



# THE CRITICAL ROLE OF CIVIL SOCIETY IN COMBATING TRAFFICKING IN HUMAN BEINGS

ISBN: 978-3-903128-16-3

Published by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Wallnerstr. 6, 1010 Vienna, Austria

Tel: + 43 1 51436 6664

Fax: + 43 1 51436 6299

email: info-cthb@osce.org

© 2018 OSCE/Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Copyright: "All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the OSCE/Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings as the source."

Design: Tina Feiertag, Vienna

Illustrations: LEOcrafts/ iStockphotos

Photos: shutterstock, Council of Europe, Michael Rodgers, Blanca Tapia

Cite as: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Occasional Paper No. 8: The Critical Role of Civil Society in Combating Trafficking in Human Beings

The Organization for Security and Co-operation in Europe (OSCE) is a pan-European security body whose 57 participating States span the geographical area from Vancouver to Vladivostok. Recognized as a regional arrangement under Chapter VIII of the United Nations Charter, the OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area. Its approach to security is unique in being both comprehensive and co-operative: comprehensive in that it deals with three dimensions of security – the human, the politico-military and the economic/environmental. It therefore addresses a wide range of security-related concerns, including human rights, arms control, confidence- and security-building measures, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.

PARTICIPATING STATES: Albania | Andorra | Armenia | Austria | Azerbaijan | Belarus | Belgium | Bosnia and Herzegovina | Bulgaria | Canada | Croatia | Cyprus | Czech Republic | Denmark | Estonia | Finland | France | Georgia | Germany | Greece | Holy See | Hungary | Iceland | Ireland | Italy | Kazakhstan | Kyrgyzstan | Latvia | Liechtenstein | Lithuania | Luxembourg | the former Yugoslav Republic of Macedonia | Malta | Moldova | Monaco | Mongolia | Montenegro | Netherlands | Norway | Poland | Portugal | Romania | Russian Federation | San Marino | Serbia | Slovakia | Slovenia | Spain | Sweden | Switzerland | Tajikistan | Turkey | Turkmenistan | Ukraine | United Kingdom | United States of America | Uzbekistan

ASIAN PARTNERS FOR CO-OPERATION : Afghanistan | Australia | Japan | Republic of Korea | Thailand

MEDITERRANEAN PARTNERS FOR CO-OPERATION: Algeria | Egypt | Israel | Jordan | Morocco | Tunisia

The materials in this publication are for general information purposes only, provided on an "as is" basis, without warranties of any kind, including fitness for any particular purpose. The OSCE, specifically, does not make any warranties with respect to the accuracy or completeness of the information in this publication. The views, findings, interpretations and conclusions expressed herein are those of the author(s) and do not necessarily represent the official position of the OSCE and/or its participating States. To the extent permitted by law, the OSCE does not accept any liability for any loss, damage, liability or expense incurred or suffered, which may arise as a result of, or in connection with, the use of information contained in this publication.

Office of the Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings

# THE CRITICAL ROLE OF CIVIL SOCIETY IN COMBATING TRAFFICKING IN HUMAN BEINGS

# Table of contents



## **Foreword**

page 6

## **Acknowledgements**

page 7

## **List of acronyms**

page 8

## **List of boxes**

page 9

## **Introduction**

page 10

### **1.1 Purpose and methodology**

page 11

### **1.2 The OSCE and the value of civil society**

page 13

### **1.3 The concept of civil society as an integral part of the democratic governance**

page 14

### **1.4 Engagement of civil society in anti-trafficking efforts**

page 16

## **International and regional norms and standards on the role of civil society in anti-trafficking policies**

page 20

### **2.1 International and European law**

page 21

### **2.2 Non-binding instruments**

page 27



## **The role and contribution of anti-trafficking NGOs: examples in practice**

page 36

### **3.1 Partnership**

page 38

### **3.2 Prevention**

page 42

### **3.3 Protection**

page 44

### **3.4 Prosecution**

page 48



## **Recommendations**

page 52



## **Annexes**

page 54

### **1. Questionnaire for the NGO consultation meeting in Warsaw, September 2017**

page 55

### **2. Compilation of OSCE documents addressing the role of NGOs in combating trafficking in human beings**

page 56



OSCE/Michael Rodgers



OSCE/Blanca Tapia



# Foreword

The 2003 OSCE Action Plan defines the OSCE's vision of a multi-agency co-operative response to trafficking in human beings. It calls on the OSCE participating States to consider establishing Anti-Trafficking Commissions or similar bodies responsible for co-ordinating activities within a country among State agencies and NGOs, and for elaborating measures to prevent the crime, punish its perpetrators and protect its victims. Indeed, as witnessed on numerous occasions, the multi-agency and multidisciplinary approach has been critical to the effective prevention and countering of human trafficking.

The inclusion of civil society is a pre-requisite for any viable anti-trafficking strategy. Despite the fact that existing legal and political instruments are explicit about the importance of co-operation between State actors and civil society organizations in ensuring a coherent and meaningful anti-trafficking response, our ongoing dialogue with civil society partners reveals that the such a co-operative approach is not always reflected on the ground.

This Occasional Paper, developed by the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, is based on the results of consultation meetings organized by the Office in 2016-2017 with a wide range of anti-trafficking NGOs working within the OSCE area. I hope that this publication will serve as a useful source of good practices and as a timely reminder of the added value that civil society brings into our joint efforts to combat trafficking in human beings.

The 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings, with its chapter on partnerships, gives a new impetus to co-operation in the sphere of combating trafficking in human beings. Such co-operation, could focus on strategic goals or on more target-oriented tasks, such as providing assistance or addressing specific forms of exploitation. The full-fledged participation of civil society representatives in new and existing co-operative frameworks should be universally upheld.

**Thomas Greminger**  
OSCE Secretary General

**“ The inclusion of civil society is a pre-requisite for any viable anti-trafficking strategy.”**

# Acknowledgements

The paper that you have in front of you is a result of a collaborative effort undertaken by many organizations and individuals whose tireless work contributes to the fight against trafficking in human beings. It reflects the overarching importance of partnerships that lay a foundation for any meaningful intervention to address the challenges of modern-day slavery.

First and foremost, very special thanks go to the Government of Switzerland and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) for their invaluable support to the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings in organizing the NGO consultation meeting in Geneva in 2016. The discussions at this meeting gave a conceptual birth to this paper and re-affirmed its relevance.

The contents of the paper, to the greatest extent possible, reflect the findings elicited through our consultations with a wide range of anti-trafficking NGOs from the OSCE region, operating both at the grassroots level and as international networks. These NGOs come from and work tirelessly in Albania, Austria, Bulgaria, Canada, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Kyrgyzstan, Moldova, the Netherlands, Poland, Portugal, the Russian Federation, Serbia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, the United States, Ukraine, the United Kingdom and Uzbekistan. Unquestionably, this paper would not have been possible without their contributions.

The text of the publication was initially drafted by a capable and dedicated team of THB experts: Bärbel Uhl, Ryszard Piotrowicz and Liliana Sorrentino. Not only did they summarize the key points of the consultations with the NGO partners, but they also provided a thorough review of relevant instruments and good practices in support of the critical role of civil society in combating human trafficking.

The initial draft was further developed and fine-tuned by a number of OSCE colleagues. In this regard, special words of acknowledgement should go to Tetiana Rudenko, Georgina Vaz Cabral and Oleksandr Kyrylenko for managing the consultation and drafting processes and the publication itself in a spirit of collegiality and good will, as well as to Cynthia Peck-Kubaczek, who edited the draft with the best of her knowledge and experience.

Last, but not least, special thanks should be extended to Suzanne Hoff (La Strada International), Pierre Cazenave (Terre des hommes) and Klara Skrivankova (Anti-Slavery International) for lending a helping hand throughout the process and finding time and energy to peer review the final draft.

The contents of this publication do not necessarily reflect the views or policies of the above-mentioned organizations, nor does it imply any endorsement.

