

A National Referral System as Integrated System of State Led Responses

Human trafficking has been a global priority for over 20 years. The first international drive at the UN contained in the Palermo Protocol that came together in 2000.

At the same time United States legislation in the Trafficked Victims Protection Act introduced many measures in the US and included global awareness and influence through the annual Trafficking In Persons report with tier grading and potential sanctions for defaulters.

Since that time, we have seen some of the outcomes of efforts rise and fall. In recent years prosecutions have fallen and impunity for perpetrators appears to have become greater, so what is the cost to victims and what can be done to change these trends.

The Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking national or transnational, linked or not linked to organised crime and taking in all persons who are victims of trafficking women, men or children.

The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period, to be granted a renewable residence permit, to receive compensation for the damages suffered, and introducing a non-punishment principle.

Yet despite this and many international and national commitments action plans and policies that are proposed to address human trafficking all too often reframe, dilute or even ignore recognised best practice developed from years of experience and importantly listening to the voice of those who have been exploited.

Trafficking has three distinct elements that I will mention;

- The victim
- The role of the State
- And the perpetrator

The reason I placed the victim at the head of this list is if responses are not designed to proactively identify victims, deliver long-term support and build means to prevent exploitation then the perpetrators will be 'gifted' impunity, the suffering will continue and the ill-gotten gains believed to exceed over \$150 billion per year will continue and will increase.

Understanding where and how someone might become a victim is crucial, as is how it happens, what can be done to prevent it, how proactive identification can be achieved, who has a responsibility for identification and what the response is when a potential victim is identified. These are all elements necessary for an effective National Referral Mechanism but they still elude many national responses.

Whilst there is a much-needed focus on supply chains and efforts should continue to look at the root causes, these efforts should place more emphasis on reparation and provision of support funded by those who profit, not just statements of intent. However, this should not distract the need for National Referral Mechanism to be established by a Government meeting international standards or best practice, building responses that provide;

- Safety
- Support

- Stability
- And long-term security

The question is what a proactive system of identification is?

The aim of the Palermo Protocol and CoE Convention is to suppress and end human trafficking. Whilst this is an enormous challenge, measures have to contribute to ending this crime, not just managing it or responding after exploitation is self-identified or accepted after a victim has gone through an arduous process to convince authorities that they were a victim, often taking months or years to decide.

As a former police officer I shudder to think that in 2022 victims of the most serious abuse and exploitation have to negotiate different agencies and bodies to have their status confirmed. This in itself assists perpetrators, discourages victims from coming forward and is in my view a betrayal of protecting human rights.

I have heard it said that a so called 'easy system' will attract misuse and migrants might use it as a means of remaining in a country. However, a professional, well-resourced and effective National Referral Mechanism would do the opposite, be able to identify those who are trafficked, the level of support they require and use that information for prevention or where agreed by the individual or covert of other evidence can prove a case mount a prosecution.

To be effective an NRM must be integrated into a States response and include all relevant actors including civil society. But importantly the State must ensure its vast reach and resources are designed to proactively identify victims, provide unconditional access to support and develop plans and strategies that place human trafficking at the core of its 'business as usual.'

The new OSCE guidance launched earlier this year was commended by US Congress Representative Chris Smith, the lead for the Trafficked Victims Protection Act, as 'the best so far.' This gives

guidance and clarity of what an NRM should look like and importantly what it should do and the need for a trauma informed systemic response.

The role of State actors including from health, children's services, police, prosecutors, judiciary, local authorities, places of detention, border protection and immigration services and more need to have policies that are proactive in identifying potential victims and places where victims may be exploited, harboured, recruited or transported. Crucial to these policies is that safety and support is not conditional to assisting the State.

I have personally seen cases where a child was imprisoned as an adult for document offences, yet it was obviously they were a minor and the entire system actively looked the other way.

Or where a woman was imprisoned for cultivation of over €1million of drugs, despite the discussions in the court that she was trafficked and forced into watering and minding the contraband at great risk to her health and in fear of her life. The failures in these cases not only led to a miscarriage of justice, but allowed organised criminals the impunity I mentioned earlier.

The purpose of a National Referral Mechanism needs to be better understood. It should open different pathways bespoke to an individual's needs. In some case that may be high levels of support and access to residence, in others such as domestic trafficking a victim may want or need different forms of support. On occasions I have met victims who do not want any support but want to see their exploiter prosecuted, so an NRM should be flexible to respond to different needs and situations.

The world has committed to 17 global targets, the SDG's including the eradication of human trafficking and child labour. As part of a States delivery to achieving this an effective, proactive National Referral Mechanism is crucial.

There is a great deal of speculation, research, constellation and prevarication on how to address human trafficking. Introducing a State Led NRM is a basic formula to ending this crime and one all States should place as a priority.