



# **Fight against Trafficking in Human Beings and Organised Crime – Phase 2 (THB/IFS/2)**

## **Assessment of Referral Mechanisms for Victims of Trafficking in Bosnia and Herzegovina**

**2016**



Report prepared by Liliana Sorrentino, Independent Expert

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## 1. LIST OF ACROYNMS

- BiH – Bosnia and Herzegovina
- CSW – Centres for Social Welfare
- FBiH –Federation of Bosnia and Herzegovina
- MoHRR – Ministry of Human Rights and Refugees
- MoS - Ministry of Security
- NRM – National Referral Mechanism
- RS - Republika Srpska
- SC - State Coordinator
- SIPA - State Investigation and Protection Agency of BiH
- SFA - Service for Foreigners' Affairs
- THB - Trafficking in Human Beings
- TRM – Transnational Referral Mechanism
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## 2. INTRODUCTION

This report is an assessment of the referral mechanisms for identification, assistance and protection of rights of victims of trafficking in Bosnia and Herzegovina. It is prepared in the framework of the project “Fight against Trafficking in Human Beings and Organised Crime – Phase 2 (THB/IFS/2)” implemented by the International Centre for Migration Policy Development (ICMPD) in cooperation with Expertise France (EF) and the International Foundation of Administration and Public Policies of Spain (FIIAPP). The project targets Albania, Azerbaijan, Bosnia and Herzegovina, Moldova, Pakistan and Turkey and is implemented in the framework of the EU Instrument contributing to Stability and Peace (IcSP). Building on the achievements of the project “Fight against Trafficking in Human Beings – Phase 1” implemented in Azerbaijan, Bosnia and Herzegovina, Moldova and Turkey from January 2013 to September 2014, the project seeks to contribute to the prevention of and fight against transnational organised crime, particularly in relation to trafficking in human beings (THB), by providing the participating countries with policy, legal and technical expertise and knowledge.

This report examines current referral and coordination mechanisms in place in BiH to identify victims and potential victims of trafficking, at national and transnational level, and to refer them to support services while protecting their rights. The report begins with an overview of national legislation and policies, then it discusses the institutional framework with its coordination and referral mechanisms to address trafficking. The following chapters examine the specific components of the referral process: identification, reflection period and residence permits, assistance, social welfare and long term assistance for reintegration, access to justice, return and repatriation. It concludes with recommendations on how to improve the referral process and the protection of rights of trafficked persons.

### 2.1 METHODOLOGY

The report was prepared in the period from November 2015 to March 2016. The research involved a combination of desk research and primary research with semi-structured interviews and collection of a few case studies.

The fieldwork interviews were conducted with professionals from a variety of public institutions, NGOs as well as from international organizations. The selection of participants in interviews was very carefully done with the support of the ICMPD Project Officer in BiH. The approach adopted was multidisciplinary, so interviewees included several categories of experts: police and law enforcement bodies, prosecutors, victim support organizations, social workers, lawyers and policy-makers. The interviews took place in Sarajevo, Zenica, Banja Luka and Mostar. In addition, some interviews were done on Skype and others through the submission of a written questionnaire; some follow up data requests were also sent to a few organizations. With a view to examine aspects related to the functioning of Transnational Referral Mechanisms (TRM), two interviews were conducted with professionals working in NGOs in countries of destination. In

total 23 agencies were interviewed/consulted for this report. Fieldwork included also a visit to a shelter for trafficked persons.

The report is based on a careful analysis of a wide range of laws, policies, studies, reports, guidelines and other documents publicly available that were collected with the support of ICMPD Project Officer in BiH and of the Office of the State Coordinator for combating trafficking in human beings (SC).

Furthermore, the report builds on previous work by ICMPD in South Eastern Europe, and in particular on: the Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons and the 2012 report The Way Forward in Establishing Effective Transnational Referral Mechanisms.<sup>1</sup>

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<sup>1</sup> ICMPD, Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons: South-Eastern Europe, 2009; ICMPD, The Way Forward in Establishing Effective Transnational Referral Mechanisms, 2012.

### 3. OVERVIEW OF TRAFFICKING IN HUMAN BEINGS IN BIH

Bosnia and Herzegovina is a country of origin, transit and destination for trafficking in human beings. People, especially women and girls, are trafficked for sexual exploitation. Children, especially of Roma ethnicity or living in other marginalised communities (e.g. collective centres for refugees), are trafficked for forced begging, forced marriages and forced criminality; some young girls are exploited in domestic servitude. There are also significant indications of trafficking for labour exploitation of BiH citizens abroad. Overall, the phenomenon has dramatically changed compared to the first decade of 2000; it is reduced, some forms - especially trafficking for sexual exploitation - are more hidden and harder to detect, other forms of exploitation are not immediately recognizable (e.g. trafficking for forced begging and forced criminality).

#### Trafficking in persons: 2012-2014

	2012	2013	2014
<b>Child victims</b>	19 (16 girls and 3 boys)	9 (6 girls and 3 boys)	37 (24 girls and 13 boys)
<b>Adult victims</b>	20 (20 women)	7 (5 women and 2 men)	12 (11 women and 1 man)
<b>Total</b>	39	16	49

Source: BiH MoS, Situation Reports on THB in BiH in 2012, 2013 and 2014

#### Child trafficking by form of exploitation

	2012	2013	2014
Forced begging	9	6	27
Sexual exploitation	7	1	6
Forced marriage and begging	3	2	4
<b>Total</b>	19	9	37

Source: BiH MoS, Situation Reports on THB in BiH in 2012, 2013 and 2014

The vast majority of trafficked persons are BiH citizens. In 2014 out of a total 49 victims, only 3 were foreign nationals. A similar trend was observed in the previous two years with 2 and 12 victims being foreign nationals in 2013 and 2012.

#### Human trafficking by form of exploitation: adults

	2012	2013	2014
Sexual exploitation	16	2	5
Forced labour/begging	4	4	3
Forced begging		1	4
<b>Total</b>	20	7	12

Source: BiH MoS, Situation Reports on THB in BiH in 2012, 2013 and 2014

BiH citizens are also trafficked abroad. For example in 2014 two victims of THB from BiH were identified in the Republic of Serbia. Notably, 652 BiH nationals were identified as



victims of THB by the BiH State Prosecutor Office in the indictment concerning the SerbAz case of THB for labour exploitation in Azerbaijan in 2009. Since then there have been very few cases of labour trafficking identified although there is a growing trend of persons emigrating from BiH in search of employment opportunities,<sup>2</sup> and some media reported cases with clear hallmarks of trafficking for forced labour.

## 4. NATIONAL LEGISLATION AND POLICY DOCUMENTS

### ***Laws and policies***

Bosnia and Herzegovina has developed legislation and policies to prevent THB since the early 2000s and has established an articulated policy, institutional and legislative anti-trafficking framework.

BiH has ratified the relevant international conventions on THB including: the UN Convention against Transnational Organised Crime (UNTOC) and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Rights of the Child and its Optional Protocol on the sale of children (CRC), the ILO Forced Labour Convention (ILO C29 and C105), the ILO Convention on the Worst Forms of Child Labour (C182), UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. In addition, BiH is a party to the Council of Europe (CoE) Convention on Action Against Trafficking in Human Beings, which is a human rights treaty and lays the foundation for the establishment of a National Referral Mechanism for the identification and assistance of trafficked persons and for the protection of their rights. BiH has also ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. BiH has also expressed its intention to harmonise its policy and law with the EU standards, in coherence with the Stabilisation and Association Agreement, and especially with the EU Directive on Trafficking in Human Beings 2011/36/EU.

BiH has a complex institutional and legislative set up consisting of two Entities and one District i.e. the Federation of Bosnia and Herzegovina (FBiH), the Republic Srpska (RS), and the Brčko District. This results in the multiplication of legal systems, jurisdictions, and institutions competent to deal with THB at State, entity, district, and cantonal levels. This institutional setup is particularly challenging when dealing with a complex and multifaceted crime such as THB that requires a comprehensive, multidisciplinary and holistic approach.

Responsibility for criminal law and criminal justice is shared between the State, entity, and district level. Recognising the need to prevent conflicts of jurisdiction and ensure a more effective criminal justice response to THB, the BiH Strategy to Counter THB 2013 – 2015 and its related Action Plan, included among its key objectives the full harmonisation of criminal

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<sup>2</sup> Ministry of Security, Bosnia and Herzegovina Migration Profile for the year 2014, 2015.

legislation throughout the country.<sup>3</sup> In 2015 BiH amended the State criminal code provisions on THB to limit the State competence exclusively to cases of trafficking containing an international element. More specifically, the amended Article 186 criminalises international trafficking, described as trafficking of a person in a country where the person has no residence or citizenship. The trafficking definition for both adults and children is generally compliant with international standards. The level of minimum penalties is also raised respectively to five and ten years imprisonment compared to previous three and five years term. In addition to a stricter penal policy, the new provision also establishes as a criminal offence the use of services of a victim of trafficking with imprisonment ranging between six months and five years (Art. 186.5). Further, it introduces a non-punishment provision for offences that trafficked persons were forced to commit as a direct result of their trafficking (See later section on non-punishment).

At the entity level, the RS Criminal Code (CC) is generally aligned with international standards and includes legislative provisions criminalising trafficking in persons (Article 198a), trafficking in minors (Article 198b) for a wide range of exploitative purposes including labour exploitation, forced criminality, forced marriage and illegal adoption. It also criminalises THB as organised criminal enterprise (Article 198c), and establishes as an offence the use of services or facilitating the use of services of a victim with the knowledge that the person is trafficked.

The situation differs in the other entity, the Federation of BiH does not criminalise trafficking in persons nor child trafficking. At present, the FBiH CC criminalises only 'Enticement into prostitution of adults and children' (Article 210).<sup>4</sup> Following, the amendments of the State Criminal Code, the FBiH has failed to rapidly enact new legislation criminalising THB in line with relevant international obligations and thus there is a legal vacuum of non-penalisation in a significant part of the territory of BiH.

#### **Challenges posed by lack of criminalisation of THB in FBiH**

The Mobile Team for street children in Sarajevo identified a girl without parental care and with some disabilities as a child victim of trafficking, and referred the case to SIPA. She was sold to a man who abused her position of vulnerability and enslaved her. She was forced to beg for 50BAM per day. She was exploited for four years, the cruellest means of abuse and coercion were used against her, including cigarettes burns, pulling of nails, severe beatings and starvation. The girl was rescued and referred to a shelter. SIPA investigated the case following the information from the Mobile Team as a case of THB. When the BiH CC was amended, and THB became only a transnational offence at the State level, the Prosecutor re-qualified the case under the offence of enslavement (Article 185, CC BiH); this prosecutorial strategy might have been chosen since at present there is no THB offence at state level.

*Source: Interview with a law enforcement agency*

<sup>3</sup> BiH Ministry of Security, Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013 – 2015 and Action Plan, adopted at 43rd session of the Council of Ministers of Bosnia and Herzegovina on 26 March 2013, p.45.

<sup>4</sup> It is interesting to note that bylaws for the protection of victims of THB include also victims of enticement into prostitution

THB is criminalised also at the level of Brčko District under Article 207a Trafficking in persons and Article 207b Organised trafficking in persons. These provisions are generally aligned with relevant international standards. The CC also criminalises the use of services of victims of THB and includes a non-punishment provision for status offences that victims were forced to commit as a direct result of their being trafficked.

In conclusion, there is a need to rapidly harmonise anti-trafficking criminal law with international standards across all levels of BiH complex institutional setup, starting with amending the CC of the FBiH. In addition, while the State CC refers to international THB, the CC in RS and in Brčko district do not specify that the offences criminalised are only domestic. Given the BiH legislative and institutional setup, and the complex and composite nature of the THB offence, it is likely that conflicts of jurisdiction, unclear attributions of tasks and competences, varied interpretations of international standards and of the same or very similar legal provisions may arise. It is therefore recommended to develop clear criteria and guidance for the establishment of the competent jurisdiction to deal with the offence of THB.

The Criminal Procedure Codes, the laws on protection of witnesses under threat and vulnerable witnesses at the State and entity levels provide a number of important measures to protect victims-witnesses of trafficking during criminal proceedings<sup>5</sup> (see Section on protection of victims' rights in criminal proceedings).

To further enhance BiH level of compliance with the international anti-trafficking standards, harmonisation and streamlining of legislation should be extended to primary law and bylaws not only in the field of criminal justice but also in the field of social protection, child protection, education and health etc. Moreover, a clear division of power, tasks and competencies amongst the authorities competent at the various levels of the BiH institutional setup should be ensured.

BiH has adopted two important bylaws to deal with the protection of victims of THB:

- The Rulebook on the protection of foreign victims of trafficking in persons (hereinafter Rulebook on protection of foreign victims).<sup>6</sup>
- The Rules on the protection of victims and victims-witnesses of trafficking in persons who are citizens of BiH, (hereinafter Rules on the protection of domestic victims).

The Rulebook on the protection of foreign victims became primary law in 2013 as it was attached to the amended Law on Movement and Stay; in 2015 a new Law on Foreigners was adopted<sup>7</sup> (hereinafter Alien Law). The adoption of the new Rulebook is pending.

The Rules on protection of domestic victims are instead secondary legislation adopted at the State level and are not formally binding at the entity and district level. These Rules lay down the procedures for identification, protection and assistance of victims and indicate the tasks of

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<sup>5</sup> BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses, BiH OG No. 3/03, 21/03, 61/04 and 55/05; FBiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses, FBiH OG No: 36/3 ; Law on the Protection of Witnesses in Criminal Procedure, RS OG No 48/2003, 61/2004 and 55/2005. BD Law on protection of Witnesses under Threat and Vulnerable Witnesses, BD OG No 11/2003 and 8/2007.

<sup>6</sup> OG BiH No 49/2013, 24 June 2013.

<sup>7</sup> Law on Foreigners, BiH OG No 8/15, 17 November 2015.

competent authorities at the various levels of BiH state administration, as well as the mechanisms for cooperation with civil society. In other words, these Rules provide the foundation for the establishment of an NRM in line with international standards. To this end, these Rules need to be harmonised to reflect the recent changes in jurisdiction on THB cases, and to clarify the tasks and competences of the relevant authorities at the State, entity and district level. The Rules would need to be revised also with regard to ensuring the inclusion of labour market and labour migration actors who may come into contact with persons trafficked for labour exploitation. Furthermore, it would also be important to ensure that the Rules be adopted as primary legislation and become legally binding for competent authorities throughout the country.

The following chapters discuss further a number of legislative and policy issues including those related to harmonisation of social protection legislation and legal aid from the perspective of protecting the rights of trafficked persons and ensuring equality of treatment before the law.

