless persons, refugee returnees and internally displaced persons.<sup>10</sup>

As per UNHCR's Guidelines on International Protection No. 7, "UNHCR's involvement with the issue of trafficking is essentially twofold. Firstly, the Office has a responsibility to ensure that refugees, asylum-seekers, internally displaced persons, stateless persons and other persons of concern do not fall victim to trafficking. Secondly, the Office has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within the refugee definition contained in the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (hereinafter "the 1951 Convention") are recognized as refugees and afforded the corresponding international protection."<sup>11</sup> In addition, in line with its statelessness mandate, UNHCR may support victims of trafficking who are without identity documents to establish their nationality status in order to prevent them from being rendered stateless.

In the context of this Framework Document, UNHCR aims to provide guidance on the efficient identification and protection of victims of trafficking who fall within its mandate. UNHCR is also active in building the capacity of local authorities and implementing partners to respond to trafficking, in providing direct assistance and solutions to identified victims, in the development of asylum sensitive anti-trafficking legislation, through participating in inter-agency coordination fora and in carrying out prevention activities as part of its broader protection mandate in cooperation with states, international organizations and civil society.<sup>12</sup>

<sup>8</sup> See IOM Council Resolution C/106/RES/1310: Migration Governance Framework.

<sup>9</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V) <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

<sup>10</sup> UN High Commissioner for Refugees (UNHCR), Note on the Mandate of the High Commissioner for Refugees and his Office, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html>.

<sup>11</sup> UNHCR, Guidelines on International Protection No. 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006), available at: <http://www.refworld.org/docid/443679fa4.html>.

<sup>12</sup> See also relevant Executive Committee Conclusion: No. 89 (LI) – 2000 (UNHCR in cooperation with states should implement comprehensive measures to address trafficking and smuggling); No. 90 (LII) – 2001 (s) (calls upon States to cooperate in the establishment of identity and nationality status of victims of trafficking); No. 102 (LVI) – 2005 (n) (on addressing the risks of sexual exploitation for female persons of concern to UNHCR); No. 107 (LVIII) – 2007 (States, UNHCR and other relevant agencies and partners to put in place modalities, as appropriate, for early and continuous identification of children at heightened risk including of trafficking) and No. 108 (LIX) – 2008 (e) (on the need for UNHCR to cooperate with other agencies to address trafficking and smuggling).

## 1.7 Principles of cooperation

Both IOM and UNHCR agree to the following principles of cooperation, which underpin institutional cooperation in responding to the needs of persons affected by trafficking:

- ➔ Commitment to ensuring that victims of trafficking who are migrants, IDPs, refugees and asylum-seekers, returning refugees and stateless persons are identified in a timely manner and offered the best available specialized protection and assistance;
- ➔ Victims are provided with unconditional access to protection and assistance, irrespective of their cooperation with law enforcement agencies or migration status;
- ➔ Application of transnational criminal law, international human rights law, refugee law, and other relevant international legal standards;
- ➔ Commitment to transparent cooperation and collaboration;
- ➔ Responsible information-sharing between agencies with due regard to data protection standards, including UNHCR data protection policy and IOM data protection principles;
- ➔ Inclusive consideration of the role and function of other partners in meeting the needs and upholding the rights of trafficked persons, including in the development of case referral mechanisms with those agencies and authorities and in coordinating prevention and protection measures. IOM and UNHCR recognize the efforts deployed according to their respective mandate by, in particular, UNODC, as well as UNICEF, OHCHR, UNFPA, UN Women, the ILO, UNDP and relevant international and civil society organizations.
- ➔ Commitment to avoid duplication or substitution and instead, promote complementarity and respect for IOM and UNHCR's respective mandates, roles, expertise, internal processes and capacities.

