

**REFERENCE GUIDE
ON PROTECTING THE RIGHTS
OF CHILD VICTIMS OF
TRAFFICKING IN EUROPE**



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2012/194	Alisher Nevoly
12103	Ўзбекистон МК

Foreword

Today, virtually every country in Europe is facing the problem of trafficking in human beings either internally or as a country of origin, destination, transit or a combination of these. The phenomenon is not new; however, the political, social and economic changes that swept the continent in the last decade have left a specific mark on the dynamics of trafficking. Transition from centrally planned to free market economies as well as the years of war in the former Yugoslavia increased poverty and the vulnerability of women, girls and boys to exploitation including trafficking. These changes also led to an increase in corruption, lack of a rule of law and the emergence of war economies, thus enabling the trafficking industry to spread.

The response of governments and of international and non-governmental organizations was swift and focused. It especially strengthened the law and law enforcement capacities to fight trafficking, and established assistance programmes for victims of trafficking. Although yielding some results, this approach was often criticized for its lack of a human rights focus. Child victims of trafficking, for example, were seldom recognised as being entitled to special protection measures.

To improve the protection of child victims in anti-trafficking efforts, UNICEF developed the Guidelines on Protection of the Rights of Child Victims of Trafficking. The Guidelines outline the minimum standards for safe-guarding the rights of child victims of trafficking at each stage of anti-trafficking interventions. The governments of South Eastern Europe endorsed the Guidelines at the Stability Pact Task Force sub-regional Ministerial Forum in Sofia on 10th December 2003. Since that time, the Guidelines have been used by a wide range of policy makers and practitioners in South Eastern Europe and more widely. Many provisions from the Guidelines have been incorporated in relevant European programmes and instruments for anti-trafficking action, such as the Council of Europe Convention on Action against Trafficking in Human Beings.

The idea of this Reference Guide was born out of conversations with the members of the Stability Pact Task Force on Trafficking who observed that the implementation of the Guidelines is still too slow. This Guide aims to be a practical tool to assist implementation, explaining and illustrating the implications of each of the standards and measures outlined in the Guidelines and their interconnections. The Guide should also serve as a reference for setting up policies and specific actions and as such is of special use for policy makers, legislators and practitioners responsible for protecting and assisting child victims of trafficking.

We hope that this Reference Guide will serve all those at the forefront of anti-trafficking action across Europe.



Maria Calivis
UNICEF Regional Director CEE/CIS

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List of Acronyms

CRC	United Nations Convention on the Rights of the Child (1989)
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (previously End Child Prostitution in Asian Tourism)
EU	European Union
ILO	International Labour Office and International Labour Organization
ILO-IPEC	See IPEC
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour (part of ILO and referred to as ILO-IPEC)
NGO	Non-governmental organization
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	United Nations Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UAM	Unaccompanied minor
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	UN Office on Drugs and Crime (the UN secretariat for the Convention against Transnational Organized Crime and its Trafficking Protocol) runs a Global Programme against Trafficking in Human Beings
US/USA	United States of America
WHO	World Health Organization

Glossary

Adolescent	A person between the ages of 10 and 19.
Biodata	Personal biographical data about an individual (e.g. age, name, etc...)
Child	In accordance with article 1 of the Convention on the Rights of the Child: "For the purpose of this present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier."
Child prostitution	The use of a child in sexual activities for remuneration or any other form of consideration.
Commercial sexual exploitation (of children)	The sexual exploitation of a child for remuneration in cash or in kind, usually organized by an intermediary (parent, family member, procurer, pimp), mainly for prostitution and pornography.
Durable solution	Long-term arrangements made for a child who has been trafficked.
Exploiter	A person who makes money from a child or adult who has been trafficked, as defined by the UN Trafficking Protocol, notably subjecting them to forced labour or servitude, or to prostitution (commercial sexual exploitation).
Immigration official	Includes border police and others involved in processing new arrivals at airports, ports and other frontier crossing points.
Law enforcement official	Police officer or other officials responsible for enforcing the law.
National Referral Mechanism	Procedure designed by ODIHR-OSCE to ensure coordination among government ministries, NGOs and others that are involved in caring for victims of trafficking and making decisions in regards to them.
Non-national	Person from another country, i.e., foreigner.
Offence	'Offence' and 'crime' are used interchangeably in the Guide and do not imply that one is more serious than the other.
Refoulement	The expulsion or return of a refugee to the frontiers of territories where his or her life or freedom is threatened because of his or her race, religion, nationality, membership of a particular social group or political opinion.
Separated child	Separated from both parents or from their legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members.
Trafficker	A person who engages in trafficking in persons as defined by the UN Trafficking Protocol.
Trafficking Protocol	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, linked to the UN Convention against Transnational Organized Crime (2000). This Protocol is sometimes referred to as the 'Palermo Protocol'.
Unaccompanied child	An unaccompanied child or minor is a child who is separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.
Young person	Refers to children under 18 and young adults aged 18 to 23.

Chapter 1 Introduction to Child Trafficking and UNICEF Guidelines

1.1 The purpose of this Reference Guide

In response to reports of child trafficking within South Eastern Europe and from South Eastern Europe to other parts of Europe, in 2003 UNICEF developed a set of "Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe."¹ A major reason for drafting the Guidelines was that agencies responsible for child protection – governmental, intergovernmental and non-governmental – observed that they are often unsure what procedures to follow when someone under 18 was believed to have been trafficked. A further reason was that the United Nations General Assembly agreed upon new standards regarding 'trafficking in persons' and 'sale of children' in 2000. With many countries adopting these new standards at the national level, an opportunity emerged to improve protection available to children by setting out standards for good practice.

