



**Research template for
collecting and analysing data
on the access of trafficked
persons to compensation**

TOOLKIT ON COMPENSATION FOR TRAFFICKED PERSONS

COMP.ACT is a European project by La Strada International and Anti-Slavery International and their partners to improve access to justice and guarantee compensation for trafficked persons. Based on the activities and assessments on the national and international level, several tools have been developed to assist practitioners in supporting trafficked persons to claim compensation.

At a broad level, the Toolkit aims to promote that compensation becomes one of the key elements of programmes of assistance and services to trafficked persons in Europe.

More specifically, this Toolkit provides the user with common understanding of the right to access to justice and compensation, comprehensive background information and relevant legislation, expertise step-by-step guidance and promising practices. Thus, the Toolkit offers a theoretical understanding and a practical approach to compensation for trafficked persons, relevant to all countries regardless of their legal system.

Introduction to this tool

This *Guidance for national research* provides a framework for conducting a country-level study on compensation. The guidance assists in collecting and analysing data on the access of trafficked persons to compensation and identifying barriers in access to compensation at the national level.

It should also assist the researchers in formulating practical conclusions and identifying policy recommendations on strengthening victims' access and removing existing barriers.

The guidance consists of two main parts: a framework for research, laying out basic principles and cornerstones for country research, including recommendations on methodology (chapter 2) and a template/table of contents for country studies which national project teams are encouraged to follow in structuring the results of their research.

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1. Framework for country research on compensation

1.1. Rationale and aim of the research

Under international law, states are under an obligation to ensure that trafficked persons have access to compensation for material and non-material damages suffered. Indeed, in most countries, a range of mechanisms and procedures for compensation to victims of crime exist, at the level of criminal law, civil law, labour law, and/or through state compensation funds. Nevertheless, in practice, only a few trafficked persons claim compensation, and even fewer are awarded actual payments.¹ Some of the obstacles identified include: lack of awareness/knowledge on part of authorities and NGO service providers; perception of trafficked person as witness and disregard of their human rights due to predominant law enforcement/criminal justice approach; ineffective use of asset seizure and confiscation for the purpose of compensating trafficked persons; lack of legal aid for trafficked persons, long duration of proceedings; reluctance of trafficked persons to undertake legal steps due to fear of retaliation or uncertain immigration status.²

For a definition of the elements of compensation, refer to section 1.3.

Under the COMP.ACT project, national research teams shall carry out country studies to analyse what remedies are available to enable trafficked persons to access compensation and how these remedies work in practice. This should be done through a mapping of existing compensation schemes for victims of violent crime, and especially trafficked persons, with a view to identifying and gaining a better understanding of current challenges, needed reforms and examples of promising practice. Studies will identify policy-oriented recommendations tailored to specific target groups. Research findings will feed into partners' efforts to lobby and advocate for changes necessary to strengthen the access of trafficked persons to compensation and to sensitize key stakeholders on the fundamental importance of this right, through developing specific plans and tools for lobbying, advocacy and capacity building purposes, tailored according to specific country contexts and reform needs. For instance, research partners called for possible tools such as a list of indicators on what constitutes effective access to compensation, or a check list/flow-chart to help service providers to better integrate compensation into daily counselling work.

The basic assumption of the study is that trafficked persons *have a right* to compensation. It is therefore not necessary to start *arguing for such a right and why it is important*. While the latter approach runs the risk of neglecting the human rights dimension, it might at the same time, from a pragmatic point of view, be helpful in certain cases where the government has not yet demonstrated political will and awareness on the issue.

1.2. Research questions

The following overall research questions should be addressed by all country studies:

- To what extent do trafficked persons have *effective access* to compensation?
- To what extent do existing compensation channels comply with *international and regional commitments*?

¹ *La Strada International, Anti-Slavery International, Concept Note for COMP.ACT Europe – European Action for Compensation for Trafficked Persons* (hereinafter: *LSI/ASI, COMP.ACT concept note*), p 1, *OSCE ODIHR, Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008* (hereinafter *OSCE ODIHR 2008*). Quote from: *LSI/ASI, COMP.ACT concept note*, p 1).

² *LSI/ASI, COMP.ACT concept note*, p 3.

- What are the main *obstacles* to victims accessing compensation?
- What are the *prerequisites/enabling factors* for victims accessing remedies?
- Are there any examples of *promising practice*?
- What improvements are needed to improve victim's access to compensation?

The analysis should address *all different stages* of compensation procedures: the actual access to the procedure (until the registration of the claim), during the course of proceedings (from the opening of the case until a decision/judgement has been made) and the enforcement stage.

At a more detailed level, the following list suggests a number of questions, which may be prioritized or supplemented by country teams, in line with country priorities and available budgets:

- *What legal remedies (procedural paths, institutions) exist to enable trafficked persons to claim compensation and receive actual payments?*
- *To what extent are trafficked persons able to effectively access these remedies?*
- *What are particular challenges and promising practices in accessing different forms of compensation (material damages, moral damages) for persons trafficked for different purposes (sexual exploitation, labour exploitation etc.)*
- *Out of all compensation claims tracked down, how many compensation claims resulted in awards and actual receipt of payments? What were the amounts claimed/awarded/ received?*
 - *To what extent do the following factors have an impact on trafficked persons' access to compensation?*
 - *Purpose of trafficking/type of exploitation*
 - *Type of procedural path chosen (e.g. criminal law, state compensation fund, etc.)*
 - *Availability of legal assistance/representation by a lawyer/trade union*

Besides lawyers, trade unions may also represent trafficked persons in court. However, as a general rule, this requires under the country's legislation, the sector in which the trafficked person is employed (e.g. domestic work) and/or (in case of undocumented migrants) undocumented labour is recognised as work.