# List of acronyms

<b>AIRE</b>	Advice on Individual Rights in Europe
<b>ATMG</b>	Anti-trafficking Monitoring Group
<b>CBSS</b>	Council of the Baltic Sea States
<b>CCME</b>	Churches' Commission for Migrants in Europe
<b>CIS</b>	Commonwealth of Independent States
<b>CoE</b>	Council of Europe
<b>CSO</b>	Civil Society Organization
<b>CTHB</b>	Combating Trafficking in Human Beings
<b>EC</b>	European Commission
<b>ECHR</b>	European Court of Human Rights
<b>ETUC</b>	European Trade Union Confederation
<b>EU</b>	European Union
<b>FLAG</b>	Forced Labour Action Group
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>GRETA</b>	Council of Europe's Group of Experts on Action against Trafficking in Human Beings
<b>HDIM</b>	Human Dimension Implementation Meeting
<b>IDP</b>	Internally Displaced Person
<b>ICMPD</b>	International Centre for Migration Policy Development
<b>ICTU</b>	Irish Congress of Trade Unions
<b>ILO</b>	International Labour Organization
<b>IO</b>	International Organization
<b>IOM</b>	International Organization for Migration
<b>ITUC</b>	International Trade Union Confederation
<b>MC</b>	Ministerial Council
<b>MRCI</b>	Migrant Rights Centre in Ireland
<b>NAP</b>	National Action Plan
<b>NCM</b>	National Co-ordination Mechanism
<b>NGO</b>	Non-Governmental Organization
<b>NRM</b>	National Referral Mechanism
<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>OSR/CTHB</b>	Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
<b>PC</b>	Permanent Council
<b>PICUM</b>	Platform for International Co-operation on Undocumented Migrants
<b>PfC</b>	Partner for Co-operation
<b>SR/CTHB</b>	OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
<b>THB</b>	Trafficking in human beings
<b>UNGA</b>	United Nations General Assembly
<b>UNHCHR</b>	United Nations High Commissioner for Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNODC</b>	United Nations Office on Drugs and Crime



# List of boxes

	page
<b>BOX 1</b> Dimensions and dynamics of civil society involvement in anti-trafficking activity	18
<b>BOX 2</b> Examples of type of NGO contributions to anti-trafficking work	37
<b>BOX 3</b> NGO membership in the Albanian National Anti-Trafficking Task Force	38
<b>BOX 4</b> Anti-trafficking NGOs and the UK Modern Slavery Bill	39
<b>BOX 5</b> The Migrant Rights Centres in Ireland and the Forced Labour Action Group	40
<b>BOX 6</b> Multi-stakeholder partnership: UNDOK, the drop-in centre for undocumented workers in Austria	42
<b>BOX 7</b> Prevention of human trafficking through the economic empowerment of vulnerable persons in Ukraine	43
<b>BOX 8</b> The 'Teramo Protocol': a local referral mechanism in Italy	44
<b>BOX 9</b> Specialized reception centres run by NGOs in Belgium	46
<b>BOX 10</b> Development of social standards of assistance to victims of human trafficking in Kazakhstan	47
<b>BOX 11</b> From COMPACT – European Action for Compensation for Trafficked Persons to JUSTICE AT LAST – European Action for Compensation	48
<b>BOX 12</b> The American Bar Association Task Force on Human Trafficking: A Toolkit on THB for Bar Associations	49

CHAPTER

# 1



INTRODUCTION

# 1.1 Purpose and methodology

... The purpose of this Occasional Paper is to outline and analyse the role played by civil society in efforts to address the threat posed by the crime of human trafficking. This paper is an additional tool to assist the OSCE participating States in strengthening their response to trafficking in human beings, especially in the area of partnerships as a fundamental component of an effective anti-trafficking response.

OSCE institutions and field operations strongly support the work of civil society and acknowledge the importance of its role in combating all forms of human trafficking. The Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings works closely with anti-trafficking NGOs in its advocacy initiatives, when organizing events, training exercises and research projects, and during the Special Representative's high-level country visits. The continued co-operation with specialized NGOs and regular consultations with them have demonstrated the need to reaffirm the critical role played by civil society in combating human trafficking, especially in crisis situations. It has also revealed that there is a continuing need to address and alleviate the many challenges faced by anti-trafficking NGOs in their daily work, including advocacy efforts, policy-making engagement, funding and sustainability prospects, service provision roles, and networking and co-operation arrangements.

Relevant to the topic of this publication are all civil society actors engaged in anti-trafficking efforts in the OSCE region, including trade unions, bar associations, business associations, journalist and other types of media organizations, as well as other social and religious groups and associations. However, the paper will only elaborate on the role of non-governmental organizations. The scope of this study is therefore restricted to the contributions of NGOs to the response of States against trafficking in human beings, with a particular focus on specialized anti-trafficking organizations.

The study provides a detailed overview of the role and importance of NGOs in combating trafficking in human beings in the OSCE region as well as of the international legal foundation of their engagement. It should be read as a reference document for the more effective involvement of civil society organizations in preventing and fighting human trafficking at the national and local level. However, the paper does not look into country specific situations, nor does it necessarily represent the views of all civil society organizations.

This Occasional Paper is based on the findings of a number of consultation meetings, desk-based analysis of legal international framework and policy papers, case studies, and assessment and country visit reports.

The OSR/CTHB initiated this endeavour in 2016 when exploring the role of NGOs in national referral mechanisms and the broader scope of anti-trafficking efforts. Within the framework of this study, two consultation meetings with representatives of civil society active in the anti-trafficking field in the OSCE region were organized to discuss the existing modalities of the above-mentioned involvement and challenges.

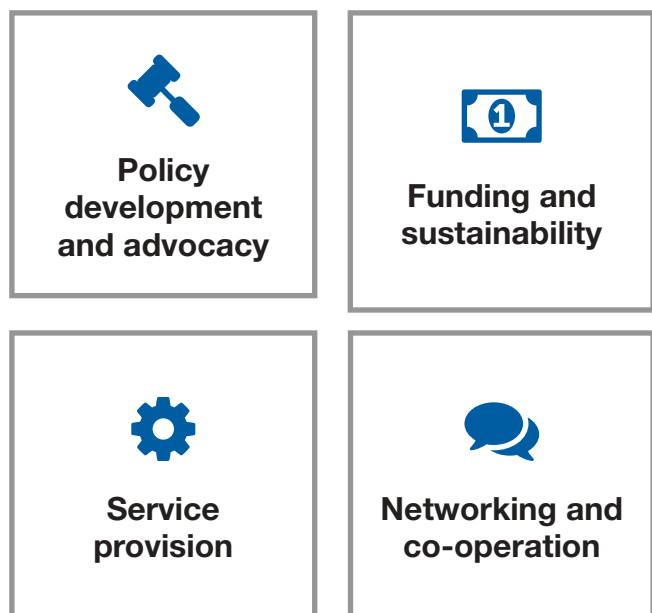


April 2018, 18th Alliance against Trafficking in Persons conference, side event on the role of NGOs in combating trafficking in human beings (OSCE)

In November 2016, the OSR/CTHB, with the support of the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and co-funding from the Swiss Government, held a first consultation meeting with specialized anti-trafficking NGOs in Geneva, Switzerland. The two-day meeting provided a platform for an expert discussion with 23 NGO representatives from 22 OSCE participating States and an expert exchange with the relevant Geneva-based international organizations (IOM, ILO, OHCHR, UNHCR, UNICEF) on the issues of child trafficking, labour exploitation, crisis-related issues and gender aspects of combating trafficking in human beings. In addition, the participants highlighted the essential role played by NGOs in providing services to trafficked persons, as well as the need for the full-fledged participation of civil society actors in policy and decision-making processes.

The findings prompted a second in-depth consultation meeting, which took place in Warsaw, Poland, on the margins of the OSCE/ODIHR Human Dimension Implementation Meeting in September 2017. It involved 20 NGO representatives from 19 participating States. Based on a questionnaire distributed to the participants prior to the meeting, the discussion centred on the following areas pertinent to the work of anti-trafficking non-governmental organizations:

In addition to the semi-structured consultation meetings, the OSR/CTHB organized a side event on the margins of the 18th *Alliance against Trafficking in Persons* to further enrich the expert dialogue initiated in 2016 in Geneva and to develop recommendations. Focusing on the above areas, the event discussions helped validate some of the findings and recommendations outlined in this report, especially that the role of NGOs should not be reduced merely to that of contracted service-providers. They re-affirmed the need to regard such NGOs first and foremost as human rights defenders whose constructive criticism is vital for democratic processes and crucial for progress. The participants also came to the conclusion that the current trend of tightened security policies is also affecting anti-trafficking NGOs in their daily work. It was pointed out that in the times of shrinking space for civil society and the “unintended side effects” of tightening security policies, participating States need to be conscious of the added value and the complementarity that co-operation with NGOs brings to effective responses to trafficking in human beings.



# 1.2 The OSCE and the value of civil society

The OSCE was the first international structure to embrace a comprehensive approach to security, with its participating States agreeing to establish respect for human rights as one of its founding pillars. As explicitly acknowledged in OSCE commitments, civil society is an indispensable cornerstone of a democratic system of government. In the Charter of Paris, the OSCE participating States committed to “undertake to build, consolidate and strengthen democracy as the only system of government of our nations.”<sup>1</sup> Consequently, the OSCE’s institutions and field operations have implemented this commitment by actively partnering with civil society throughout the region and beyond.

The OSCE participating States have repeatedly recognized that the involvement of civil society is crucial in achieving progress in the Organization’s objectives.