## 1.8 Principles of protection and assistance

IOM and UNHCR further agree to the following principles of protection in their commitment to identify, support and find solutions for victims of trafficking and those at risk of being trafficked:<sup>13</sup>

### RIGHTS-BASED APPROACH: \_\_\_\_\_

Victims of trafficking should be empowered to understand and exercise their rights and the ability and accountability of duty bearers responsible for respecting, protecting and fulfilling rights should be increased. Protection and assistance should not be provided contingent on other services, including cooperation with law enforcement.

### DO NO HARM: \_\_\_\_\_

Where there is reason to believe that providing assistance could cause trafficked persons to experience harm, it will not be undertaken at that time. Further, IOM and UNHCR will ensure that no harm is done to the wider community through support to trafficked persons, including refugee, migrant and host communities.

### NON-DISCRIMINATION: \_\_\_\_\_

Protection and assistance services will be provided to all victims of trafficking without discrimination or prejudice on the basis of nationality, gender, age, sexual orientation, gender identity, ability, race, ethnicity, religion, language, social status, or any other status.

### SELF-DETERMINATION AND PARTICIPATION: \_\_\_\_\_

Victims of trafficking are to be enabled to make choices and participate in decision-making regarding their protection and assistance. Services are to be delivered in collaboration with victims of trafficking and their autonomy and agency will be reinforced and encouraged.

<sup>13</sup> Adapted from IOM, *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation, and Abuse* (2019).

### **INDIVIDUALIZED ASSISTANCE:** \_\_\_\_\_

Recognizing that all trafficked persons have unique experiences, vulnerabilities, and needs, the services provided to them will be tailored to the extent possible. This will include ensuring that services are age, gender, and culturally appropriate, provided in a preferred language, and appropriate to the circumstances of the victim of trafficking and the context.

### **ACCOUNTABILITY:** \_\_\_\_\_

Victims of trafficking who are accessing services are to play an active role in the measurement of the quality of services. Their views should be solicited and used to adapt and improve services. Effective complaints systems and procedures will be included in all service delivery programming and safeguarding measures will be in place to ensure that no harm is done to trafficked persons through their use of services.

### **CONTINUUM OF CARE:** \_\_\_\_\_

A holistic approach to protection and assistance includes ensuring comprehensive service delivery where all identified needs are met. This is contingent on a strong case management system where protection and assistance services are mapped and service delivery is tracked and monitored throughout the time the trafficked persons is accessing services. IOM and UNHCR will endeavour to ensure that all victims of trafficking assisted are provided with a continuum of care, including in cases of return to countries of origin, resettlement or relocation to third countries, or other movements.

### **INFORMED CONSENT:** \_\_\_\_\_

Before receiving assistance or accessing services, victims of trafficking should freely give their permission with the knowledge of possible risks and benefits. Inherent in the right to give consent is also the right to refuse assistance. Consent is not static and should be evaluated throughout the time victims are accessing support. Consent can be given in full or in part and accessing one service should not be contingent on consenting to others. Consent is a process that includes the provision of information to the victim of trafficking, providing them the opportunity to ask questions, ascertaining comprehensiveness and comprehension of the information provided to them, clarifying and restating information, and documenting consent.

### **BARRIER-FREE ACCESS:** \_\_\_\_\_

Services provided to victims of trafficking should be available in sufficient quantity and quality, be culturally and socially relevant, be physically accessible, and should not present any safety and security concerns. Victims of trafficking should be aware of services available to them and any barriers to access should be identified and rectified, including physical, financial, social, and security barriers that would prohibit victims from accessing assistance.

### **CONFIDENTIALITY, PRIVACY, AND THE PROTECTION OF DATA:** \_\_\_\_\_

With due regard to the right to privacy, information should not be requested or required from victims of trafficking unless it is essential to the provision of protection and assistance. Disclosure of personal data should only be done with the consent of the victim of trafficking and after the responsible organization has assessed potential risks. Only exceptionally can personal data be shared without consent, in accordance with each organization's data protection policy, for example to prevent serious, foreseeable, and imminent harm to a victim or another person. When this is necessary, the least amount of information should be disclosed and only to the relevant person(s), organization(s), and/or authorities. The victim should be informed prior to information being shared.

