

Strategic Approach for Drafting Regional Guidelines on Victim Protection

At the regional workshop on “Enhancing Victim Protection of Trafficked Persons in the Greater Mekong Sub region - *Technical Workshop to Draft Regional Guidelines on Victim Protection*”, participants representing countries of the Greater Mekong Sub-region drafted a set of *Guiding Principles for the Protection of Victims of Trafficking in the Greater Mekong Sub-Region* as a basis for the development of “Regional Guidelines on Victim Protection”. (Annex I) The workshop was held in response to the COMMIT government’s objective to develop regional guidelines on Safe and Timely Return and Post Harm Support (PPCs 6&7).

In support of this objective, participants to the workshop have also drafted an accompanying proposed “strategic approach” that outlines measures for consideration by COMMIT member governments that could be undertaken in pursuing the objective of developing draft regional guidelines. (Annex II) In drafting this “strategic approach”, participants recognized that governments are in various stages of development on this issue and will thus apply this approach as best suits their national context.

Guiding Principles for the Protection of Victims of Trafficking in the Greater Mekong Sub-Region

Supplementing the COMMIT Memorandum of Understanding on Cooperation against Trafficking in the Greater Mekong Sub-Region

I. General Principles

Individual countries are encouraged to promote the following:

- 1) Placement of the rights of trafficked persons at the centre of all efforts to prevent and combat trafficking, giving appropriate weight to the rights and obligations recognized in the international human rights instruments (CRC, CEDAW, etc), and ensuring that actions taken in relation to victims are guided by a rights-based and victim-centered approach.
- 2) Development of policies and practices to ensure that all victims of trafficking have access to comprehensive, high quality support services that are age, gender, language and culturally appropriate, that are responsive to the victim's needs and respect their right of choice, that are provided by adequately trained professionals or paraprofessionals, and that aim to restore the victim's dignity and decision-making power.
- 3) In all actions concerning child victims, the best interests of the child is a primary consideration.
- 4) Progressive commitment of government resources to support victim return and reintegration, having regard to existing government resources.

II. Identification of Trafficking Victims

Individual countries are encouraged to promote the following:

- 1) Incorporation into their national legal framework, to the greatest extent possible, the definition of trafficking in persons as contained in the Palermo Protocol.
- 2) Development of special arrangements for individuals considered victims of trafficking under the COMMIT MOU, but who do not fall within the scope of domestic trafficking laws as trafficking victims.
- 3) Completion of victim identification as expeditiously as possible in order for the victim to enjoy protection and services as required. If a clear determination cannot be made during the initial screening process, the presumption shall be that the person is a potential victim of

trafficking and thus appropriate protection/support measures provided until further determination can be made through the victim identification interview or other investigations.

- 4) Development at a national level of a standardized screening checklist which reflects domestic law and the COMMIT MOU, so as to provide for more consistent identification of potential victims of trafficking.
- 5) Clear definition and division of roles, responsibilities, and cooperation mechanisms among the agencies involved in the victim identification process, with due provision for specialized training and resource allocation.
- 6) Acceptance of the definition of a child as a person under the age of 18. Where age is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child. Special measures shall be taken to put in place child sensitive victim identification strategies, including guidance on age determination and child sensitive interviewing procedures.
- 7) Development of policies, practices and protocols on the timely sharing of information on trafficking victims based on the principle of “informed consent” that ensure privacy and confidentiality of victims.
- 8) Development of operational guidelines during the identification of trafficking victims, that address at a minimum:
 - a) Provisions for the removal of trafficked persons from detention-like facilities and referral to appropriate interim care and protection services;
 - b) Victim-sensitive interview procedures ensuring interviews are conducted in a safe environment and with an appropriate support person present.
 - c) Access to a translator, where necessary, and the provision of information on the victims’ rights and support that is available in language they understand.
- 9) Incorporation into bilateral agreements dealing with victim identification, proactive operational procedures for the exchange of information and sharing experiences on ad hoc arrangements for possible broader application.

III. Interim Care and Protection

Individual countries are encouraged to promote the following:

- 1) The right to security and protection for all victims of trafficking in close consultation with victims.
- 2) Development of standardized bilingual intake/interview forms in the language of the country of origin and destination.
- 3) Specially trained bilingual staff to support the translation process. This may include Foreign Affairs and embassy staff or other relevant agencies.

- 4) Development of individualized interim recovery plans with the full participation of the victim. Victims should be informed of the range of services and support options available, and have the right to decline interim care and protection assistance. This should, at minimum, include the establishment of a referral system to provide for:
 - a) Gender and age appropriate safe accommodation that provides a secure and supportive protection environment;
 - b) Medical care;
 - c) Psycho-social support; and
 - d) Access to legal advice and assistance
- 5) Establishment of a designated coordinating body, referral networks, multi-skilled teams and the like, and a clearly defined division of roles, responsibilities, and cooperation mechanisms among the different agencies and organizations providing support to victims of trafficking.
- 6) Development of strict Victim Protection Policies and Procedures and related minimum standards and monitoring mechanisms for all care providers to ensure that they meet the basic and specialized needs of victims.
- 7) Development of specialized interim care and protection services that recognize the special needs of child victims and that link support to the child with appropriate support to the family.