## Astana Commemorative Declaration: Towards a Security Community, OSCE Astana Summit Meeting (2010)

“ We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, [...], and the rule of law.”<sup>2</sup>

Civil society organizations are particularly well placed to complement participating States’ activities in addressing crimes, especially by assisting and protecting victims as well as monitoring the situation. For instance, in addition to the commitments adopted by the participating States, the 2014 Swiss Chairmanship of the OSCE, under the leitmotif of creating a security community for the benefit of everyone, prioritized the implementation of existing human dimension commitments and strengthening the involvement of civil society in the work of the Organization, to enhance its visibility and make its voice heard in the OSCE’s thematic discussions.<sup>3</sup> The overall aim was to create a continuous dialogue between civil society actors in the OSCE region and the OSCE institutions, with the intention of strengthening the ongoing civil society dialogue at the international level. This was to build upon the existing tradition of OSCE Parallel Civil Society Conferences taking place on the eve of OSCE Ministerial Council meetings. This tradition was initiated by several civil society representatives at the Astana Summit in 2010 and led to the creation of an OSCE-wide NGO-network called the Civic Solidarity Platform.<sup>4</sup>

By engaging with the OSCE, civil society organizations have helped to keep human rights high on the political agenda, to mobilize attention, and to shape OSCE action on a number of pressing issues.<sup>5</sup> This approach is well reflected in the anti-trafficking efforts of the OSCE institutions and field operations. For example, from the outset of the *Alliance against Trafficking in Persons* being established – an international informal platform for advocacy and co-operation against trafficking in human beings launched in 2004 and hosted by the Special Representative and Co-ordinator to Combat Trafficking in Human Beings (SR/CTHB) – civil society organizations were included alongside international and regional organizations.<sup>6</sup>

1 OSCE, Charter of Paris for a New Europe, Paris, 21 November 1990: <https://www.osce.org/mc/39516?download=true> (accessed 15 June 2018).

2 OSCE, Astana Commemorative Declaration: Towards a Security Community, OSCE Astana Summit Meeting, 2010: <https://www.osce.org/mc/74985?download=true> (accessed 20 June 2018).

3 Priorities of the 2014 Swiss Chairmanship of the Organization for Security and Co-operation in Europe (OSCE), Creating a Security Community for the Benefit of Everyone: <https://www.osce.org/cio/109266?download=true> (accessed 18 June 2018).

4 IFSH (ed.), OSCE Yearbook 2015, “Civil Society in the OSCE: From Human Rights Advocacy to Peacebuilding”, (Baden-Baden 2016), pp. 363-373. See also the Civic Solidarity Platform: <http://www.civicsolidarity.org/page/about-us> (accessed 15 June 2018).

5 Civic Solidarity, Safeguarding civil society participation in the Helsinki process – a matter of the OSCE’s *raison d’être*, Civic Solidarity Platform Statement, 11 December 2017: <http://www.civicsolidarity.org/article/1520/safeguarding-civil-society-participation-helsinki-process-matter-osces-raison-detre> (accessed 18 June 2018).

6 The 2006 Ministerial Decision on Combating Trafficking in Human Beings (MC:DEC/3/06) tasked the OSCE Special Representative to further “co-operate and seek synergies with relevant international actors, including regional organizations, intergovernmental agencies and NGOs; continue to convene, chair and organize joint initiatives of the Alliance against Trafficking in Persons”.

# 1.3 The concept of civil society as an integral part of the democratic governance

Although there is well-documented recognition of civil society as a cornerstone of democratic institutions and procedures throughout the OSCE area, defining the concept of civil society poses certain challenges. While political discourse offers many terms that are used interchangeably, there is as yet no distinct definition that is universally agreed upon. For instance, the UN refers to civil society as the “third sector” (along with government and business), while the EU Agency for Fundamental Rights offers a terminology that highlights both the function of civil society as a “watch dog” regarding state institutions, including government and parliament, and as an integral part of a pluralistic society: “[civil society organisations] help ‘give a voice’ to people on issues that matter to them, assist rights holders, monitor governments’ and parliaments’ activities, give advice to policymakers, and hold authorities accountable for their actions.”<sup>7</sup>

It is critical to appreciate the full, broad and diverse scope of civil society, which includes not only formally constituted bodies but also social movements. This is reflected in a recent policy statement of the EU Parliament: “This study assumes a relatively standard and broad definition of civil society, as the sphere of non-coercive association between the individual level and the state level. This definition embraces formally organized NGOs, more loosely structured social movements and individual activists.”<sup>8</sup>

Within this broad understanding of civil society, some further considerations are needed to create a basis for elaboration. Based on the discussion undertaken from 2001 to 2012 by the London School of Economics Global Civil Society Programme, the following forms and functions of civil society engagement could be singled out for the purpose of this Occasional Paper:<sup>9</sup>

1. New public management: civil society as sub-contractors for robust national and intergovernmental policy-making;
2. Corporatization: civil society organizations partnering with companies;
3. Social capital of self-organization: civil society building trust through networking;
4. Activism: civil society monitoring and challenging power-holders.

As can be seen from the above, civil society activities are manifold. While they are sometimes critical of governmental institutions and actions, this is not always the case.

Within the “new public management” model, civil society helps fulfil governmental obligations and policies by taking on the role of sub-contractor for specific services or activities. The anti-trafficking framework throughout the OSCE region provides many examples of civil society forming a co-operation partner contributing to States being able to fulfil their obligations, as for instance, among other things, in identifying victims of human trafficking or providing them assistance and support services.

“Corporatization” is likewise pursued as a strategy by many NGOs working in the anti-trafficking area. Partnering with the for-profit sector, including global corporations, is sometimes regarded merely as a fundraising activity. However, the ramifications of such collaborations can be far-reaching, as will be presented in chapter III below.

“Self-organization” continues to be at the core of civil society movements. A special feature of NGOs working in the anti-trafficking sphere is the fact that they can often represent specific interest groups, such as women, migrants or human trafficking survivors. They can also mobilize for the purpose of advancing particular issues, such as the protection of the rights of trafficked persons or their access to justice, including compensation. Among many other things, their activities address human rights, democratization, social justice, education and labour rights.

“Activism” remains the least institutionalized or organized form of civil society movements. This may include ad hoc social activities and public events, such as public assemblies and social media campaigns. Activism and self-organization are often intertwined, and the transition from activism to self-organization and vice-versa usually happens smoothly. For example, an established NGO may take up an issue because that issue is attracting a high level of public awareness through social activism or – the other way around – an activist group may decide to offer services and counselling to its respective peer group and formalize its activities by becoming an NGO.<sup>10</sup>

7 European Union Agency for Fundamental Rights, Challenges facing civil society organisations working on human rights in the EU (2017), p. 13.




8 European Parliament, Directorate-General for External Policies, Policy Department, Shrinking space for civil society: the EU response (2017), p. 8.

9 London School of Economics, Global Civil Society Yearbook 2001–2012. Available at: <http://www.lse.ac.uk/international-development/conflict-and-civil-society/past-programmes/global-civil-society-yearbook> (accessed 29 June 2018).

10 For example, the Czech Diaconia adopted specialized services for trafficked persons into their portfolio of assisting marginalized populations: <https://www.diakonie.cz/en/> (accessed 19 February 2018). The German NGO Hydra was founded in 1980 by an activist group of people working in prostitution. It offers today a wide range of counselling for people working in prostitution, including for people who have been trafficked: [http://www.hydra-berlin.de/beratungsstelle/beratung\\_bei\\_hydra/](http://www.hydra-berlin.de/beratungsstelle/beratung_bei_hydra/) (accessed 19 February 2018).



OSCE participating States have adopted a variety of legislative, administrative and other measures that form the regulatory environment for civic society operations. Although the specific legal requirements may differ in each country, the following principles are widely applicable in the majority of OSCE Participating States:

-  **Registered NGOs need to have a transparent structure in terms of managing finances and decision-making procedures;**
-  **They need to aim their activities at the common social welfare or at the protection of human rights and democratic values, without having an interest in financial profit;**
-  **Part of their work should be based on voluntariness, for instance the work of the board members.<sup>11</sup>**

The organizational forms of civil society are based on national legislation and are accordingly monitored by the relevant authorities. Over time, many NGOs involved in activities related to human trafficking have developed in-depth knowledge, special skills and technical programmes to reach out to victims of trafficking, including presumed and potential victims, as well as to provide assistance and protection, and to prevent abuse and exploitation. The high level of the professional service provisions of many NGOs for trafficked persons may obscure the fact that their origins were based on broader social movements, including movements for migrants’ rights, gender equality and non-discrimination.<sup>12</sup>

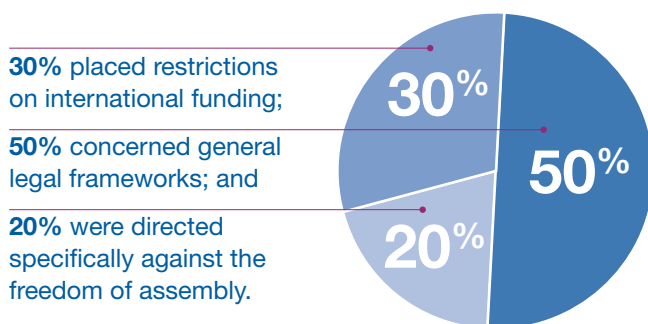
In all its forms, civil society can be understood as the glue that holds a diverse society together. It should ideally function as an interlocutor with state actors, representing multifaceted social groups.