## 5. INSTITUTIONAL FRAMEWORK: COORDINATION AND REFERRAL MECHANISMS

This chapter describes the key features of the existing coordination mechanisms and their role in the referral, support and protection of trafficked persons. The analysis is based on the understanding that a National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in strategic partnerships with civil society. The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims to services.<sup>8</sup> In addition, such referral mechanisms need to be also transnational; a “Transnational Referral Mechanism integrates the process of referral from initial identification through return and assistance between countries of transit, destination and origin” and it involves both public institutions and NGOs in the various countries.<sup>9</sup>

The BiH Strategy to counter THB and the Action Plan for 2013-2015 provide the overarching framework and approach to addressing the multifaceted aspects of human trafficking through measures of prevention, protection, prosecution and partnership. The Action Plan is comprehensive and multi-sector, however funding for implementation was not adequate.

The establishment of functioning transnational and national referral mechanisms for identification and support of trafficked persons for all forms of exploitation is amongst the objectives of the Strategy and a number of specific activities were foreseen to this end in the Action Plan.

The BiH institutional anti-trafficking framework includes three main coordination mechanisms:

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<sup>8</sup> OSCE ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the rights of Trafficked Persons. A Practical Handbook*, 2004, p.15 [www.osce.org/node/13967](http://www.osce.org/node/13967)

<sup>9</sup>ICMPD, *The Way Forward in Establishing Effective Transnational Referral Mechanisms*, 2012, p.25.

- The **State Coordinator** for Combating Trafficking in Human Beings and Illegal Migration in Bosnia and Herzegovina (SC).

The State Coordinator leads and coordinates the country anti-trafficking efforts at the policy level, and chairs the inter-institutional team for monitoring the implementation of the Strategy and Action Plan. Furthermore, the SC Office in practice coordinates the work of the Regional Monitoring Teams (RMTs) and often convenes their meetings. At the operational level, the SC Office occasionally facilitates ad hoc referral and cooperation among RMTs members, for example to facilitate victim's access to services in concrete THB cases.

- The **Strike Force** for Fight against Trafficking in Human Beings and Organized Illegal Immigration.

The Strike Force is a mechanism for coordination of law enforcement services between State, Entity and Brčko District in fighting THB; it is established under the direct management of the BiH Chief Prosecutor with a specific and considerable budgetary allocation. It is a mechanism to ensure operational cooperation and exchange of intelligence in relation to investigation of THB cases throughout the country. An NGO representative (IFS Emmaus at the moment) may be invited to discuss and arrange operational aspects of victim assistance when deemed necessary by the law enforcement agencies. Other public institutions such as those competent for social welfare are not part of this coordination mechanism.

- The **Regional Monitoring Teams (RMTs)**.

The RMTs are multidisciplinary teams involving public officials from multiple institutions: Ministry of Security (MoS), Ministry of Human Rights and Refugees (MHRR), Ministry of Justice (MoJ), Ministry of Civil Affairs (MCA), Agency for Gender Equality, BiH Prosecutor's Office, State Investigation and Protection Agency (SIPA), Border Police, Service for Foreigner's Affairs, police, prosecutor's offices, social welfare centers, health care services, labour inspectorates, officials from the Ministries of Education, local NGOs and other public officials at Entity, cantonal and Brčko District level. There are four RMTs: Sarajevo, Mostar, Banja Luka and Tuzla.

The RMTs are established on the basis of Article 22 of the Rules on protection of domestic victims of trafficking; their main mandate is to establish local referral mechanisms for victim identification and assistance.<sup>10</sup> According to the Guidelines for RMTs, they are also involved in prevention of THB, analysis of the phenomenon and capacity building. The RMTs are very large coordination mechanisms –involving around 60-70 participants in some locations (e.g. in Sarajevo) and thus they provide mainly a forum for exchange of information and for establishing contacts with counterparts in other public institutions and in NGOs. The SC Office has developed detailed Guidelines for RMTs and is working towards ensuring nominal representation of public institutions in the RMTs to have continuity in their participation and engagement in the RMT work. However, the RMTs do not meet very often; a more frequent and regular schedule of RMT meetings combined with regular training sessions should be considered to establish more solid working relationships. Notably, despite RMTs mandate, operational coordination and referral in concrete individual trafficking cases can hardly happen within these large forums of work. In addition, many RMTs members are not

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<sup>10</sup> Rules on Protection of Victims of Trafficking in Human Beings and Victim-witnesses of Trafficking in Human Beings Who Are Citizens of BiH, 2007, Art. 22.

specialists on THB and need specific training and capacity building; the recent legislative changes make local police and prosecutorial authorities now competent to deal with THB cases and they also necessitate tailored specialized training. According to some stakeholders, the RMTs have established a ‘narrow team’ i.e. a sort of core team comprising police, prosecutor, Centers for Social Welfare (hereinafter: CSW), NGOs and a few others that should be in charge of coordination at the operational level in concrete THB cases, however this practice is not systematic and the core teams do not meet regularly.

In addition to the above coordination mechanisms, two public institutions have a specific coordination role with regard to THB, namely the Ministry of Human Rights and Refugees and the Ministry of Security’s Sector Immigration and Service for Foreigners’ Affairs. The MoHRR is responsible for the coordination and administration of State budget funds for the protection and assistance to BiH citizens who are victims of trafficking. The Sector for Immigration and the SFA of the MoS are responsible for the administration of State budget funds for foreign victims and for coordination of protection of and assistance to them.

The infrastructure for the establishment of an NRM is complemented by the two bylaws on protection of domestic and foreign victims, which were discussed in the previous chapter. Here it is worth noting that both bylaws do not mention labour inspectorates, labour migration authorities and trade unions, although trafficking for labour exploitation has been on the rise in recent years, and these additional actors would need to be operationally involved in the NRM.

With regard to establishing clear roles, mandates and tasks of each actor in the NRM process of identification and assistance, over recent years, numerous guidelines targeting specific professional groups have already been developed. A number of NGO projects were also implemented in partnership with state institutions to build the capacity of various actors in the NRM. However, in practice it would seem that these efforts have not reached a critical mass, and hence the existing guidelines are not yet widely known, understood, shared and accepted by each professional group/actor involved in the process of victim identification, referral and assistance.

The table below lists the most important guidelines available for public bodies and NGOs involved in the process of victim identification, referral and assistance:

**Main guidelines for professionals involved in NRM and TRM work**

Organization	Theme	Year
MoS, CRS	Guidelines for Regional Monitoring Teams	
CRS, MoS	Guidelines for Centres for Social Welfare	2010
XY, MoS	Guidelines for Mental Health Centres in treatment of victims of trafficking	2014
XY, MoS	Guide for multidisciplinary cooperation in the process of rehabilitation, re-socialisation, reintegration and repatriation of victims	2015
XY, MoH	Guidelines for health care professionals in assistance to victims of trafficking	
CRS, MoS	Guidelines for primary and secondary school teachers	2011
IOM	Standards for safe houses for victims of trafficking	2009

Save the Children and Zemlja djece	Minimum standards of care for drop-in/daily centres for street children	
Zemlja djece and network of daily/drop-in centres for street children	Minimum standard for outreach field work with children	
MoS	Instructions on the rights of potential and registered adult domestic and foreign victims of trafficking	
Save the Children, MHHR	Practicum for training of judges, prosecutors, police, social workers and other professionals on the issue of combating forced and harmful child labour in the street	2014
MoS	Instructions on the rights of potential and registered child domestic and foreign victims of trafficking both	
ICMPD	Guidelines for the development of a Transnational Referral Mechanism (TRM) for trafficked persons in Europe: South Eastern Europe	2009

### *Conclusions*

Overall, the existing coordination mechanisms mainly work at the policy level and serve to exchange information, coordinate activities, promote harmonization. The Strike Force provides the only operational coordination mechanism to handle THB cases and it is only law enforcement focused/mandated. The operational coordination for the identification, protection of rights and referral to assistance of trafficked persons is instead quite fragmented. As noted by GRETA there is no formally established NRM in BiH “defining the roles and procedures of all persons and competent NGOs who may come into contact with victims of trafficking and ensure that all relevant actors adopt a more proactive approach to identify possible victims of THB.”<sup>11</sup>

However, the existing coordination mechanisms, the bylaws regulating the protection of domestic and foreign victims and the specific guidelines for professionals working on THB do provide a solid basis to further develop and establish an operational NRM. The NRM should build on a multidisciplinary and rights-based approach and on a strategic partnership with NGOs, which need to be recognized as key partners in both the design and implementation of anti-trafficking responses.

During the fieldwork interviews, the current mechanisms of coordination and referral were discussed at length with a variety of stakeholders from public bodies and NGOs in attempt to assess their functioning and to identify possible ways forward. Many stakeholders emphasised that there are plenty of tools and guidelines but that these are not widely known or where they are known they are not respected nor effectively implemented. Some stakeholders suggested that the weaknesses in the operational functioning of the NRM are linked also to a lack of resources for victim assistance and/or to erroneous allocations of the limited resources available. For example, the budget for law enforcement coordination through the Strike Force is allegedly disproportional compared to the resources for victim support, the more since the recent changes

<sup>11</sup> Council of Europe GRETA, *Report concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina*, 2013, p. 7.



in jurisdiction on THB cases render operational law enforcement coordination necessary especially at the local level; another similar example relates to the budgetary allocations for assistance to domestic victims (i.e. the majority if not the totality of victims) is disproportionately lower than that for foreign victims (see Chapter on victim assistance). The table below summarises the main challenges in the practical implementation of referral mechanisms.

<b>Main challenges in NRM/TRM functioning</b>
Lack of information and knowledge on THB and its current features among many public institutions
Lack of knowledge about existing rules, regulations and guidelines on THB among many actors from both public and NGO sector at all levels
Lack of capacities and resources to recognise and deal with THB cases also linked to frequent staff rotation
Lack of appreciation and understanding of adult and child victims' situation, trauma, needs and urgency of interventions
Failures in the identification mechanisms resulting in lack of access to status and protection for adult and child victims and in lack of prosecution of perpetrators
Lack of resources and limited scope of victim support services, especially for long term social inclusion
Difficulties in cooperation due to complex administrative setup
Limited knowledge and practical experience in working with a multi-sector, multi-disciplinary approach
Limited appreciation and respect for NGOs and their role
Lack of transparency and accountability of public institutions

*Source: Adapted and complemented from R. Surtees, Beyond trafficking. The re/integration of trafficking victims in the Balkans, 2007 to 2014, 2015, KBF and Nexus Institute, p.124.*

According to many stakeholders, the RMT provide the framework for establishing a national referral mechanism. According to the Rules on protection of domestic victims, each RMT should appoint a regional coordinator, and this person could perhaps arrange to have a small team of public officials and NGOs that meet more frequently to ensure operational coordination and multi-agency work for victim identification and assistance. More specifically, each RMT could set up a core team of police, prosecutors, CSW and NGOs that would a function as a multi-disciplinary team for victim identification and referral. The core teams will need to develop a shared understanding of the THB crime, its impact on victims, its main current features, as well of the respective mandates, expertise and tasks of team members. The core teams should also work together on developing common indicators for the recognition of THB cases for various forms of exploitation (see next chapter on victim identification). Clearly, many identification toolkits and indicators already exist and they should be adapted and tailored to the BIH context, they should also be periodically revised and updated for multi-disciplinary use. Furthermore, from a human rights perspective, it is important that partnership between public institutions and NGOs in the core team is on equal footing and based on mutual respect of each other's role and expertise.



An additional important resource for the formal establishment of NRM and to make it operational in detecting and handling individual trafficking cases is provided by the cooperation models between public institutions and NGOs that were established at local level, such as the Tuzla Protocol (see Chapter on Identification).

The multidisciplinary and human rights-based approach should be strengthened and operationalized also at the State level for the handling of international THB cases. In this regard, the composition of the Strike Force should be reviewed to include representatives of the MoHRR, the Ministry of Civil Affairs, social welfare authorities and accredited NGOs that are direct service providers in international trafficking cases.

The establishment of a functional NRM should go hand in hand with efforts to map and enhance the scope and quality of support services provided to women, men and children that are trafficked for a variety of forms of exploitation.

The establishment of a functioning and effective NRM would require also that the SC Office's operational capacity is strengthened with adequate human and financial resources so that it can drive the NRM at an operational level. Alternatively, it could be the MoHRR that leads the operational coordination and referral of individual cases of victims of trafficking liaising with each RMT core team at local level and with the Strike Force at State level depending on the nature of the trafficking case. In the latter case, the MoHRR would also require adequate human and financial resources to lead the NRM.

The next chapters examine in details the various components of an NRM/TRM from victim identification through assistance, access to justice and eventually return/repatriation.

## **6. IDENTIFICATION**

The process of victim identification is central to the proper functioning of an NRM. In other words, the process of recognition of a person as a victim of THB is essential to protect the rights of that individual as a victim of crime and violations of human rights, and to ensure that the individual is promptly referred to support and assistance. Correct and timely identification of trafficked persons is also crucial to the success of the criminal justice response to THB. When trafficked persons are not recognised, the crime goes undetected, the traffickers go unpunished and trafficked persons are denied access to justice.

The identification process is complex, it requires knowledge of the complexities of the crime, and time and efforts to understand and assess the circumstances of the individual situation, the needs and views of the trafficked person, the physical and psychological impacts of THB. When children are involved, additional time and special care are necessary to hear and understand the child's statement and views and to ensure no harm to the child. The onus of victim identification is on the authorities. Victim identification requires a multi-agency approach whereby trained/qualified competent authorities take proactive measures and collaborate with victim

support services - including both social protection authorities and NGOs- to identify trafficked persons and protect their rights.<sup>12</sup>

### ***Channels for identification***

According to the Rulebook on protection of foreign victims of THB, public authorities (such as police, border guards, prosecutors, CSW or other) who have a reasonable suspicion that a foreigner might be a victim of THB should immediately inform the Service for Foreigners' Affairs (SFA) that is in charge of coordinating the referral to support and protection while competent law enforcement authorities investigate the case. The Rulebook on protection of foreign victims includes a list of indicators of THB that competent authorities should assess in the identification process.<sup>13</sup>

According to the Rules on protection of domestic victims, anyone who has a suspicion that someone might be a victim of THB should inform SIPA (State Investigation and Protection Agency of BiH) and the Prosecutor Office or local police and local prosecutor. In cases involving children, the competent CSW needs to be promptly informed for the appointment of a guardian. In cases involving adults the CSW may be notified of the case upon consent of the trafficked person.<sup>14</sup>

Empirical data from interviews with local stakeholders indicate that the main channel for victim identification is through law enforcement operations, i.e. in most cases it is the police who establish the first contact with the victim. A second major channel for victim identification is through the outreach work of NGOs running the Daily Centres (Drop-in Centres) for street-involved children, and the Sarajevo CSW Mobile Team for street-involved children. In some less frequent instances, the route to identification is through a help-line or a social worker from an NGO or a CSW or through a public official from other public institutions (e.g. education or health). There have been also very few cases in which a person approached directly an NGO or the SFA seeking help as victim of trafficking. Self-identification of trafficked persons remains quite rare.