### **GENDER-SENSITIVITY:** \_\_\_\_\_

The impact of gender on experiences, vulnerabilities, and needs should be explicitly acknowledged and appropriately addressed through the delivery of protection and assistance services. This approach acknowledges gender-based discrimination and promotes gender equality through the provision of services. This may include having a case manager of the same gender, providing gender-specific services, or services that seek to address gender inequality and discrimination.

### **CHILD-CENTERED ASSISTANCE AND THE BEST INTERESTS OF THE CHILD:** \_\_\_\_\_

The best interests of the child must be a primary consideration in protection and assistance activities for children. In assessing the best interests of trafficked children, international guidance from the Committee on the Rights of the Child should be consulted, along with guidance from UNHCR, IOM and UNICEF as relevant, to ensure the full application of the best

interests principle.<sup>14</sup> Services for trafficked children should be age-appropriate, follow best practices in child protection and be communicated and delivered in a 'child-friendly' manner – meaning that they are accessible and appropriate for children. Family unity should be maintained unless this is not in the best interests of the child, for example, because it is unsafe or presents a risk to a child or children involved in the family unit.

#### **PERSONS WITH DISABILITIES:**

The impact of physical and psychosocial disabilities on experiences, vulnerabilities and needs should be explicitly acknowledged and appropriately addressed through the delivery of protection and assistance services. This approach acknowledges the different and additional discrimination that persons with disabilities face, as well as the different and additional barriers persons with disabilities face during migration or displacement. It promotes more comprehensive protection through the provision of services and holistic risk assessment, and recognizes the heightened vulnerabilities that persons with disabilities face before, during and after trafficking. This approach may include providing additional services for specialized physical or psychosocial support, developing the screening process to better identify disabilities that are less visible, and ensuring that reception facilities provide basic assistive devices such as wheelchairs and ramps.

## **1.9 Duty of the State to protect victims of trafficking and persons at risk of being trafficked**

IOM and UNHCR recognize that it is first and foremost the responsibility of the State to safeguard the rights of all persons on its territory or falling under its jurisdiction, including victims of trafficking and those at risk of being trafficked, in accordance with international commitments, including those provided by the Trafficking in Persons Protocol, and with national legislation where relevant.<sup>15</sup> States also bear the primary responsibility not only for ensuring the physical safety of victims, but for respecting, protecting and fulfilling the rights of those on their territory and ensuring access to remedies, regardless of their legal status.<sup>16</sup>

In countries where both national asylum procedures and specific frameworks for the protection of victims of trafficking exist, IOM and UNHCR should promote their complementarity and cooperation as well as ensure that effective referrals are made between the two protection frameworks according to the national context.

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<sup>14</sup> See for example, Committee on the Rights of the Child General Comments 6, 14, 22 and 23; the UNHCR Guidelines on Assessing and Determining the Best Interests of the Child (2018); and the IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation, and Abuse (2019).

<sup>15</sup> International commitments derive from ratified international treaties (e.g. the Convention on the Rights of the Child) and customary law.

<sup>16</sup> See United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000, Art. 6: Assistance to and Protection of Victims of Trafficking. See also OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)

# 2.

## FRAMEWORK FOR COOPERATION IDENTIFYING, REFERRING & MANAGING CASES

In order to facilitate effective coordination at national levels, IOM and UNHCR offices will designate focal points for trafficking cases and the exchange of information regarding the existing capacity of each organization and implementing partners to identify, refer, protect, and assist victims. Where national referral mechanisms for victims of trafficking exist, IOM and UNHCR will coordinate activities with a view to ensure complementarity and synergies for the identification and protection of victims in the national context.

