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# Quality standards for risk assessment and the safe return and reintegration of trafficked persons

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# Quality standards for risk assessment and the safe return and reintegration of trafficked persons

Women and human trafficking, is a complex crime and capital perpetration against women and human rights.
The purpose of quality standards is the prevention of re-trafficking or other harms and violations of human rights in cases of voluntary and safe return of a trafficked person to his/her country of origin.

Prerequisite for a voluntarily and safe return and reintegration is to identify victims of human trafficking so that people are not endangered by deportation processes. Identification has to follow internationally accepted definitions. Practical indicators against which suspicious facts can be found on women trafficking must therefore be based on these definitions. From the point of official identification, the person concerned is entitled to stay in the destination country. This is to be seen as a major prerequisite for the voluntarily and safe return. On this basis return counselling and applicable measures for reintegration can be set up. Central Element of the return counselling is to conduct a risk analysis so that the highest possible degree of safety for a return can be guaranteed.

Therefore the quality standards are outlined in the following three chapters:

1. **Identification**
2. **Return counselling and measures for reintegration**
3. **Risk assessment**

**1. Identification**
In order to identify victims of human trafficking, a clear definition of the term human trafficking or trafficking in women is needed.
Within the framework of the Council of Europe Convention on Action against Trafficking in Human Beings, a standardized definition was submitted based on the definition of the UN

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000):
"For the purposes of this Convention:
a) 'Trafficking in human beings' beings' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;"[1]

Since 1996 the organization LEFÖ has been working with a definition of trafficking in women which is similar to the definition that established itself on an international basis within the framework of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)*:*

**Trafficking in women is**
when a woman engages in migration on the grounds of deceit and false promises and then finds herself in a coercive situation in the target country, when a woman finds herself in a situation where she has no rights and is forced to provide certain services, when she is stripped of her dignity, personal or sexual integrity by a husband or employer."[2]

Before the commencement of the Council of Europe Convention, this definition was already implemented into the Austrian national penal law in 2004 (Gazette (Amtsblatt) 1 No. 15/2004, implemented: May 1st 2004):

**§ 104a Human Trafficking**

(1) Whoever recruits, accommodates, or otherwise receives, transports, offers or transfers to a third party
1. a minor or
2. an adult applying impure means
for the purpose of sexual exploitation, removal of organs or exploitation of the person's labour, shall be sentenced to imprisonment of up to three years.

(2) Impure means are deception concerning the facts, taking advantage of a position of power, of a state of need, of a mental illness or any state that causes a person to be defenceless, of intimidation and the granting or the assumption of a benefit for the transfer of power over the person.

(3) Whoever commits the crime making use of violence or dangerous threat shall be

1 *Council of Europe Convention on Action against Trafficking in Human Beings 2005, pg. 8*

2 *cf. Boidi 1996*

sentenced to imprisonment of six months to five years.

(4) Whoever commits the crime against a minor, being involved in a criminal association, using serious violence, or in any form that endangers the person's life deliberately or due to gross negligence, or if the crime causes the person serious harm, shall be sentenced to imprisonment of one to ten years."

**§ 217 Cross-border trafficking for purposes of prostitution**

(1) Whoever brings a person to perform illicit prostitution, even if such person already engages in prostitution, in another country than the one whose citizenship such person has or where such person has his/her habitual place of residence, or procures such person for such purposes, shall be sentenced to imprisonment of six months to five years, and, if the crime is committed for profit, to imprisonment of one to ten years.

(2) Whoever induces by deception a person to commit prostitution in another country than the one whose citizenship such a person has or where such person has his/her habitual place of residence or coerces such person by violence or dangerous threat to move to another country or conveys such person to another country by violence or by exploitation of such person's error shall be sentenced to imprisonment of one to ten years.

While adhering to the established definition of human trafficking, the new 2011 EU Directive[3] expands the definition of exploitation. It now includes, for example, sexual exploitation, forced labour, begging, removal of organs, illegal adoption as well as forced marriages, if the elements of the offence of human trafficking are met.

The definitions implemented in the Austrian legal system are the basis for any identification of a victim of trafficking in women. Despite their existence, failures in identification have been recorded on an international level, being one of the most common reasons for repeated trafficking in women or other violations of human rights.[4]

The basic requirement for risk assessment is therefore the identification of a trafficked person.