- *Launch of criminal proceedings and willingness/ability of victim to cooperate/testify*
- *In case of criminal proceedings: under which criminal offence the case is charged/ tried*
- *Whether the person has been officially identified/recognized as trafficked person/ victim of crime*
- *Whether the court/law enforcement has confiscated the trafficker's assets*
- *Residence status of the trafficked person*
- *Return of the trafficked person to her/his country of origin before the judgement was issued*
- *To what extent can existing "mainstream" (i.e. not anti-trafficking specific) mechanisms, such as legal aid funds or state compensation funds for victims of crime in general be used to improve trafficked persons' access to justice?*
 - *Is there a difference in accessibility of these mechanisms for victims of human trafficking compared to other victims of crime and if so, why? (For example, are state compensation funds for victims of crime as accessible to trafficked persons as to victims of rape or serious bodily injury? Do criminal or civil compensation claims for material and moral damage work better for other groups than for trafficked persons, and if so, why?)*

- *What, if any, changes are needed in existing mechanisms to improve their access?*
- *Does potential for replicating promising practice from one area to other areas exist? (Take as an example a pool specialised in representing victims of crime in criminal law cases, while nothing comparable exists for labour law cases. To what extent can the experiences from criminal law be transferred to facilitate the establishment of a similar group for labour law cases?)*
- *And/or: To what extent are new, specific instruments needed?*
- What are specific issues/actions relating to effective access to compensation that need to be considered/undertaken in the *country of destination*, which the ones in the *country of origin*? In case country research reveals any *cross-border cases* that involve another country that is partner to the COMP.ACT, project, an analysis from the perspective of *both, the destination and the origin country could bring added value.*

Tips for formulating research questions³

- Your research questions should be designed in a way that they support your research objectives. See e.g. the WHO/PATH Practical Guide (p 53) for examples of research objectives and corresponding questions.
- You may start with a broad brainstorming, but then make sure to prioritize and narrow your list of questions down to a manageable number. Refer to the IPDET Handbook⁴ for suggested criteria for prioritizing and selecting research questions.
- Involving your key stakeholders already at the stage of developing your research questions can help to increase the potential impact of your study results.
- For qualitative studies, research questions may initially be more general and refined at a later stage, as the data are collected and collected. This is different for quantitative research, where the research questions needs to be determined before the data collection begins, as they form the basis for establishing the hypothesis to be tested.

1.3. Scope of research

Research should cover **all forms of trafficking** in persons, in line with the definition of Article 3 of the Palermo Protocol: *“Trafficking in persons’ 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;”*

Over recent years, awareness among relevant actors of the fact that trafficking affects a broad range of sectors has increased. Nevertheless, the efforts of policy makers, law enforcement, as well as NGO service providers still tend to focus mainly on cases of

³ WHO/PATH, *Researching Violence Against Women. A Practical Guide for Researchers and Activists*, authors: Mary Ellsberg and Lori Heise, 2005 (hereinafter: *WHO/PATH Practical Guide*), pp 52f.

⁴ *Independent Evaluation Group (IEG) at the World Bank, Faculty of Public Affairs and Management at Carleton University, International Program for Development Evaluation Training (IPDET) Course Modules*, 2007 (hereinafter: *IPDET Handbook*), p 238. This handbook deals with evaluation design, but to a large extent also provides useful guidance on research design more generally.

trafficking into the sex industry. This fact is reflected in the relatively limited amount of information available on the access to justice, including compensation, of persons trafficked into other sectors, such as domestic work or agriculture. At the same time, compensation for material damages (i.e. unpaid wages, lost income opportunities) has often been overlooked in cases of trafficking into the sex industry - largely due to a lack of understanding of which material damages should be compensated and moral prejudices against the victims and their right to material compensation.

The analysis should be done against the background of **international and regional commitments** on compensation undertaken by the country. This includes legally binding documents (“hard law”) ratified by the country, such as UN and Council of Europe (CoE) treaties, conventions and protocols and, for EU member states, EU Directives and Framework Decisions, as well as politically binding documents (“soft law”) such as recommendations, resolutions or declaration of principles adopted at the level of UN, OSCE, CoE and EU.

Tips on international and regional commitments:

- You may want to refer to the OSCE ODIHR study on compensation for a useful overview and succinct analysis of key standards that can serve as starting point for the analysis of the international and regional commitments undertaken by your country.
- Besides analyzing existing documents, it is worth looking into standards that are in the process of being developed, such as the draft for a revised EU Framework Decision on Trafficking. This way, your ongoing advocacy work can benefit from your research and vice versa.
- Apart from documents that specifically address anti-trafficking and/or compensation such as the Palermo Protocol or the CoE Conventions on anti-trafficking and on compensation for victims of violent crime, respectively, you should also look into other areas, such as ILO labour standards or the EU Return Directive and Sanctions Directive.

Reports should address the **entire range of compensation avenues** available in the country:

Sources of payment & procedural paths:⁵

1. Compensation from the trafficker

- a) Compulsory court orders, obtained through criminal law procedures,⁶ civil law procedures and/or labour law procedures.
- b) Voluntary settlements/mediation, which may be negotiated during a pending case (depending on the respective national legal system) or take place separate from any court proceedings. In practice, this may involve lawyers, labour inspectorates, representatives of NGOs or trade unions negotiating with the trafficker/exploiter on behalf of the trafficked person, or collective action by workers, such as wearing badges, protests or as last resort strikes.

Note that in labour law cases, besides courts, administrative bodies such as labour inspectorates may also have an important role to play, usually through negotiating with employers or referring cases to court.⁷

2. Compensation **from the state** through *state compensation funds*

⁵ OSCE ODIHR 2008, pp 22ff.

⁶ Depending on the legal system, compensation can be ordered by the court as part of the conviction (common law tradition) or awarded through an appended civil procedure sometimes called “adhesion procedure” (civil law tradition).

