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International Organization for Migration
Review of the National Referral Mechanism
Written Evidence Submission to the Review Team
September 2014

Introduction

The International Organization for Migration (IOM) is an intergovernmental organisation established in 1951, committed to the principle that humane and orderly migration benefits migrants and society. The Organization acts to help meet the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards effective respect for the human rights and well-being of migrants. IOM's mandate allows it to work with migrants, refugees, displaced persons and others in need of migration services or assistance. With over 460 offices worldwide and numerous ongoing projects and programmes, IOM is in a strong position to offer advice to governments, and bring best practices from experience in other countries.

IOM's Involvement with the Issue of Human Trafficking¹

According to Article 1 (c) of the IOM Constitution, one of the purposes and functions of the Organization is *"to provide [...] advisory services on migration questions and other assistance as is in accord with the aims of the Organization"*. The IOM Strategy, adopted by the IOM Council in 2007, further provides that the Organization will focus on *inter alia "assisting States in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons, in particular women and children, in a manner consistent with international law"* (Point 11 of the Strategy).

IOM has been active in the field of counter-trafficking on a global level for over 20 years. Since 1994, the Organization has assisted over 20,000 trafficked persons across the globe through the provision of safe accommodation, medical, psychosocial and legal support, assisted voluntary return, education and training opportunities and assistance with the establishment of small businesses. IOM has also developed a standardised data management tool, the Counter-Trafficking Database, to gather information on victims of trafficking who are assisted through IOM's programmes worldwide. As of today, the database is installed in over 72 IOM offices in all regions of the world, with data covering approximately 24,000 individual cases.

Furthermore, IOM has supported States with a range of capacity-building initiatives, which include training for immigration and police authorities, prosecutors and judges, as well as health and social services officials.

Since 2011, the IOM Country Office in the UK (IOM UK) has been delivering training to First Responders and other frontline professionals on issues associated with human trafficking within the country, including the key indicators, the National Referral Mechanism (NRM) and the related work of the UK Human Trafficking Centre (UKHTC) and the Home Office. To date, IOM UK has delivered this training course to over 1000 frontline professionals, many within First Responder organisations.

IOM UK also hosts awareness raising events to mark Anti-Slavery Day in the UK, such as the 'Buy Responsibly' campaign in 2011 and the 'Fashioned for Freedom' events in 2011, 2012, and scheduled for October 2014. Both events draw the attention of the public, as consumers, to the use of trafficked and exploited labour within the production lines of everyday items, such as clothing.

¹ IOM uses the term "trafficking" according to the definition provided by the Palermo Protocol which includes slavery as a form of exploitation. For further information see: 'United Nations, Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime, 2000'.



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In addition, IOM UK has been providing specialised return and reintegration assistance to victims of trafficking who choose to return to their countries of origin, using our global network of offices. At present, IOM UK is implementing the CARE (Coordinated Approach for the REintegration of Victims of Trafficking) pilot project for victims of trafficking in Austria, France, Portugal, Spain and the UK who choose to return home to their countries of origin that are outside of the European Economic Area (EEA). A second project provides reintegration assistance to Albanian victims of trafficking, to support them to live independently in their home communities.

For all of these activities, IOM UK has worked closely with service providers within the NRM and other agencies active in the field of human trafficking to provide the best possible support for victims of trafficking.

NRM Review

IOM values the efforts and shares the legitimate interest of the UK government in combatting human trafficking. IOM welcomes the review of the NRM, with its stated aim of establishing whether it provides an effective and efficient means of supporting and identifying potential victims of both human trafficking and modern slavery.

IOM UK welcomes the opportunity to provide comments as part of the review process. In doing so, IOM UK's comments will address the following sections raised in the review's Terms of Reference:

- Identification
- Data
- Level of support
- Governance

➤ ***Identification***

Recommendation 1:

All First Responder staff and a greater proportion of frontline staff should receive training to better understand human trafficking, identify victims of trafficking and make referrals to the NRM.

First Responders are agencies and organisations that are designated by the Home Office based on the likelihood that they may encounter a victim of trafficking. IOM UK has noted a varying range of understanding of the issues of human trafficking and of its indicators among staff within First Responder organisations. Indeed, while some are aware of trafficking indicators and the existence of the NRM, there are many who still do not know what the NRM is, that they are a First Responder organisation or what their duties are as First Responders.