With regard to trafficking for sexual exploitation, NGOs doing outreach activities for HIV prevention with sex workers are not engaging in victim identification and do not seem to be part of existing referral practices.

Cases of BiH victims identified abroad seem not to be systematically included in the SC annual report on THB since probably BiH authorities do not always receive information or referral of these cases. However, over the past few years references to BiH victims trafficked abroad can be found in reports from other countries (e.g. Serbia, Montenegro, Austria, France).

Some types of THB are under-reported or not identified, this applies particularly to trafficking for labour exploitation of BiH citizens migrating for work abroad. In 2014 the State Prosecutor issued a very significant indictment for THB for labour exploitation in the so called SERB\_AZ case,

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<sup>12</sup> Article 10 of the Council of Europe Anti-Trafficking Convention; see also Council of Europe, 4th General Report on GRETA's Activities, 2015, p. 41; Article 11 EU Trafficking Directive.

<sup>13</sup> Rulebook on Protection of Alien Victims of Trafficking in Persons, Art. 6.

<sup>14</sup> BiH Council of Ministers, The Rules on the protection of victims and witnesses of THB nationals of BiH, 2007, Art.4 and 5.

recognising 672 victims of human trafficking, out of which 652 were BiH nationals and 20 were foreigners.<sup>15</sup> Since then, very few cases of labour trafficking have been detected. Reports on the local press and data about labour migration outflows suggest that the cases of labour trafficking are often not recognised. In this regard, while it is positive that labour inspectorates are now included in the work of the RMTs it is clear that there is still a lack of knowledge and capacities. Furthermore, it would be worth developing outreach empowerment and information programs for people migrating abroad to improve both identification of potential victims and to prevent abuse and trafficking.

### ***The victim identification process***

Pursuant to the Rulebook to foreign victims, the SFA is responsible for the first in-take interview to establish whether there are grounds to believe that the person has been trafficked on the basis of the listed indicators. It is also the SFA responsibility to inform the person about his/her rights and obligations including the possibility of receiving independent legal counselling in a language that s/he understands (Article 8). The Service is then responsible for informing the competent prosecutor for the initiation of proceedings and the official status determination.

The Rules on protection of domestic victims indicate that victim identification is a process that requires a multidisciplinary approach, involving public institutions and NGOs providing victim support services. This process is based on a “voluntary interview” with the potential victim of trafficking and on the assessment of the information gathered by police and prosecutors (Article 7).

The Guidelines for RMTs provide competent authorities with a very generic list of THB indicators and guidance on the steps to follow in the identification process through the stages of: detection, initial interview (or in-take interview), case assessment and referral to assistance, interview for status determination, reporting and information exchange. Importantly, the Guidelines make clear that if victims need urgent medical care this should be provided before any other action is taken.<sup>16</sup>

While the RMT Guidelines and bylaws suggest a multidisciplinary process, in practice only law enforcement and prosecutors (SFA, SIPA, police and prosecutors at State, entity, district level) identify victims, other actors such as CSW and NGOs are not formally involved in the identification process. The first screening interview is usually done by the police or by the SFA if the person is a foreigner- and if they have a reasonable suspicion that the person may be trafficked, they inform the prosecutor, then if the prosecutor considers that there are reasonable indicia of trafficking, the prosecutor authorises the referral of the potential victim to support services. At this stage, reportedly no standard form or leaflet is used to inform the trafficked person about his/her rights and obligations.<sup>17</sup> It should be noted however that the SC Office has developed two standard documents enumerating the rights of adult and child victims of trafficking but most interviewed stakeholders were not aware of these tools and did not mention using them.

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<sup>15</sup> MoS, Situation Report on THB in BiH for 2014, p.7-8

<sup>16</sup> Guidelines for Regional Monitoring Teams, p.81.

<sup>17</sup> Interviews with police and NGOs.

The following interview(s) are conducted by the prosecutor, often jointly with the police and aim at the status determination, i.e. they are connected with the initiation of criminal proceedings for THB. It is not clear how law enforcement and prosecutors perform the identification process, which criteria they use and whether clear guidelines and procedures for interviewing trafficked persons are provided.

In most cases the status determination interview is conducted after the reflection period while the person is assisted and provided with legal counselling at the safe house (see the next section on the reflection and recovery period). At this stage there would be a possibility to involve other actors in the identification process (e.g. NGOs social workers, CSW, medical personnel etc.) but in practice there is no established multidisciplinary process for identification. All stakeholders indicated that ultimately it is the solely responsibility of the prosecutor to establish whether a person is a victim of THB. In practice, it is upon indication of the prosecutor that a person is treated as a victim of THB and provided with care and support and this depends on the initiation of criminal proceedings for THB offences. This conditionality is not in line with the human-rights approach and requirements of the Council of Europe Convention and indeed GRETA has recommended disconnecting the formal identification from the initiation of criminal proceedings.<sup>18</sup>

*“If the investigation continues and we find out it is not THB then practically nothing happens, the case is dropped. If the case is closed because the prosecutor decides not to qualify it as THB there is no victim protection and as for victim assistance, it basically depends on the NGO and if they have resources.” [ a police officer]*

### **Identification of child victims of trafficking**

In 2014, the SC report indicates that the majority of potential victims were children and that about 70% were exploited in begging, however only 14 out of 49 total potential victims were referred to a safe house for assistance. On the one hand, these data reflect the important work carried out by several NGOs such as Zemlja Djece and Save the Children supported network of daily/drop-in centres (see box below).<sup>19</sup> On the other hand, the statistics from the SC report also indicate that most potential victims are not recognised/confirmed to be victims by the prosecutor, and thus denied protection and access to justice.

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<sup>18</sup> Council of Europe GRETA, *Report concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina*, 2013, p.106.

<sup>19</sup> For example, the NGO Zemlja Djece has developed a set of indicators for the identification of child victims of trafficking. These include first some generic indicators common to most forms of exploitation and then specific indicators of situations of sexual exploitation, labour exploitation and exploitation in begging and petty crimes. The indicators were developed on the basis of the NGO experience in outreach work with children living and working on the street. See [http://www.zemljadjece.org/index.php?option=com\\_content&view=article&id=195&Itemid=129&lang=en](http://www.zemljadjece.org/index.php?option=com_content&view=article&id=195&Itemid=129&lang=en) for general indicators and for indicators of specific forms of exploitation [http://www.zemljadjece.org/index.php?option=com\\_content&view=article&id=198&Itemid=132&lang=en](http://www.zemljadjece.org/index.php?option=com_content&view=article&id=198&Itemid=132&lang=en) .

## Protocol on Acting in Cases of Child's Street Exploitation for Tuzla Canton

The Protocol on Acting in Cases of Child's Street Exploitation for Tuzla Canton was adopted in 2014 by the following cantonal institutions: Ministry of Labour, Social Welfare and Return, Ministry of Education, Science and Sport, Ministry of Health, Ministry of Interior, Municipal Court in Tuzla, NGO Zemlja Djece. The Protocol regulates multi-sector cooperation and intervention for the protection of children that may be victims of economic, sexual and other forms of exploitation or trafficking. It sets out the overarching principles of such cooperation i.e. the principle of the best interests of a child, the principle of urgency and efficiency and the principle of protection of privacy and identity of a child. The Protocol provides a detailed sequence of the actions to be taken by each competent institution upon suspicion that a child might be exploited to ensure the immediate protection, safety and referral to care of the child. Interestingly, the working group that drafted the Protocol is mandated with reporting yearly on its implementation to Tuzla canton government. Furthermore, the Protocol provides for sanctions based on law and internal regulations of the institutions in case of non-application of the Protocol.

The Protocol is the outcome of the pioneer work of the NGO Zemlja Djece in the care and protection of children living and working in the street and of the cooperation established between the NGO and the relevant public institutions in the Tuzla Canton.

Source: Zemlja Djece <http://www.zemljadjece.org>

Fieldwork interviews suggest that in most cases, outreach social workers from Daily Centres or from the Sarajevo Mobile Team for street-involved children recognise that a child may be a potential victim of trafficking, and immediately inform the competent authorities: CSW, SIPA, local police and prosecutor's office, SFA (in case the child is a foreigner). Pursuant to Article 15 of the Rules on domestic victims, the child should be treated as a child without parental care and the competent CSW<sup>20</sup> should appoint immediately a guardian for the child.<sup>21</sup> Depending on the circumstances of the case, the child may then be referred to: a Crisis Centre for Children Without Parental Care<sup>22</sup>, a safe house for THB victims, a Daily Centre or other institution for children. In practice, however, sometimes law enforcement authorities and CSW fail to timely intervene when NGOS/Daily Centres signals suspicions of child trafficking due to discriminatory attitudes that justify these risk situations as traditional cultural practice.<sup>23</sup> Furthermore, in many cases prosecutors do not consider that there are sufficient indicia of THB or sufficient elements to classify the case as one of child trafficking.

*"One problem we have is that in all trafficking cases in which a parent is involved, the legal classification of the case is never THB, they say it's their tradition" [A social worker]*

*"When a prosecutor decides it is not THB, then child victims from BiH return to their families and foreign child victims return to their country of origin" [An NGO representative]*

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<sup>20</sup> The territorial competence of the guardian is determined by the place of permanent residence of the child, and when this is unknown, upon the current place of residence

<sup>21</sup> Rulebook on protection of domestic victims, Art. 15(4)

<sup>22</sup> Crisis centres for children are established only in Tuzla, Mostar and Banja Luka.

<sup>23</sup> Council of Europe, Reply from Bosnia and Herzegovina to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, GRETA(2016)2, p.23 .

It was not possible to establish with certainty what happens to these children -potential victims of trafficking- when the case is rejected as trafficking. Clearly each case is different, and not all cases bear the hallmarks of THB. However, it seems that most cases are classified as child neglect or child abuse and - depending on the circumstances they may result either in a fine being imposed on the child' parents, or in restriction or termination of parental rights and the removal of the child from the family. CSW and outreach social workers attempt to continue working with the child and his/her family to support them, however it is challenging as services are limited and often the child continues working and living in the street and being exposed to abuse and exploitation.

#### *Case story 1: Child trafficking for forced marriage and forced begging?*

In 2014 a 13-year-old girl was sold by her family to another family that was involved in begging and she was to be given in marriage to an adult man. The girl was immediately exploited in child begging.

The girl had been a beneficiary of Zemlja Djece Daily Centre for street involved children and the NGO had been actively supporting the girl and her family and was monitoring their situation. At a certain point, the NGO became aware of the risks for the girl to be trafficked for forced marriage and they immediately alerted the competent authorities. However, the girl was very quickly sold and exploited in begging. Some time after, thanks to the NGO efforts and to a coordinated intervention of competent authorities the girl was found on the street in a city far from her place of origin, an immediate intervention was arranged to rescue her and she was referred to a safe house for trafficked persons. Later the girl was placed in an out-institutional form of accommodation, she still receive threats from the family of the groom.

A case was opened against the groom for sexual assault of a child, not for trafficking in children. The mother of the girl was prosecuted for child neglect and the Court determined for her a six-month imprisonment term, suspended for two years on probation. The NGO continues being in touch with the girl and monitoring her family situation as the mother has one more under-age girl living with her and apparently has also being threatened.

*Source: Case story adapted based on interview and communication with Zemlja Djece*

#### *Case story 2: Child trafficking for forced begging?*

T.A was persuaded by the father (H.M.) of the accused (H.O.) to buy an old non-functioning vehicle "Mercedes" for 3,000 BAM and with the passing of time the father somehow increased this debt to 29,000 BAM. T.A. paid the amount of approximately 18,000 BAM, but not the full amount that the father imposed upon him and his family. The father then threatened to use force to T.A. and his family, and forced T.A. to do household work for him and forced his wife R.A to beg and bring all earned money to him.

The accused (son, H.O.) together with his father daily drove R. A. with her three young children (aged seven, nine and five) at various locations in the Brčko District to beg and to bring all money to the father, supposedly as repayment of debt, although the debt did not decrease. When the father went to prison for other criminal offences the son (accused) continued to threaten to kill them and rape R. A. and their minor daughter, in order to force them to beg and bring all money to him as repayment of the debt. This case was prosecuted as Trafficking in Human Beings (Article 207a (1) of BD CC) and Basic Court of Brčko District examined this case and established that the accused did not take any decisive act as accomplice and acquitted the accused of all charges. The case is still pending appellate verdict.

*Source: Basic Court of Brčko District Verdict No 96 0 K 07890314 K dated 22 May 2015*

### Case story 3: Child trafficking for forced begging?

P.A. was a girl living in a difficult material situation with her mother and a stepfather. The stepfather abused her vulnerability and forced her to beg. The stepfather made an arrangement with two other persons (male and female) who lived in a different location whereby he sold them P.A.. In return he received 400 BAM. The two persons who bought the girl forced her into extramarital cohabitation with their son. She was also forced to beg and work on waste dumps. P.A. attempted to run away on a few occasions but her stepfather was always able to find her, he physically and psychologically maltreated her and handed her back to the two persons to whom she was sold.

P.A. was identified as a victim and her case was prosecuted as child trafficking. The Court of BiH issued an acquittal in the first instance, the case was appealed and the Court convicted the accused for Trafficking in Human Beings (Article 186 (2) BiH CC).

*Source: Court of BiH, Verdicts No S1 3 K 004249, dated 28 September 2011 and No S1 3 K 994249 12 KŽK, dated 30 January 2013, Court of BiH*

### Conclusions

The practices and challenges in the identification of THB victims suggest a number of considerations.

First, there is no shared interpretation and common understanding of the crime of trafficking between law enforcement professionals, prosecutors, and social workers operating at State, entity, district and cantonal level; they do not use common indicators or criteria to recognise the various forms of trafficking.

Second, there are challenges with the legal qualification of cases and with the understanding of the evidentiary standards required. It is likely that THB cases are being investigated and prosecuted under different criminal offences that are often milder and that in some cases may be constituent elements of the trafficking offence (e.g. soliciting prostitution).

Third, there are specific challenges and divergent opinions between police, prosecutors, NGOs and CSW regarding cases involving children - especially from the Roma community - who are trafficked for the purpose of forced begging, forced criminality or forced marriages. Several legal professionals indicated that the legal qualification of these cases as child trafficking requires necessarily the involvement of a third-party (i.e. not a parent) in the exploitation of the child. This specific interpretation of existing legal provisions raises concerns and it is not in line with international standards. Similar challenges exist also with regard to trafficking for forced marriages, as some front-line responders seem reluctant to recognise this form of exploitation and tend to justify it associating it with traditional practices. In this situation, there is a risk that children who are exposed to exploitation that does not qualify as child trafficking be marginalised even further, and may not be provided the required support and protection to keep them safe from further harm.