The following indicators[5] focus on central aspects of women trafficking and the included exploitation (as in the definition of human trafficking) and serve as a basis for identification of the victims of trafficking:

3 cf. Offical journal of the European Union 2011
4 cf. OSCE; ODHIR 2009; 2010/ ICMPD 2008
5 cf. Indicators LEFÖ-IBF/ ILO 2009/ ICMPD 2008

- Poor physical condition – marks of violence
- Passport/ID-document was taken („stored“)
- Intimidated behaviour, fear (of revenge), depression – apathetic behaviour
- Signs or statements that the person is being controlled
- Isolation – person has hardly any friends in the country, without direction, no knowledge of national language
- Person was kept locked up or was prevented from moving freely through intimidation, strictly controlling all walks, etc. (threats that she would be reported to the authorities in the country of destination or that her family would be informed about her work and other uncomfortable details; she is being forced to commit criminal acts)
- No money

### Exploitation

- Excessive amount of working hours, no days off, no vacation
- No salary/salary below minimum wage
- No possibility to quit job, dependence
- Extremely bad working conditions (e.g. not allowed to use washing machine in household – has to hand-wash, in case of sex work: use of condoms not allowed)
- No work contract or the like
- Threat of use of violence or actual violence, also against family

If some of these indicators apply there is a valid suspicion on human trafficking.
Women trafficking/human trafficking is a complex crime and is not always easy to be identified as such. Therefore experts must be consulted.

As soon as any suspicion arises based on the mentioned indicators, a 30-day reflection period applies in Austria during which no deportation back to the country of origin is allowed to take place. (Departmental Note of the year 2009)[6]

In this 30 days period the following in-depth indicators for identification are to be elaborated:

- Deceit in the process of recruitment: A woman did not know that she was supposed to do this kind of job or believed that she would earn more. She did not know about the living circumstances in the destination country regarding her status as a migrant: The woman had to work more hours than originally agreed to for less income. She had to share her room with other people and received less payment than agreed. She was informed incorrectly about her status and legal situation as a migrant in the country of destination. Possibly she was promised an education in the country of destination.

6 cf. BMI 2009; BMI-FW1440/0021-II/3/2009

- Force in the process of recruitment: violence or threat of violence at the point of recruitment: A woman might have been threatened, for example, with passing on information to her family or harming her family.
- Recruitment by taking advantage of the special vulnerability of a person: The person did not have a supportive family background. She may have had to take care of several children or other relatives. She did not have any, or only basic education and no sufficient income. She did not have any access to information about the country of destination and was not able to plan her migration herself. She received false information about her rights in the country of destination to produce anxieties and apprehension towards the authorities there. The person is mentally and emotionally unstable. Force might have been exercised by taking advantage of a person's religious or cultural beliefs.

After identification, several steps have to be taken. One of them is to find out whether or not it is safe for the trafficked woman to go back to her country of origin. The work experience of almost 17 years of LEFÖ shows that some women do want to return to their home country. To guarantee a safe return an effective risk assessment has to be carried out prior to the actual return by an expert-NGO such as LEFÖ with cooperative support from governmental institutions.

**2. Return counselling and measures of reintegration**

The first results of the study show that women who do not return voluntarily[7] run a great risk of being re-trafficked or becoming victims of other violations of their human rights![8]

The findings of experts from Germany, specialized in the area of Human Trafficking, concerning the issue of returning of people affected by trafficking exposes that a return which meets the anticipated safety requirements needs at least a preparation period of at least two to three months.[9]

The following standards of return counselling for the purpose of a sustainable reintegration are to be kept.

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*7 A voluntary decision concerning the return of trafficked persons to their country of origin is defined as follows: The alternative option of receiving a legal residence permit in the country of destination has to be provided. There should be no external coercion influencing the decision of a trafficked person to return to his/her country of origin.*

*8 cf. OSCE; ODHIR 2009/ ICMPD 2008/ La Strada Moldova 2007/ UNHCR 2009*

*9 cf. OSCE; ODHIR 2010*

**Counselling concerning the return and reintegration of trafficked persons**

Main principle: Quality, transparency and sensitivity of information
Offers of support prior to the return

Counselling:
Clarify prospects (access to residence) in the country of destination vs. prospects in the country of origin.

If the victim shows a desire to return:

- Evaluation of the desire to return: Clarify whether the desire to return is subjective, physiological, psychological or labour market related. Push and Pull Factors have to be gathered.
- Informing about the support concerning the return and reintegration:
  Go into details on different levels of reintegration. Family reintegration, reintegration into the community (support groups), economic reintegration (qualifications for the labour market, possibilities for further education in the country of destination or origin), cultural reintegration (language, tradition) and religious reintegration. Physical and psychological health is pivotal for successful reintegration as well

Preparation: Evaluation of the specific case, the person and the situation in the country of origin. Development of an individual plan for the return and reintegration (support and protection). A central aspect of the preparation is a risk assessment (see the standards below). Options in the case of failed return or reintegration: For example, the women is informed about the option of coming back to the country of destination during counselling prior to the return, in case a high amount of danger and risk is identified only when she is already back in her country of destination.[10]