IV. Assessment and Best Interest Determination of (Re)Integration

Individual countries are encouraged to promote the following:

- 1) Development of national level policies and procedures that ensure reintegration solutions are individually assessed on the basis of the best interests of the victim of trafficking.
- 2) Designation of case manager or case management group in the destination country to undertake the assessment, make recommendations for best interest determinations, and coordinate relevant support required.
- 3) Designation of a focal ministry/department to coordinate between country/place of origin and destination in sharing relevant information relating to nationality verification, family assessment and victim assessment.
- 4) Development of standardized case forms and family assessment procedures at the national level that contribute to a sub-regional standard for information sharing and assessment with respect to determining the feasibility of family-based reintegration solutions. This includes:
 - a) Assigning appropriately trained personnel to conduct assessments, using standardized forms, in a language understood by the victim;
 - b) Applying child-sensitive procedures in conducting assessment interviews with children;
 - c) Establishing bilateral coordination channels between countries of destination and origin for expeditious nationality/identity verification;

- d) Conducting comprehensive risk and security assessments to verify if family reunification is in the best interests of the child.
- 5) Development of policies and guidance on the sharing of information on trafficking victims, bearing in mind that while information exchange between relevant agencies is essential to determine best interest solutions, the victim's right to privacy should be respected and the victim not put at risk.
- 6) Development of policies and guidance on the determination of an appropriate "best interest" solution for reintegration of victims that involves the full participation of the victim, as well as coordination, collaboration and joint planning of relevant governmental, intergovernmental and non-governmental agencies of both countries ensuring that:
 - a) Durable solutions are reached based on adequate information on identity confirmation, risk/security assessment and family tracing/assessment.
 - b) In absence of appropriate care-givers/guardians, a child victim is not be returned until suitable arrangements for care is made in place of origin;
 - c) If the best interest of the victim is to remain in destination country, consideration should be given to the provision of special stay permits/visas that facilitate legal (temporary) residency.
 - d) Alternatives to family reunification are provided for children and other vulnerable victims when return to immediate family is not recommended (e.g. foster homes, safe houses, extended family/relatives).
 - e) Institutionalization should be used as a measure of last resort.
 - f) In case there are serious concerns related to health care access in the place of origin, provisions for such care is made in the destination country – in the best interest of the victim.
- 7) Establishment of a bilateral process by the appropriate authorities in the country of destination and probable country of origin, and the victim to arrive at a best interest solution for individuals where nationality is suspected, but can't be verified, so as to avoid statelessness.
- 8) Strengthening of criminal and civil procedures against traffickers to ensure that victims are provided full information on legal proceedings (including time frame, process, consequence, right not to participate, etc.), necessary psycho-social and technical advice and are not forced to testify, provide information on traffickers, or participate in the legal proceedings.

IV. RETURN AND RECEPTION

Individual countries are encouraged to promote the following:

- 1) Designation of an appropriate agency to serve as a focal point for arranging and coordinating return travel of victims of trafficking with destination/origin countries.

- 2) Expedient return of victims of trafficking when all assurances of protection have been met; unless rapid return is not in the victim's best interest due to medical or psycho-social, or other needs.
- 3) Development of appropriate bilateral and national operating procedures to ensure timely, safe and victim-sensitive repatriation of victims of trafficking. Such procedures should include provisions for:
 - a) Agreed mechanisms for communication between the sending and receiving countries, in advance of return travel, about the place, time, date and number of returnees;
 - b) Victim safety and protection throughout the transit process through, where necessary, provision of social worker and other appropriately trained escorts. Adult victims may choose to decline transit support, however children should be accompanied throughout the return process.
 - c) Ensuring the privacy and dignity of victims throughout the transfer and handover process, including reduced formality in the handover process and restrictions on the presence of the media.
 - d) Preparation of an individual case file including all relevant personal information of each victim, services provided during interim care and details regarding their trafficking situation, for handover to the designated receiving authorities in the country of origin.
- 4) Development of national-level policies, procedures and minimum standards for gender and age appropriate temporary transit accommodation and services in the country of origin that ensure:
 - a) Victims have a choice whether to return directly to their home community, to receive transit support, or to integrate into another community in their country of origin;
 - b) Victims who cannot return home immediately have access to transit accommodation. Any stay in transit accommodation shall be voluntary.
- 5) Introduction of mechanisms to identify and provide follow-up support to victims who return by themselves without having been identified as victims of trafficking in the destination country.