### Civil society and the ‘shrinking space’ discourse

Both European and international organizations have raised concerns about the increasing restrictions on agency and activism in civil society. The European Union Agency for Fundamental Rights (FRA), for instance, conducted a study based on qualitative interviews with civil society experts as well as data from its own research network.<sup>13</sup> The report describes the

different types and patterns of challenges faced by civil society organizations and highlights promising practices that can counteract various worrying trends. The FRA identified challenges and limitations for civil society in the following areas: the regulatory environment, finance and funding, the right to participation and the ensuring of a safe space.<sup>14</sup>

Furthermore, the European Parliament has analyzed the situation of civil society organizations worldwide in its report *Shrinking Space for Civil Society: the EU Response*. It observed a significant decrease since 2004 in the number of NGOs and their activities.<sup>15</sup> Moreover, the report states that from 2012 to 2015, more than 120 restrictive laws were adopted in 60 countries, including EU members. Of these laws:



In more practical terms, the restrictions imposed upon NGOs were manifested as follows:

- **NGOs receiving funding from abroad have had to register as “foreign agents”;**
- **The registration of NGOs has become subject to strict approval and licensing procedures;**
- **NGOs have been faced with punitive taxes;**
- **NGO staff members have been increasingly at risk of persecution and imprisonment.<sup>16</sup>**

These challenges and limitations were also raised during the consultation meetings with anti-trafficking NGOs organized within the framework of the research undertaken for this Occasional Paper.<sup>17</sup> They shared concerns and discussed the restricting policies they had experienced, including the right to free assembly, limited opportunities to voice criticism of governmental strategies, and the increasing reluctance of governments to fund NGO networking activities.

11 This typology is based on an overview elaborated by the Austrian NGO platform “The World of NGOs”; it can be viewed at: <http://www.ngo.at/ngos/was-ist-eine-ngo> (accessed 22 August 2018).

12 See for instance the NGOs organized in the La Strada network, such as La Strada Belarus and Animus/La Strada Bulgaria. German NGOs that are members of KOK were also originally self-supporting groups of particular sectors in society, including migrant women, sex workers and faith-based groups.

13 For more information on the methodology, see European Union Agency for Fundamental Rights, *Challenges facing civil society organisations working on human rights in the EU* (2017) p. 55.

14 European Union Agency for Fundamental Rights, *Challenges facing civil society organisations working on human rights in the EU* (2017), p. 13.

15 European Parliament, Directorate-General for External Policies, Policy Department, *Shrinking space for civil society: the EU response* (2017), p. 9.

16 European Parliament, Directorate-General for External Policies, Policy Department, *Shrinking space for civil society: the EU response* (2017), p.43.

17 For more detailed information, see the section below on purpose and methodology, p. 18.

# 1.4 Engagement of civil society in anti-trafficking efforts

Trafficking in human beings is a complex crime that can best be addressed by involving all relevant stakeholders. The OSCE participating States have long taken the position that civil society should be engaged in anti-trafficking efforts along with the States themselves.

The Ministerial Council Decision No. 1 “Enhancing the OSCE’s efforts to combat trafficking in human beings” adopted in 2000 was the first OSCE Ministerial Council Decision calling “on OSCE institutions, in particular the ODIHR and field operations, to develop and implement anti-trafficking programmes and to promote co-ordinated efforts in the areas of prevention, prosecution and protection, in co-operation with non-governmental organizations as well as international organizations and other relevant institutions.”<sup>18</sup> In 2003, with the adoption of the OSCE Action Plan to Combat Trafficking in Human Beings, participating States explicitly stated in the Preamble that “Acknowledging that while primary responsibility for combating and preventing trafficking in human beings rests with participating States, the link of this phenomenon to transnational organized crime requires co-operation at the international and regional level, involving the private sector and NGOs.”<sup>19</sup> This statement was again unanimously reaffirmed ten years later in the Addendum to the OSCE Action Plan adopted in 2013.<sup>20</sup>

Two Ministerial Council Decisions adopted in December 2017 – “Strengthening Efforts to Prevent Trafficking in Human Beings” and “Strengthening Efforts to Combat All Forms of Child Trafficking, Including for Sexual Exploitation, as well as Other Forms of Sexual Exploitation of Children”<sup>22</sup> – show that participating States are maintaining and even expanding the scope of their co-operation with civil society organizations (CSOs) in certain areas. For example, the Ministerial Council “calls on OSCE participating States to prevent all forms of child trafficking and sexual exploitation of children, including in tourist destinations, through education and awareness-raising, and to work with the private sector and civil society to raise awareness among the tourism industry, as well as business travellers and tourists, to help eliminate demand that fuels child trafficking and sexual exploitation of children.”<sup>23</sup>

## Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later (2013)

“While the primary responsibility for combating and preventing trafficking in human beings rests with participating States, the link of this phenomenon to transnational organized crime requires co-operation at the international and regional level, involving the private sector<sup>21</sup> and relevant NGOs ...”

18 OSCE, MC Decision No. 1, Enhancing the OSCE’s efforts to combat trafficking in human beings (28 November 2000), MC(8).DEC/1.

19 OSCE, PC Decision No.557, Action Plan to Combat Trafficking in Human Beings (24 July 2003), PC.DEC/557.

20 OSCE, PC Decision No.1107, Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later, PC.DEC/1107/Corr.1, Chapter V.1.

21 On the private sector, see OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labour exploitation in supply chains (2018).

22 OSCE, MC Decision No.6/07, Strengthening Efforts to Prevent Trafficking in Human Beings (8 December 2017) MC.DEC/6/17 and MC Decision No.7/17, Strengthening Efforts to Combat All Forms of Child Trafficking, Including for Sexual Exploitation, as well as Other Forms of Sexual Exploitation of Children (8 December 2017), MC.DEC/7/17.

23 MC.DEC/7/17, para. 4.

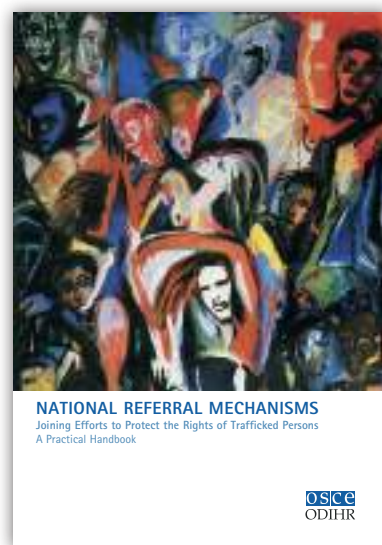


Legal instruments and policy tools urge governments, as described below in chapter II, to engage in co-operation with NGOs for a variety of purposes. For example, according to the OSCE/ODIHR National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook (2004)<sup>24</sup> and the conclusion of the 2018 *Alliance against Trafficking in Persons* Conference “Everyone has a Role: How to make a Difference Together”,<sup>25</sup> combating trafficking in human beings requires multidisciplinary and inclusive partnerships that involve all relevant actors from governments, the private sector and civil society to enhance the coherence of anti-trafficking efforts and strengthen co-operation at local, national, regional and international levels.

However, the inclusion of civil society into an overall anti-trafficking response as reflected in the clusters of the four P’s (prevention, protection, prosecution and partnership)<sup>26</sup> is not always an easy endeavour. At times civil society stakeholders challenge their role as mere technical providers without being included in political decision-making processes. In addition, given that the mission of civil society differs from that of governmental and intergovernmental institutions, its activities in the anti-trafficking sphere may sometimes be regarded as too critical towards governmental policies. While the engagement of civil society in victim support and counselling may be welcomed by the authorities, the critical response of civil society to state activities with regard to combating trafficking and protecting and assisting its victims, as well as those at risk of being trafficked, may not always be valued and in fact can provoke resentment. In this regard, it is worth underlining that although state and non-state actors, including NGOs, have different interests and roles that can sometimes lead to tensions, there is a clear continuity in their efforts. Moreover, they are expected to have the same ultimate goal, namely, fighting the crime of human trafficking, assisting its victims and improving the overall situation.