Fourth, if a case is not qualified as a THB then the trafficked person is not identified as a victim and does not receive appropriate care and protection. This law enforcement conditional



approach to victim identification is problematic because it may easily result in exclusion from assistance of victims of THB who are not willing or able to cooperate with law enforcement authorities in the criminal proceedings.<sup>24</sup> This approach makes victim identification dependent on the correct qualification of the case as THB by the authorities that first detect the case; this is particularly problematic in the complex institutional setup of BiH where there are challenges with harmonisation of legislation and establishment of clear jurisdiction.<sup>25</sup> This approach is also detrimental to the effectiveness of the criminal justice response because traffickers go unpunished when victims are not recognised as such.

Fifth, this approach to identification is not human rights-based nor multidisciplinary as demanded by the various regulations and guidelines developed in BiH and internationally. The official identification of a person as a victim should not be the precondition for granting access to assistance and support. Victim identification is often the very outcome of the process of assistance and support, NGOs and social welfare authorities that provide direct victim assistance need to be recognised and respected as extremely valuable partners in the victim identification process, and should be given the formal possibility to participate and contribute to it.

## 7. REFLECTION PERIOD AND TEMPORARY RESIDENCE PERMIT

In line with the requirements of Article 13 of the Council of Europe Anti-Trafficking Convention, the recently adopted Alien Law (Article 60 (2)) and the Rulebook for foreign victims establish the right of potential victims of THB to a reflection/recovery period of 30 days, which the person can enjoy while being accommodated in one of the MoS accredited safe houses. During this time the person is entitled to receiving a number of support services including free legal counselling, accommodation, urgent medical care, and psychological counselling (see later section on victim assistance).

In practice during the reflection period the person is given a sort of visa for the duration of one month. Interviews with stakeholders indicate that the reflection period for foreign victims is generally implemented. However, it should be noted again that access to the assistance program for trafficked person is dependent on the prosecutor's opinion that the person may be trafficked. This conditionality may raise challenges for a correct implementation of the provision. For example a public official reported the following situation:

*"We have a decision of the prosecutor that the person is a victim of trafficking, she is referred to the shelter and then 24 hours later there is already an interview with the victim. The reflection period is not always respected. Sometimes those decisions to establish whether it is a THB case or not are made too fast and other times the proceedings last too long." (A public official)*

In line with the requirements in Article 14 of the Council of Europe Anti-Trafficking Convention, the Alien Law (Article 58) and the Rulebook on Foreign Victims (Article 12) stipulate that during

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<sup>24</sup> GRETA Report (2013) para 104.

<sup>25</sup> GRETA Report (2013) para 104.



the reflection period the trafficked person can request a temporary residence permit on humanitarian grounds. Such a permit may be granted to a trafficked person to: a) provide protection and assistance in recovery and return or b) to cooperate with the competent authorities in criminal proceedings for THB. In the former case, a recommendation from a medical specialist on the need for continued treatment or a recommendation from the repatriating agency requesting time is needed.<sup>26</sup> In the latter case a recommendation of the competent authorities before which the proceedings are conducted is necessary for granting/extending the temporary residence on humanitarian grounds. Such a permit is for the duration of six months, it is renewable and allows the person to attend education or vocational training and/or access to the labour market.

These provisions apply equally to adults and children, however in the case of children the Rulebook on protection of foreign victims contains an overarching provision establishing that all activities by competent authorities shall be undertaken in the best interests of the child, with the utmost care and protection of the child welfare, and with utmost degree of urgency and efficiency (Article 19).

The issuance of the temporary residence permit requires that the competent authorities e.g. the prosecutor gives an opinion on the case to the MoS; in practice this means that in case the prosecutor decides not to proceed with an indictment for THB or in case the victim is not cooperative, s/he may see her/his application for a residence permit being refused or cancelled.<sup>27</sup>

Recently, there have been very few cases involving foreign victims of THB and it would seem that their stay was regularised with a temporary residence permit enabling access to the labour market. However, in practice even when granted such a permit victims continue living in the safe house as they usually do not have other options or means to self-sustain. Some stakeholders reported that victims often wish to leave BiH as soon as possible and that they are assisted return may be delayed due to the length of judicial proceedings.

The Rules on protection of domestic victims do not envisage the granting of a reflection/recovery period for domestic victims. However, they establish that the interview with the victim be conducted voluntarily, and following an expert assessment of the physical and psychological condition of the victim or victim-witness (Article 7). The expert assessment of the physical and psychological conditions of the victim may be used to avoid too early interviews, which could be traumatising for the person. In practice, according to some NGOs a reflection/recovery period is implemented in cases involving both foreign and domestic victims. Other NGOs instead report challenges in the practical implementation and respect of a reflection period for all trafficked persons, regardless of where they come from, as police is often the first agency to enter into contact with the trafficked person and often pressures him/her to cooperation in the investigation at an early stage. According to police, the reflection period is granted to all victims but its exact

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<sup>26</sup> Council of Europe, Reply from Bosnia and Herzegovina to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, GRETA(2016)2, p.44 .

<sup>27</sup> GRETA (2013) para 122, IFS EMMAUS (2015), p.56; Article 13, Rulebook on protection of foreign victims.

duration varies case-by-case depending on the physical and psychological conditions of the victim.

*“We maintain a flexible approach, for example one woman was interviewed on the 21st day because she was ready and this was also the opinion of the case manager at the shelter.” [A police officer]*

*“We had cases when we took the first statement on the first day, and others in which we took the victim statement later when the victim was at the shelter. We assess case by case whether there is a need for a reflection period and when is best to interview the person. “ [A police officer]*

## 8. ASSISTANCE

In line with the minimum requirements for victim assistance set in Article 12 of the Council of Europe Anti-Trafficking Convention, the Rulebook on protection of protection foreign victims (Articles 14 to 17) and the Rules on protection of protection of domestic victims (Articles 8 to 14) establish that victims are entitled to physical protection, protection of privacy and identity, safe accommodation, medical assistance, legal counselling about their rights in a language they understand, legal assistance during criminal proceedings, education and training opportunities, assistance in employment and other social measures depending on financial capabilities.<sup>28</sup>

As discussed earlier, in practice entry into state-funded victim assistance programs is dependent on the prosecutor legal qualification of the case as THB, unless the service provider has additional/specific resources and funds that can be used for victim assistance regardless of the legal qualification of the case.

While a few years ago victim assistance was completely funded by external donors, now there are dedicated state-budgetary allocations, though limited in amounts. More specifically, in 2014 the Ministry of Security had a budgetary allocation of 120,000 BAM for assistance to foreign victims, while the Ministry of Human Rights and Refugees allocated a budget of 60,000 BAM for domestic victims. There is a sharp difference between the amounts available for foreign and domestic victims; probably this is due to the fact that such budgetary lines were defined at a time when victims of trafficking in BiH were mainly foreigners. Over recent years the THB situation in the country has dramatically changed and almost all victims are BiH citizens, the current division of funding between foreign and domestic victims is disproportional and creates a discriminatory treatment between domestic and foreign victims, which is contrary to BiH international human rights obligations, including Article 3 of the Council of the Council of Europe Convention on Action against THB which in particular prohibits discrimination in enjoyment of measures to protect and promote victims' rights.<sup>29</sup> There is therefore an urgent need to identify a practical and flexible solution that allows responding to the needs for victim assistance in a more fair and effective way. One possibility would be that of establishing a joint fund for assistance to all

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<sup>28</sup> See Art. 8 to 14 of the Rulebook on protection of victims and victim-witnesses of trafficking in human beings who are citizens of BiH; Art. 14 to 17 of the rulebook on protection of foreign victims of trafficking in persons.

<sup>29</sup> Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) Explanatory Report, para 63-69.

victims of THB. Another possibility would be increasing the resources for assistance to domestic victims to guarantee at least the minimum required assistance measures that are envisaged in international standards and in domestic regulations.

The Ministry of Security and the Ministry of Human Rights and Refugees use the current budgetary resources for victim assistance to finance NGOs selected through a tender for the provision of victim support services. Cooperation agreements are signed with the selected NGOs specifying the provision of victims support services and the cooperation modalities. For example, the MoHRR requires that the NGOs cooperate closely with local CSW.

Fieldwork interviews revealed some challenges related to the tender procedures that risk hindering domestic victims access to the support services and social assistance. In particular, there seems to be a discrepancy between the yearly cycle of the tender procedure and the necessities of providing continued assistance to domestic victims of trafficking. For example, recent delays in the publication of the tender risk resulting in victims of trafficking having to leave the social assistance program due to lack of funding. Some NGOs are extensively dependent on public funding to provide safe accommodation and other support services to victims of trafficking, and in a situation of uncertainty about funding NGOs may have to decline assistance. In one instance a victim of trafficking entered an NGO safe house program for social assistance but after sometime the NGO completed the project with the MoHRR and the grant was not renewed, so the NGO had either to seek external donor funding for continued assistance or the child beneficiary had to be moved to another shelter with negative implications for her process of rehabilitation. The NGO managed to find additional resources and ensured continued support to the beneficiary.

It is important to note that when State authorities delegate the provision of assistance to NGOs, they still maintain the ultimate responsibility to ensure the availability of assistance and thus should prevent situations like the one described above.

Overall, NGOs play a vital role in the system of victim assistance and contribute to it not only with their expertise but also with additional external donor funding. Some NGOs have very long experience in working with trafficked persons, other NGOs include also other vulnerable groups among their beneficiaries e.g. victims of domestic violence. In order to comply with international obligations of protection and assistance to all victims of trafficking, it is necessary to review the divided funding mechanism for victim assistance and the tender procedures with a threefold purpose: -to enhance transparency and efficiency, - to ensure continued assistance, especially in cases involving children, and - to enable better NGO planning of support services. Consideration should also be given to establishing clear and transparent minimum standards of support through a multidisciplinary collaborative process involving public bodies and NGOs.

In 2014 two main NGOs provided support services to both domestic and foreign victims, namely IFS Emmaus and Medica. IFS Emmaus has a shelter that can accommodate up to 80 adult and child victims and provide them with a range of medical, psychological, social, educational services. It is a closed-type high-security shelter, so it is the preferred location in THB cases with security concerns. Medica manages an open-type safe house that can accommodate about 25 adult and child victims and provide them with a variety of support services medical, psychological, social, educational and training services. Medica also operates a daily centre for

street-involved children where they provide hot meal, refreshments, recreational, education and other activities for children. Both NGOs cooperate regularly with Vasa Prava, the main NGO providing legal counselling and legal assistance to trafficked persons throughout the country.

In 2015 the MoHHR funded also three other NGOs for the provision of accommodation and other support services to domestic victims, namely Buducnost from Modrica, Zene sa Une and Fondacija Lokalne Demokratije in Sarajevo.

#### Victim assistance

Victim assistance	2012	2013	2014
Safe houses	13	6	14
Drop-in centres	10		21
Orphanage			1
Declined assistance	6		13
Outside shelter support		10	13
Total	29	16	49

The scope of victim support services varies from one NGO to another. The table below lists the services that are most commonly available to trafficked persons.

Main support services provided by NGOS	
SOS / Help line	Social and health accompaniments
Safe accommodation	Language interpretation and cultural mediation
Material assistance (e.g. food, clothing, personal hygiene items etc.)	Educational activities
Social counselling	Recreational activities
Medical assistance	Vocational training
Psychological counselling	Employment counselling
Psychiatric care	Family mediation
Free legal counselling and assistance	

The assistance is shelter-based; the trafficked person provides her consent to acceding to the safe house and there receives the various support services. The trafficked person may leave the safe house upon informing both the shelter management and the competent authorities and she is required to provide information about her new place of residence. Leaving the shelter practically means renouncing to support services. A few NGOs mentioned that some of their

services are available also on a non-residential basis, however the problem is often that trafficked persons may live far from the service provider and lack resources for transportation.

The duration of victim assistance programs is for a period of 3-6 months on average. Services are short-term and mainly available for women and children. In rare cases stay in the safe house was reported for 2 years or more and this long period was linked to the duration of criminal proceedings.

*“Trafficked persons often stay too long in the shelter because of the length of criminal proceedings. In cases involving children this period maybe even longer” (An NGO representative)*

Services for certain groups of trafficked persons e.g. men trafficked for forced labour could be improved. It would seem that in practice the only support service that is available to trafficked men is legal counselling.

### **Assistance to children**

The bylaws on protection of domestic and foreign victims contain measures for special protection of child victims and require that all actions to protect and assist children be taken in light of the overarching principle of the best interests of the child.<sup>30</sup> These measures include: the presumption of minor age in age disputed cases, the immediate appointment of a guardian from the competent CSW, the provision of adequate accommodation, medical care, material assistance, psychological support, education etc.

At present one of the most positive realities for assistance to children is the network of daily centres that deliver care and protection services to children living and working on the street, including those who are trafficked. The daily centres' services include: outreach programs with children, their families and communities; provision of a meal and opportunities for personal hygiene caring, information and counselling, educational and recreational activities, psychological support, referral and accompaniment to other services.<sup>31</sup> The daily centres operate in partnership with local authorities and are funded mainly through external donors. These Centres provide very important and much needed services for children and should continue operating while strengthening their collaboration with competent local public institutions and with other NGOs.

Assistance and protection of child victims of trafficking remains however particularly challenging. The interviews with local stakeholders revealed significant challenges especially regarding: delivering adequate services, conducting a multidisciplinary best interests determination process, implementing a durable solution and delivering tailored and age-appropriate support programs for trafficked children.<sup>32</sup> For example, in situations when there is an urgent need to remove a child from the street and his/her parents cannot be located or there is an immediate

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<sup>30</sup> Rulebook on protection of foreign victims, Articles 19 and 20; Rules on protection of domestic victims, Articles 3 and 15.

<sup>31</sup> Save the Children, Minimum Service Standards for Drop In Centres for Street Children in BiH, *undated*.

<sup>32</sup> Although the principle of the best interests of the child is well-known, it is not adequately implemented in practice and several public authorities -including social welfare and courts- lack guidance on how to determine the best interests of a child and on how to work together with a multidisciplinary approach. This issue is explicitly recognised in the Action Plan for Children of BiH 2015-2018 adopted by the Council of Minister of BiH in June 2015, p.30-31.

safety risk for that child, emergency accommodation facilities are lacking; at present such facilities exist only in Tuzla, Mostar and Banja Luka. There is also a lack of alternative family/community-based options for children; the possibilities of placement in foster care families are limited and often poorly funded, thus frequently resulting in poor standards of care.<sup>33</sup> Children who are recognised to be trafficked are often placed in safe houses for victims of THB, which in some cases have arranged to have a separate wing for children. Competent guardianship authorities cooperate with NGOs to ensure care and protection of the children accommodated in safe houses. Yet, safe houses are service facilities that are not meant to provide a durable solution for children, one social worker commented:

*“Children cannot stay here two years or longer, they cannot go to school on their own, they are escorted even when they are 15-16 y.o.” [An NGO representative]*

*“Long term reintegration is the main challenge we face, especially for trafficked children who are teenagers, 14-15 y.o.” [An NGO representative]*

Some stakeholders mentioned also that it is not uncommon for children to be returned to their families even if it is not in their best interests; this seems to be especially the case for children above 12-13 years of age, and for children from the Roma community, thus suggesting that they are also discriminated against.<sup>34</sup> Younger children recognised victims of trafficking or for whom the CSW has established that they cannot stay with their parents are more often placed in institutions. These situations tend to occur also when the case is initially qualified as child trafficking and then the case is dropped due to a lack of evidence, so regardless of the victimisation of the child.