IOM UK also recognises the role of other frontline professionals in the detection of potential victims of trafficking and the need to provide them with training on how to identify a potential victim and how to make a referral. Frontline professionals might include: medical and public health social workers; child, family and school social workers; and mental health and substance abuse social workers/counsellors.

IOM UK is one of a number of organisations that has developed a training course introducing the issues surrounding human trafficking, including the potential indicators and the functioning of the NRM. This course has been delivered to staff in two local authorities (with First Responder status as well as frontline staff that work with vulnerable individuals who could potentially be victims of trafficking).

However, it is clear that a more systematic approach to training, which covers standardised and agreed upon content, should be provided to all First Responder staff and a greater proportion of



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frontline staff that are in contact with vulnerable individuals. This would support the NRM to function at its best and in turn see more effective identification take place.

Recommendation 2:

All First Responders should have an established, internal pathway to facilitate identification and referrals.

First Responders have a responsibility to gather initial evidence of trafficking and make referrals to Competent Authorities within the NRM. When delivering training to staff within First Responder organisations, IOM UK has noted that many of them do not know who to contact within their organisation should they come across a potential victim of trafficking. This could prevent effective referrals from being made into the NRM from First Responder bodies and could put victims at risk of further exploitation.

IOM UK is aware of one First Responder body (Croydon Council) that has developed a successful internal pathway which provides staff members with a clear process that they should follow if they come into contact with a potential victim of trafficking, leading to the NRM referral. This should be replicated as a best practice amongst other First Responder bodies so that staff is fully aware of the required steps to ensure that a successful referral of a potential victim of trafficking in their care can take place.

Recommendation 3:

Victims of trafficking with a positive conclusive grounds decision should be granted a trafficking-specific temporary residence permit. Criteria for granting further leave based on 'personal circumstances' should be clarified and encompass issues of fear and reprisals in the country of origin.

At present, once a non-EEA² national has received a positive conclusive grounds decision that formally identifies them as a victim of trafficking, they are not automatically entitled to a temporary or permanent residency permit. Temporary residence is conditional and may only be granted in one of the following three scenarios: if a victim is co-operating with an ongoing police investigation and their presence in the UK is required to this purpose; if a victim has raised a legitimate claim for compensation through the criminal courts and it would be unreasonable for them to be outside the UK to pursue that claim; if a victim's personal circumstances, although not meeting the grounds for international protection, are so compelling that they justify a grant of leave to remain in the UK.

IOM is aware of reports that highlight the lack of clarity in the criteria for permits granted on the basis of 'personal circumstances' and some inconsistencies in the information that is considered during decision-making. Publically available Home Office guidance notes do not adequately explain what criteria are considered when reviewing personal circumstances or how they are gathered³. As such, it is not clear whether consideration is given to the victim's situation in their country of origin, including fear of reprisals at home, family involvement in trafficking, or specific socio-economic factors which may hinder their ability to reintegrate.

Indeed the 2012 GRETA report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom⁴, notes that there is a lack of understanding or specific criteria on how the UK interprets 'personal circumstances'. Non-governmental organisations also noted through this report that the professional opinion and expertise of the service provider does not always seem to be given due weight in this decision making.

² EEA nationals have the right to remain in the UK and therefore the granting of residence permits is not relevant for them.

³ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298421/traffickingcompetent.pdf

⁴ See http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf



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The GRETA report also provides figures for the number of recognised non-EEA victims of trafficking that then go on to receive residence permits due to their 'personal circumstances'. These indicate that between 2009 and October 2011, of 373 non-EEA victims of trafficking with a positive conclusive grounds decision, just 25 received residence permits due to their 'personal circumstances'. This number seems remarkably low.

The lack of entitlement to a trafficking-specific temporary residence permit and the unclear application of the 'personal circumstances' to conditionally grant residence to a victim of trafficking raises important concerns. Firstly, victims may not receive the protection that they need to ensure that they can continue with their recovery and make decisions about the future (as there is no specific relief from removal if return to their country of origin is not viable based on their trafficking experience). Furthermore, victims of trafficking require significant time and psychological help to overcome their experience and give coherent account of their experience. This may also influence their decision as to whether or not to cooperate with a police investigation or make a claim for compensation.