Civil society organizations can – and indeed often do – make active, constructive and positive contributions towards the development of laws and policies regarding human trafficking and, more broadly, the protection of human rights for all. In this regard, they should not simply be regarded as a group of specialized entities offering merely technical support when requested or permitted by the State: “Although (...) [governmental procurement] provides a legal basis and steadier funding to the work of the service providers, it also has the risk of limiting their work to that requested by the State. (...) States often only allocate funding for assistance to officially identified victims of trafficking, while NGOs want to support all people in need as a result of exploitation and abuse.”<sup>27</sup>

A sustainable strategy for including civil society in the anti-trafficking response needs to reflect the many contributions that civil society can provide, while at the same time taking into consideration the potential tensions of a governmental/non-governmental partnership.



OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (2004)

24 OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (2004), p. 26: <http://www.osce.org/odihhr/13967?download=true> (accessed 19 February 2018).

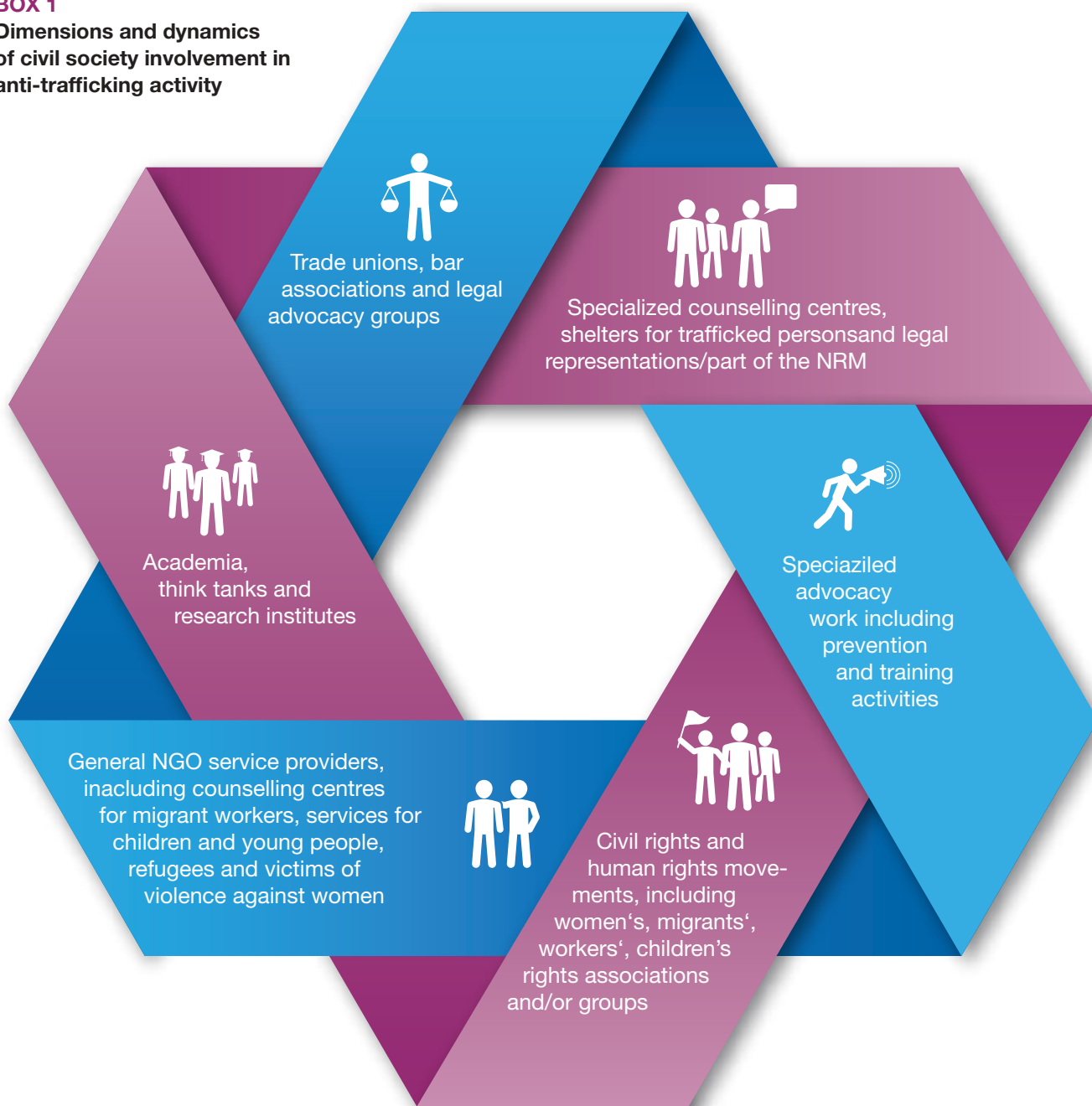
25 On the 18th Alliance against Trafficking in Persons Conference, “Everyone has a Role: How to make a Difference Together”, see: <https://www.osce.org/event/alliance18> (accessed 19 June 2018).

26 See below, chapter IV.

27 Marieke van Doorninck, “Changing the system from within, the role of NGOs in the flawed anti-trafficking system”, in: R. Piotrowicz, C. Rijken and B. Uhl (eds.), *Routledge Handbook of Human Trafficking* (2017), pp. 419-426.

The following classification of major non-governmental stakeholders illustrates the importance of different types of civil society actors engaged in anti-trafficking efforts, be they a registered entity or an informal association of civil and human rights movements.

**BOX 1**  
**Dimensions and dynamics of civil society involvement in anti-trafficking activity**



The range of civil society engagement is wide and diverse, interconnected and multi-faceted. It extends from protecting human rights and ensuring the effective recognition of the rights of trafficked persons, to prevention, education and awareness-raising, to advocacy and watchdog activities to promote transparency and accountability of state actors, and much more. The engagement and co-operation of a wide spectrum of civil society actors in anti-trafficking efforts is also necessary because of the complexity and ever-changing characteristics of the crime. Thus, while most anti-trafficking NGOs were initially involved in this work alongside a focus on women's rights or domestic violence, with the passing of time many more civil society organizations operating in a variety of social fields also adopted an anti-trafficking agenda (or a modern slavery agenda). Such NGOs include those working on human rights, migrant rights, asylum, social exclusion and marginalization, child issues, non-discrimination, corporate social responsibility and business and human rights. Trade unions have also become more active and engaged, as have alternative workers organizations and initiatives.

An effective strategy that NGOs can offer to bridge the gap between potential victims of trafficking and support structures is "peer-to-peer" methodology.<sup>28</sup> Groups identified as vulnerable to trafficking, including (irregular) migrant workers, people working in prostitution, unaccompanied minors and people belonging to ethnic minorities, can easier access information about support and protection when such information is distributed through their own networks of communication.

A widespread network of self-organized and activist groups, such as refugees, migrant workers, violence against women's groups, and children's rights activists, for instance, may contribute to preventing abuse and exploitation of vulnerable and marginalized persons, and ensure that more victims of trafficking are identified and have access to services without discrimination.

Given their first-hand contacts with marginalized groups vulnerable to being trafficked, NGOs can give voice to their concerns and ensure their participation in informing policies and actions that affect them. NGOs also possess invaluable sources of data and information that may shed light on violations of the rights of trafficked persons and other groups that would otherwise remain undetected.

---

<sup>28</sup> An example of peer-to-peer methodology to fight human trafficking can be found at: <https://ncfy.acf.hhs.gov/news/2017/02/peer-peer-workshops-contribute-ending-human-trafficking> (accessed 22 August 2018).

CHAPTER

# 2



INTERNATIONAL AND REGIONAL  
NORMS ON THE ROLE OF  
CIVIL SOCIETY IN ANTI-TRAFFICKING  
EFFORTS

## 2.1 International and European law

✦ The participation of NGOs and the wider civil society in anti-trafficking work is regulated by both international and national law. This regulatory foundation consists of legally binding instruments, including treaties, directives and legislation; there are also a number of significant non-binding instruments that influence and often describe the role of civil society organizations, such as guidelines and recommendations. A complete picture can only be obtained when all such instruments are taken into account. Such instruments have been developed by a variety of global and regional entities, including the UN, the EU, the Council of Europe, the CBSS and the CIS. They highlight, inter alia, the need to engage civil society in the following areas of anti-trafficking activity:

- Policy and legislation development;
- Prevention, including information campaigns and other awareness raising interventions;
- Identification of victims of human trafficking, in particular in collaboration with law enforcement authorities;
- Protection of victims of human trafficking, including a wide scope of support services, including during criminal proceedings;
- Training and capacity building for all relevant anti-trafficking stakeholders.

As can be seen from the above, the actual engagement of civil society is crucial as well as diverse. However, due to the nature of existing instruments, such engagement is not always necessarily based on a binding duty of the State. The aim of this chapter is therefore to provide an overview of:

1. Where such legal duty exists or, if not a duty, then at least where guidance or recommendation to do so is stated; and
2. What is the nature of such duty or guidance.