These challenges reflect broader issues and weaknesses related to the general functioning of the criminal justice and child protection systems in the country and their capacity to protect the most vulnerable and disadvantaged groups, starting with children living below the poverty line.<sup>35</sup> These factors, which hinder the assistance and reintegration of child victims of trafficking, are also the very same factors that contribute to rendering children vulnerable to abuse, exploitation and trafficking.

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<sup>33</sup> This situation is recognised also in the Action Plan for Children of BiH 2015-2018 adopted by the Council of Minister of BiH in June 2015, see p.44.

<sup>34</sup> Interviews with NGOs and CSWs.

<sup>35</sup> See the Action Plan for Children of BiH 2015-2018 adopted by the Council of Minister of BiH in June 2015, p. 55. This document indicates that the most disadvantaged groups are Roma, internally displaced persons, returnees, children from rural areas and children with disabilities.

### ***A foreign child victim of trafficking***

A child victim of trafficking in human beings, 13 years old: "I was born in Belgrade and attended school until the fifth grade. I was a very good student. I have four brothers and one sister and I am the oldest. When I was 12 years old, my father married me to a 14 year old boy and got money for that. He hit and insulted me. I ran away from him with my aunt who came to visit me. She said she would take me with her to Bosnia and Herzegovina, so they could not find us. We crossed the border by bus. My aunt had my birth certificate and health card. We arrived in Sarajevo in the summer and lived in Visoko for four months. My aunt forced me to beg and bring her money. She said we needed money to buy food. If I brought less than 20 BAM, I would be beaten with hands and objects. One day she told me to go begging in another village and that she would come and pick me up the next day. I believed her, but the next day she did not come. I was alone on the street for 6 days. In this village, I met a lady whose name I do not remember. She drove me to the bus station in East Sarajevo. The chief of the station called the police and they took me to the police station."

The girl was at the police station for two days. During that time, she was interviewed several times by different police officers, trying to establish her identity and needs for assistance. She was provided with two chairs placed side by side to serve as bed and police officers collected money to provide her food.

The police officer in charge contacted several government institutions including the local CSW, and State Border Police for information on where to accommodate the girl and what kind of assistance to provide her with. At a certain point the BiH the MoS Department for Anti-trafficking was contacted and finally advised police on the appropriate procedure and referred them for assistance and guidance to the NGO IFS-EMMAUS.

Two days after being identified, in coordination with the BiH Service for Foreigners Affairs (SFA) the girl was accommodated in the shelter of the NGO International Forum of Solidarity – EMMAUS. A temporary guardian was assigned and accompanied the girl during the referral to support services as potential victim of trafficking. She received a number of support services including medical care, psychological assistance, literacy lessons, mentoring, occupational therapy, and legal aid. She was also granted a humanitarian residence permit that was extended twice.

During her stay at the shelter, law enforcement agencies interviewed her four times on the circumstances of her case. She expressed her fears to return home, as she was afraid of being sold again by her family. Twenty months later, she was repatriated to her country of origin, she was accompanied by the temporary guardian, SFA and IOM. Prior to her assisted return, the guardian and SFA liaised with relevant services in Serbia and made care arrangements for her (placement in home care and further rehabilitation/re-socialization assistance).

*Source: IFS Emmaus, 2008*

## **9. SOCIAL WELFARE AND LONG TERM ASSISTANCE FOR REINTEGRATION**

Outside assistance in shelters, social protection for vulnerable groups is the main scheme for assistance and support to the social inclusion of trafficked persons in the long run. The BiH system of social protection is highly decentralised and reflects the complex institutional structure of the country with its multiple levels of governance. Different laws and policies regulate social protection at the level of the Entities, District and Cantons. This diversity of regulations translates

*inter alia* into differences in terms of eligibility criteria for the identification of vulnerable persons, and in terms of types and amounts of the entitlements.

With regard to trafficking, there is no harmonisation in the entitlements to social protection for adult and child victims of trafficking on the basis of their status as vulnerable individuals, victims of a serious crime and in need of social assistance. More specifically, only the RS Law on social protection identifies child and adult victims of THB among the beneficiaries of social assistance.<sup>36</sup> The laws on social protection in FBiH and in Brčko do not include trafficked persons -both adults and children- among the vulnerable groups entitled to social assistance. The Rules on protection of domestic victims attempt to harmonise this situation by recommending a number of social protection measures for victims and victims-witnesses including accommodation, financial aid, counselling and psychological support and inclusion into the social inclusion program.<sup>37</sup> However, the Rules are bylaws and are not legally binding for competent authorities at local level.

The MoHRR has issued comprehensive, articulated and human rights-based guidelines for CSW regarding victims of trafficking, including minimum operational standards and performance principles for professionals working at these centres. These guidelines are complemented by the MoS Guidelines for Regional Monitoring Teams. According to the RMTs Guidelines a multidisciplinary team of experts (including a CSW case manager, physician, psychologist, NGO, police and prosecutor, lawyer) should be established to coordinate and determine the social assistance and reintegration plan for each trafficked person. Unfortunately, many stakeholders seem not to be fully familiar with these guidelines, for example none of the interviewed stakeholders referred to this multi-disciplinary practice of case management.

When trafficked persons leave the safe house, it is not surprising that they encounters significant barriers to access public services; these relate to administrative and bureaucratic procedures, to discriminatory attitudes and to lack of financial resources. Several stakeholders suggested that there is a need to strengthen CSW capacities to deliver social assistance and child protection services. Social workers are often constrained in what they can do to support trafficked persons, they have very few resources, large case loads of clients, they deal with large amount of paperwork and bureaucratic procedures, and they lack expertise to deal with trafficked persons, especially children. The situation however varies across the country and there are positive examples of engaged and committed social workers who creatively and efficiently use the limited resources at their disposal.

There are also other positive examples of strengthened collaboration between NGOs and public institutions. Several NGOs have established cooperation protocols with the local CSW and other authorities and have started working together more systematically. For example, some NGOs have established cooperation with local education institutions to enrol trafficked children in school or in vocational training programs. These are very important developments as they allow trafficked persons to access government supported reintegration services such as education and vocational training.

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<sup>36</sup> Law on Social protection of Republic of Srpska of 19 April 2012, N. 01-020-1172/12, Article 17.

<sup>37</sup> Rules on protection of domestic victims, Article 12 - Social security.



Overall long-term social assistance for the reintegration and social inclusion of trafficked persons, especially children, is very challenging given the general context of poverty, unemployment and social exclusion in the country. There are very many competing issues with other large groups of vulnerable individuals also in need of social protection. Already in 2013 the BiH Strategy to counter THB recognised the provision of social protection and medical care to victims of THB as one of the key challenges to meet.<sup>38</sup>

The reintegration of trafficked persons is a highly expensive, complex and challenging process, yet it is a crucial one; when trafficked persons are not properly assisted and supported they are more likely to fall back into trafficking or to suffer life-long lasting consequences.<sup>39</sup> Several anti-trafficking stakeholders both from the public and NGO sectors highlighted the significant weaknesses of the current system for reintegration of trafficked persons, showing awareness of the complexity, length and cost of the process, as well as of its non-linear features.

*“ There is no long term assistance, we only manage to respond to crisis situations.” [ a public official ]*

*“What lacks is the exit strategy for victims, the worst thing for them is to go back to their local community and face the trafficker.” [An NGO representative]*

Government funds for victim assistance and protection are limited, existing reintegration programs are quite narrow in scope and are under-resourced; reintegration depends on international and bilateral donor assistance to NGOs. Non-residential victim support services are also underdeveloped.

*“ A major gap is the provision of social services for long term reintegration outside the shelter.” [An NGO representative]*

*“ Trafficked persons need help in finding a job.” [An NGO representative]*

To meet these challenges, some NGOs attempt to liaise and cooperate with other civil society groups to refer trafficked persons to other support services; this type of referral works mainly on an ad-hoc basis and it depends on the NGO network and contacts. Additional free services for vulnerable groups might be available, for example one NGO provides free gynaecological, dermatological and venereologic services but these do not seem to be included in the current system of referral to assistance. It might be useful to conduct a systematic mapping of potentially accessible services such as counselling, vocational training, income generating initiatives, free medical consultations, charities programs of material assistance for vulnerable groups etc. This mapping could provide the basis to enrich the scope of resources and services available for the reintegration of trafficked persons. In addition, consideration should be given to supporting free transportation for trafficked persons to continue accessing some shelter-based support services (e.g. psychological and social counselling) or other services (e.g. legal counselling) after they have left the safe house.

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<sup>38</sup> BiH Ministry of Security, Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013 – 2015 and Action Plan, adopted at 43rd session of the Council of Ministers of Bosnia and Herzegovina on 26 March 2013.

<sup>39</sup> R. Surtees, Beyond trafficking. The re/integration of trafficking victims in the Balkans, 2007 to 2014, 2015, KBF and Nexus Institute, p. 148-149.

## 9.1 HEALTH CARE

The policy framework for health care services varies between Entities, Districts and Cantons. The health care system is centralised in the RS under the RS Ministry of Health and Social Welfare. In the FBiH the healthcare system is decentralised at the cantonal level.

Trafficked persons often do not have any medical insurance. Pursuant to Article 13 of the Rules on protection of domestic victims, victims shall be provided with health protection and to this end resources are to be ensured by the MoHRR. Pursuant to Article 16 of the Rulebook on protection of foreign victims, health protection shall be provided in/through the shelter.

When trafficked persons are sheltered in one of the accredited safe houses, they enjoy a facilitated access to health care services for the duration of their stay. For example, both Medica and Emmaus IFS have established protocols of cooperation with local hospitals to ensure that trafficked persons (both BiH citizens and foreigners, adults and children) can receive medical screening and necessary medical assistance regardless of whether they have a health insurance card. Once a trafficked person leaves the safe house, access to health care services may become challenging, as trafficked persons usually do not have a health insurance card. In practice, given the limited resources available, the current victim assistance framework covers only initial health care. In BiH a rather large proportion of the population is not covered by public health insurance and has therefore no access to health care services.<sup>40</sup>

Free health care protection for all children is also not fully provided. In practice, access to free health care is available for all children till seven years of age. Beyond the age of seven, the health care protection is linked to the enrolment of the child in regular education. In the FBiH Article 19 of the Law on health care insurance provides that insured persons are: - children till 15 or 18 years of age who did not complete compulsory education or did not find employment after they completed compulsory school if they reported their status to the Employment Service; children enrolled in regular elementary and secondary education; and BiH university students who are not insured as family members up to 26 years of age. The right to health care for children who are not enrolled in regular education (from birth till 15 y.o.) can be secured through social welfare centres at cantonal level. However, not all cantons enacted necessary bylaws resulting in lack of free health care for children especially below the school age.<sup>41</sup> In the RS, all children aged from 7 to 15 years of age are provided health care protection, as well as till 18 or 26 if enrolled in regular education; in the FBiH children from 7 to 18 or even up to 26 years of age, are provided with health care if enrolled in regular education<sup>42</sup>. Since health care protection and insurance is linked to permanent residence it is unlikely that children who are on the move or not enrolled in regular education will have free and unlimited access to health care protection.

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<sup>40</sup> SPIS Project, UNICEF, *Gap Analysis In The Area Of Social Protection and Inclusion Policies in Bosnia and Herzegovina*, 2013., p.12

<sup>41</sup> Ombudsman, Specijalni izvještaj Zdravstvena zaštita djece u BiH, 2012.

<sup>42</sup> Law on health care insurance (FBiH OG No. 30/97, 7/02, 70/08 i 48/11, RS OG No. 18/99, 51/01, 70/01,51/03,57/03,17/08,01/09,106/09, BD OG No 1/02, 7/02, 19/07, 2/08 i 34/08 and Law on health care protection (FBiH OG No 46/10, RS OG No. 106/09 and BD OG No 38/11)

## 10. ACCESS TO JUSTICE

### 10.1 NON-PUNISHMENT OF VICTIMS

The non-punishment of trafficked persons for offences committed in the course, or as a consequence of being trafficked is a crucial provision for the protection of their rights. The non-punishment clause is strictly related to the State's obligations to identify and assist victims, investigate trafficking and bring the true perpetrator of crime to justice. This provision is therefore particularly relevant in the assessment of the referral mechanisms in BiH.

Pursuant to Article 26 of the Council of Europe Trafficking Convention on Action against in Human Beings victims of trafficking shall not be penalised for their involvement in unlawful activities, to the extent that they have been compelled to do so.<sup>43</sup>

Since 2015 the BiH Criminal Code<sup>44</sup> includes a non-punishment clause in Article 186(10) that establishes that criminal proceedings shall not be conducted against a victim of trafficking who was forced to participate in the commission of another criminal offence if such action was direct result of his/her status as a victim of trafficking. A similar provision is also established in the CC of Brčko district<sup>45</sup> while it is not included in the CCs of the two entities<sup>46</sup>.

The inclusion of the non-punishment provision in the BiH CC is a very positive and significant development, however given the nature of the legal system in the country there is a need to proceed with further harmonisation of the Criminal Codes in the two entities to include a specific non-punishment clause. This is particularly important since the CC of the two entities include only general clauses of "irresistible force" or "extreme necessity" (e.g. Article 12 and 12a of the RS CC and Article 25 and 25a of the BiH CC), which Courts usually apply in a very restrictive manner. Furthermore, it is recommended to issue guidance to investigating and prosecuting authorities on the application of the non-punishment clause.<sup>47</sup>

The OSCE and the Council of Europe advocate for an interpretation of the non-punishment clause in light of the trafficking definition, in particular with regard to the notion of compulsion. More specifically, compulsion should be interpreted in light of the broad array of coercive, deceptive and abusive means, including abuse of a position of vulnerability, through which traffickers control their victims so that victims lose their autonomy, are not free to act and commit an offence because of their trafficking situation.<sup>48</sup> Given that, in the case of children the international definition of trafficking does not require the use of abusive and deceptive means,

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<sup>43</sup> For a detailed analysis of the non-punishment principle in international and European Law see OSCE, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 2013.

<sup>44</sup> Law on Amendments to Criminal Code of BiH, BiH OG No 40/15

<sup>45</sup> Law on Amendments to Criminal Code of BD, BD OG No 9/13.