### 2.1 Overview

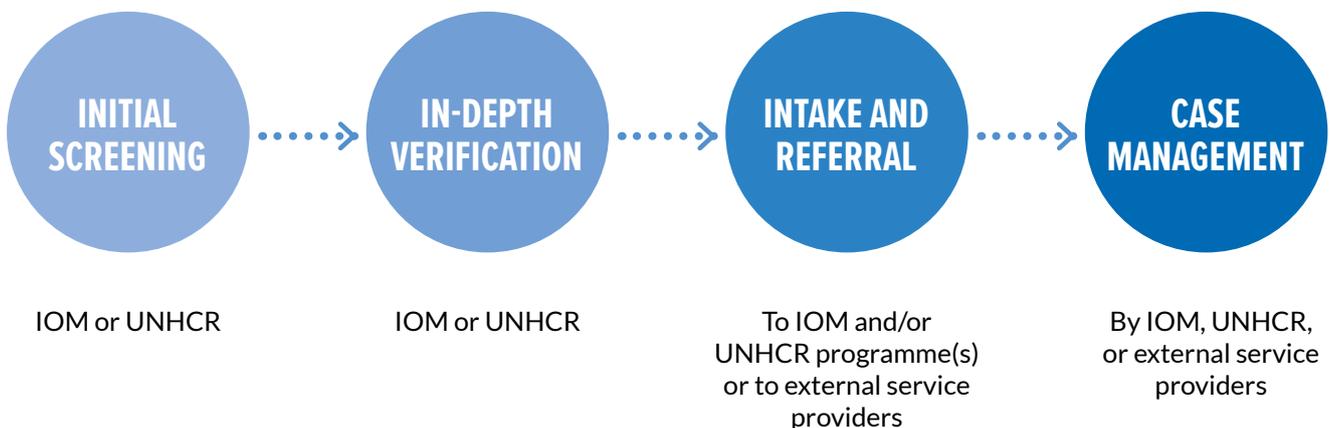
Identification and referral of victims of trafficking between IOM and UNHCR may arise at any stage in the case management process of either organization, as well as in their general protection and monitoring activities.

When either IOM or UNHCR encounters a potential victim of trafficking, they should conduct an initial screening. If indicators of trafficking are found, an in-depth verification interview should be conducted without delay by the relevant organization.

Assistance should be provided to verified cases immediately and throughout the case management process, until a solution is found.

In contexts where a person falls under UNHCR’s mandate, but UNHCR does not have the capacity to verify a person as a victim, UNHCR should consult IOM and, where necessary and appropriate, involve IOM in conducting the in-depth verification interview. Conversely, in situations where a person falls under IOM’s remit and IOM does not have the capacity to conduct the in-depth verification interview, UNHCR should be consulted and potentially involved in the interview where the appropriate capacity to do so is available.

In situations when the in-depth interview concludes that the person is not a victim of trafficking, the interviewing organization still has the responsibility to refer the person so that any assistance and protection needs can be met.





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## 2.2 Lead organization

If the individual is identified as a victim of trafficking and an asylum-seeker, a refugee, or a stateless person, UNHCR will take the lead in the case and work with IOM and State or non-State actors as appropriate to ensure that s/he is provided with the best available protection, including any specialized assistance for victims of trafficking that may be available through any IOM programme and/or any national or regional programme.

If the individual is identified as a victim of trafficking but is not an asylum-seeker, a refugee, or a stateless person, IOM will take the lead and work with State or non-State actors as appropriate in order to do the same.

If the individual identified as a victim of trafficking is an internally displaced person, the case will be referred according to local guidance, such as that established by the Protection Cluster, in line with global guidance from the Global Protection Cluster Anti-Trafficking Task Team. The local guidance will determine which stakeholder will take the lead and work with all relevant actors as appropriate to ensure that the victim is provided with the best available specialized assistance.

If the person is identified as a person under UNHCR's mandate, but is not a victim of trafficking, UNHCR will take the lead in the case. Conversely, if the person is a migrant that needs protection and assistance but it is neither a victim of trafficking nor a person under UNHCR mandate, IOM shall have the lead to manage the case.