While States have legal obligations regarding assistance to and protection and support of trafficked persons, they do not necessarily have to fulfil all such activities themselves. The State may carry out its duty by engaging another entity, such as an NGO, to perform particular functions, although the State remains responsible under the law. It should therefore not be forgotten that States often delegate some or even many of their own functions to civil society organizations.

Section 2.1 of this chapter discusses legally and politically binding instruments that have been adopted by the United Nations, as well as other regional organizations to which OSCE participating States belong, including the Council of Europe, European Union and the Commonwealth of Independent States, on the role of civil society in combating trafficking in human beings. Section 2.2 provides an overview of the relevant non-binding instruments.



### United Nations

#### Palermo Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>29</sup> (Palermo Protocol), adopted in 2000, recognized the possible contribution of civil society in several of its provisions. This is particularly significant given that this instrument has been so widely accepted<sup>30</sup> and that it represents the international community's first attempt to address trafficking in modern times. Article 6(3) provides for victim support:

“Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, *in co-operation with non-governmental organizations, other relevant organizations and other elements of civil society*, and, in particular, the provision of:

- a. Appropriate housing;
- b. Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- c. Medical, psychological and material assistance; and
- d. Employment, educational and training opportunities” (emphasis added).

<sup>29</sup> UNGA Res. 55/25.

<sup>30</sup> The Protocol had 172 parties as of December 2017.

Furthermore, Article 9, on prevention of trafficking in persons, provides, in paragraph 3: “Policies, programmes and other measures established in accordance with this article shall, as appropriate, include co-operation with non-governmental organizations, other relevant organizations and other elements of civil society.”

Contributions from civil society are also foreseen in Article 10(2) on information exchange and training for law enforcement, immigration and other relevant officials in the prevention of trafficking. Such training, it is stated, “should encourage co-operation with non-governmental organizations, other relevant organizations and other elements of civil society.”

### **Security Council Initiatives**

In December 2016, the United Nations Security Council adopted Resolution 2331 (2016).<sup>31</sup> This measure, dealing with the links between human trafficking and armed conflicts, also recognizes the role of civil society.

The resolution (in paragraph 3) “[e]ncourages Member States to: (a) Build strong partnerships with the private sector and civil society, including local women organizations, and to re-double their efforts by encouraging these actors to provide information helping to identify, disrupt, dismantle and bring to justice individuals and networks involved in trafficking in persons in areas affected by armed conflict.”

Paragraph 15 of the same instrument refers to national strategic frameworks and action plans against trafficking in persons “developed through broad consultations, including with civil society.”

This resolution was followed by another in November 2017,<sup>32</sup> Resolution 2388 (2017), which deals extensively – albeit not exclusively – with THB in the context of armed conflicts. The Preamble provides, inter alia: “Recognizing the need to continue to foster a global partnership against trafficking in persons among all stakeholders ...” Further, paragraph 20 explicitly mentions the contribution to be made by civil society in assisting States in providing appropriate assistance to children affected by armed conflict.

### **Protocol to Forced Labour Convention**

In June 2014, the Conference of the International Labour Organisation adopted a Protocol to the Forced Labour Convention.<sup>33</sup> While this instrument is about forced labour, not specifically human trafficking, trafficking does however take place for the purpose of exploiting victims’ labour. The close ties between the two practices are acknowledged in the Preamble: “Recognizing that the content and forms of forced or compulsory labour have changed and trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, is the subject of growing international concern and requires urgent action for its effective elimination ...”

Accordingly, this instrument is relevant when assessing the role of civil society. It envisages active contributions from civil society to the effort to prevent forced labour. Article 1(2) establishes the duty of parties to “develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers’ and workers’ organizations, which shall involve systematic action by the competent authorities and, as appropriate, in co-ordination with employers’ and workers’ organizations, as well as with other groups concerned.” Moreover, under Article 6, “[t]he measures taken to apply the provisions of this Protocol ... shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned.”

31 S/RES/2331 (2016).

32 S/RES/2388 (2017).

33 P029 – Protocol of 2014 to the Forced Labour Convention, 1930. As of 9 November 2017, the Protocol has been ratified by 15 OSCE participating States.





## Council of Europe

### Convention on Action against Trafficking in Human Beings

The principal Council of Europe instrument on human trafficking is the Convention on Action against Trafficking in Human Beings, adopted in 2005.<sup>34</sup> It has been ratified by 47 States, including Belarus, which is not a member of the Council. The Convention clearly recognizes the significant role to be played by civil society in giving effect to the objectives of the treaty, which are set out in Article 1(1):

“(a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;  
(b) to protect the human rights of victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;  
(c) to promote international co-operation on action against trafficking in human beings.”

The role of civil society is explicitly acknowledged in general terms, in Article 35, entitled “Co-operation with civil society”: “Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organizations, other relevant organizations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.” Under this provision, it is a duty, not a choice, to encourage co-operation between state agencies and NGOs.

According to the Explanatory Report to the Convention, a strategic partnership entails “the setting up of co-operative frameworks through which State actors fulfil their obligations under the Convention, by co-ordinating their efforts with civil society.”<sup>35</sup> This can include regular dialogue involving all actors, with the practical implementation of the Convention’s purposes being achieved (as one example) through “the conclusion of memoranda of understanding between national authorities and non-governmental organisations for providing protection and assistance to victims of trafficking.”<sup>36</sup> Indeed, Article 35 provides the legal foundation for establishing a National Refer-

ral Mechanism, i.e. “a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.”<sup>37</sup>

Chapter II of the Convention deals with prevention, co-operation and other measures. Article 5(1) requires parties to establish or strengthen co-ordination “between the various bodies responsible for preventing and combating trafficking in human beings.” Although civil society is not specifically mentioned here, the Explanatory Report<sup>38</sup> to the Convention in fact is clear that civil society is seen as one of the bodies being referred to: “The paragraph makes it a requirement to co-ordinate all the sectors whose action is essential in preventing and combating trafficking, such as the agencies with social, police, migration, customs, judicial or administrative responsibilities, non-governmental organisations, other organisations with relevant responsibilities and other elements of civil society.”<sup>39</sup>

Article 5(6) is more explicit and indeed stipulates a mandatory role for civil society with regard to prevention: “Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance” (emphasis added). As the Explanatory Report makes clear, while the parties to the Convention are responsible for meeting the obligations laid down in Article 5, they must, as appropriate, involve civil society “in the implementation of preventive measures.”<sup>40</sup>

Article 6 – on measures to discourage demand – appears to go even further in that it refers to the “responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking.”<sup>41</sup> Of course, this responsibility is not a duty or obligation in the sense of it being a duty arising under the Convention; it is not an instrument that can bind civil society. However, the Explanatory Report acknowledges that civil society has been a key agency in identifying demand as one of the main causes of trafficking; accordingly, the measures to discourage demand “seek to create maximum awareness and recognition of (civil society’s) ... role and responsibility in that field.”<sup>42</sup>

34 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005), CETS No.197.

35 Paragraph 352.

36 Paragraph 353.

37 OSCE/ODIHR, National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook (2004).

38 CM(2005)32 Addendum 2 final, 3 May 2005.

39 Paragraph 102.

40 Paragraph 107.

41 Article 6(b).

42 Paragraph 110.

Chapter III of the Convention addresses measures to protect and promote the rights of victims. Effective identification of trafficked people is essential so they are recognized as victims of a serious crime and given the help, support and protection they need. Article 10(1) establishes the duty to have personnel trained in identifying victims and to ensure that “the different authorities collaborate with each other as well as with relevant support organisations” in this identification process. Thus, while this provision does not explicitly mention civil society, it clearly makes an indirect reference to it, since in many countries the civil society has played a crucial part in dealing with trafficked people, including their identification. The Explanatory Report is clear on the role for civil society: “The support organisations could be nongovernmental organisations (NGOs) tasked with providing aid and support to victims.”<sup>43</sup>

Article 10(2) contains the duty to adopt legislative or other measures to identify victims, again “in collaboration with other ... relevant support organisations.” Civil society could therefore also be involved in these processes. The Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA), which has the responsibility for monitoring States’ compliance with the Convention, has often reiterated that “specialised NGOs can substantially contribute to the victim identification process and should be involved in a multi-agency effort to ensure that no victim of trafficking remains unidentified.”<sup>44</sup> It is also necessary to mention that the GRETA expert team includes civil society representatives, thus reiterating the importance of inclusive and comprehensive partnerships in the field of combating trafficking in human beings.

The Rules of Procedure for Evaluating Implementation of the Convention moreover contain provisions concerning information from civil society. Thus, based on a questionnaire it has developed, GRETA seeks information directly from civil society. During its visits, GRETA organizes meetings with relevant civil society actors and visits NGO-run shelters for victims of trafficking.<sup>45</sup>

Article 12 deals with the duty to provide assistance to victims. This includes a clear, albeit conditional, duty to co-operate with civil society: “Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with nongovernmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.”