<sup>46</sup> Law on Amendments to Criminal Code of RS, RS OG No 67/13 specifying the offence of trafficking in human beings but does not include specific reference to non-punishment clause.

<sup>47</sup> See also Council of Europe GRETA, *Report concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina*, 2013, para 148.

<sup>48</sup> OSCE, 2013

and given that children are vulnerable by virtue of their age alone, the notion of non-punishment in cases involving trafficked children is broader. “Where a child is trafficked, and is used by a trafficker for an illegal purpose, or the child otherwise commits a criminal act which is related to their situation as a trafficked child, non-punishment should be applied also in order to prevent the further victimization of that child. Where the circumstances are unclear and there are doubts regarding the relationship between the offence and the child trafficking situation, law enforcement officials and prosecutors should prioritize actions that promote the well-being of the children, avoid harm to them and are in their best interests.”<sup>49</sup>

The existing non-punishment provisions in the criminal laws of BiH do not distinguish between a case involving a trafficked adult and one involving a trafficked child. In BiH the age of criminal responsibility for children is 14 years of age according to juvenile justice legislation adopted in the Entities and in Brčko District.<sup>50</sup> When children above 14 years of age commit an offence related to their trafficking situation relevant provisions of juvenile justice legislation apply.<sup>51</sup> In the context of non-punishment the principle of opportunity is particularly important as it provides prosecutorial discretion on non-initiation of criminal proceedings.<sup>52</sup> Furthermore, given that there are growing indications of trafficking in children for the purpose of exploitation in criminal activities (e.g. pickpocketing and drug dealing) it would be quite important that prosecutors and judges for juveniles, as well as defence attorney for children and CSW staff, be able to recognise cases bearing the hallmarks of trafficking and thus be able to see the child victim behind the child offender so to effectively apply the non-punishment provision and adequately protect child victims.

Article 26 of the Council of Europe Convention refers to non-imposition of penalties, therefore considerations should be given to ensuring that trafficked persons are not penalised also for the commission of administrative offences when these offences are a result of their situation as trafficked persons. This is particularly important since several administrative provisions related to public order are adopted at the level of Entities, Brčko District and cantons, and penalise with fines or imprisonment engaging in prostitution and begging, which are currently among the main purposes of exploitation of trafficked women, men and children.<sup>53</sup> It is not uncommon for trafficked persons to be misidentified and penalised for violations of such public order provisions.

Interviews with legal professionals and other stakeholders in BiH revealed a good level of awareness of the non-punishment provision and of its importance in ensuring the protection of rights of trafficked persons. The main NGOs engaged in victim assistance did not have recent experience with trafficked persons being penalised for status offences. However, other stakeholders mentioned a recent case of a girl trafficked for forced criminality, who had pending criminal proceedings for repeated pickpocketing, and for which the prosecutor was considering a direct application of Article 26 of the Council of Europe Convention to halt criminal proceedings on the grounds that the girl was a victim of trafficking for the purpose of exploitation in criminal

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<sup>49</sup> OSCE, 2013, para 42.

<sup>50</sup> BD Law on protection and Treatment of Children and juveniles in criminal proceedings, BD OG No 44/11

<sup>51</sup> FBiH Law on Protection and Treatment of children and juveniles in criminal proceedings, FBiH OG 7/14

RS Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, OG RS 13/10, 61/13

<sup>52</sup> RS Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, OG RS 13/10, Article 89. FBiH Law on Protection and Treatment of children and juveniles in criminal proceedings, FBiH OG 7/14, Article 89.

<sup>53</sup> See for example, RS Law on Public Order, OG RS 11/15.

activities. There were also reports of fines imposed on parents of children exploited for begging. Since there are many indications of trafficking in children for forced criminality but very few trafficking investigations are initiated, some legal professionals mentioned that it would not be surprising that children above the age of 14 were misidentified and treated as offenders, and they would probably receive a Court reprimand, minor punishment or a suspended sentence.

The application of the non-punishment provision depends on the timely and correct identification of victims and is linked to a victim's right to have their trafficking investigated. This is challenging everywhere, and also in BiH, especially since recurrent problems in ensuring a proper legal classification of trafficking cases were reported by various stakeholders and result in victims not being recognised and treated as such. Moreover, the transfer of jurisdiction from State to Entity/Brčko institutions suggests that training and guidance on non-punishment is necessary for police and prosecutors.

## 10.2 LEGAL ASSISTANCE

Providing legal counselling and assistance to trafficked persons is crucial to protect their rights, and ensuring that trafficked persons can make informed choices and actively participate in judicial and administrative proceedings. It is also critical to avoiding criminal punishment of the victim for trafficking related offences, and to accessing compensation and redress.

Pursuant to Article 15 of the Council of Europe Anti-trafficking Convention victims shall have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language, which they can understand. They have a right to legal assistance and free legal aid under the conditions provided by domestic law.<sup>54</sup>

Both BiH bylaws for domestic and foreign victims establish that victims are entitled to information about their rights and legal assistance during proceedings. More specifically, Article 11 of the Rules on protection of domestic victims and witnesses, establishes that victims and victims-witnesses be provided with legal aid to have their interests and viewpoints considered in proceedings to claim compensation and in other proceedings to obtain social protection. The Rulebook on protection of foreign victims also deals with legal counselling and legal aid and specifies that it should be provided from the first interview through administrative and criminal proceedings (Articles 8, 14, 15 and 17).

The public system of free legal aid is very fragmented and differently regulated at the State, entity, district and cantonal levels of BiH, thus creating differentials in treatment of individuals before the law. In practice, legal aid is provided by NGOs that are mainly funded by external donors and partially through public resources. With regard to trafficked persons, the NGO Vasa Prava is leading in the provision of legal counselling, legal aid and representation. In most cases,

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<sup>54</sup> Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) Explanatory Report, paras 191-199. See also EU Directive on THB 2011/36/EU, Article 12 and 15 and EU Victims of Crime Directive 2012/29/EU, Article 20 that provides that victims may be accompanied by their legal representative and a person of their choice.

victims' access to legal aid is arranged through the staff of the safe house, however there have also been a few cases of other referrals or self-referrals to the NGO Vasa Prava.

The NGO lawyers assist trafficked persons in the administrative proceedings e.g. for the regularization of status; furthermore they often accompany victims to courtrooms when they need to testify, they may also legally represent victims in civil proceedings for claiming compensation.

The case below is illustrative of the importance of providing timely and early legal counselling to trafficked persons, adults and children, to enable a more effective protection of their rights.

### **Child trafficking?**

Border police intercepted a foreign girl with a false passport at Sarajevo airport; an adult who was allegedly her relative accompanied her. The adult man put forward a request for international protection and was referred to the asylum centre. The girl stated that she was not at ease in the presence of that man and border police and SFA suspected that she might be trafficked and referred her to a safe house for victims of trafficking. The competent CSW appointed a guardian and the girl received counselling and other support services in the shelter. Police interviewed the girl just a few days before the end of the reflection period; the interview was conducted in English. Following the initial investigation, the prosecutor did not consider that she was trafficked and recommended that she be referred to the asylum procedure. Later in the procedure, the NGO Vasa Prava provided legal representation for the girl. The NGO lawyer started working on the case and challenged that the interview had been conducted without interpretation, and requested a new interview with an interpreter to take a proper statement. Following this interview, the prosecutor decided to further investigate the case as there were reasonable grounds to believe that she might be trafficked. The girl remained in the shelter and the lawyer put forward a request for a temporary residence permit on humanitarian grounds. The prosecutor concluded the investigation with a negative decision, there were not sufficient elements of trafficking. Meanwhile, the family of the girl was traced; her parents were in a foreign country and had just received refugee status. The NGO lawyer cooperated with the SFA and the consular authorities of the foreign country to arrange for family reunification. It took one year and a half for the girl to be reunited with her parents.

*Source: Interview with Vasa Prava*

## **10.3 PROTECTION OF VICTIMS' RIGHTS IN CRIMINAL PROCEEDINGS**

According to BiH criminal law, victims and victims-witnesses are not parties in criminal proceedings, they are injured parties and as such they are entitled receive information but not to be legally represented. It is the responsibility of the prosecutor to protect victims' rights. The Criminal Procedure Codes, the State and Entities' laws on protection of witnesses under threat and vulnerable witnesses provide a number of important measures to protect victims-witnesses of trafficking during criminal proceedings.<sup>55</sup>

<sup>55</sup> BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses, BiH OG No. 3/03, 21/03, 61/04 and 55/05; FBiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses, FBiH OG No: 36/3 ; Law on the Protection of Witnesses in Criminal Procedure, RS OG No 48/2003, 61/2004 and 55/2005. BD Law on protection of Witnesses under Threat and Vulnerable Witnesses, BD OG No 11/2003 and 8/2007.

These measures include *inter alia* closed hearings, the use of audio and video technical means to hear the victim, the possibility to examine the victim without the accused present in the courtroom, the possibility of anonymous testimony, the prohibition of asking the injured party about her/his previous sexual experiences, etc. In addition, some courts (e.g. at the State level or in major entity towns) have also established victim-witness protection units to provide legal aid and psychological support to vulnerable witnesses.<sup>56</sup> Adult victims of trafficking are however not automatically granted the status of vulnerable witnesses; it is up to the prosecutor to put forward the request to the court. Many of the established provisions for protection of vulnerable victims-witnesses mirror those required under the Council of Europe Trafficking Convention (Article 28) and some of those required under EU Trafficking Directive (Article 12 and 15); such measures should be mandatory in trafficking cases.

Interviewed police and prosecutors reported that victims safety needs vary significantly from case to case and that only rarely 24-hour police protection was needed. Generally, it is seldom for a victim to require full-fledged witness protection. The most common victim-witness protection measures are police escorts. Police escort victims to court or other locations where necessary and often allow also a social worker or counsellor from the safe house to accompany the victim. These measures help the victim feeling safer and more comfortable and also contribute to building a relationship of trust thus fostering victim stabilization and cooperation with competent authorities.

The RMT Guidelines provide detailed and practical guidance to arrange protection and care of victims during criminal proceedings. For example, the Guidelines recommend that the victim visit the courtroom before the trial to familiarise with the setting and prepare for the testimony; they suggest that where legally possible the victim-witness should have a copy of her/his previous statement. Other important measures relate for example to the use of other entrances to avoid any contact with the defendant and his/her relatives and friends, arranging for separate waiting rooms, adequate translation, excluding public from the courtroom and protecting sensitive data (e.g. about victim-witness life, names and photographs etc.).<sup>57</sup>

Despite the existence of legal provisions and guidance for their practical implementation, a number of important challenges remain. A challenge in the protection of victims' rights relates to protection of their privacy. There are reported cases in which media published the names of victims or described so many details about the case that it was easy to identify the victim. Another challenging area regards prevention of re-traumatization or repetition of humiliating experiences through repeated interviews. Some NGOs mentioned that it is not uncommon for victims to be interviewed by multiple public officials and repeatedly, e.g. police and prosecutor at State and entity level, CSW, SFA etc. In addition, victims' lawyers mentioned that they are not always and promptly notified when the police visit the shelter to interview the victim, this means that they are not able to be always present during the interview.<sup>58</sup>

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<sup>56</sup> For an extensive description and analysis of this measures see OSCE ODIHR, Council of Europe, *Review of the legislation pertaining to combating THB in BiH*, 2009 and IFS Emmaus, *Promoting a Victim Centred Approach in Trafficking Cases*, 2015.

<sup>57</sup> MoS, Guidelines for RMTs, p. 61.

<sup>58</sup> Interview with NGOs.

With regard to children there are specific legal provisions and specific challenges in ensuring their protection in criminal proceedings. Children are recognised among the categories of vulnerable witnesses in the laws on witness protection therefore granted witness protection measures by the court in each individual case. Furthermore, the Laws on Protection and Treatment of Children and Juveniles in Criminal Proceedings contains a number of provision to protect children and juvenile victims of crime, including trafficking, but only for sexual exploitation, neglect, abduction and abuse for pornography.<sup>59</sup> Such protection should be extended to all forms of exploitation of children and full application of the legal framework should be ensured.

The legal protection emphasise the necessity of treating child victims with extra caution considering their age, personality, education and living conditions to prevent further harm. The laws also establish that the child victim shall be interviewed with the assistance of a trained expert, a pedagogue or a psychologist without the prosecutor for juveniles being physically present. The interview with the potential child victim must take place in the presence of the child's legal representative. Children's interviews should be conducted in a suitable place and should be video recorded. There are also measures of protection that prohibit for example direct confrontation with the accused and ensure protection from direct contact with the suspect.<sup>60</sup> However, according to many stakeholders, these and other protection measures for vulnerable victims-witnesses are unevenly applied through the territory of BiH. This is because resources, capacities and knowledge vary across the country, for example often local courts do not have special equipment or a victims-witness support service.<sup>61</sup>

Children are also entitled to be accompanied by parents or their guardian during proceedings. Guardianship is secured through the competent CSW, however the CSW guardian is usually a social guardian and often lacks competence to legally assist child victims; yet the guardian can seek free legal aid for child victims but it is not always done. Even when children have a legal representative, there are frequent challenges in ensuring that the various professionals understand and take into due account the child's needs rights and views, act in the best interests of the child throughout the proceedings and also apply the principle of urgency.<sup>62</sup>

*"We had a case in which we identified a potential victim in January, the girl was placed in shelter and only in July we received some instructions regarding the case. I can't keep a girl in a shelter for seven months without finding her family or finding a durable solution for so long." (A public official)*

*Procedures with children last too long in the prosecutor's office. (A public official)*

The RMTs guidelines provide some guidance for the prosecutor in conducting the interview with the child and encourage a cooperative approach between prosecutor, police, CSW, social workers, NGOs and other services involved to achieve better results, to avoid repeated interviews and to prevent further trauma to the child. The practical implementation of this

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59BD Law on protection and Treatment of Children and juveniles in criminal proceedings, BD OG No 44/11  
59FBiH Law on Protection and Treatment of children and juveniles in criminal proceedings, FBiH OG 7/14  
RS Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, OG RS 13/10, 61/13  
,Article 184

<sup>60</sup> *ibid.*

<sup>61</sup> See UNICEF, *Children's Equitable Access to Justice in Bosnia and Herzegovina. Summary*, 2015, p.11-12

<sup>62</sup> *ibid.* UNICEF, 2015



approach is challenging. Some stakeholders reported that different public officials, including police, prosecutors and staff of the SWC, interview potential victims repeatedly. The repetition of interviews makes the victim account again and again the harm suffered and may easily cause additional trauma. This repetition of interviews is indicative of the challenges in implementing a multidisciplinary approach, i.e. of working together and sharing information avoiding further harm to the child.