## STEP 1: Initial screening

The initial screening of a person who may be a victim of trafficking is meant to assess if any indicators of trafficking are present, in accordance with each organization's relevant guidance, including child-specific guidance.<sup>17</sup>

If trafficking indicators are present, the case should be referred for in-depth verification.

If no trafficking indicators are found, but there are other indicators of protection and assistance needs, the case should be referred to existing, suitable programmes or other service providers.

The screening should:

- Ensure that comprehensive and accurate information is provided to the individual in a language s/he understands, including, where relevant, information on the right to seek asylum, on options for regularizing his/her status, options for regular onward movement such as family reunification, and voluntary return and repatriation where appropriate.<sup>18</sup>
- Where there are indications that the other organization should be involved in the case, request the individual's informed consent to share personal data with UNHCR or IOM for the purpose of referral, including about what assistance has been received to date, in accordance with each organization's data protection requirements.<sup>19</sup>

- Inform the individual that s/he may be approached for follow-up by IOM or UNHCR, and provide them with appropriate contact details.

## STEP 2: Verification by in-depth interview

The aim of the in-depth verification interview is to determine to the extent possible, if the person is a victim of trafficking.

Please refer to the IOM (2007) Handbook on Direct Assistance for Victims of Trafficking, Ch. 2, Appendices I & II for specific guidance on interviewing victims in-depth.<sup>20</sup>

In addition to the interview criteria that are normally applied by IOM and UNHCR, the following specific issues should be taken into consideration during the in-depth interview:

- Fear of forced return to country of origin or habitual residence;
- Fear for his/her safety or that of his/her family in country of origin, transit, current location or intended destination;
- Interest in pressing charges or testifying as a witness, or on the contrary, unwillingness to cooperate with law enforcement, which may impact the victim's immigration status in the country of destination/exploitation;
- Interest in making use of a reflection period, in accessing temporary residency or asylum procedures; or returning to his/her country of origin; and

<sup>17</sup> See for example: IOM Handbook on Direct Assistance for Victims of Trafficking (2007), Section 1.1; UNHCR Heightened Risk Identification Tool (and User Guide) (2008) and the UNHCR Guidelines on Assessing and Determining the Best Interests of the Child (2018). For specific guidance on 'trafficking indicators' please see UNODC Human Trafficking Indicators (2012).

<sup>18</sup> With regard to the right of victims of trafficking to seek international protection, please see: (UNHCR Guidelines on International Protection No. 7 - the Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006); OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Guidelines 1.6 & 2.7; UNHCR Agenda for Protection (2003), Goal 2; Council of Europe Explanatory Report to the Convention on Action Against Trafficking in Human Beings (2005), Ch. VIII, Art. 40, para. 377 and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), Savings Clause Art. 14. See also Protecting Refugees and Other Persons on the Move in the ECOWAS Space, January 2011, First edition, available at: <http://www.refworld.org/docid/4e54961d2.html>.

<sup>19</sup> Please refer to IOM Data Protection Principles (2009), IOM's Data Protection Manual (2010), UNHCR Data Protection Policy (2015) and the IOM Handbook on Direct Assistance for Victims of Trafficking (2007), Chapter 1.2 & Appendix I for guidance on sharing information on individual cases. Basic principles related to informed consent are outlined in Appendix I of the IOM Handbook. Please also refer to UNHCR's data protection policy, *supra* 12.

<sup>20</sup> For guidelines on interviewing women and people who have experienced trauma please refer to IOM Handbook on Direct Assistance for Victims of Trafficking (2007), Sections 2.2 & 2.3.2, Appendix I; UNHCR, Gender Training Kit on Refugee Protection and Resource Handbook (2002), Ch. 6; WHO Ethical and Safety Recommendations for Interviewing Trafficked Women (2003).

- Interest in accessing remedies, if available or, on the contrary, unwillingness to access them, even if available.