Offers within the country of destination prior to a return:

- Shelter
- Financial and material support (e.g. transportation, food, commodities needed for the return)
- Medical support
- Legal and administrative support (e.g. travel documents). Legal counselling aimed at empowering individuals to obtain necessary information and to assert their own rights. For example in the access to compensation.
- Special programmes to prepare for economic reintegration: job-related offers for further education, small loans for the

*10 To guarantee safety for returning survivors of human trafficking, options of possible migration back to the countries of destination should be provided and supported financially by the countries of destination if a trafficked person feels unsafe or finds themselves in danger.*

purpose of self-employment, special job-training, cooperation with employers so that clients can demonstrate work experiences by obtaining valid references.
- Supporting the travelling process (accompanied return and support in transit)
- Establishing contacts within the country of origin (depending on the individual desire support to get in touch with families, friends or local NGOs)

**3. Risk Assessment**

Generally, one has to consider the risks on two levels while carrying out a risk assessment for the possible return and reintegration of victims of human trafficking.
On the one hand, it is about the actual risks that affect a person in an acute way, directly connected to the person's return and reintegration (e.g. the risks in connection to the offender as to the point of a life- threatening situation, the person's health, etc.). On the other hand, risks concerning the trafficking of women have to be analyzed on a social level. This has to do with risks that lead to the marginalization and stigmatization of a person affected by trafficking. These risks might not appear to be acute in the actual situation but have to be considered in the long run, since they can become causes for repeated trafficking in women or other violations of human rights.

To guarantee a safe and voluntary return of trafficked persons, increased cooperation between many different actors such as NGOs and national authorities is essential. Human trafficking as an international crime and a violation of human rights implies the accountability of states to protect and support survivors of human trafficking and the active involvement of state authorities in this process.

The following actors are to be questioned if a risk analysis is carried out:
- Victims themselves (carried out by the NGO)
- Governmental authorities in the country of origin (contacts of Austrian authorities)
- Local NGOs (contact through NGO)
- International organizations (contacts through NGO)

The following three steps are pivotal for risk assessment prior to the voluntarily and safe return of a trafficked person:

STEP 1:
HISTORY OF THE TRAFFICKED PERSON
The aim is to compile all possible essential individual facts and experiences to be able to evaluate the chances for a safe return.
Concerning the target group of trafficked women, it is important to keep their special individual vulnerability in mind.
Experiences demonstrate that danger derives

mostly from perpetrators and criminal organizations, while the political and economic situation of the woman in her country of origin adds to her individual vulnerability. Therefore the first step of an effective risk assessment has to be based on the person's individual history.

**Analysis of a trafficked person's history**

The basic requirement is the trust relationship between the trafficked person and the NGO-member. This relationship is not something that just exists, but it requires a certain time span to be developed.[11]
The aim is to compile the entire story to the greatest possible extent and to identify possible risks. It is also relevant for effective risk assessment to include the history of the person. The person's fears should be related to objectified risks.
Risks on following levels have to be taken into consideration:

Risks in the context of a woman's history:

- Evaluate the family: What does the person's intimate environment look like? What is the economic situation of the family? Whom can the person trust? Is the family in danger itself? Are there any debts the family has or the person has to her family? How is the family handling the trafficking experience?
- Circumstances in country of origin: Does the person belong to any political or other kind of minority? Is she at risk of facing persecution, punishment or discrimination and is, therefore, exposed to a higher risk of being re-trafficked or becoming a victim of other violations of human rights?

Risks caused by the trafficking process:

- Criminal organization of perpetrators: Who is involved? Which contacts exist in the country of origin? How high is the probability that perpetrators will take revenge in the case of return? What does the criminal organization of the perpetrators look like, how strong is the perpetrators' influence?
- Investigate and analyze family and friends locally: Where can family and friends be found? Are they possibly in danger themselves or to what extent does the trafficked woman run a risk of being found by her perpetrators if she stays with her family? Has the family moved? Is the family itself involved in trafficking?

Risk of stigmatization:

- Analysis of the socio-political situation in the country of origin: To what extent is reintegration (into the community, into the labour market) possible? How high is the risk for the person to be excluded as a result of the previous migration or kind of job (sex work/prosti-

11 cf. IOM 2007/ La Strada Moldova 2007

tution)? Stigmatization can be caused simply by a return connected to women trafficking, since it is generally assumed that exploitation in the form of prostitution took place.
- Analysis of living conditions and of the woman in her country of origin: What are her chances of being able to connect to people in her country of origin based on her history?

