

1.3 Identification and referral

In the context of human trafficking, identification should ideally be aimed at identifying vulnerabilities to trafficking and exploitation rather than only identifying evidence that trafficking in persons as set out in the Trafficking in Persons Protocol has taken place. Identifying people before they are trafficked and exploited supports early access to support. For those who have already fallen victim of trafficking, their identification is a central human rights obligation of States. As noted in the OHCHR Recommended Principles and Guidelines on Human Trafficking and Human Rights, “a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights” (guideline 2). The State must have procedures in place by which to strengthen its capacity to identify victims of trafficking, in a way that is human rights compliant in its design and application. Here, the role of national **referral mechanisms** in ensuring that victims are not only identified, but are appropriately referred to appropriate service providers is key to protecting their rights.⁵⁰

Gender dimensions must be taken into consideration to strengthen identification of victims of trafficking. For instance, there may be barriers to identifying female victims of trafficking for sexual exploitation where they exist in mixed populations along side other women in the sex industry. In the context of trafficking into forced marriage, factors relating to the private setting of the exploitation and potential involvement of family members may dissuade victims from self-identifying or coming to the notice of authorities. Identification must take into account the special needs of women and children yet not be based on assumptions that only women and girls, or people of certain nationalities are victims of trafficking. Such assumptions can

result in failure to identify people, for instance, men or boys, or people along specific routes or in specific sectors, or who otherwise do not fit the assumed ‘profile’ of who is a victim of trafficking. Accordingly, actors who play a role in identification and referral (including public and private recruitment agencies, employers, police, border and immigration officers, embassy and consular officials, labour inspectors, social workers, healthcare providers and child protection actors) must be provided with trauma-informed, gender and child sensitivity training that counters stereotypical and discriminatory attitudes.

Identification must also be responsive to crises and conflict; the stakeholders who are likely to encounter victims of trafficking and others in need of protection may change at the onset of conflict, requiring a different set of actors to be engaged and equipped with necessary skills. Humanitarian workers and peacekeeping personnel should be equipped with indicators adapted to identify victims of trafficking among the persons they encounter. Importantly, services that identified potential victims may be referred into may be absent or have as a result of crises of conflict, meaning that referral mechanisms must be modified and be continually updated in line with realities on the ground.

Identification of victims of trafficking raises complex human rights considerations. On the one hand, failure to identify victims of trafficking can amount to continued abuse of their rights. For this reason, a presumption that a person who may be a victim of trafficking is a victim should apply, until further screening takes place to rule out this possibility. On the other hand, poorly conducted identification can be detrimental to rights, for instance, where they are conducted in a way that does not respect the privacy of people involved, or results in actions taken beyond identification

⁵⁰ For more on national referral mechanisms, see National Referral Mechanisms: Joining efforts to protect the rights of trafficked persons: A practical handbook (OSCE, 2004)

of victims of trafficking. Examples include raids of places of work that are conducted using unnecessary force, without respect for the dignity of the persons on the premises, and that result in detention or deportations of persons identified as living and working in the country irregularly. In this context, the Committee on the Elimination of Discrimination against Women “condemns the use of anti-trafficking interventions to justify violence against specific groups of women, particularly in the case of violent raids and entrapment operations by law enforcement authorities conducted with a view to dismantling trafficking networks.⁵¹” In some cases, where raids are carried out in brothels in countries where prostitution is illegal, those who are not identified as victims of trafficking may instead be charged with offences relating to involvement in the sex industry.

There have been reports of violence against women or children being perpetrated by authorities carrying out such raids⁵². Forcible removals of people from the places where they live and / or work may result in them having to leave behind their savings, their possessions or even their children. Persons who are removed may subsequently be detained prior to deportation, for prolonged or indefinite periods in shelters (as discussed in [Tool 1.4](#)).

Rights abuses and violations can also occur where people are identified as being victims of trafficking against their wishes and interests, including when they do not consider themselves to be victims. By way of example, many rights groups are pushing back against counter-trafficking work they consider to be harmful to human rights.⁵³ In cases where poor work conditions are conflated with situations

of trafficking the result may be that, far from having their rights upheld, workers - many of whom are migrants - instead lose their livelihood and may be placed into protection and criminal justice processes against their will. Identification and referral procedures should consider the specific needs and wishes of potential victims of trafficking in persons and act in their best interests. In order to do no harm to victims and potential victims of trafficking in identification and referral processes, national referral mechanisms in place must be rights-based, gender-sensitive, victim-centered and trauma-informed.