In the case of an individual seeking asylum, a Refugee Status Determination (RSD) interview will normally be undertaken either by a government asylum authority or by UNHCR. Verification of victim of trafficking status may take place either in the same sitting as the RSD interview, or separately as considered appropriate in full appreciation of the specific needs of the individual concerned. In the case of children, a Best Interests Assessment (BIA) and/or Determination (BID) will also be required.<sup>21</sup> Where indicators of trafficking are identified during the course of an RSD interview, and an individual's status as a victim of trafficking is directly relevant to their asylum claim, the asylum decision should be put on hold until the asylum applicant's status as a victim of trafficking has been determined.

UNHCR may refer rejected asylum-seekers or former refugees whose status has been cancelled or revoked either by UNHCR or competent national authorities, and who are presumed victims of trafficking, to IOM.

## 2.3 Detention

Although victims of trafficking should be kept out of detention, State practice shows that victims of trafficking are often detained for various reasons. The routine criminalization and automatic detention of victims of trafficking violates their human rights and contravenes State obligations under international law to protect and assist them.

In order to comply with international law any detention must be necessary in the individual case, reasonable and proportionate to a legitimate purpose. Where the detention of these individuals is unlawful or arbitrary, steps should be taken to ensure their immediate release. Advocacy for the use of alternatives to detention and other non-custodial measures should always be carried out, as failure to consider less restrictive or intrusive measures can render a decision to detain arbitrary.<sup>22</sup>

In the event that trafficked migrants, asylum-seekers, refugees, internally displaced persons or stateless persons are subject to detention for immigration related or other reasons as just described, to the extent feasible they should still be granted access to the protection and assistance outlined under this Framework Document.

## 2.4 Periodic exchange of information on trends

Separate to the personal data that is shared between IOM and UNHCR when referring a victim of trafficking, it is recommended that periodic consultations are undertaken to discuss the trends indicated in the initial screening and in-depth verification interviews. This can include patterns in the criminal activity reported (location, type of exploitation, perpetrators identified etc.), the risk profiles of verified victims and evolving trends in mixed movement in the country of operation or region, patterns of rights violations that victims are subject to, and other vulnerable situations. These periodic consultations should not reveal any data that can identify victims of trafficking.

## 2.5 One organization

In countries where only one organization is present, or only one organization has access to the victim concerned, the organization that is present or has access may provide initial assistance and coordinate with the other organization as appropriate, through the national, regional or HQ office.

<sup>21</sup> Please see pp.29-44 of the UNHCR Guidelines on Determining the Best Interest of the Child (2008).

<sup>22</sup> Please see the Annex for references to the respective UNHCR and IOM immigration detention and detention monitoring guidelines.

# 3.

## FRAMEWORK FOR COOPERATION ON IMMEDIATE PROTECTION RESPONSES AND SOLUTIONS FOR VICTIMS OF TRAFFICKING

The following section outlines areas for cooperation, both in immediate protection responses as well as longer-term solutions for identified victims. Solutions may be grouped into the categories of: 1) assisted voluntary return, voluntary repatriation, and reintegration, 2) local integration, 3) resettlement or relocation to a third country, and 4) complementary pathways of admission to a third country.

Access to and coordination mechanisms for each category may differ according to the individual's status; national laws and resources; and the local capacity and financial resources of agencies and partners. Agencies are encouraged to exchange information on local actors, existing SOPs and referral pathways<sup>23</sup>, resources, needs and capabilities for facilitating the below protection and assistance options as well as long-term solutions for victims in their context of operation.

### 3.1 Immediate protection responses and other assistance

Victims of human trafficking must be protected from further harm and may be in need of immediate protection and assistance, such as medical and psychosocial assistance, safe accommodation and legal aid. Notwithstanding their obligations under international human rights and refugee law, according to Article 6 of the Trafficking in Persons Protocol, "State Parties shall consider providing victims of trafficking with counselling and information on their legal rights in a language they understand, appropriate housing, medical, psychological and material assistance,

education, training and employment opportunities".<sup>24</sup> IOM and UNHCR should endeavour to identify the victim's immediate needs and ensure her/his timely referral to services and/or relevant projects and programmes, in line with existing national referral mechanisms, where they exist.