Furthermore, in child trafficking cases –especially for forced criminality - it is not uncommon for professionals to be misled by the behaviour of the child and to consider it delinquency or bad behaviour, this is why it is very important to ensure the use of expert witnesses in court who can help explaining and understanding the child victim behaviour and trauma.

“Access to justice for children is influenced largely by their age and dependent status as well as by cultural perceptions of the place of children within society and the family. Due to their evolving capacities, children have less knowledge, fewer financial resources and are generally less equipped to deal with the complexity of the justice system in all of its forms. They depend on adults to obtain information on their rights, to navigate and understand available remedies and to access justice mechanisms.”<sup>63</sup>

Another general cultural challenge is related to the fact that professionals involved with child victims and potential victims often do not consider them as right-holders, as individuals whose rights may have been violated and who have their own specific rights and protection needs, which are greater than those of adults because they are children.<sup>64</sup>

Some stakeholders interviewed mentioned that there have been conflicts of jurisdiction between authorities at the State and entity level in investigating and prosecuting THB; in some instances this resulted in children spending even two years in a safe house without any information on the development of proceedings.

## 10.4 COMPENSATION

Victims of trafficking have a right to compensation for material and non-material damages from the perpetrator. States are also to take steps to guarantee compensation of victims, for example through the establishment of a State compensation fund or scheme.<sup>65</sup>

Victims are entitled to compensation from the offender. During the criminal proceedings the prosecutor should inform the victim/injured party about the possibility of filing a property claim for compensation of damages, however in practice this is not routinely done or victims are advised not to do so to avoid delaying the main proceedings.<sup>66</sup> The law stipulates that the Court should rule upon the claim for compensation if this does not considerably prolong the proceedings. It is

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<sup>63</sup>ibid. UNICEF, 2015, p. 11

<sup>64</sup> ibid. UNICEF, 2015.

<sup>65</sup> Council of Europe, Convention on Action against Trafficking in Human Beings (CETS No. 197) Explanatory Report, paras 191-199. See also EU Directive THB 2011/36/EU, Article 17.

<sup>66</sup> Interview with prosecutors and NGOs.

therefore at the discretion of the Court to make such an assessment. The exercise of this discretion is likely to be influenced by the investigative work of the prosecutor in gathering evidence of damages to the victim.<sup>67</sup>

*“When prosecutors do bring a property claim for compensation on behalf of the victim, the Court is usually not in favour of examining it as it would significantly delay the proceedings.” (A prosecutor)*

In practice compensation for victims of trafficking is rarely awarded in criminal proceedings; victims are routinely referred to civil proceedings. In a rare instance the BiH Court awarded a victim of trafficking - injured party- compensation in the amount of 5.000 BAM to be paid in the period of 30 days under the threat of execution. For the remaining part of the property claim (the victim requested 30 000 BAM) the victim was referred to civil proceedings. The accused was found guilty and sentenced to five years of imprisonment.<sup>68</sup>

*“ Prosecutors use medical expertise to support their case but not to show and calculate damages to the victim. They do not put forward property claims for victims, they say it is complex and takes too much time.” (A lawyer)*

Several NGOs emphasised that there is a strong law enforcement approach, victims are instrumental to the prosecution of THB, they are interviewed, cooperate and testify in court but they rarely receive redress and compensation.

*“Victims stay only victims, while traffickers go on with their life with impunity” (An NGO representative)*

After the conclusion of criminal proceedings victims are left alone to claim compensation in civil proceedings: free legal aid is not always guaranteed, victim-witness protection measures are no longer available in civil proceedings, the burden to prove material and non-material damages is on them again and the proceedings are very lengthy. This is why victims often do not even try to seek compensation. Legal professionals interviewed were aware of these challenges and some suggested some measures to take:

*“There should be a separate branch of investigation in which doctors and psychologists are called upon to assess the grades of suffering and qualify them in monetary value”. (A prosecutor)*

The case box below presents one of the first cases of transnational cooperation to facilitate access to justice and compensation. This is also a positive example of fruitful transnational referral and cooperation in the protection of the rights of trafficked persons. Many of the actors involved in the case such as the National Coordinators, the local NGOs know each other since long time, trust each other and have established good partnerships. Cooperation especially among NGOs is very practical, informal and effective; there are no specific protocols or standard procedures.

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<sup>67</sup> Article 193 CPC BiH. See also IFS Emmaus, 2015, p.71-77; IFS Emmaus, Manual for Judges and Prosecutors on Compensation for Victims of THB in BiH, undated.

<sup>68</sup> Verdicts of Court of BiH No: K- 76/08, dated 11 September 2009, confirmed at second instance by verdict No: KŽ-61/09 dated 09 March 2010.

## Transnational multi-stakeholder cooperation for the protection of rights trafficked persons

Two women from Serbia were trafficked for sexual exploitation in BiH. They were exploited in a bar. Their situation came to the attention of police that recognised that they were victims of trafficking and referred them to a local safe house. The women received medical and psychological care and also legal aid while being accommodated in the shelter. They decided to cooperate with the police in the investigation and they also requested to be rapidly returned to their home country. The authorities in BiH and in particular the Office of the State Coordinator liaised with the Office of the National Coordinator for THB in Serbia to inform him about the case and arrange the assisted return procedure. The women were returned to Serbia and referred to a local NGO where they received further assistance psychological, medical, economic empowerment trainings, and legal aid. Some time later the two women were invited to testify in the trial against their traffickers that was held in BiH. The Serbian NGO assisted the women both in the psychological preparation before going to court and in arranging for their transportation to BiH. The Serbian NGO also cooperated with the relevant Court in BiH and its victim-witness protection unit, and submitted a request for consideration of the women as vulnerable witnesses to the local prosecutor and Court. The request was accompanied by a medical expert opinion issued by the psychologist assisting the women in Serbia. The Court accepted the request and the women were granted the status of vulnerable witnesses. They testified and rapidly returned to their home country. The criminal proceedings concluded with a sentence for THB against the trafficker who was sentenced to four years imprisonment. The women were referred to civil proceedings to claim compensation for damage suffered. The NGO from Serbia contacted an NGO in BiH to represent the women in civil proceedings for claiming compensation. The women continue engaging in the proceedings despite receiving occasional threats by their traffickers.

*Source: Interview with the NGO Astra*

## 11. RETURN, REPATRIATION & TRM

Ensuring the safe return of trafficked persons and preventing their re-victimization is a key component of a national/transnational referral mechanism. A number of international and regional standards are relevant to ensuring the safe and dignified return of trafficked persons.<sup>69</sup> Article 16 of the Council of Europe Anti-Trafficking Convention requires that “when a party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim and shall preferably be voluntary”. In the repatriation of a child the best interests of the child must be the primary consideration. States are also to provide victims with information on the services and organisations that could assist them upon their return.<sup>70</sup>

The Rulebook on protection of foreign victims attributes the responsibility for the repatriation of foreign victims to the Ministry of Security. The procedure is regulated in the Rulebook on protection of foreign victims, namely Article 18 deals with the process of returning adult victims

<sup>69</sup> For a detailed analysis of relevant international standards and for guidance in their implementation see OSCE ODIHR, *Guiding Principles on Human Rights in the Return of Trafficked Persons*, 2014.

<sup>70</sup> See Council of Europe, *Convention on Action against Trafficking in Human Beings (CETS No. 197) Explanatory Report*, 2005, para 200-207.

and Article 21 with the return of child victims. According to these provisions the return process shall be voluntary, safe and dignified, and in the case of children, also in their best interests.

The process of return of the victim is coordinated by the MoS Service for Foreigners' Affairs in partnership with relevant institutions, NGOs and IOs. In practice the assisted and voluntary procedure is implemented in cases when the person is recognised to be a victim. When the person is not identified as a victim then s/he is usually returned as an irregular migrant.

The return process is usually arranged at the end of the criminal proceedings. The procedure seems to be easier and smoother within the Balkan region since it is based on regional and bilateral cooperation agreements and other arrangements including the cooperation established through the ICMPD Transnational Referral Mechanism project in SEE. Readmission agreements are also used for arranging the assisted return to other countries.

With regard to risk assessment procedures prior to returning the trafficked person to countries in the region, the practice seems to be that of informing the competent authorities in the country of origin (e.g. Ministry of Interior or National Anti-Trafficking Coordinator) to verify the person identity, collect information and ask them to undertake a risks assessment and cooperate with them to establish whether the planned return is safe.

The assisted return of child victims is arranged in cooperation with the competent CSW, which provides guardianship for the child and leads the process of best interests determination. The Service for Foreigners of the MoS supports the CSW in establishing contact with the competent authorities in the country of origin to trace the family of the child and assess the situation and risks for the child prior to making practical arrangements for his/her return to the parents or to the competent guardianship authority. Once it is established that it is in the best interests of the child to be returned, the Service for Foreigners together with the CSW escort the child to the place of return.

Over the last couple of years there have been very few foreign victims who have been identified and during the fieldwork it was not possible to examine in details the repatriation procedure. According to interviewed stakeholders, it would seem that the risk assessment is individualised and addresses the risk of persecution, torture, and inhuman or degrading treatment. However, it was not explored whether additional risk factors are assessed such as risk of retaliation by traffickers on the person and his/her loved ones, risks of harassment, detention or prosecution by the authorities, availability and accessibility of social support services for victims of trafficking, availability and accessibility of health services to respond to the medical needs of the victim. Also the details of the best interests determination process for child victims could not be examined, for example it is unclear to what extent the process is multidisciplinary, to what extent the views of the child are being heard, whether the degree of integration of the child is considered, etc. According to some NGOs, in some instances the return of child victims of trafficking originating from countries in the SEE region is arranged on the basis of very fast readmission procedures.

Some NGOs have positive experience of cooperation with the authorities in the repatriation procedure; for example NGOs support the trafficked person explaining her/him the process and providing information on available support services upon return, establishing contact with their NGO partners in countries of origin to facilitate continued care arrangements. Some NGOs were

familiar with the cooperation frameworks established through the ICMPD project on Transnational Referral Mechanism in SEE, however the existing procedures seem to be too lengthy, bureaucratic and not efficient, hence NGOs often prefer using their own network and resources for a more effective cooperation in the transnational referral.

#### *Trafficking for forced begging? Assisted voluntary return*

A woman from Kosovo<sup>71</sup> was sold in marriage at the age of 12; she fled from Kosovo at the beginning of the war and once in BiH she was sold to another man and lived in the country without identification documents for many years. She had two children and was forced by her husband to beg; when she did not bring enough money she was physically abused and beaten. At a certain point, the local CSW noticed her situation and informed police and prosecutor. She was referred to a safe house for victims of trafficking where she received medical care, psychological and legal counselling. She stayed in shelter for a few months, then left and returned to her husband, she was worried for her children. Competent authorities did not consider that she was a victim of trafficking.

Some time later the woman approached again the NGO Vasa Prava and asked for assistance in returning to her family in Kosovo. She wanted to return to save her children, she was afraid that her older daughter aged 13 would be sold. She had no proper ID documents. The NGO lawyers advised her on her legal options and tried to help her in getting travel documents and in facilitating the return procedure.

The NGOs liaised with the MoS Service for Foreigners' Affairs and cooperated with them to arrange her assisted return. Prior to her assisted return, Vasa Prava made contacts with their NGO partners in Kosovo and the woman was provided with referral contacts to seek support in Kosovo as victim of THB. She was assisted in returning safely back to her family in Kosovo.

*Source: Interview with Vasa Prava*

Recently BIH has cooperated with France in a large case of trafficking for forced begging. This case is illustrative of the importance of transnational cooperation in tackling trafficking cases, as well as of the challenges in ensuring a holistic and rights-based approach. The implementation of transnational referral mechanisms was difficult especially with regard to ensuring protection of child victims. While law enforcement and judicial cooperation were well arranged, it would appear that inadequate efforts and resources were placed to identify and effectively assist child victims of trafficking in France and BiH. For example, there were challenges in the cooperation between child protection authorities in the two countries in coordinating the exchange of information to confirm the identity of children and to investigate their family situations. It seems also not clear how many children were identified as victims in this case, whether they were provided with assistance and protection measures and whether the non-punishment provision was effectively implemented at least in the second round of prosecution of the case. The cooperation between France and BIH in this case included some multidisciplinary seminars involving police, prosecutors, investigating judges, social protection services and NGOs to address these challenges, yet the complexities of the case, the realities of exploitation of the trafficked children and the thin line between victim and offender in some instances posed significant difficulties.

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<sup>71</sup> All reference to Kosovo should be understood in full compliance with United Nation Council resolution 1244 (1999).

### *Joint Investigative Team BiH – France on trafficking for forced criminality*

In 2015 France and BiH set up a Joint Investigative Team (JIT) with the support of Eurojust. The JIT composed of police and prosecutors from the two countries was directed at dismantling a sophisticated human trafficking ring that exploited young women and children from BiH for the commission of petty crimes in Paris for many years.

Young women and children were placed on touristic locations and at major tourist stops of public transportation where they were forced to commit pickpocketing of tourists. The children were mistreated physically and psychologically; when they did not bring enough money to their controllers, they were punished through beatings, cigarettes burns and even raped. Children were systematically trained on what to say to the police in case of arrest and on refusing fingerprinting.

The French authorities had prosecuted members of the criminal network already in 2013 and had failed to recognize and protect the child victims behind the young thieves engaged by the criminal gang. Despite this prosecution, the criminal ring had continued its operations.

In an effort to address these challenges, in 2015 the transnational cooperation between France and BiH included the organization of a series of seminars involving judges, prosecutors, police and representatives of social welfare, child protection, NGOs and the national coordinators 'offices to establish cooperation modalities and action plans with regard also to victim identification and protection of rights.

In the summer of 2015 this joint investigation led to a number of arrests for trafficking, money laundering and other offences both in BiH and France. Prosecutors believe the suspects gained illegal assets worth more around 1,5 million euro that criminals spent on real estate purchases and luxury cars. Despite these positive results, there were serious shortcomings in securing the protection of the trafficked children.

The children were under enormous pressure by the traffickers and were very afraid of cooperating with the authorities. Some young girls were mothers of children who were in the hands of traffickers in BiH and who used threats against these children to control them. The BiH child protection authorities granted protection to four children. The process of reunification with their mothers is long and complex.

Unfortunately, despite the initial plans the joint operation between France and BiH did not see a close cooperation between child protection authorities in the two countries, before the arrests. There were no social workers from BiH deployed to France to work with the French NGOs and the local child protection services to identify the girls exploited in Paris, build trust with them and refer them to adequate assistance. Because of this lack of trust in the French authorities and the presence of their children in BiH, in France, many victims refused to be protected.