There are a number of reasons that trafficked people may not wish to be identified as such, including the possibility of long-term detention in closed shelters, mandatory return to country or place of origin, stigmatization, lack of understanding of identification and protection processes, or a simple lack of victim support services that meet their needs. These negative outcomes speak to the need to respect the agency of rights holders and to take human rights-based and gender-sensitive approaches that empower people to participate in the decisions that affect them.

Identification of children among trafficked or smuggled people

International human rights law imposes special responsibilities on States in relation to identifying children who may be in need of assistance and support. At the national level, UNODC should work to ensure that child protection laws and frameworks for identification apply equally to children irrespective of their nationality. To ensure that children in need of protection are identified, States should apply a presumption that a person who may be a child is treated as a child until an age determination can be made. The paramount rule that applies to all situations involving children is the best interests of the child, as contained in the Convention on the Rights of the Child (CRC). States parties

⁵¹ Committee on the Elimination of Discrimination against Women, General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, UN Doc. CEDAW/C/CC/38 (6 November 2020) [46]

⁵² Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions (GAATW, 2018); Collateral Damage: The Impact of anti-trafficking measures on human rights around the world (GAATW, 2007).

⁵³ Anti-Trafficking Review: Special Issue - Sex Work. Issue 12, April 2019, (GAATW, 2019)

cannot prioritize other considerations, such as law enforcement agendas against traffickers or smugglers, or border and migration management objectives over the best interests of the child.

Because the CRC applies to all children who are in the jurisdiction or control of the State, children who are non-citizens are as entitled to protection as nationals⁵⁴. Child rights apply regardless of whether or not a child is determined to be a victim of trafficking. It is thus important to ensure that the process of identifying children as victims of trafficking is not used to deny them rights to which they are entitled simply by being children. At the national level, UNODC should work to ensure that child protection laws and frameworks for identification apply equally to children irrespective of their nationality. Identification approaches should be gender-responsive; in many countries, males who are victims of trafficking may be less likely to identify themselves as such. Men and boys may not be identified as victims where authorities are less willing to investigate crimes against them. This speaks to the need for gender-sensitive approaches to identification and referral.

Identification through screening interviews

For all trafficked persons and smuggled migrants in need of protection, identification often takes place through screening interviews, including as to whether a person needs protection as an asylum seeker. Consideration should be given to how these screening interviews can be conducted in a way that is human rights based and gender responsive, including by avoiding potential profiling biases that can mean some victims are not recognized as such. Ideally, as stated at the outset, identification and screening should not only aim to recognize people who have been trafficked, but also detect vulnerabilities to trafficking so that early support can be provided and their exploitation prevented.

⁵⁴ Human Rights and Human Trafficking: Fact Sheet No. 36. (OHCHR, 2014) 7

Table: Example of advocacy points [Tool 3.7](#) on prevention

Human rights / gender concern User to specify issue that arose in advocating for a human rights-based / gender sensitive approach:	Advocacy point to address concern User to outline arguments that persuaded stakeholders of the value of human rights-based / gender sensitive approach
Men and boys who are victims of trafficking are not identified	Identification systems may be weakened if they are informed by deficient or inaccurate profiles of who can be a victim of trafficking Identification processes must be inclusive and allow for all victims of trafficking to be identified so that women and girls and men and boys can be identified along trafficking routes
Gender-sensitive approaches are not considered important in the identification and referral of trafficked persons or others in need of protection and assistance	Where gender-sensitive approaches are not taken, victims of trafficking may not effectively identified or may be misidentified. Where gender-sensitive approaches are not taken, there law enforcement procedures may be exposed to risks of accusations of misconduct / misconduct maybe be more likely
Persons who may be in need of protection and assistance are deported without being appropriately and accurately identified and referred	If potential victims of trafficking or smuggled migrants are deported without being identified, potential evidence and intelligence is lost, meaning that traffickers and smugglers can continue their crimes with impunity.