Victims of trafficking may require specialized or additional support in the following areas:<sup>25</sup>

- ➔ Shelter and accommodation
- ➔ Water, sanitation, and hygiene
- ➔ Food and nutrition
- ➔ Personal safety and security
- ➔ Health and well-being
- ➔ Education and training
- ➔ Livelihoods, employment, and income generation
- ➔ Family tracing, assessments, and reunification
- ➔ Access to justice, including remedies

<sup>23</sup> Almost in all the operations/countries there are SOPs for SGBV prevention, response and referral pathways. Prevention of and response to trafficking that is also SGBV, could be part of these existing procedures and referral pathways, if there are no stand-alone procedures on prevention of and response to trafficking. On the contrary however, if procedures on referral pathways of trafficking victims exist, these should be used instead.

<sup>24</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, Art. 6.

<sup>25</sup> For more information, see IOM, *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation, and Abuse* (2019).



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## 3.2 Solutions

### 3.2.1 Voluntary repatriation and reintegration of victims of trafficking who are refugees or asylum-seekers

If the victim of trafficking is a refugee or asylum-seeker who makes a decision to voluntarily repatriate, based on a free and informed decision, to his or her country of origin or habitual residence, UNHCR will take the lead in the voluntary repatriation of the individual, working with relevant partners in accordance with established organizational guidelines.<sup>26</sup> UNHCR's role will include verifying the voluntariness of the decision to repatriate and assisting the victim to repatriate in safety and dignity, in order to support sustainable reintegration.

Information should be shared about local support structures in place in the country of origin or habitual residence (which may be offered by IOM or others) that could supplement UNHCR's regular protection services with specialized security measures or reintegration assistance for victims of trafficking. Existing inter-state and multilateral agreements should be taken into account before proceeding with voluntary repatriation.<sup>27</sup>

### 3.2.2 Assisted voluntary return and reintegration of victims of trafficking who are not refugees or asylum-seekers

If the individual is a victim of trafficking, but not a refugee or asylum-seeker, and wishes to return to his/her country of origin, IOM will take the lead in the voluntary return of the individual, working with relevant partners in accordance with established organizational guidelines.<sup>28</sup>

<sup>26</sup> See UN High Commissioner for Refugees, *Handbook – Voluntary Repatriation: International Protection*, 1996.

<sup>27</sup> In some regions, multilateral guidelines establish standard procedures for voluntary repatriation.

<sup>28</sup> IOM IN/198/2012: Assisted Voluntary Return and Reintegration for Trafficked Migrants.

IOM's primary considerations when offering or providing voluntary return assistance to trafficked victims are: (a) that the return respects the individual rights of each beneficiary; (b) that the return can be facilitated safely, and; (c) that reintegration is sustainable. IOM must ensure that the trafficked person's return is voluntary and based on his or her informed written consent.

IOM recognizes that it has a duty of care to each trafficked victim who requests assisted voluntary return and reintegration. In seeking to meet this obligation prior to facilitating the voluntary return process, IOM will take all reasonable measures to:

- ➔ Ensure that risks are properly identified, assessed, and managed at every stage of the assistance process;<sup>29</sup> and
- ➔ Provide case-specific reintegration support to each returning beneficiary.

### 3.2.3 Local integration

#### 3.2.3.1 Local integration of victims of trafficking who are under UNHCR's mandate

UNHCR will include victims of trafficking under its mandate in its local integration strategy for all refugees in the host country. This will include advocating for a durable legal residence status, and inclusion in national services and systems in the host country.

The host State, UNHCR and partners may, if appropriate, be able to provide specific support to promote the self-reliance of victims of trafficking living in host countries who are also persons under UNHCR's mandate and to support their access to justice and other specific services if required, in addition to monitoring their situation.

