



Warsaw, 28 February 2023

## **Contribution to the UN Special Rapporteur on trafficking in persons, especially women and children by the OSCE Office for Democratic Institutions and Human Rights**

### **“Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)”.**

1. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) thanks the Committee for raising this important issue and expresses its gratitude for the opportunity to contribute to this discussion on the prevention of trafficking among refugees, IDPs and stateless persons in conflict situations.
2. This written submission was prepared by ODIHR in response to the call by the UN Special Rapporteur on trafficking in persons, especially women and children for inputs to the general discussion on the rights of refugees, IDPs and stateless persons.
3. The OSCE participating States have identified unresolved conflicts among the contributing factors to trafficking in human beings. In this regard, the 2003 OSCE Action Plan to Combat Trafficking in Human Beings highlighted the “root causes of trafficking in human beings, occurring both in countries of origin and destination (...) such as poverty, weak social and economic structures, lack of employment (...), unresolved conflicts, post-conflict situations, illegal migration and the demand for sexual exploitation and inexpensive, socially unprotected and often illegal labour”. The OSCE participating States further recognized the significance of “identifying the most vulnerable segments of the population,” and “ensure that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including victims of THB, to seek and enjoy asylum from persecution in accordance with international refugee law”.<sup>1</sup>
4. The vulnerability of refugees, IDPs, migrants and stateless persons to trafficking in human beings is irrefutable.<sup>2</sup> Refugees, especially those who flee from conflict or war, are among the most vulnerable individuals in society. Having to abandon their homes, possessions, and community support systems, they undertake strenuous and perilous journeys to seek refuge in unknown places that may lack basic necessities, where they might feel socially isolated and encounter discrimination. Some of these individuals are unable to obtain legal status, leaving them without the means to support themselves.

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<sup>1</sup> OSCE Ministerial Council (2003), [Decision No. 2/03, “Combating Trafficking in Human Beings”](#), Maastricht, 3 December 2003, MC.DEC/2/03.

<sup>2</sup> OSCE/ODIHR [National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook – Second Edition](#), 24 January 2002, p.43-46.

Consequently, they become highly vulnerable to various forms of trafficking and exploitation in a climate of political, economic, and social instability.<sup>3</sup>

5. In an effort to find a place of refuge, some individuals rely on smugglers and traffickers for assistance, placing themselves in precarious situations that make them highly vulnerable to trafficking in human beings.<sup>4</sup> Often, refugees are not aware of the hazards they may face until it is too late. Later refugees face the situation when traffickers who initially promised them safe passage demand additional payment. When refugees are unable to meet these demands, they may be subjected to physical and sexual abuse as a means of coercion to repay their supposed "debts" or are further sold or exploited.
6. Typically, survivors and victims of trafficking come from underprivileged socioeconomic backgrounds and/or countries with lower income levels, and they are frequently trafficked or smuggled to wealthier nations where traffickers and smugglers can maximize their profits from exploiting them.<sup>5</sup> As a result, trafficking in human beings is specifically acknowledged as a development obstacle in the 2030 Sustainable Development Agenda.<sup>6</sup> To "prevent, combat and eradicate trafficking in persons in the context of international migration" is thus central to the Global Compact for Safe, Orderly and Regular Migration as set out in Objective 10.
7. Refugees, IDPs and stateless children are frequently at a heightened risk of experiencing violations and risks to their safety and well-being.<sup>7</sup> These may include being separated from their families, neglect, violence, abuse, distress, social isolation, discrimination, and economic exploitation, which can include trafficking in human beings.
8. OSCE participating States have agreed "to promote dignified treatment of all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law, in particular human rights" (Ljubljana 2005). These commitments clearly protect not only the right to seek asylum but also require adherence to the principle of *non-refoulement*, which prohibits States from moving individuals outside their jurisdictions or effective control if there is substantial reason to believe that this could lead to irreparable harm for the individual upon their return.
9. Furthermore, States need to have procedures in place to identify victims of trafficking who are in need of international protection because they may face 'refoulement'. A full and competent risk assessment must be carried out before a decision to proceed with an enforced return of a victim of trafficking is considered. All victims of trafficking who may require asylum or other forms of international protection should be provided with

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<sup>3</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children to the United Nations Human Rights Council (A/ HRC/32/41), [2018 UNODC report Trafficking in Persons in the Context of Armed Conflict](#).