Such assistance includes safe accommodation, psychological and material assistance, emergency medical treatment, translation and interpretation services, counselling and information about legal rights and available services, assistance to have the interests of the victim considered during criminal proceedings against alleged offenders, and access to education for children. While, again, these are a duty of the State, it is very likely that in some States, civil society organisations may be better placed to offer such assistance. This is again acknowledged in the Explanatory Report: “NGOs have a crucial role in victim assistance.”<sup>46</sup>

Article 16, on repatriation and the return of victims, explicitly refers to the role of NGOs in facilitating the safe and dignified return of trafficked people to their home countries when they have been trafficked transnationally. Paragraph 6 provides that “Each Party shall adopt such legislative or other measures as may be necessary to make available to victims ... contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.”

43 Paragraph 130.

44 Council of Europe, 4th General Report on GRETA’s activities, GRETA (2015)1, p. 40.

45 Council of Europe, Action against Trafficking in Human Beings, Monitoring Mechanism, Role of NGOs. Available at: <https://www.coe.int/en/web/anti-human-trafficking/role-of-ngos> (accessed 17 July 2018).

46 Paragraph 167.



Chapter V contains measures on investigation, prosecution and procedural law. The significant supporting role of civil society in assisting trafficked people before, during and after a trial is recognized in Article 27(3). It establishes the duty to “ensure ... to any group, foundation, association or non-governmental organisation which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings” concerning human trafficking. Such activities may be risky because of the threat of retribution from the traffickers or their associates.<sup>47</sup> This is recognized in Article 28, on the protection of victims, witnesses and collaborators with the judicial authorities. Paragraph 4 established the duty to adopt measures to provide, “when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations” which may carry out the assistance and support functions mentioned in Article 27(3).

#### **Convention on preventing and combating violence against women and domestic violence<sup>48</sup>**

This instrument was adopted in April 2011. It does not address human trafficking as such. However, many trafficked women are subjected to physical and sexual violence as part of being trafficked and/or subsequently exploited.

The Convention is explicit in recognizing the role of civil society and the need for States to co-operate with it: “Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.”<sup>49</sup>

#### **Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)**

The Lanzarote Convention addresses, *inter alia*, trafficking-related issues, in particular the sexual exploitation of children. It includes a number of provisions that recognize the role and contribution of civil society. For example, with regard to participation in policy-making, Article 9 deals with the participation of children, the private sector, the media and civil society. Paragraph 2 provides that States “shall encourage the private sector [...], as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through selfregulation or co-regulation.” Further, Article 10, on national measures of co-ordination and collaboration, requires (paragraph 3) that States “shall encourage co-operation between the competent state authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.” Co-operation with civil society is envisaged also in Article 14, on assistance to victims. Paragraph 2 provides that “[e]ach Party shall take measures, under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.”

<sup>47</sup> This is noted in the Explanatory Report, paragraph 290.

<sup>48</sup> CETS 210.

<sup>49</sup> Article 9.



## European Union

The EU has adopted several binding instruments on, or relating to, human trafficking. These show a clear recognition of the critical role of civil society in addressing this crime, not only in co-operating with Member States, but also in scrutinizing the effectiveness of States' efforts to address human trafficking.

### Anti-Trafficking Directive 2011/36/EU

This instrument<sup>50</sup> seeks to address THB in a comprehensive way, focusing both on tackling trafficking as a serious crime but also on the protection of and support for victims of trafficking. Already in the Preamble, the role of civil society as a partner of States is acknowledged: "Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations in this field working with trafficked persons, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures."<sup>51</sup>

The operative part of the Directive does not always specifically mention civil society playing a role, although the provision quoted above makes it clear that this is envisaged. Rather, the Directive is framed, when dealing with protection and assistance (Articles 11–17), on the obligations of States towards trafficked persons. Article 11, on assistance and support for victims of trafficking, stipulates the types of assistance and support that might be offered by NGOs or other members of civil society, at least for a period of time: appropriate and safe accommodation, material assistance, medical treatment, psychological assistance, counselling and information.<sup>52</sup>

Article 19 on the establishment of national rapporteurs or equivalent mechanisms is explicit; it stipulates that the tasks of such mechanisms are to be carried out "in close co-operation with relevant civil society organisations active in this field."

50 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA.

51 Recital 6.

52 Article 11(5).

### Residence Permits Directive 2004/81/EC

This Directive<sup>53</sup> is relatively narrow in scope, but once again a role for civil society is explicitly recognized. The Directive provides for persons who are not citizens of an EU Member State but who have been trafficked to an EU State and who are co-operating with the authorities to be granted residence permits for limited periods. During the time they are living in an EU Member State on the basis of such a permit, such persons have certain entitlements to assist them in their daily lives and recovery. To this end, Article 12(1) provides: "The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member states or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin ..."

### Other EU instruments

There are other EU instruments that do not deal specifically with human trafficking but which are nevertheless pertinent to evaluating the role of civil society in the context of combating human trafficking. An important example is the Victims of Crime Directive.<sup>54</sup> While this instrument addresses the rights and needs of all victims of crime, in places it singles out particular offences. Victims of human trafficking are specifically identified as being vulnerable to a high rate of secondary and repeat victimization, intimidation and retaliation.<sup>55</sup> The possible contribution of civil society is recognized in the context of victim support service provisions. Article 8(4) provides: "Victim support services and any specialist support service may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis."

53 Council Directive 2004/81/EC of 29 April 2004 on issuing residence permits to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration if they co-operate with the competent authorities.

54 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

55 Preamble, Recital 57.

## 2.2 Non-binding instruments



### United Nations

#### General Assembly

In August 2010, the General Assembly of the United Nations adopted by resolution the United Nations Global Plan of Action to Combat Trafficking in Human Beings (the Plan).<sup>56</sup> The Plan contains several references to the important role that civil society plays, as well as the effective contributions it can make with regard to anti-trafficking efforts, particularly in providing assistance and support for trafficked people.

The Preamble refers to the need to develop a global plan of action that will “[f]oster co-operation and co-ordination among all relevant stakeholders, including Member States, international organizations, civil society organizations and the private sector, and within various entities of the United Nations system ...” Paragraph 2 of the resolution then urges all stakeholders – Member States, the UN and other international organizations – “as well as civil society, including non-governmental organizations”, the private sector and other entities of the UN system “to fully implement the relevant provisions of the Plan of Action and the activities outlined therein”. This clearly shows that civil society is expected to be actively involved in future actions to assist trafficked people. This is elaborated upon in the Plan of Action itself, which was published as an Annex to the Resolution.

The Resolution itself is explicit in acknowledging and providing for a role for civil society, both in general and specific terms. Paragraph 40 outlines the general role: Member States “[a]cknowledge the important role of civil society organizations in providing assistance and empowerment to victims of trafficking in persons, helping them to seek redress and facilitating the care of and provision of appropriate services to victims, including close co-operation and co-ordination with law enforcement officials”.

With regard to prevention of trafficking, in Paragraph 18 the Plan calls for States to “[p]romote awareness-raising campaigns aimed at persons at risk of being trafficked and at the general public through education and the effective involvement of the mass media, nongovernmental organizations, the private sector and community leaders with a view to discouraging the demand that fosters the exploitation of persons ... and that leads to trafficking”.

In terms of assistance, Paragraph 32 calls upon States to “[p]rovide assistance and services for the physical, psychological and social recovery and rehabilitation of trafficked persons, in co-operation with non-governmental organizations and other relevant organizations and sectors of civil society”.

In the section on the strengthening of partnerships, Paragraph 53 requires States to “[p]romote co-operation and co-ordination among governmental institutions, civil society and the private sector, including the media, as well as workers’ and employers’ organizations, to strengthen prevention and protection policies and programmes”.