V. Reintegration

Individual countries are encouraged to promote the following:

- 1) Reintegration support services that aim to restore a person's sense of self worth, prevent re-trafficking, and contribute to safe and dignified inclusion into society.
- 2) Reintegration plans for returnees that address individual needs identified with the participation of the returnee, by conducting gender, age and culturally sensitive assessments.
- 3) Protection of returned victims of trafficking and their families, as well as service providers, from threats and reprisals from their traffickers or others, by means of regular security assessments by law enforcement officials, service providers, local leaders and the community.

- 4) Mechanisms to ensure that returning victims of trafficking have access to and are provided legal advice and support, that legal cases are pursued in both destination and origin countries even after they have returned to their home communities, and that victims are able to pursue legal claims for compensation and restitution.
- 5) Equal access to support services (and right to refuse such services) for any returnee identified as being a victim of trafficking whether or not they have returned through established formal return mechanisms.
- 6) Provision of ongoing reintegration services to achieve sustainable integration, taking into account the severity of the harm suffered, the age of the person, and other relevant factors.
- 7) Development of national and bilateral procedures to ensure the secure and confidential handling of case information in the reintegration process, on an “as needed” basis.
- 8) Appropriate measures are taken to provide, to the extent possible, ongoing reintegration support for victims of trafficking, including access to psychosocial recovery and mental healthcare support, formal or non-formal education and services, and economic empowerment services, with due respect given to confidentiality and the principle of informed consent of victims.
- 9) Minimum time frames and standards for regular monitoring and follow up visits are established recognizing that some cases may require longer monitoring and follow up, and that “reintegration” is seen as an ongoing process.
- 10) Development of specialized reintegration support services for child victims, particularly those who cannot, in their best interest, return to their families. Adequate care arrangements should be made that favour family and community-based arrangements rather than residential/institutional care.
- 11) Victims are provided information about safe and legal migration through reintegration programmes in the country of origin.

Suggested Strategic Approach

Within the COMMIT MOU, the importance of victim protection is outlined in seven points under the heading Protection, Recovery and Reintegration. These points provide the foundation and reinforcement for the development and operationalization of Regional Victim Protection Guidelines. The COMMIT MOU and Sub-regional Plan of Action (SPA) also spell out the importance of implementing a victim protection approach that has both regional and country components. With this in mind, governments are encouraged to consider the following steps as a “suggested strategic approach” in implementing a victim protection framework, at both the national and regional level.

- A. Through existing/designated coordination mechanisms (for example, National Committees, Task Forces, etc.) consultation meetings are carried out to facilitate the eventual national level endorsement of the Regional Guidelines on Protection.
- B. Once the Regional Guidelines on Protection have been agreed to by the COMMIT governments, these guidelines would be shared broadly with the relevant Ministries and Agencies within their country to review and compare with existing national guidelines in each country to consider them for consistency with the Regional Guidelines (incorporating relevant points into existing country guidelines and procedures, if they do not exist). In so doing, Governments are encouraged to include and consider feedback from all agencies and departments, both at the policy and operational levels.
- C. Through existing/designated coordination mechanisms (for example, National Committees, Task Forces, etc.) consultation meetings are carried out to refine and improve the National Guidelines on Victim Protection, where necessary, to address and reinforce principles agreed to in the regional protection guidelines (with inter-ministerial, inter-departmental, and inter-agency/organizations’ involvement). To implement the National Guidelines, each country would consider developing national Implementation strategies for victim protection that are consistent with or included within their National Plans of Action.
- D. Implementing strategies that promote the elaboration of operational guidelines outlining who is responsible for each aspect of the guideline points. Government, development partners and civil society (including front-line officials) could contribute to this process of developing implementation strategies and operational procedures to support these guidelines.

- E. In addition to the country strategies, cross-border Operational Procedures for these Guidelines would be put in place, taking into consideration any existing cooperation measures (bilateral MOUs/agreements/procedures established).
- F. A Needs Assessment of the appointed focal points/agencies is carried out to identify: common regional training (that can be incorporated into COMMIT regional training – PPC1); national training and institutional needs.
- G. Based on the Needs Assessment, the countries could consider undertaking capacity building activities to support service providers to be able meet the victim protection guideline standards (Government and NGOs). This may include introducing revisions to existing curriculums in teaching institutions or short courses for trainees and in-service professionals (counselors, social workers, healthcare workers, legal professionals, police, etc).
- H. Each country could consider initiating community involvement (including private sector) in implementation of guidelines, especially in assisting to reduce stigma and discrimination towards victims and to improve possibilities for successful reintegration (e.g. ensuring viable livelihood options).
- I. To effectively operationalize the guidelines, mobilization of funds and resources at both the regional and country levels should be considered. This includes both international and government mobilization. This can be done through the COMMIT process.
- J. Each country considers implementing a monitoring and evaluation framework to monitor victim protection guideline compliance. This could be done at the both the regional and country levels.