In some countries, IOM has established programmes with local partners who are able to provide support services ranging from specialized psychosocial counselling to skills development and job placements for victims of trafficking. Depending on availability of

resources, these programmes could be accessed by refugees who are victims of trafficking.

#### 3.2.3.2 Local integration of victims of trafficking who are not under UNHCR's mandate

IOM will take the lead to provide support for both victims of international and internal trafficking who are not asylum-seekers, refugees, or stateless persons. In some countries, IOM has established local networks involving State and non-State actors to facilitate the integration of victims of trafficking. IOM will provide support to promote the victim's self-reliance and will coordinate with local partners to arrange support and monitoring.

IOM may advocate with host country governments for victims to be allowed long-term stay as required, potentially through such measures as humanitarian visas or residence permits, and the possibility of access to locally available services (provided by State or non-State actors).

### 3.2.4 Resettlement or relocation to a third country

Options to resettle or relocate to a third country should be considered when necessary and appropriate to ensure the protection of victims of trafficking whose legal and physical security cannot be assured in their home or host country.

#### 3.2.4.1 Resettlement of victims of trafficking who are under UNHCR's mandate

Victims of trafficking who are refugees, as well as stateless victims who are not found to be refugees in some cases,<sup>30</sup> may need to be resettled on account of their inability to recover from the experience in the country of refuge, due to the continued threat of re-trafficking or retaliation they face to which a solution cannot be identified, due to the consequences of the stigmatisation such individuals may experience in their host community as a known victim, or due to risks based on other grounds. Please consult the UNHCR

<sup>29</sup> IOM IN/219/2014: Assessing Risks when Assisting Victims of Trafficking

<sup>30</sup> Exceptions can be made for non-refugee stateless persons for whom resettlement is considered the most appropriate durable solution, and also for the resettlement of certain non-refugee dependent family members to retain family unity.

Resettlement Handbook in Appendix B for guidance on applicable submission categories.<sup>31</sup>

#### **3.2.4.2 Relocation of victims of trafficking to a third country**

IOM may promote mechanisms for the safe relocation to third countries of victims of trafficking who are not under UNHCR's mandate, when specific support and assistance are not available in their home or host country.

In such cases, IOM and UNHCR on a good offices basis, may advocate and draw on such measures as humanitarian visas, private and/or community sponsorship programs and family reunification schemes as appropriate. Please consult UNHCR and IOM HQ for guidance for relocation of victims of trafficking to a third country.

#### **3.2.5 Complementary pathways to protection and solutions**

Complementary to resettlement and relocation, access to regulated and safe pathways of admission to third countries may be considered for victims of trafficking when necessary and appropriate to widen the options for victims with few prospects of attaining a long-lasting solution in a host State.

Victims of trafficking may be eligible to access complementary pathways of admission to international protection and solutions in third countries. Through these safe and regulated avenues, refugee victims of trafficking can be admitted to and stay in a third country and have their international protection needs met while they are also able to support themselves to potentially reach sustainable and lasting solutions.

These complementary pathways can include opportunities for expanded family reunification, short or long-term labour mobility schemes, education programmes such as academic scholarships, traineeships and apprenticeships, and regional mobility schemes in third countries.

#### **3.2.6 Solutions for stateless persons**

In the case of victims of trafficking who are stateless, UNHCR may undertake interventions to ensure protection, including cooperation with the relevant authorities, and provide assistance. Legal aid programmes have been established in a number of countries to enable persons to access legal remedies to redress their stateless status. Such programmes may also be useful where victims are stateless or cannot establish their nationality.<sup>32</sup>

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<sup>31</sup> For information regarding resettlement as a durable solution please refer to: UNHCR Resettlement Handbook (2011); UNHCR Refugee Resettlement: An International Handbook to Guide Reception and Integration (2002).

<sup>32</sup> See UNHCR Executive Committee Conclusion No. 106 on the identification, prevention and reduction of statelessness and the protection of stateless persons (in particular paragraphs l, m and v) and Conclusion 102 paragraph y.

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