Secondly, this approach may lead victims of trafficking and their advocates to seek alternative avenues to gain protection, such as through the asylum system, even when this may not be the appropriate route. It should also be noted that during the asylum-seeking process, individuals are generally subjected to restrictions to rights and entitlements while their case is being considered. Therefore, a victim of trafficking in the asylum process is denied the enhanced support that should be granted to them during their transition from exploitation to freedom and active member of society.⁵

IOM recommends that victims of trafficking with a positive conclusive grounds decision receive an automatic trafficking-specific temporary residence permit (for a minimum period of around 3-6 months) to assist them in their longer-term recovery and decision-making process for the future. This should also grant continued access to the specialised support services that victims of trafficking require. An extension of this period, based on an individual's 'personal circumstances' (if they choose not to cooperate with an investigation or claim compensation) should be reviewed and clarified, taking into account the country of origin situation and the professional views of the service providers.

➤ **Data**

Recommendation 4:

A systematic and comprehensive mechanism for capturing data on human trafficking in the UK should be developed.

At present there is no mechanism in place to consistently capture data on those people who choose not to be referred to the NRM but who would still be considered potential victims of trafficking based on globally established indicators. As a result, important information about cases where First Responder professionals (such as social services or specialised NGOs) suspect that trafficking has taken place is not recorded in a systematic way outside of the NRM. This makes it very difficult to build a clear picture of the state and scale of trafficking in the country if no data collection mechanism and tool is established separately from the NRM statistics.

Furthermore, the data that is recorded through the NRM does not include information on the pre-trafficking experience or socio-economic context of the individual in question, prior to their trafficking. It is vital to understand, from the victims themselves, what circumstances led to their subsequent trafficking and exploitation in order to better identify and implement a prevention strategy in source countries, thus tackling the problem at the root of its cause. In addition, no information is held

⁵ IOM does of course recognise that some victims of trafficking do fall within the scope of the refugee definitions according to the 1951 Convention and are therefore entitled to international protection.



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regarding the profile of the traffickers, facilitators, recruiters or transporters for the purpose of building a clear picture of the victim's trafficking history. According to the IOM "Guidelines for the Collection of Data on Trafficking in Human Beings, Including Comparable Indicators"⁶, improving data collection is imperative to assess the extent of trafficking, identify new trends, and develop targeted projects for prevention.

Systematic and comprehensive record keeping about the experiences of victims of trafficking will enhance current knowledge of the crime which, in turn, will allow for the development of effective response systems.

➤ **Level of support**

Recommendation 5:

Legal support should be made available to victims of trafficking when they have been identified by a First Responder, including advice on the NRM referral process and the consequences.

Currently, victims of trafficking are only entitled to legal aid once they have received a positive reasonable grounds decision under the NRM. This prevents victims from receiving legal advice and assistance based on the NRM referral itself.

Referral into the NRM has significant legal consequences for trafficking victims, particularly for those whose immigration status could lead to an enforced removal if their trafficking situation is not recognised.

For a victim of trafficking to make a fully informed decision about whether or not to be referred into the NRM they should have access to specialist legal advice and support (preparation of the referral itself).

Recommendation 6:

A specialised voluntary return and reintegration programme for victims of trafficking (including EEA nationals) who wish to return home should be established and offered on a case-by-case basis and in accordance with individual needs.

At present, there is no long-term approach to providing specialised return and reintegration assistance to victims of trafficking who choose to return home to their countries of origin. The EU-funded CARE project, which provides enhanced reintegration assistance to non-EEA victims of trafficking who return home via the assisted voluntary return (AVR) programme, is a pilot scheme which will conclude in September 2015. Beyond this time, there will be no schemes in place to provide the tailored reintegration support that victims of trafficking desperately need.

For victims of trafficking from within the EEA who wish to return home voluntarily, there is no mechanism in place to facilitate their return and provide reintegration assistance, with relevant embassies unable to deliver this service. This is particularly important given a rise in European trafficking and the number of European victims within the NRM⁷. These victims of trafficking are

⁶ Republic of Austria, Federal Ministry of the Interior. International Organization for Migration. February 2009. "Guidelines for the Collection of Data on Trafficking in Human Beings, including Comparable Indicators."

⁷ According to the official statistics from the National Crime Agency and the Serious Organised Crime Agency National Archives, in 2012, there were a total of 247 EEA victims of trafficking referred into the NRM (within the top 30 countries). In 2013, this figure had increased to 562, representing a 128% increase in EEA victims of trafficking in the NRM. See <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics> and <http://webarchive.nationalarchives.gov.uk/20130703102353/http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics>



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entitled to receive the support they need should they choose to remain in the UK, but such provisions and rights are lost if they choose to return home.