⁷ OSCE ODIHR 2008, pp 28f.

Types of damages covered:

While national laws might differ as regards to terminology and the extent to which compensation mechanisms cover what types of damages, two categories of damage can be defined:

- a) **Material damages** reflect financial losses, such as “medical, funeral and hospital costs, loss of future earnings and employment-related benefits, unpaid wages or costs of damage to property”⁸ that occurred to the trafficked person as a consequence of the trafficking experience.
- b) **Moral damages** are about non-financial losses, e.g. “emotional suffering, loss of reputation or ‘honour’, ‘pain and suffering’, inconvenience, loss of enjoyment of life, loss of society and companionship,”⁹ caused by the trafficking experience.

The OSCE/ODIHR study on compensation (pp 15-16, 22-34 and 37-40) provides a useful overview on compensation mechanisms and an introduction into relevant terminology.

Table: Overview of compensation mechanisms¹⁰

		ELEMENTS OF COMPENSATION					
		Source of payment		Compulsory or voluntary nature of agreement		Types of damages compensated	
		State	Offender	Compulsory orders	Voluntary agreements	Material	Immaterial (moral)
COMPENSATION MECHANISMS	Criminal law procedures	--	X	X (court judgement)	X (depends on national laws)	Depends on national laws	
	Civil law procedures	--	X	X (court judgement)	X (negotiations through NGOs, lawyers)	Depends on national laws	
	Labour law procedures	--	X	X (court judgement)	X (negotiations through NGOs, lawyers, labour inspectors, trade unions; collective action by workers)	Depends on national laws	
	State compensation (administrative law)	X		X (decision by admin. body)	--	Depends on national laws	

⁸ OSCE ODIHR 2008, p16.

⁹ OSCE ODIHR 2008, p16.

¹⁰ Based on the overview provided in OSCE ODIHR 2008, chapter 3.1.

A comprehensive approach to analysing the access of trafficked persons to compensation looks not only at **barriers that are specific to trafficking cases**, like for instance limited police capacities to identify trafficked persons. Indeed, some barriers might be a manifestation of broader, **systemic shortcomings**, such as huge backlogs of cases in courts, lack of sensitivity on part of the police and judiciary for the needs and rights of victims of crime in general, or a weak rule of law system. Keeping this broader picture in mind when doing the analysis helps the researcher to make sure that the proposed recommendations actually tackle the identified shortcomings.

It is also crucial to address the role of a **broad range of stakeholders** – besides the “usual suspects” such as courts, prosecutors, police and lawyers, the role of trade union and labour inspectorates in compensation proceedings is generally under-researched and deserves greater attention. Furthermore, research should also address the role of NGO service providers and the extent to which they have the necessary awareness and capacities to mainstream compensation and legal assistance into their daily work, in addition to mere provision of social assistance.

Another aspect of a comprehensive approach is the **composition of the research team**, so as to include a broad range of expertise. This point is addressed in section 2.6 (under “Planning”).

A comprehensive approach to research is important for several reasons.

- It can help to overcome past and current limited perspectives which tend to focus primarily on compensation obtained through criminal procedures – often implying an emphasis on the cooperation of trafficked person with law enforcement and on trafficking into the sex industry. A comprehensive research focus offers an opportunity to break up this narrow view and to delink victims’ access to compensation from being a witness, thereby contributing to improve the access of all trafficked persons to material and moral compensation – irrespective of the nature of exploitation or their willingness/ability to testify.
- Delinking compensation from an exclusive criminal justice focus helps to put trafficking into the broader context of human rights, labour rights and migrant rights, which implies a perception of trafficked persons not only as victims of crime, but also as bearers of rights, workers, migrants, etc.

It can help to bridge the knowledge gap on compensation obtained through other paths than criminal law procedures and by persons trafficked for non-sexual purposes. Collecting information on compensation in under-researched areas might be more demanding and therefore require well-targeted research strategies. However, even if your research reveals that for some procedural paths such as civil or labour law, no cases exist or that it is nearly impossible to find information – this conclusion in itself can be an important entry point for further research and advocacy.

1.4. Methodology

A mix of qualitative and quantitative elements is recommended for data collection.

It would exceed the scope of this note to provide an overview of the different approaches and tools used in qualitative and quantitative research. Colleagues who wish to familiarize themselves with this topic are encouraged to consult the WHO/PATH Practical Research

Guide on Violence against Women, in particular chapters 3 (pp 54-56), 4, 5, 7, 8 and 9) as well as the FHI Field Guide on Qualitative Research Methods, for an introduction into the topic and further references.

1.4.1. Data collection

Researchers should make use of the following data collection methodologies:

1. **Review of secondary sources**, as starting point to identify existing information and specify further research needs. Useful materials include scientific articles and policy-oriented studies on compensation, governmental sources such as annual organized crime reports, reports from National Rapporteurs/Working Groups/Task Forces or official crime statistics, as well as annual reports from NGO service providers.
2. **Analysis of relevant laws and policy documents.** In line with a comprehensive approach (see chapter 2.3), the following laws should be considered for analysis – to the extent that they are relevant for compensation: criminal code, criminal procedure code, civil code, civil procedure code, labour law, anti-discrimination law, immigration law, law regulating a state compensation fund, etc. Besides reviewing the laws as such, leading case law (Supreme Court) and commentaries should also be consulted, as well as Action Plans, Ministerial Decrees or instructions/guidelines for police, prosecutors, judges and lawyers, etc.