The Plan was preceded and followed by regular UNGA Resolutions with regard to trafficking, all of which have confirmed the integral role played by civil society, including NGOs, in the provision of assistance and support to victims of trafficking, awareness-raising amongst those at risk of being trafficked as well as the public at large, and general co-operation to assist trafficked people.<sup>57</sup> The Human Rights Council and the Economic and Social Council have also acknowledged the role of civil society in resolutions adopted on human trafficking.<sup>58</sup>

<sup>57</sup> GA Res 58/137 (2003), Strengthening international co-operation in preventing and combating trafficking in persons and protecting victims of trafficking (Preamble, Paragraphs 3,9); GA Res 61/144 (2006), Trafficking in women and girls (Preamble, Paragraphs 9, 14, 15, 16, 17, 23); GA Res 61/180 (2006), Improving the co-ordination of efforts against trafficking in persons (Preamble, Paragraph 1, 15); GA Res 63/194 (2008), Improving the co-ordination of efforts against trafficking in persons (Preamble, Paragraphs 3, 4, 6, 8, 12); GA Res 64/178 (2009), Improving the co-ordination of efforts against trafficking in persons (Preamble, Paragraphs 3, 5, 6); GA Res 67/190 (2012), Improving the co-ordination of efforts against trafficking in persons (Preamble, Paragraphs 6, 7, 13); GA Res 68/192 (2013), Improving the co-ordination of efforts against trafficking in persons (Preamble, Paragraphs 5, 10); GA Res 69/149 (2014), Trafficking in women and girls (Preamble, Paragraphs 18, 26, 27); GA Res 70/179 (2015), Improving the co-ordination of efforts against trafficking in persons (Preamble, Paragraph 12); GA Res 71/167 (2016), Trafficking in women and girls (Preamble, Paragraphs 6, 17, 20, 29, 32)

<sup>58</sup> See, for example, Resolution 2015/53 adopted by the Economic and Social Council on 21 July 2015, Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons. Paragraph (e) of the Preamble refers to civil society as a “stakeholder” in this field. Paragraph (f) of the Preamble notes that one objective of the Global Plan of Action is “[t]o foster co-operation and co-ordination among all relevant stakeholders, including ... civil society organisations”. The Preamble also recognizes NGOs as one of the “established channels of assistance” to trafficked persons. Paragraph 3 urges all stakeholders mentioned in the Global Plan of Action (i.e., including civil society) “to continue to contribute to the full and effective implementation of the Global Plan of Action, including by means of strengthening co-operation and improving co-ordination among themselves in achieving that goal”.

<sup>56</sup> GA Res 64/293.

On 19 September 2016, the UNGA adopted Resolution 71/1, the New York Declaration for Refugees and Migrants,<sup>59</sup> which is intended to promote the adoption of policies and measures to address large movements of refugees and migrants. It contains a number of references to human trafficking which may also be linked to the contribution to be made by civil society in supporting and assisting trafficked persons. In paragraph 29, it is stated that Member States “... recognize and will take steps to address the particular vulnerabilities of women and children during the journey from country of origin to country of arrival. This includes their potential exposure to discrimination and exploitation, as well as to sexual, physical and psychological abuse, violence, human trafficking and contemporary forms of slavery.”

It is acknowledged that refugees and migrants who are part of large movements are in danger of being trafficked and subjected to forced labour,<sup>60</sup> as is the particular vulnerability of women and girls.<sup>61</sup>

The Declaration is accompanied by two annexes. Annex 1 – “Comprehensive refugee response framework” – appears to recognize the role of civil society. Under Paragraph 5(a), referring to the outset of large movements of refugees, receiving States, along with international organizations “and other partners” as appropriate, must ensure that measures are in place to “provide for adequate, safe and dignified reception conditions, with a particular emphasis on persons with specific needs, victims of human trafficking ... and support the critical contribution of receiving communities and societies in this regard”. In terms of support for immediate and ongoing needs, States are supposed to take action “in co-operation with multilateral donors and private sector partners” (paragraph 6).

More explicitly, under paragraph 7(d) host States undertake to “[s]upport local civil society partners that contribute to humanitarian responses, in recognition of their complementary contribution”. While this instrument is about large-scale movements of refugees and migrants, trafficked persons or those at risk of being trafficked are acknowledged to be a part of this group; the contribution of civil society to the support and assistance of all is acknowledged.

### **United Nations High Commissioner for Refugees**

The main focus of the UNHCR’s work is the welfare of persons who are seeking, have applied for or have been granted international protection: that is, persons who are in another country and who cannot return to the State of their citizenship or permanent residence because of a well-founded fear of being subjected to persecution or some other threat to their basic human rights. Such threats may be at the hands of the State, or of non-State actors if the State is unable or unwilling to act to provide protection.

While the UNHCR is not primarily concerned with victims of human trafficking, people who have been trafficked to another country may well be at risk should they be compelled to return to their home country. They may have escaped their traffickers and given information to the police or evidence in court. This could well put them at risk of violence or even being re-trafficked. In some countries trafficked persons may be at risk from the authorities or their own families.

It is therefore possible that some such persons may be entitled to refugee status, not because of their having been trafficked in the past, but because of the risks they face in future if compelled to return home, which may be connected to the fact that they have been trafficked. The UNHCR recognized this by adopting, in 2006, Guidelines on international protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.

The Guidelines are not legally binding but are intended to provide “interpretive legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as for UNCHR staff carrying out refugee status determination in the field.”

The Guidelines focus on the State’s obligation to identify trafficked persons, as well as those persons at risk of being trafficked who may qualify for refugee status. However, they acknowledge the role of civil society when addressing the issue of assistance. Paragraph 45 refers to Article 6 of the Palermo Protocol, paragraph 3, which requires parties to consider implementing assistance measures “in co-operation with non-governmental organizations, other relevant organizations and other elements of civil society.” In the section on strengthening of partnerships, Paragraph 53 requires States to “[p]romote co-operation and co-ordination among governmental institutions, civil society and the private sector, including the media, as well as workers’ and employers’ organizations, to strengthen prevention and protection policies and programmes”.

<sup>59</sup> A/Res/71/1.

<sup>60</sup> Paragraph 35.

<sup>61</sup> Paragraph 60.



## Special Rapporteur on Trafficking in Persons, especially Women and Children

The Special Rapporteur, whose primary task is to focus on the human rights of trafficked persons, has regularly stressed the importance of States working with civil society organizations to facilitate the protection and assistance of trafficked persons. In a joint report with the Special Rapporteur on the Sale and Exploitation of Children, Including Child Prostitution, Child Pornography and other Child Sexual Abuse Material, both Rapporteurs stressed the importance of States and civil society organizations working together,<sup>62</sup> and even called upon them “to strengthen collaboration”<sup>63</sup>

## Office of the High Commissioner for Human Rights

The Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) have also recognized that civil society must be involved in anti-trafficking efforts. In fact, ten of the eleven guidelines contain the phrase “States and, where applicable, intergovernmental and non-governmental organizations should consider” or “States and, where appropriate, intergovernmental and non-governmental organizations should consider”, before outlining the relevant measures. The effect is that even if non-governmental organizations are not specifically mentioned in the body of a guideline, it is nonetheless necessary to consider whether they might be able to contribute to fulfilling its objectives.

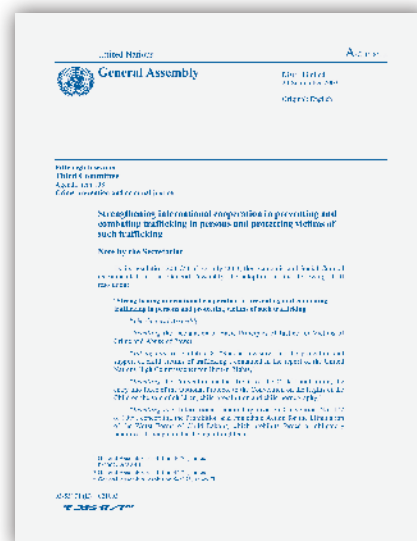
There is frequent reference to the particular role of non-governmental organizations in fulfilling particular guidelines. Guideline 1.2 recommends consultation with “relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.” Guideline 1.3 refers to the development of links between relevant governmental institutions and civil society through national action plans. According to Guideline 1.7, “[n]on-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.”

Guideline 2.3 refers to ensuring formalized “co-operation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons.”

Guideline 3.7 goes beyond the most common feature of civil society involvement, which is usually linked to protection, support and assistance to trafficked people, by highlighting a possible contribution to law enforcement. It recognizes “the central role” that NGOs can play here by informing the authorities about trafficking incidents and patterns. Moreover, Guideline 5.9 suggests that States should encourage their law enforcement authorities “to work in partnership with non-governmental agencies in order to ensure that trafficked persons receive necessary support and assistance.”

Guideline 6, on protection and support for trafficked persons, recommends that States, in ensuring that safe and adequate shelter for trafficked people is available, should do so “in co-operation with” NGOs (Guideline 6.1). Access to primary health care and counselling should be ensured “in partnership with” NGOs (Guideline 6.2). Again “in partnership with” NGOs, States should ensure that trafficked persons returning to their country of origin receive the necessary assistance and support to ensure their well-being (Guideline 6.8).

Finally, States should consider “encouraging and facilitating co-operation between nongovernmental organizations and other civil society organizations in countries of origin, transit and destination”, particularly (but not only) to ensure support and assistance to trafficked persons who are repatriated (Guideline 11.12).



Strengthening international co-operation in preventing and combating trafficking in persons and protecting victims of such trafficking

62 18 July 2017, A.72/164, paragraphs 81, 82, 83, 85.

63 18 July 2017, A.72/164, paragraph 86.