A Human Rights-Based Approach and TRMs
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Legal Framework

• 2011 EU Directive on preventing and combating trafficking and protecting victims

• 2005 CoE Convention on Action Against Trafficking

• 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons
Joint UN Advocacy – Trafficking in the EU

• UNODC, UNHCR, OHCHR, UNICEF, ILO, UN Women

• Holistic & integrated approach “4 Ps” (Prevention, Prosecution, Protection, Partnerships)

• Human Rights-Based Approach
  — Gender-sensitive
  — Age-sensitive

• Influence EU trafficking legislation and policy

• Advocate for adherence with UN and international standards and norms
UN Joint Commentary on the EU Directive –
A Human Rights-Based approach

http://www.unhcr.org/refworld/docid/4edcbf932.html
UN Joint Commentary

• Selected articles:
  — Recitals 1, 3, 7, 33: Human rights & integrated approach
  — Art. 8 Non-prosecution
  — Art. 11 Assistance
  — Art. 12 Protection in criminal proceedings
  — Art. 13-16 Children
  — Art. 17 Compensation
  — Art. 18 Prevention
  — Art. 19 Monitoring

• Key international standards

• Recommendations – transposition & implementation
UNHCR’s Mandate & Human Trafficking

• Prevent - refugees and asylum-seekers become victims of trafficking

• Identify – victims (or persons at risk of trafficking) in need of international protection

• Protect and assist – these victims are granted refugee status or subsidiary protection

• Prevent – victim statelessness and protect stateless victims

• Find durable solutions for victims
Trafficking: A Violation of Human Rights

- Human trafficking = serious crime + gross violation of fundamental rights (Recital 1 EU Directive)
- Human trafficking = form of gender-based violence (CEDAW)
- Prohibition (Art. 4 ECHR, CAT)
Human Rights-Based Approach

- Victim and his/her rights at the centre
- Rights engaged in human Trafficking
- No adverse impact on victims’ rights
- Gender impact
Human Rights-Based Approach  
- Due Diligence

• State duty to act with **due diligence** to
  - Prevent
  - Investigate and prosecute traffickers
  - Assist and protect victims

• ECrtHR - *Rantsev vs. Cyprus & Russia*
A Human Rights-Based Approach and Trans-National Referral Mechanisms
TRMs – Victim Identification

• Human trafficking definition: Complex & difficult to prove: Act, Means, Purpose

• Role TRMs - Early identification: Who? How?
  — Identification of vulnerabilities to trafficking/persons at risk of trafficking (prevention – Art.9(4) UN Prot)

• Low-threshold approach - Indicators
  — “reasonable-ground indication” (Art.11(2) EU Directive)

• Two-tier system: social identification + criminal code investigation and prosecution

• Role TRMs: Formalise two-tier system
  — Role of expert service providers and others (competent authority)
TRMs – Access to Assistance

• **Unconditional** access to assistance
  — Art.10, 12, 28 CoE Conv, Art.11(3) EU Directive
• Assistance: Shelter/housing, counselling & info, medical, psychosocial, material, legal advice, employment, education…
• Access to reflection and recovery period (Art.13 CoE Conv)
• !! Short-term assistance
• Assistance **and** Protection
• Protection from further harm and protection of victim’s safety
  – Art.6(1)&(5) UN Prot, Art.12 & 28 CoE Conv
• Protection: A Victim Status
• Status **unrelated** to criminal proceedings
• Role for (T-)NRM\(s\)
  – Who grants status?
  – Procedure?
  – Content of protection
• Long-term residence permit
Where relevant

- Principle of *non-refoulement* (Recital 10 EU Directive)
- Provision information on asylum (Art.11(6) EU Directive)
- Saving Clause – without prejudice to 1951 Refugee Convention (Art. 14 UN Prot)
- Being a victim cannot preclude right to seek asylum (Art. 40 CoE Conv)
TRMs – Access to Asylum

• Role TRMs – Ensure **linkages** with
  – Border management systems and authorities
  – Asylum authorities
  – Other asylum actors (lawyers, legal advisors, NGOs)

• Coordination Mechanisms – **Responsibilities** for border and asylum
• Multi-disciplinary problem - Integrated approach
• Criminal justice response - !!! Silo approach
• Coordination
• NGOS & civil society active in addressing trafficking – Not just service providers

TRMs – An Integrated Approach
TRMs – Training

• State duty to identify and protect/assist
• Role TRMs – Training needs analysis at regional, national and local level + targeted training responses:
• Training of officials (incl. asylum authorities)
  — Art.10(2) UN Prot, Art.10(1) CoE Conv, Art.18(3) EU Directive
• Cooperation with civil society, NGOs, others (IOs)
  — Art.9(3) UN Prot, Art.5 CoE Conv.
FRONTEX

- 2011: Training Manual for border guards
- UNHCR, IOM, UNICEF, OHCHR, OSCE, CEPOL, Eurojust
- Human rights-based, age and gender-sensitive
- Three modules with distinct sections on children
  - Awareness raising
  - Identification tools by first line border guards
  - Interview and assistance & protection by second line border guards
TRMs – Victim Return

!! Principle of *non-refoulement*

- Right to effective remedy - Guarantees of non-repetition

- Pre-return risk assessment

- Standards: Risk Assessment
  - Risk of persecution
  - Risk of violation Art.3-4 ECHR
  - State protection
  - Return in safety and dignity

!! presumption
TRMs – Victim Return

- State responsibility: No chain of *refoulement*
- If refugee/asylum-seeker: No data exchange with state of origin
- !! EU – Dublin returns of asylum-seekers to other EU State where exploitation
- ECrtHR: *MSS vs Belgium and Greece*
TRMs – Accountability

• Human rights-based approach – principle of accountability
• Role TRMs – Clear accountability processes and responsibilities (incl. NGOs and civil society)
• Transparent monitoring and reporting mechanism built in TRMs
• Monitor human rights impact of anti-trafficking laws, policies and actions
Thank you!

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