Tips for analyzing laws and policy documents:

- It is worth exploring the potential of labour and anti-discrimination laws to enable trafficked persons to claim compensation for violations of labour standards. Labour law can help to overcome difficulties in proving intent on part of the trafficker, which is usually needed for criminal law, but not for labour law – for the latter, the mere violation of the standard is sufficient, irrespective of the violator's intent. Under anti-discrimination law, a case could be built on the argument that the trafficked person is paid less than other workers doing the same work and therefore subjected to discrimination. The advantage is that the procedure is relatively quick and that some anti-discrimination laws shift the burden of proof from the employee to the employer.
- Besides analyzing existing legal and policy documents, it is also worth looking into laws and policies that are in the process of being drafted. This allows you to combine research and analysis with ongoing advocacy.

3. **Analysis of compensation cases** before courts and (in case of state compensation funds) administrative bodies. Such an analysis may include the review of the texts of court judgements/ administrative decisions or the inspection of court files. The decision whether to analyse court judgements or entire files will depend on the amount of time and resources available for research at country level, as well as on the kind and level of the information sought by the national research team.
 - *Judgements are easier to access and less time-consuming to scan than court files. While they can provide a broad range of relevant information, such as (for criminal cases) the offence charged/convicted, the spectrum of abuse and rights violations or the amount of compensation awarded, they are however less*

illustrative of the overall process, and the significance of the information contained depends strongly on the quality of the judgement.

- *The analysis of court files on the other hand is more time-consuming and involves greater costs (e.g. for travel, photocopies). At the same time, this approach offers a more comprehensive and detailed insight into the overall proceedings, in particular to assess whether trafficked persons were able to exercise existing rights, such as the right to legal aid, interpretation or information about her/his rights (including compensation).*

The analysis of court documents allows for collection of both, quantitative (e.g. number of awards/ refusals, amounts requested/awarded/received) and qualitative (e.g. legal reasoning, manifestation of barriers to access to justice, attitudes of court, role of legal counsel) data.

Access to court judgements and files depends on the *requirements set by national legislation*. In some countries, anonymized copies of judgements are easily accessible on the internet or in law library databases, or can be requested from courts/Ministry of Justice. Similarly, access to court files can be requested for scientific research purposes from courts/Ministry of Justice. In other countries, judgements and files are not public. In the latter case, lawyers representing trafficked persons in court or victim support organizations providing legal support might be consulted as alternative source of information on court case. In many countries, court decisions which are not made public can be requested under Right to Information Acts or similar laws.

Tips for analysis of court files/judgements:

- In criminal proceedings, cases that may qualify as trafficking are sometimes charged under other offences – in addition to or instead of trafficking in persons. Therefore, when analysing judgements or files, it is advisable not to limit the research to cases qualified as “trafficking in human beings”. Depending on the national legislation, *other criminal offences* to be looked at include e.g. exploitation of prostitution, forced prostitution, forced labour or slavery.
- Develop a *data collection instrument* that specifies what data you need to collect and how you want to code it.¹¹ Such a tool can guide you in extracting and compiling key information from comprehensive files and lengthy judgements, such as: nature of proceeding (criminal/civil/labour law, state compensation); offence charged (in criminal procedures); compensation awarded – yes/no & justification; amounts of compensation claimed/ awarded/ received; confiscation order issued – yes/no (in criminal procedures); duration of proceedings; legal assistance/representation of the trafficked person by a lawyer/NGO/trade union representative – yes/no.
- It is worth checking whether *courts or the Ministry of Justice* can provide some sort of *case briefs* that can be useful for your research. E.g. in the UK, the ASI research team obtained so-called certificates of convictions with key facts on the case, including the offence charged and whether confiscation/compensation orders were made.

4. **Expert interviews/surveys** can help to gain insights into the practical application of laws, including into capacities, attitudes and opinions on part of those who apply these laws or accompany trafficked persons through compensation procedures.

¹¹ *IPDET Handbook*, module 8, pp 364ff.

- *Surveys have the advantage of enabling researchers to reach a large number of people. They are used to ask questions that are simple and factual, including standardized questions that just require people to say yes or no, or tick the box that best describes their attitude or what happens in their organization, etc. At the same time, the design of a survey and (if you have a large numbers of respondents) the analysis of survey data can be quite time-consuming and requires specialised expertise. Furthermore, surveys don't allow for asking very sophisticated questions. There is also the risk of low response rates which reduce the degree to which the results are representative. Furthermore, respondents might leave in blanks if they don't understand a question – that's why pre-testing of survey questions is of utmost importance.*
- *Interviews allow researchers to ask more complex, in-depth questions and to ask for clarifications. Interviewees may tell the story in their own language and thereby provide the researcher with a more in-depth understanding of the issue – in particular when interviews are conducted in semi-structured form, which is a common method in qualitative research. "With good rapport and interesting questions, people will often be willing to be interviewed for an hour or more, whereas they would be very unlikely to spend that amount of time filling out a questionnaire." ¹² The limitations are that interviews are more time and cost intensive and therefore allow researchers to reach a smaller number of people, unless there is a large budget or a lot of time.*

The choice whether to conduct in-person interviews (oral) or surveys (questionnaires) as well as the respective size of the samples will depend on the kind of information/level of detail aimed at by the country research as well as on the *amount of resources mobilized* at country level. A combination of both tools could include a survey for a first round of information collection, for instance to help identifying anti-trafficking counselling centres, lawyers, migrants organization and labour inspectorates who have experience in compensation cases. The responses received could help narrowing down the target group for more in-depth interviews. Should the project budget not allow for the use of both tools, researchers are strongly encouraged to do semi-structured in-person interviews, which are more likely to allow for an in-depth understanding of the functioning of compensation systems, their gaps and strengths.

Tips for preparing and conducting interviews and surveys:

***Writing questions for interviews and surveys*¹³**

- It can be helpful to consult key stakeholders and local experts when developing questions.
- Use simple, clear, easy terms and avoid academic/formal language style.
- Sequencing questions: start with facts to warm up, not with controversial questions.
- Pilot test the questions and make revisions, if needed.