<sup>4</sup> OSCE, [Migration routes](#), UNODC (2018), [Global Study on Smuggling of Migrants](#), pp. 41-42.

<sup>5</sup> World Migration Report 2022, ["Human Trafficking In Migration Pathways: Trends, Challenges, and New Forms of Cooperation"](#).

<sup>6</sup> [Goal 8 | Department of Economic and Social Affairs \(un.org\)](#).

<sup>7</sup> World Migration Report 2022, OSCE/ODIHR, [Practical Handbook – Second Edition](#), p.44-45.

early access to free, independent, specialist legal advice and have access to all other entitlements/protectations proscribed under international law.<sup>8</sup>

10. Moreover, adults and children who have a preliminary positive identification as a presumed victim of trafficking should be provided with a recovery and reflection period, which should be granted for a minimum of 90 days, irrespective of their co-operation with law enforcement.<sup>9</sup> For victims who have irregular migration status in the country in which they are located, the recovery and reflection period provides a right of temporary residence permit during which time they will not be forcibly removed to their country of origin or any third country.
11. The OSCE participating States have recognized the need of protection of children refugees, IDPs and unaccompanied minors.<sup>10</sup> In particular, the 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings recommended promoting targeted awareness-raising and public education in order to ensure respect for the human rights and fundamental freedoms of persons vulnerable to THB. Special attention should be put on children in child institutions/orphanages, children in alternative care, runaway youth, unaccompanied and separated children, children with disabilities, children belonging to national minorities, children without any citizenship, children without birth registration, child asylum-seekers, refugees, migrants and IDPs, and children left behind by migrating parents.
12. The OSCE participating States committed to address the development of the anti-trafficking frameworks and strengthen the existing one specifically for children. Ministerial Council Decision 6/18 aims to “promote national anti-trafficking mechanisms, including National Referral Mechanisms where they exist, and child protection systems where appropriate, that recognize the needs and rights of child victims of trafficking; incorporate victim-centred, trauma-informed and age-appropriate assistance; apply a multidisciplinary approach, respecting human rights, that takes into account the respective gender-specific concerns of girls and boys, and reflects, as appropriate, input and recommendations from survivors of trafficking in human beings when providing immediate assistance and looking for durable and sustainable solutions; as well as establish referral channels that are appropriate for children”.<sup>11</sup>
13. The OSCE region accounts for approximately 40% of all trafficking in human beings cases worldwide.<sup>12</sup> Of these cases, 27% involve children, with girls comprising 16% and boys 11%. Although labor and sexual exploitation are the most common forms of trafficking, more than 10% of children in the OSCE region are trafficked for organ

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<sup>8</sup> OSCE, Practical Handbook – Second Edition, p 115.

<sup>9</sup> OSCE, Practical Handbook – Second Edition, p 129.

<sup>10</sup> OSCE Ministerial Council (2017), 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”](#), Vienna, 8 December 2017, MC.DEC/7/17.

OSCE Ministerial Council (2004), Decision No. 13/04, [“The Special Needs For Children Victims of Trafficking For Protection and Assistance”](#), Sofia, 7 December 2004, MC.DEC/13/04.

OSCE Permanent Council (2003), Decision No. 557, [“OSCE Action Plan to Combat Trafficking in Human Beings”](#), 24 July 2003, PC.DEC/557.

<sup>11</sup> OSCE Ministerial Council (2018), Decision No. 6/18, [“Strengthening Efforts to Prevent and Combat Child Trafficking, Including of Unaccompanied Minors”](#), Milan, 7 December 2018, MC.DEC/6/18.

<sup>12</sup> [2020 UNODC Global Report on Trafficking in Persons](#).

removal, forced begging, and forced criminal activity. The high incidence of child trafficking has prompted OSCE participating States to pledge their commitment and implement initiatives aimed at reinforcing domestic and cross-border systems for safeguarding children.