*Sources: Interviews with experts and media sources.<sup>72</sup>*

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<sup>72</sup> <http://www.france24.com/en/20130425-france-hamidovic-child-pickpocketing-ring-trial-paris>

<http://www.bosniatoday.ba/arrests-in-bih-and-france-for-human-trafficking/>

<http://www.balkaninsight.com/en/article/bosnia-arrests-alleged-human-traffickers>

<http://www.bosniatoday.ba/watch-the-video-of-todays-arrests-of-human-traffickers-in-bosnia/>; Interview with Olivier Peyroux, expert on THB; O. Peyroux, *Fantasies and Realities fueling Child Trafficking in Europe*. ECPAT France 2015.

## 12. CONCLUSIONS AND RECOMMENDATIONS

Over the years BiH has set up an articulated institutional and policy framework to deal with trafficking in human beings but at the operational level this framework has several challenges, which hinder the proper identification, referral to assistance and protection of rights of trafficked persons. There are no formally established functional national and transnational referral mechanisms, which include all relevant public authorities and civil society. There is however a rich body of bylaws and guidelines that provides a good basis to take the next steps and make the anti-trafficking machinery work and be more operational. These next steps involve actions at various level of the complex BiH institutional setup, dedicated efforts to establish an operational coordination of the referral process, capacity building and resources. The following areas require further improvement:

### ***Policies and legislation***

- Rapidly harmonise anti-trafficking criminal law with international standards across all levels of BiH complex institutional setup, starting with amending the CC of the FBiH to introduce criminalization of THB in line with international standards.
- Harmonise and streamline the bylaws on protection of domestic and foreign victims to reflect the recent changes in jurisdiction on THB cases, and to clarify and coordinate the tasks and competences of the relevant authorities at the State, Entity and District level.
- Harmonise the entitlements to social protection for adult and child victims of trafficking on the basis of their status as vulnerable individuals, victims of a serious crime and in need of social assistance. To this end, seek ways to ensure that the Rules on protection of domestic victims of trafficking be adopted as primary legislation and become legally binding for competent authorities throughout the country.

### ***Referral and coordination mechanism***

- Establish a formal NRM/TRM building on existing structures, bylaws and guidelines and ensure that NGOs are strategic partners in the design and implementation of such mechanisms.
- Ensure that the State Coordinator for combating THB in the MoS or a dedicated office in the MoHRR has operational capacity and adequate human and financial resources to drive the NRM coordination at an operational level with continuity. The NRM coordinator should ensure continuous liaising with each RMT core team at local level and with the Strike Force at State level depending on the nature of the trafficking case with the aim of coordinating and monitoring the identification, referral and assistance of trafficked persons domestically and transnationally.
- Establish a core team of police, prosecutors, CSW and NGOs within each RMT and task them with the operational activities of victim identification and referral to assistance. Core teams should be trained together on multiple aspects of THB including identification, referral, assistance and trauma.

- Build the capacity of core teams members to develop a shared understanding of THB, its impact on victims, its current features, as well of the respective mandates, expertise and tasks of core team members.
- Review the composition of the Strike Force to ensure a holistic and human rights-based approach and include representatives of the MoHRR, the Ministry of Civil Affairs, competent social welfare authorities and accredited NGOs that are direct service providers in international trafficking cases.
- Build on existing experience (e.g. Protocol on acting in cases of children exploited on the street for Tuzla Canton) to develop specific protocols of interventions that go beyond existing bylaws on victim protection are more specific and concrete, and are regularly monitored.
- Review budgetary allocations for coordination, and in particular ensure that resources for law enforcement coordination at State level be proportionate and commensurate with the scope of such activities and with the overall magnitude of anti-trafficking efforts.

### ***Victim identification***

- Disconnect the formal identification of victims from the initiation of criminal proceedings.
- Recognise NGOs and CSW that provide direct assistance to victims as formal and strategic partners in the process of identification.
- Set up a working group comprising police, prosecutors, NGOs and CSW and labour market authorities to devise specific indicators of THB for each form of exploitation and guidance on how to use the indicators. The indicators should be regularly reviewed to reflect the changing modus operandi of traffickers.
- Train all actors who can potentially encounter a trafficked person (e.g. police, prosecutors, lawyers, court officials, labour inspectors, staff of CSW child protection authorities, staff of Daily Centres for children, personnel of residential institutions for children, medical staff and consular staff, and NGOs) on the use of such THB indicators in order to ensure that they are proactive, have a common approach to identification of THB cases, and are able to properly handle the communication with victims of trafficking and their referral to assistance and support.
- Ensure continued funding and enhance support for Daily Centres for street-involved children and ensure that they continue employing Roma cultural mediators. Increase also the number of Mobile Team for street children and provide adequate funding for their operation.
- Develop outreach empowerment and information programs for people migrating abroad to improve the identification and protection of potential victims and prevent abuse and exploitation.
- Encourage existing outreach programs on HIV prevention among sex workers to engage in identification of THB victims and in their referral to appropriate protection and support.
- Ensure that all frontline police, border guards, immigration officials, personnel of immigration detention facilities receive mandatory basic training on THB and regular updates to reflect current trends in traffickers' modus operandi.



- Implement training programs on THB for law enforcement and prosecutors especially those now competent for THB at cantonal level. Such trainings should be multidisciplinary, should foster the use of THB indicators and should aim at developing a common interpretation, understanding and classification of the key elements of the THB offence. Trainings should also be focused on issues related to handling communication and protection of victims-witnesses rights, especially children, and on gathering and securing evidence in THB cases.
- Ensure that all trainings for professionals working on THB include competencies to understand the physical and psychological impacts of THB (trauma informed response).

### ***Victim assistance***

- Ensure that all victims – regardless of their nationality, gender, age or other ground - receive all the support measures they are entitled to based on the Council of Europe Trafficking Convention (Chapter III), regardless of who provides those services.
- Identify an urgent and practical solution to respond to the assistance needs of domestic and foreign victims in a non-discriminatory, fair and effective way. To this end consider establishing a joint fund for assistance to all victims of THB merging the budgetary resources of the MoS and the MoHHR .
- Ensure that victim access to assistance is not made conditional on the initiation of criminal proceedings for THB.
- Ensure that the procedure for placing a child potential victim of trafficking under guardianship and for referring the child to appropriate care and protection is urgent. Also ensure that potential child victims have immediate access to emergency accommodation where necessary.
- Review current tender procedures for NGOs grants for victim assistance to ensure transparency, efficiency and continued provision of assistance and support services to victims.
- Allocate funding for direct assistance and social inclusion programs for trafficked persons, especially children, and ensure that programs develop services also for persons trafficked for other purposes of exploitation including labour exploitation, forced begging and forced criminality.
- To enhance victims continued access to shelter-based support services (e.g. psychological and social counselling) or other services (e.g. legal counselling) after they have left the safe house, consider providing them with small financial amounts for transportation to reach the service provider.
- To enrich the scope of services available for the reintegration of trafficked persons, conduct a systematic mapping of potentially accessible services such as counselling, vocational training, income generating initiatives, free medical consultations, charity programs of material assistance for vulnerable groups etc.

- Develop practical training and guidance to promote a multi-agency approach to: the protection of child victims, the best interests determination process and the identification of a durable solution for each child.
- Strengthen the capacity of service providers, especially Centres of Social Welfare to improve their role in the identification and assistance of trafficked persons, especially children by means of multidisciplinary training and cooperation protocols with NGOs.

### ***Access to justice***

- Harmonise the Criminal Codes in the two Entities to include a specific non-punishment provision in line with European standards. Meanwhile, law enforcement officials and prosecutors must refrain from applying administrative provisions related to public order (e.g. begging and prostitution) to trafficked persons and ensure compliance with the non-punishment provision (Article 26, Council of Europe Trafficking Convention).
- Organise training for law enforcement, prosecutorial and judicial authorities across all levels of jurisdiction on the effective implementation of the non-punishment provision.
- Harmonise statutory provisions related to legal aid for victims of THB and their representation in front of the Courts of BiH and of the Entities and Brčko District.
- Ensure that trafficked persons acting as victims-witnesses in criminal proceedings be systematically granted protection measures for vulnerable witnesses in accordance with existing laws.
- Ensure respect for the principle of urgency in all criminal proceedings involving child victims.
- Improve victims' access to compensation from the perpetrators by ensuring that prosecutors timely inform victims of their rights to file a property claim for compensation.
- Develop capacity building programs for judges and prosecutors – especially those operating at cantonal level- with the objective of raising their awareness about THB as a serious crime and a violation of human rights, and of enhancing their capability and skills to recognize and adequately classify trafficking cases and implement anti-trafficking legislation in line with European and international standards. Such training should also build on an analysis of domestic case law on THB and of relevant international case law (e.g. ECtHR). Also involve NGOs and experts on trauma in the delivery of such trainings.
- Develop capacity building initiatives to ensure that investigative work in THB cases includes gathering evidence of material and non-material damages to the victim.

### ***Return, repatriation and TRM***

- Raise awareness of all the actors in the referral process about existing guidelines and standard operating procedures – including those developed in the framework of the ICMPD TRM project in SEE-, and ensure that these tools are known, accepted and effectively used by the relevant actors.

- Ensure that when developing transnational cooperation in THB cases, including when setting up JITs, protection of victims' rights is not secondary, and that plans and resources are allocated at an early stage for collaboration between social welfare institutions and NGOs as well as for provision of direct assistance.

## **ANNEX I**                      **List of interviewed agencies and organisations**

1. State Coordinator for Combating Trafficking in Human Beings, BiH Ministry of Security
2. BiH Ministry of Human Rights and Refugees
3. BiH Prosecutor`s Office, Prosecutor in charge of THB cases
4. BiH Ministry of Security, Sector for Immigration
5. BiH Ministry of Security, Service for Foreigners` Affairs,
6. BiH State Investigation and Protection Agency SIPA
7. FBiH Federal Police Administration - Inspector Eneid Hasanovic
8. FBiH, Federal Prosecutor`s Office - Prosecutor in charge of THB cases
9. RS Prosecutor`s Office - Prosecutor in charge of THB cases
10. RS Ministry of Interior, Department for Organized Crime
11. Center for Social Welfare, Mobile team for prevention of child begging, Sarajevo
12. Center for Social Welfare, Mostar
13. NGO Save the Children
14. NGO Emmaus IFS
15. NGO Medica Zenica
16. NGO "HO Altruist"
17. NGO Novi put
18. NGO Zemlja djece u Bosni I Herzeovini
19. NGO Association XY
20. NGO Astra, Belgrade
21. OSCE
22. UNICEF
23. Olivier Peraux, expert on THB

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**ANNEX III Agenda of the Workshop on the improvement of the National Referral Mechanism, Sarajevo, 13 July 2016**

**Fight against Trafficking in Human Beings – Phase 2  
(THB/IFS/2)**

**Workshop on the Improvement of the National Referral Mechanism  
13 July 2016  
Hotel Sarajevo, Sarajevo**

**Agenda**

**Wednesday, 13 July 2016**

**09:30 – 10:00 Registration of participants**

**10:00 – 10:20 Welcome and introduction to the workshop**

*Tanislava Tanic, Head of Department for Trafficking in Human beings  
Madis Vainomaa, THB/IFS/2 Key Expert*

**10:20 – 11:00 Presentation of the NRM assessment results and recommendations**

*Liliana Sorrentino, Expert on NRM/TRM*

*Comments:*

*NGOs: IFS Emmaus, Medica Zenica*

*Competent institutions: BiH Ministry of Security, Sector for Immigration*

*International organisations: OSCE Mission to Bosnia and Herzegovina*

**11:00 – 11:15 Coffee break**

**11:15 – 13:00 Work in Working groups**

*Moderators: THB/IFS/2 Key Expert, Expert on NRM/TRM, CPO*

*Rapporteurs: TBD*

**WG I – Identification, Assistance, Access to justice, Return and repatriation for children victims of trafficking in human beings**

**WG II - Identification, Assistance, Access to justice, Return and repatriation for adults victims of trafficking in human beings**

**13:00 – 14:00 Lunch break**

**14:00 – 15:00 Presentation of WGs discussion**

*Coffee break*

**15:00 – 15:15**

**15:15 – 16:30 Discussion on the next steps to be taken in the framework of the THB/IFS/2 project to improve the NRM and Conclusions**

*Department for Combating THB*

*Expert on NRM/TRM*

*THB/IFS/2 Key expert*



## **ANNEX IV Conclusions of the Workshop on the improvement of the National Referral Mechanism, Sarajevo, 13 July 2016**

### **CONCLUSIONS**

On 13 July 2016, a national multi-agency workshop was held in Sarajevo, Bosnia and Herzegovina, in the framework of the EU-funded project Fight Against Trafficking in Human Beings and Organised Crime – Phase 2 (THB/IFS/2). The workshop saw the participation of 36 professionals including representatives of law enforcement, prosecutor's offices, social welfare, lawyers, NGOs, international organizations and other relevant public agencies and ministries. Participants discussed the main findings and recommendations of the ICMPD report assessing referral mechanisms for trafficking victims in BiH and highlighted priority areas for action. Priorities for action relate to two main areas: victim identification and coordination and cooperation.

#### ***Victim identification***

Addressing the challenges related to victim identification is a core and urgent priority for anti-THB action. A main issue is the lack of a shared interpretation and common understanding of the crime of THB between law enforcement professionals, prosecutors, and social workers operating at State, entity, district and cantonal levels; they do not use common indicators or criteria to recognise the various forms of trafficking.

There is an urgent need for technical assistance in the development of indicators and the following action should be prioritised:

- i. Set up a working group comprising of police, prosecutors, NGOs, Centres for Social Welfare, labour market authorities and others to devise specific indicators of THB for each form of exploitation. The indicators should be regularly reviewed to reflect the changing modus operandi of traffickers.
- ii. Develop guidance on how to use the indicators for victim identification. The indicators should be used in such a way to allow immediate referral to assistance providers when there is a reasonable suspicion that a person might be trafficked. Access to support should not be conditional on the initiation of criminal proceedings for THB.

#### **Coordination & Cooperation**

Cooperation and coordination in the referral and protection of victims' rights at local level is crucial, and in this regard the role and work of the Regional Monitoring Teams (RMT) should be strengthened as follows:

- iii. Establish a core team of police, prosecutors, Centres for Social Welfare and NGOs within each RMT and task them with the operational activities of victim identification and referral to assistance.

- iv. Build the capacity of core teams members to develop a shared understanding of THB, its impact on victims, its current features, as well of the respective mandates, expertise and tasks of core team members.
- v. Train Core Teams together on multiple aspects of THB including identification, referral, assistance and trauma.
- vi. Train Core Teams on existing bylaws, instructions and guidelines for various professional groups that have been developed in BiH in recent years, and on the identification indicators to be developed.
- vii. Establish a coordination mechanism for victim referral and protection of their rights at operational level
- viii. Find an urgent and practical solution to respond to the assistance needs of domestic and foreign victims in a non-discriminatory, fair and effective way.
- ix. Consider establishing a joint fund for assistance to all victims merging the budgetary resources of the Ministry of Security and the Ministry of Human Rights and Refugees.