***Conducting interviews*¹⁴**

- It's best to record the interview – make sure to ask permission from your interview partners - and to take notes. After the interview, type your notes as soon as possible – best: within a day.
- For semi-structured interviews that consist of open-ended questions, you don't need to stick to the script as strictly as for structured interviews/close-ended questions – it

¹² *IPDET Handbook*, module 8, p 384.

¹³ *IPDET Handbook*, module 8, pp 373ff.

¹⁴ *IPDET Handbook*, module 8, p 386.

is fine to go with the flow.

- Accept whatever the interviewees say with empathy and without judgement.

Conducting surveys¹⁵

- Ask only one question at a time.
- Avoid yes or no responses. Instead, ask people to answer along a scale (e.g. a 5 point scale from “little or no extent” to “very great extent”) to enable you to capture a range of views.
- In particular in case of low response rates make sure refer to the *number of respondents*, e.g. “70% of respondents”. Indeed, response rates are one of the major issues in surveys. The best strategy is therefore to try to increase willingness of potential respondents to participate, e.g. through the following: explaining in a cover letter the purpose of survey, why they have been selected and why their participation is important, how the information will be used and whether they will receive a copy of the final report; giving an accurate estimate of the time needed; assuring and protecting anonymity; ensuring a professional look of the questionnaire (nice layout and error-free text); indicating a person to call in case of questions; providing a self-addressed/stamped envelope.

Further readings on techniques for preparing and conducting interviews and questionnaires

- WHO/PATH, *Researching Violence against Women, A Practical Guide for Researchers and Activists*, 2003, chapter 8 and chapter 9 (pp 129-132).
- IPDET Handbook, pp 370-394 (module 8). This document focuses specifically on evaluation design, but many of the points are useful and valid for research in general.

1.4.2 Population and sample

Research participants: Representatives of the following professional groups should be targeted for interviews/surveys:

- Judges (criminal, civil, labour law procedures)
- Prosecutors
- Police
- Officials from the Ministry of Justice
- Officials from administrative bodies in charge of state compensation funds
- Lawyers specialised at representing victims of crime/victims of trafficking/migrant workers subject to labour exploitation
- NGOs providing assistance, counselling, legal advice to trafficked persons
- NGOs working on migrant rights, labour rights and refugee/asylum issues
- Trade unions
- Labour inspectorates
- Other organisations/associations working with exploited workers¹⁶
- Trafficked persons (refer to the section below on the integration of the perspective of trafficked persons).

¹⁵ IPDET Handbook, module 8, pp 390ff.

¹⁶ In Germany, for example, citizens' initiatives have successfully taken up the issue of compensation of exploited migrant workers, as shown in the preliminary findings of KOK research on labour exploitation.

Researchers need to draft different kinds of interview questions to each different target group, to be specified and compiled in interview guides.

Geographic focus: Research teams need to decide on the geographical scope of their respective studies. Resource scarcity (time, travel costs) may prevent the research to cover the entire country. In this case, practical considerations (regions with most active NGOs/lawyers, regions with high number of cases) may help limiting your geographical scope. Ideally, research (e.g. through interviews or analysis of court files) should not be limited to the capital region but reach out to other areas in the country, as well.

Integrating the perspective of trafficked persons: From a human rights perspective that puts empowerment and agency at the centre, it is of key importance to ensure that the views and experiences of trafficked persons inform research findings. Interviews with trafficked persons can also be a useful way of triangulating the data collected by comparing their views on the quality and effectiveness of compensation proceedings with the views of state authorities or NGO service providers. This contributes not only to a more comprehensive picture, but also strengthens the study's credibility.¹⁷ While researchers/project managers interviewed in preparation of this note agreed that the analysis needs to take into account the perspective of trafficked persons on compensation proceedings, there were different opinions as to whether interviewing trafficked persons was an appropriate option.

- *Pros:* Given the fact that the rights and participation of trafficked persons are at the centre of the work of victim support organization, it is important to hear their views and experiences. Victims' voices can also be important to document in countries where the government yet needs to be convinced that compensation is an issue. While NGO service providers are familiar with the needs and interests of trafficked persons, in some cases, their perceptions or views – for example why in a given case compensation was or was not claimed or whether the procedure was overall a successful experience - might differ from the views of individual clients.
- *Cons:* It is time-consuming to interview individual victims - in order to obtain a significant spectrum of views, a large number of interviews are needed. Likewise, NGO service providers may be able to reflect the views and experiences of trafficked persons. Furthermore, interviewing victims might have a destabilizing effect on victims, especially when their compensation case has not been successful, and they might not be willing to tell their story again.

COMP.ACT country studies should take into account the experiences of trafficked persons as the main beneficiaries of compensation procedures. Interviews with trafficked persons are one possible tool to this end. If more broadly targeted interviews are not feasible, alternatively, just a few illustrative case studies could be used. In deciding whether to interview trafficked persons and defining the size of the sample, researchers will need to take into account the amount of resources (funds and time) available for research, as well as the number of compensation cases. Alternatively, researchers can build on the expertise of NGOs providing direct services to trafficked persons by putting emphasis on the experiences of trafficked persons during interviews, or, as done by Anti-Slavery International in its recent study on compensation in the UK,¹⁸ by having a representative of a victim support organization contributing to the study.

¹⁷ WHO/PATH 2003, p 213.

¹⁸ *Anti-Slavery International*, Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK, authors: Janice Lam and Klara Skrivanekova, 2009, p 13.