14. In the OSCE region, the military attack of the Russian Federation in Ukraine caused one of the largest refugee waves in recent history. The total number of refugees is nearly 8 million people, vast majority of who are women, children and elderly.<sup>13</sup> As a part of ODIHR's response to the military attack in Ukraine, ODIHR conducted assessment visits to transit and destination countries of refugees from Ukraine, published factsheet and policy recommendations based on the conducted a survey of women refugees from Ukraine and conducted trainings for frontline responders on identification of trafficking in persons victims and survivors and on trauma-informed, victim-centered, gender-sensitive approach. ODIHR is focused on promotion of establishment and strengthening of National Referral Mechanisms by the OSCE participating States as an essential framework to address trafficking in human beings, particularly during conflicts and other crises.
15. Women and children<sup>14</sup>, refugee women and children, as well as other marginalized groups, remain particularly vulnerable to risk of trafficking especially in the context of conflict.<sup>15</sup> Considering this, ODIHR launched a [Survey on safety and security of women refugees from Ukraine](#) aiming to collect empirical data to ensure that their voices are reflected in the development of responses to address their trafficking vulnerabilities and risks.<sup>16</sup> The received data shows that women lack information about the threat of becoming a trafficking victim as well as rights afforded to refugees, majority of them did not receive legal assistance or offers of support or legal guidance. A significant number of respondents were not made aware of the risks of trafficking in human beings.<sup>17</sup> Women and their children also shared experiences of sexual harassment domestic violence, requests of sexual favors, proposals to work in the sex industry, proposals to produce pornographic materials, and sexual violence after leaving Ukraine.<sup>18</sup>

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<sup>13</sup> UNHCR, [Operational Portal, February 2023](#)

<sup>14</sup> 55 of 57 OSCE participating States ratified UNGA Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

OSCE

Parliamentary Assembly Berlin Declaration – [Resolution on Combatting Trafficking in Human Beings, especially Women and Children](#) (2002)

OSCE Parliamentary Assembly St. Petersburg Declaration – [Resolution on Trafficking of Women and Children](#) (1999)

<sup>15</sup> UN Security Council [Resolution 2379 on trafficking in persons in armed conflict](#) (2017).

CEDAW General Recommendation No. 38 (2020) [On Trafficking in Women and Girls in the Context of Global Migration](#), 20 November 2020.

<sup>16</sup> The data is based on 1.000 responses that ODIHR collected with the survey.

ODIHR Survey on Safety and Security of Women Refugees from Ukraine, [Infographic and Recommendations](#), 2023

<sup>17</sup> 4 in 10 responders.

<sup>18</sup> The infographic illustrates that women refugees from Ukraine experience sexual harassment (1 in 22), domestic violence (1 in 50), requests of sexual favors (1 in 50), proposals to work in the sex industry (1 in 100), proposals to produce pornographic materials (1 in 250) and sexual violence (1 in 500).

16. OSCE participating States ascertain that National Referral Mechanisms serve as a national framework for States in identification of trafficking victims and ensuring their protection.<sup>19</sup> NRM is a co-operative, national framework through which governments fulfil their obligations to protect and promote the human rights of victims of trafficking, co-ordinating their efforts in a strategic partnership with civil society organizations, survivor leaders and the private sector.<sup>20</sup> It is especially important to have functioning NRM during conflict and post-conflict phase to effectively address trafficking in human beings. ODIHR published the second edition of the [National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook](#), which offers guidance to OSCE participating States on how to address trafficking in human beings, including refugees, IDPs and stateless persons and to ensure a human rights-based, victim and survivor centered, gender-sensitive, child friendly and trauma informed approach. It presents and outlines the working methods, procedures and services that are required across the four NRM ‘pillars’ of identification and protection; individual support and access to services; social inclusion; and criminal justice and redress.
17. In conclusion, with this written contribution, ODIHR hopes to contribute to raising awareness about the high vulnerability of refugees, IDPs and stateless persons to trafficking in human beings, particularly due to armed conflict and to alert States to the need to address the gaps in policies in the identification, protection, assistance and support, criminal justice process and redress and social inclusion of refugees, IDPs and stateless persons, who are victims and survivors of trafficking.

*ODIHR has been active in preventing and combating trafficking in human beings since 1999. As a result of its work, ODIHR has developed expertise and a significant role in international victim protection and the promotion of the rights of victims and survivors of trafficking and addressing the vulnerabilities of at-risk groups. ODIHR’s approach is based on human rights, the rule of law, and non-discrimination. It promotes victim and survivor centred, trauma-informed and gender sensitive measures to assist victims and survivors of trafficking in human beings.*

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<sup>19</sup> OSCE/ODIHR, [Practical Handbook – Second Edition](#).

<sup>20</sup>OSCE Permanent Council (2003), Decision No. 557 on OSCE Action Plan to Combat Trafficking in Human Beings, 24 July 2003, PC.DEC/557, pp. 13-14.