A victim-centred return and reintegration programme provides individuals with the ability to access education, skills training, employment, or medical, housing and psychosocial assistance in their country of origin. This support aims to encourage a dignified and supported return process and to address the socio-economic conditions that may have led to a trafficking situation in the first place. Reintegration assistance should be linked to other social services that may be provided in a given country by the Government and/or NGOs through their respective trafficking support mechanisms.

IOM stresses the voluntary nature of such programmes, which must come from the individual's expressed wish to return after having received the relevant pre-departure counselling to make an informed decision. Returning must be determined by the trafficking victim, after a risk and needs assessment, and not by the safety of the country of origin or by their immigration status in the UK, otherwise it will undermine their long-term recovery.

➤ **Governance**

Recommendation 7:

One Competent Authority – under the UKHTC – should be responsible for decision-making within the NRM.

IOM is aware of reports that highlight the different rates of identification between victims who have had their trafficking decisions made by a Competent Authority in the UK Visa and Immigration (UKVI) and those decided by the UK Human Trafficking Centre (UKHTC). The UKVI currently makes decisions on referrals identified as part of an immigration process (for example, where trafficking is raised as part of an asylum claim) and the UKHTC makes decisions on all others⁸. A report by the Anti-Trafficking Monitoring group noted that rates of identification by the UKVI⁹ are significantly lower at both stages of the NRM when compared to decisions made by the UKHTC¹⁰. This report concluded that the immigration status of a presumed victim of trafficking appeared to be given greater emphasis than the crime committed against them.

The current decision-making structure has resulted in a loss of confidence among organisations working in the counter-trafficking sector and a fear among victims from outside of the EEA of being referred into the NRM as their immigration status could play a part in the decision. As noted by the Centre for Social Justice “evidence for this lack of faith is seen in the number of judicial reviews that have been requested of the UKBA¹¹ for decisions made by them through the NRM. Every judicial review conducted in this area since the NRM was established in April 2009 has been for UKBA Competent Authority decisions; there have been none for UKHTC Competent Authority decisions”¹².

In order to avoid conflation of immigration concerns and trafficking decisions, the UKHTC should be the sole Competent Authority with centralised decision-making powers. This will encourage improved engagement from organisations within the sector, including some First Responders and increase trust and confidence within the system as a whole.

⁸ This includes cases involving a UK or EEA national, or a non-EEA national not yet known to the UKVI.

⁹ Formerly the United Kingdom Border Agency (UKBA).

¹⁰ Anti-Trafficking Monitoring Group, 'Wrong Kind of Victim' One year on: an analysis of measures to protect trafficked persons (June 2010), P.9.

¹¹ Now replaced by the UKVI.

¹² Centre for Social Justice, 'It Happens Here: Equipping the United Kingdom to fight modern slavery' (March 2013), P80.



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Recommendation 8:

A right of appeal for negative NRM decisions should be introduced.

Given the complexities involved in victim identification decisions, it is inappropriate that the NRM provides no formal right of appeal. This is particularly important given the impact that the NRM decisions have on the lives of potential victims of trafficking. However, as the Anti-trafficking Monitoring group has highlighted, decisions under the NRM are, at present, inconsistent and of variable quality.

Currently, the only way a victim can challenge the NRM is through a judicial review. As noted by the Joint Committee on the Draft Modern Slavery Bill, however, this is not a review of the decision itself but rather an evaluation as to whether the decision was made legally¹³. Furthermore, by the time a victim would challenge a negative NRM decision, their time with a service provider would most likely be coming to an end.

IOM supports the recommendation made in the Report of the Modern Slavery Bill Evidence Review that there should be a provision for an appeal or review mechanism against an NRM decision¹⁴. Ensuring that a right of appeal is included in the NRM will both strengthen the process and fairness of identifying victims of trafficking and ensure that victims are given the support and protection they need.

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¹³ Report on the Draft Modern Slavery Bill, Joint Committee on the Draft Modern Slavery Bill, April 2014, P64.

¹⁴ Baroness Butler-Sloss, Frank Field MP (Chair) and Sir John Randall MP, Establishing Britain as a world leader in the fight against modern slavery, Report of the Modern Slavery Bill Evidence Review, December 2013 P37