Tips for interviewing trafficked persons:

- When designing questions, make sure to formulate them in a *clear and simple* manner.
- Be clear (for yourself and vis-à-vis the trafficked person) *what information you need and what you need it for*.
- If you are not a service provider working directly with trafficked persons, *reliable and well-experienced NGO partners* might help you in accessing trafficked persons and in conducting interviews/questionnaire surveys, as was done in the case of the compensation study recently published by La Strada Belarus. Local NGO partners can also provide valuable logistic support for travelling for research purposes.
- Interviews should be done by a very experienced researcher who is familiar with research ethics or a NGO representative with *experience in working with victims of crime/trafficked persons*.
- Besides interviewing trafficked persons who have participated in compensation procedures, researchers should also seek the views of those who have not been willing or able to participate. This will allow them to get a more comprehensive view on the obstacles to trafficked persons' access to compensation
- Refer to section 2.5 of this note on ethical and safety considerations, data protection as well as section 2.6 on interviews.

If interviews with trafficked persons are done, the following should be taken into account:

Sampling: After having specified the research questions and what is feasible in terms of budget and timeframe available, researchers need to define the sample for their country studies. Sampling is basically about deciding on the number of persons to interview or the number of cases to analyse, but also about geographic distribution. As a general rule, the choice of sampling strategies and techniques depends on the approach to research chosen (qualitative or quantitative). Nevertheless, for all studies, the sampling strategy needs to be planned carefully, in order to ensure credibility of the research findings.¹⁹ Given the focus of the COMP.ACT project, as mentioned earlier, research activities will have a mainly qualitative focus, possibly with some quantitative elements (analysis of court cases).

- *Qualitative* studies usually focus on a *small number of cases selected purposefully* – with the aim to extract *rich, in-depth information*. The sample size depends on a number of factors – “the purpose of the research, the specific research questions to be addressed, what will be useful, what will have credibility, and what can be done with available time and resources.”²⁰ Usually, the selection of respondents continues until the point when new interviews no longer yield new information (point of redundancy or saturation). As regards the number of interviews, for most qualitative studies, 10-30 interviews will suffice.²¹
- *Quantitative* studies usually use *larger samples selected randomly*, with the aim to maximize the *representativeness* of the sample, and thus to *generalize* from the sample to a larger population. Weaknesses in sampling (using a small or non-random sample) will lessen the validity of the study and limit the extent to which one can generalize from the research findings.²²

¹⁹ WHO/PATH 2003, p 105.

²⁰ P. Hudelson, Qualitative Research for Health Programs, WHO 1994, quoted from WHO/PATH 2003, p 105.

²¹ WHO/PATH 2003, p 105.

²² WHO/PATH 2003, pp 105; 107.

Useful references on the specific types of sampling used in qualitative and quantitative research:

Qualitative research:

- WHO/PATH Practical Guide, p 106
- FHI Field Guide module 1, pp5f
- IPDET Handbook, module 9, pp 452ff (section on non-random sampling).

Quantitative research:

- WHO/PATH Practical Guide, p 108-144 (including factors to decide on the size of the sample)
- IPDET handbook, module 9, pp 446-451 (section on random sampling).

1.5. Ethical and safety considerations

Ethics principles need to be at the core of research strategies, no matter whether you interview state officials, NGO service providers or trafficked persons. In particular for interviews with trafficked persons, it is of central importance to address any safety concerns that may arise.

A key principle of research is **informed consent**. Informed consent has been defined as a “mechanism for ensuring that people understand what it means to participate in a particular research study so that they can decide in a conscious, deliberate way whether they want to participate”.²³ Informed consent can be obtained in writing (through signing a form) or orally. It implies that the researcher informs her/his interview partners about the research in a way they understand, in particular about the purpose of the research, what is expected from them (including the time required and whether any background research is necessary), the expected risks and benefits, whether they will receive a copy of the final study and how confidentiality and their data will be protected.²⁴ It is important to communicate clearly that participation in the research is voluntary and that consent can be withdrawn at any time²⁵ - this should be kept in mind in particular for interviews with trafficked persons, who, if interviewed by victim support organizations, might feel obliged to participate because of the support they receive.

Acknowledgement of participation: Payments to interview partners should be avoided, as they can cast doubt on the reliability and objectivity of research findings. Small gifts, for example to the children of trafficked persons, may be fine. If your interview partners have to travel, consider reimbursement of their travel costs.

For interviews with trafficked persons, make sure to assess and understand the “**risks associated with each stage of [the] interview process**, from the initial contact with a [trafficked person] to the public release of information. The most effective way to learn the risks before initiating an interview and create strategies to protect a [trafficked person]’s well-being throughout the interview is to study the subject, the local situation, and most importantly, to work with professional and experienced local organizations or individuals.”²⁶ Furthermore, **re-traumatization** of a trafficked person must be avoided. Interviews might make trafficked person relive traumatic experiences caused by the trafficking situation or

²³ FHI 2010, p9

²⁴ FHI 2010, pp 10, 11.

²⁵ FHI 2010, pp 10, 11.

²⁶ WHO/PATH 2003, p 6.

her/his participation in legal proceedings (including where proceedings were experienced as disempowering or where her/his compensation claim could not be successfully realized). Therefore, questions should be asked in a supportive, non-judgmental manner. Questions that are likely to provoke strong emotional reactions or to cause distress to a trafficked person or that force her/him to reveal traumatic details unnecessary to understanding her/his experience should be avoided.²⁷

Another important aspect is data protection and **confidentiality and data protection**:

- When interviewing representatives of institutions or organizations, you may want to keep their name and contact information in your file, but refrain from mentioning this data in your report. You can reference your source for instance as “a representative of the Ministry of Justice”, “a trade union representative” or “a staff member of the NGO X”.
- Particular precaution needs to be taken for interviews with trafficked persons who may be at serious risk of repercussions in case their identity is revealed. At the outset of the interview, you should inform them that they do not have to give their name (or may offer a false name), hometown or village, or their true nationality. If you deem it necessary to collect any of these details, make sure to use codes so that the interview notes can be linked with the respondents, and keep them separately from the interview files, rather than writing the trafficked person’s personal information on the interview notes.²⁸ If you don’t do interviews yourself, but for instance through local NGOs working directly with trafficked persons, confidentiality and data can be protected if the local NGO keeps any personal information from the interviewees with them and passes on only the anonymized interview protocols to you – this was for example done by the Belarusian research team.
- Make sure to explain the trafficked person at the beginning of the interview what precautions are being taken to protect her/his identity and to keep her/his personal details strictly confidential. Ask her/him if s/he feels these are adequate.
- When using information obtained from case files (courts, service providers) or judgments, make sure to anonymize the data in a way that the identity of the person concerned (trafficked person, trafficker) cannot be recognized. In some countries, there might be legislation regulating the public use of information from court cases – you should check this and if necessary, consider legal advice.

Recommended resources on ethical and safety considerations in research:

- WHO, Ethical and Safety Recommendations for Interviewing Trafficked Women, 2003.
- *Family Health International (FHI)*, Qualitative Research Methods: A Data Collector's Field Guide, 2010, pp 8-12

1.6. Tips for research and writing

Planning:

- It is important to devote sufficient time for planning the research. In particular, it may take quite some time to receive responses to requests for official statistics or for

²⁷ WHO/PATH 2003, p 24.

²⁸ WHO/PATH 2003, p 18.

access to files, or to make appointments for interviews – this should be factored in your planning.

- Refer to the WHO/PATH Practical Guide, chapter 3, for further information on developing a research strategy. It also has a template for a study protocol, a useful planning tool summarizing key information from the research project that can be used throughout the project, including for fundraising, training researchers and updating the advisory board. A study protocol is a living document that will evolve over the course of the project.²⁹

- At the outset of your research, it may be useful to review a number of existing studies on compensation (some are listed in the attached list of literature), to get a feeling for how others designed and conducted their research. Learning from gaps identified and difficulties experienced by other researchers can provide valuable help you in your planning and analysis and may also allow you to save resources.
- As starting point for preparing the budget, break down the steps planned and calculate the number of working days needed for each step. It may be helpful to prepare two sets of work plans/budgets: a maximum option and, in case it is not possible to raise the entire amount of funds needed, a minimum option, as was done by the Austrian research team.

“Minimum version” of the research

This guidance note is based on the overall aim of the COMP.ACT project to produce common research findings at country level that can undergo a cross-cutting analysis and comparison. At the same time, what is feasible in terms of scope of the research and selection of methodologies will vary according to the availability of resources mobilized at country level. This box presents a number of suggestions how to adapt the research plan, in the light of possible resource constraints.

- Try to narrow down the thematic focus: You might want to focus on a thematic area that is known to represent the biggest gaps and challenges, and/or an area that is particularly under-researched. As a “mini-minimum” option, even policy briefing papers of just a few pages could be considered.
- Use a more limited set of methodologies. Instead of the complete menu (chapter 2.4), focus on the review of secondary sources, analysis of law and policy documents, analysis of court judgements and expert interviews. Leave out the analysis of court files, interviews with trafficked persons and surveys.
- If you have no resources to analyse a large number of court files/and or judgements, you may limit yourself to a few illustrative case studies.
- Reduce the number of interviews. If you narrow down the thematic focus, that will also reduce the list of potential interview partners – e.g. if you focus on labour law proceedings, prosecutors or police officers would not be your primary target group.
- Consider getting volunteer help – for instance from university students who might get credits from such work for their degree. Possible tasks to delegate to volunteers include pulling out information from court files, summarizing court judgements or transcribing interviews.

²⁹ WHO/PATH 2003, p 59f.

Composition of research team:

- Country research teams should reflect a *broad range of expertise*, including social science research as well as legal expertise. On the latter, it is important to have the different areas of law/procedural paths covered – besides criminal law also civil and labour law. This will help in ensuring that the research reflects a comprehensive approach, rather than being limited to a criminal justice perspective.
- Depending on your budget and design of your research/size of research team, it may be practical to assign different roles/tasks and divide the team into researchers (doing the analysis and writing) and interviewers (doing the interviews). If this is the case, clarity about each side's roles and responsibilities are an important precondition for working together as a team - terms of reference can be a helpful tool here. Furthermore, make sure that interviewers are familiar with the purpose and context of the research, and if they interview trafficked persons, possess the necessary experience and skills.
- A training workshop at the outset of the project can be useful to ensure that all team members are knowledgeable about the issue of trafficking and compensation and familiar with the research protocol and the research methodologies/techniques, as well as to build a team spirit.

- The WHO/PATH Practical Guide (chapter 10) has practical tips for building a research team and training fieldworkers.

Partnerships:

- *Trafficking in persons into sectors other than the sex industry* is still far from being mainstreamed into overall anti-trafficking approaches/mechanisms. When researching compensation practice in this segment, representatives of *trade unions, labour inspectorates and organizations working on migrant, refugee and/or labour rights* are important partners – for interview purposes as well as with a view to possible joint advocacy at a later stage. Depending on their respective mandates, ombudspersons and agencies dealing with non-discrimination and equal opportunities could also be contacted. When approaching and interviewing such organizations, keep in mind that they might not be familiar with the anti-trafficking jargon and therefore might not identify and refer to a trafficked person as a “trafficked person”, but rather as exploited worker or undocumented migrant – it will be up to the researcher to identify these cases as trafficking. It may therefore be useful to introduce indicators of trafficking (such as: illegal confinement, confiscation of passports, physical or psychological abuse, sexual harassment/violence, non-payment of wages) in conversations with partners not specialized on anti-trafficking, rather than the complex legal definition of the Palermo Protocol or national criminal law. In addition, it will be helpful for researchers to familiarize themselves with the jargon used by these organizations.
- *Access to partners:* Migrant/refugee/labour rights organizations might not be as organized in networks as established anti-trafficking organizations are, and therefore more difficult to access. Nevertheless, getting in touch with representatives of these organizations should be a priority for research teams as they may hold valuable information which will contribute to a comprehensive picture of compensation. Existing networks, including through the COMP.ACT project, can provide valuable help in linking you up with these organizations. For example, ITUC and PICUM, both members to the COMP.ACT advisory board, have offered help in facilitating contacts between COMP.ACT researchers and national trade unions/affiliated research institutes and member organizations, respectively.