Based on the history of a trafficked person, who should not be sought as a source of information for risk assessment in the case of a safe and voluntary return:

Example 1: A trafficked woman was exploited in the household of an ambassador of her country who was working in Austria. For a return it is therefore impossible to contact or cooperate with this embassy. It can also be assumed that great risk is involved concerning political influences within the country of origin in the case of return.[12]

Example 2: It is mentioned in a woman's story that following her testimony given to the Austrian police, her parents were taken in by the police within her country of origin to endure an extensive interrogation with the aim to invalidate the woman's testimony. In this case, cooperation with the police of the country of origin should be avoided for reasons of risk assessment, since there is reason to suspect a possible connection to the network of perpetrators.[13]

Target: To extract as much information as possible about the individual history of the person from the person's own perspective, which can now be supplemented by additional general research about the country of origin in step 2.

## STEP 2: RESEARCHING ADDITIONAL SOURCES

In addition to the first information obtained in the interview with the trafficked person, further reliable sources about the country of origin have to be gathered (professional Internet research and reports on country information as well as local experts). For this research, the entirety of all reliable sources of information provided by NGOs or contacts and cooperation with government authorities should be used.

- General research on the legal situation: Are people being punished for irregular migration? What are the legal grounds concerning sex work in the country of origin?
- Research on possible contact persons: What kind of government authorities can be contacted? What kind of knowledge can be obtained through government authorities without putting the woman in danger?

12 Case LEFÖ-IBF 2009

13 Case LEFÖ-IBF 2010

- Information from specialized local NGOs: How do experts from countries of origin evaluate the security situation and a possible reintegration? How do they evaluate the possibilities of stigmatization of a returning trafficked person? What kind of support for physical and psychological recovery is offered? What kind of support is offered to trafficked persons in their countries of origin?
- Look up additional information with international organizations.

The aim of performing the first two steps before proceeding to step 3 is the extraction of all possible risks in the case of return.

## STEP 3: SHAPING SECURITY SCENARIOS

This step requires effective cooperation between the NGO carrying out the risk assessment and the government authorities as well as their contacts and their knowledge concerning security questions about the particular countries of origin.
The trafficked woman herself has to become actively involved in shaping security scenarios. Support from government authorities has to be offered especially in the areas of safe transport and transfer, data protection and shaping security scenarios concerning the perpetrators. Generally every return of a trafficked person is linked to a risk of re-trafficking. Therefore a safety plan has to be drafted every time a person expresses the wish to return, always taking into account the individual history of the trafficked woman.

- Where can safe resources for the trafficked person be found in the country of origin? Other NGOs or family members who were not involved in the act of trafficking? Is there any reason to suggest a return to a different area within the country where there is no relation to trafficking?
- Safe transport and transfer: plan for escort. How secure is passing the borders if there is no passport? Is there a need to organize security measures in the transit area? Is a safe escort all the way from the airport to the country of origin necessary and welcome?
- Data protection against stigmatization: Which data should not be made public due to the fact that a risk of stigmatization exists or punishment of the person based on the political situation cannot be ruled out? Generally only absolutely necessary data should be passed on to others and only with the approval of the trafficked person.
- Possibilities of reintegration within communities, in the labour market: Which communities already exist? If reintegration in the existing communities is not recom-

mendable, what other possibilities for social integration in other communities can be established? What possibilities exist for reintegration in the labour market? What qualifications in the area of education obtained in the country of destination or in the country of origin make sustainable reintegration possible?

- Can an efficient physical and psychological healing be ensured? What is offered in the country of origin? Which steps for physical and psychological healing should happen in the country of destination before a return, due to only marginal offers in the country of origin?
- If perpetrators are assumed to be in the country of origin, how can they be avoided? To what extent can safety be guaranteed?
- If a safe return to the country of origin cannot be guaranteed based on an analysis of the first steps, but the trafficked person still wishes to leave the country of destination due to his/her traumatisation, is resettlement in a third country an option for the person? Which countries does the person consider as an option? Afterwards, analyze all listed aspects.

**Cases in which a return is not possible:**

- The trafficked person does not want to go back (A decision to return is based on the lack of future prospects in the destination country)
- There is an even higher risk due to a testimony given in a criminal case; perpetrators are awaiting the return of the trafficked person to take revenge
- The perpetrators' criminal organization might heavily influence the police or other government authorities within the country of origin
- High risk because of the involvement of the family and the closest social environment into the trafficking process
- Trafficked persons are seriously traumatized
- There is no possibility for reintegration in any community

In all these cases the probability of being re-trafficked or becoming a victim to other violations of their human rights can be considered extremely high.

**Following the completion of the return process:**

Maintain contact to the returned person to guarantee that the return and reintegration are sustainable and to be able to document possible cases of re-trafficking.

After their return, survivors of human trafficking should receive support to be able to re-migrate

to the destination country in case they find themselves in danger in the country of origin.

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