

The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs

**Jacqueline Bhabha and Christina Alfiev
Harvard University Committee on Human Rights Studies**

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Executive Summary

This consultancy report is the result of research carried out in 2008 on the identification and referral of trafficked persons, in particular trafficked children, to procedures of international protection. The study was conducted in 10 countries: Norway, Italy, Ireland, Serbia, Nigeria, South Africa, Thailand, Kyrgyzstan, Mexico and Israel. These countries span 5 regions and are known to be affected by human trafficking. They are also diverse in a range of aspects: some are developed, others developing countries; some have instituted successful, rudimentary identification and referral systems, others have not; some are predominantly destination countries, others are also source and transit countries for human trafficking. Jacqueline Bhabha, a lecturer at the Harvard Law School, supervised the research conducted by Christina Alfiev, a Master's Degree candidate at the Fletcher School of Law and Diplomacy.

This study analyzes the effectiveness of two sets of current legal provisions relevant to the protection of internationally trafficked persons: first, identification and referral mechanisms for victims of trafficking, and second, international protection mechanisms including child specific measures, which grant legal immigration status to certain groups of non citizens. The study documents, for each of the 10 countries investigated, national anti-trafficking legislation and laws providing for asylum and other forms of international protection, such as subsidiary or humanitarian protection. It draws on both official government data and independent research by scholars and non-governmental organizations (NGOs) working in the field. In addition to pre-existing data, the study also incorporates new information specifically collected for this research, including data derived from a questionnaire sent to respondents, and phone interviews with government counter-trafficking officials, international organizations (IO), particularly UNHCR and the International Organization for Migration (IOM), and representatives from NGOs.

Among the ten countries investigated, the report highlights the good practice example of Norway. In this country, unlike any of the others studied, there is an effective system for both identifying trafficked persons (including children) and referring them on to the system that considers international protection needs. The report points out that what is unique about this system is that it establishes a comprehensive mechanism for ensuring that the international protection needs of all trafficked persons are considered, in every case. Some of the other countries studied were found to have fairly effective procedures

for identifying trafficked persons; and some had a well-functioning asylum system. But none apart from Norway were found to have a systematic method for referring trafficked persons to the international protection system once they had been identified. Some of the states studied had both systems in place but they worked completely independently; others had only established one system, either a trafficked persons identification system, or a system of international protection for people who would be in danger if returned to their country of origin, but not both. In states that had not established a fully functional asylum system, UNHCR was working with governments to set up *ad hoc* asylum mechanisms to address the existing protection vacuum.

The study explores the extent to which long term protection is granted to persons, including children, trafficked across borders. It highlights both the misconceptions regarding the meaning of effective protection and the practical institutional deficiencies.

The study's overall findings are as follows:

Conceptual obstacles:

- **Protection v. enforcement:** Most national anti-trafficking legislation makes the protection of trafficked persons dependent on cooperating with the authorities to prosecute traffickers. As a result, trafficked persons who decide not to testify against the traffickers (e.g. for fear of retaliation) are deprived of protection.
- **Repatriation v. international protection:** most national anti-trafficking systems still consider repatriation the preferred long term solution for all trafficked persons, despite reliable evidence of the risk of re-trafficking that they face. National trafficking protection systems and international protection systems are therefore, misguidedly, understood as alternatives rather than as complimentary procedures.
- **Trafficked persons v. illegal immigrants:** in some countries, trafficked persons face immediate deportation once identified, because they are simply considered illegal immigrants with no international protection rights. .
- **Lack of political consensus and insufficient resource allocation:** Vulnerable migrants are often affected by the negative political climate currently surrounding undocumented migration; this complicates the task of building political consensus regarding their protection needs.

Organizational obstacles:

- **Absence of an effective legal framework:** A functional identification, referral and assessment system relies on the existence of a dual national legal framework setting out measures of identification and international protection. The lack of one system seriously hampers the protection of trafficked persons.
- **Lack of competence of referral agency:** Except for Norway, where the international protection needs of trafficked persons are routinely addressed, referrals to international protection procedures are *ad hoc* at best. The lack of adequate knowledge about the different protection systems, on the part of legal advisers working within the national anti-trafficking system, has a seriously

detrimental impact on the referral mechanism and therefore on the access to international protection for all trafficked persons.

- **Separately operating anti-trafficking and IP systems:** Most national counter-trafficking systems are headed by a lead agency which coordinates among the different government, IO and NGO partners. Yet, offices in charge of asylum procedures are rarely connected to those coordination bodies.
- **Incomplete data collection:** No country under review forwards data on trafficking to a central entity. Moreover, information-gathering on the number of identified trafficked persons, the number of persons referred to international protection and the reasons for ultimately granting or denying international protection is unsystematic.
- **Deficient training:** While training workshops are organized continuously among the partners linked in the national anti-trafficking framework, those trainings omit trafficked persons' potential need for international protection and thus the importance of legal aid and systematic referral measures.

Child-specific obstacles

- **Insufficient legal framework:** child-specific guidelines are scarce and, if at all, inadequately coordinated in respect to the identification, referral and protection needs assessment of trafficked children.
- **Protracted procedures:** although trafficked children are spared deportation in most countries and are able to access education and welfare, they risk being forcibly returned to their country of origin once they reach the age of majority because they have not been granted a secure legal status.
- **Long term solutions:** Instead of systematically assessing trafficked children's long term protection needs, repatriation and reunion with their families in the country of origin is the most favored solution, thus exposing them to dangers such as re-trafficking upon their return.

Based on those findings, the report concludes with a series of policy recommendations.

Legal measures

- **Explicitly linking human trafficking (including of children) to international protection** in domestic legislation, action plans and official guidelines, is essential.
- **Applicability of refugee definition to trafficked persons:** national guidelines and regulations should draw attention to trafficked persons' eligibility for seeking asylum.

Institutional measures

- **Initial assessment:** Questions related to international protection needs should systematically be asked during the identification stage. Trafficked persons should

always have access to legal aid so that they can make informed choices regarding their legal rights.

- **High-level departmental coordination:** Agencies involved in international protection should be included in the coordination mechanisms regarding trafficking; rigorous training should be offered to relevant officers. .

Administrative changes

- **Training** of government officials and partners involved in counter-trafficking should be made mandatory; the links between identification of trafficked persons, and their need for referral to the international protection procedures (including child specific procedures where relevant) should be included in the training.
- **Routine referral** of children to international protection procedures to pre-empt immediate repatriation and risk of re-trafficking.
- **Monitoring and evaluation:** all trafficking cases should be systematically documented and reviewed; cases of trafficked children should be separately tagged and recorded.