- *Involving stakeholders*: Experience has shown that presenting data, conclusions and interpretations to members of the groups from which the data were collected (“member checking”) can provide a powerful tool for establishing credibility of the research. Allowing stakeholders to react to the data and to correct errors in its collection and interpretation, already at the stage of analysis, not only can strengthen the interpretation of the data but also create ownership of the findings among key stakeholders.³⁰ Similarly, sharing the final outcomes of the research with stakeholders and communities is important as it provides the basis for the research findings being used for social change – a key principle of research ethics.³¹

Collection and analysis of information

- In the study, *explain your methodology*, including approaches/tools used, your sample strategy and geographic scope as well as any methodological challenges (such as low response rates).
- Point to any research efforts undertaken that *failed to provide results* and the reasons therefore, e.g. due to lack of case documentation, insufficient awareness on part of NGOs or trade unions, etc. This can be helpful in identifying areas for follow-up work.
- *Be creative*. For example, as was done in ASI’s UK research, media reports or government news releases can be used as starting point to track down cases (“look for the case, rather than the victim”). Internet research can help in locating contact information of judges, prosecutors or police officers whose names are indicated in court files/judgements for interview purposes.
- As far as possible, *triangulate* or *cross-check the data collected* with other sources, for example through bringing findings from case analysis up during interviews. Furthermore, consulting existing secondary sources (such as government crime statistics, annual reports analyzing trends in organized crime or official Parliamentary enquiries to the government) can help for instance to confirm whether the number of court compensation cases during a given time period you have identified comes near the overall amount of cases existing in that period.

- Refer to the WHO/PATH Practical Guide for a practical tips and tools to be used in the process of qualitative data analysis (chapter 13).

Style – tips for writing the report:

- Be *concise and analytical*, rather than merely descriptive. For instance, when addressing a law on state compensation, you should explain to the reader not only the mere contents of the law, but also where the strengths and gaps are and why this is positive or problematic.
- Try to *avoid too technical language*, keeping in mind that some of your readers, such as NGO partners in your country or COMP.ACT partners from other countries might not be fully familiar with the details of your country’s legal system in general and the technical details of compensation mechanisms in particular.
- Whenever you come across *illustrative case studies* where e.g. compensation has helped a trafficked person to regain control over her life, mention them in your study.
- When formulating *policy recommendations*, try to be specific. As far as possible, try to specify responsible actors and target your recommendations accordingly.

³⁰ WHO/PATH 2003, p 214.

³¹ WHO/PATH 2003, p 217.

- Reference your sources, such as studies, articles, commentaries in footnotes, with inverted commas for literal quotations. In your analysis, try to distinguish whether a specific point reflects your own opinion or the views of your interview partners (e.g. “as was noted by the majority of interviewees, ...”, “one of the interviewed judges pointed to.....”, “while some interviewees found, others were of the opinion that”).

2. Template for country studies

1. Executive Summary

2. Introduction

Aim and purpose of the study

Scope of the study (thematic and geographic)

Methodology used, including methodological limitations (such as: low respondent rates)

3. International legal framework - brief overview on key standards:

Legally binding standards: obligations under relevant UN and CoE Conventions ratified by the country and (for EU members) binding EU documents

Soft law standards: relevant UN, EU, CoE, OSCE recommendations

4. Mechanisms and procedures for obtaining compensation

Criminal proceedings

- Overview of legal framework & application in practice
- Prerequisites, obstacles and examples of promising practice

Civil law proceedings

- Overview of legal framework & application in practice
- Prerequisites, obstacles and examples of promising practice

Labour law proceedings (Note: depending on the legal system, this might be part of civil proceedings)

- Overview of legal framework & application in practice
- Prerequisites, obstacles and examples of promising practice

State compensation fund

- Overview of legal framework & application in practice
- Prerequisites, obstacles and examples of promising practice

Non-litigious systems – voluntary settlements and mediation

- Overview of legal framework & application in practice
- Prerequisites, obstacles and examples of promising practice

Cross-cutting issues

- Such as: legal aid, residence status, trans-border elements, diplomatic immunity
- Overview of legal framework & application in practice (if applicable)
- Prerequisites, obstacles and examples of promising practice

5. Conclusions and recommendations:

Conclusions should

- extract answers to the main research questions
- summarize and systematize key challenges and promising practices

Recommendations should be

- tailored to different target groups
- practical and action-oriented and identify entry points for advocacy

3. References

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WHO/PATH, Researching Violence Against Women. A Practical Guide for Researchers and Activists, authors: Mary Ellsberg and Lori Heise, 2005, <http://www.who.int/reproductivehealth/publications/violence/9241546476/en/index.html>

³² For the purpose of this study, a draft version of the Belarus study was used.

More information on the Toolkit and on the COMP.ACT project can be found at www.compactproject.org

La Strada International: www.lastradainternational.org

Anti-Slavery International: www.antislavery.org



With the financial support of the Prevention of and Fight against Crime Programme of the European Union. European Commission – Directorate General Home Affairs



This initiative is supported by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings



The project is supported by the Council of Europe