The Guidelines are based on international standards and were originally designed in the context of South Eastern Europe. Since they were endorsed by the Stability Pact Task Force on Trafficking for South Eastern Europe and adopted by member states (2003), they were widely used to inform policy and practice against trafficking in children across Europe. Minimum standards endorsed in the Guidelines informed the Council of Europe Convention on Action against Trafficking in Human Beings, and the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance. The Guidelines were also used to advocate for more child sensitive provisions in the EU Communication and Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings.

This Reference Guide is meant to serve as an implementation book for the Guidelines as it gives information about the steps and procedures that constitute 'good practice' in the protection and assistance of child victims of trafficking. As such, the Guide is a practical tool for policy makers and practitioners from government, non-governmental and international organizations responsible for protecting and assisting child victims of trafficking across Europe.

A brief overview of the Guidelines is offered in this chapter. Chapter 2 presents basic information about child trafficking. This includes details from definitions in international instruments, explanations of why trafficking is a problem, information about patterns of child trafficking in Europe and comments on who has a responsibility to address child trafficking and in what ways.

Although this Reference Guide focuses primarily on action concerning children who have already been trafficked, Chapter 3 suggests actions which can be taken to prevent children from being trafficked.

Starting in Chapter 4, each of the guidelines issued by UNICEF in 2003 is the subject of an individual chapter. In each case, the chapter starts with the text of the guideline, followed by a review of its implications and description of actors with particular responsibility for taking action to implement it. Each chapter ends by mentioning challenges involved in implementing the guideline, along with some examples of existing practice taken from countries around Europe.

However, there is no specific chapter about the last guideline asking agencies dealing with child victims to establish special recruitment practices and training programmes to ensure that anyone responsible for the care and protection of trafficked children understands their rights and needs, is gender-sensitive and has the necessary skills to protect children. Specific training modules for law enforcement, border officials, social service providers and other professionals working in direct contact with children are being developed by different agencies and are not included in this Guide.

Following the chapters about each of the guidelines, the second part of the Reference Guide

¹ The full text of the Guidelines is reproduced in Annex 1 of this Reference Guide. It can also be accessed at <http://www.seerights.org>

contains some specific tools such as check lists for professionals in direct contact with child victims of trafficking. These describe procedures, offer practical examples and are generally intended for specific target audiences.

The full text of UNICEF's Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe as well as the texts of relevant international and European regional instruments (conventions and protocols), including a table indicating the ratification status of seven relevant instruments in Europe are included in Annexes.

1.2 UNICEF Guidelines

The UNICEF Guidelines set out standards for good practice in the protection of and assistance to child victims of trafficking – from identification to recovery and reintegration of the child. The Guidelines are based on relevant international and regional human rights instruments and provide a straightforward account of the policies and practices required to implement and protect the rights of child victims of trafficking. The Guidelines aim to help governments and state actors, international organizations and NGOs develop special protection measures for child victims of trafficking.

The Guidelines focus on the steps needed to protect and assist anyone under 18 who is believed to have been trafficked, and to make decisions about their future. The Guidelines *do not* discuss the steps needed to prevent children from being trafficked.

A draft of the Guidelines was issued in March 2003 and considered by the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe. The Stability Pact Task Force formally endorsed the Guidelines in April 2003. They were published in May 2003 and in a revised form in October 2003. At an intergovernmental meeting in Sofia, Bulgaria in December 2003, government representatives from South Eastern Europe signed a Statement on Commitments endorsing the Guidelines and pledging to develop and adopt minimum standards for the treatment of child victims of trafficking based upon the Guidelines.

In 2005 UNICEF began a process of global consultation on the relevance and usefulness of the Guidelines in regions and countries beyond Europe. The last up-dating of the text took place early in 2006 and it is expected that the Guidelines will be adopted as a UNICEF global policy instrument by mid 2006.

The Guidelines summarize basic information about child rights as set out in the United Nations Convention on the Rights of the Child (CRC)² and other relevant international legal instruments.

As noted, the UNICEF Guidelines cover 11 specific aspects concerning trafficking of children:

1. identification of children as victims of trafficking;
2. appointment of a guardian for each trafficked child;
3. questioning by the authorities;
4. referral to appropriate services and inter-agency coordination;
5. interim care and protection;
6. regularization of a child's status in a country other than their own;
7. individual case assessment and identification of a durable solution;
8. implementing a durable solution, e.g., possible return to a child's country of origin;
9. access for children to justice;
10. protection of the child as a victim and potential witness; and
11. training for government and other agencies dealing with child victims.

² The 1989 Convention has been ratified by or acceded to every country in the world except two, the US and Somalia. The Convention was accessed at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

It takes more than this checklist to create the 'protective environment'³ that safeguards children from maltreatment of all kinds. The UNICEF Guidelines explicitly focus on children who *are* being or *have been* trafficked for exploitation.

1.3 An emphasis on child rights

The UNICEF Guidelines emphasize that the human rights of children who are trafficked or at risk of being trafficked must be at the centre of all efforts to prevent child trafficking and to protect, assist and provide redress to children who have been trafficked.⁴

The principle that in all actions concerning children (including actions in response to child trafficking), the best interests of the child should be a primary consideration is guaranteed by article 3.1 of the CRC. This principle underpins the child-rights approach that UNICEF advocates in all its programmes and also in programmes and actions by other intergovernmental, governmental and non-governmental organizations.

Despite the near-universal ratification of the CRC, it is still common for agents of child protection to rely on the conventional approach – albeit, perhaps, more vigorously – of fighting the actors and factors that harm children, rather than on a full rights-based approach. For example, in the case of trafficking, many

Box 1

Key Principles to be applied in efforts to prevent trafficking, and protect and assist child victims

The best interests of the child

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (CRC, article 3.1)

Non-discrimination

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (CRC, article 2)

Each child has a right to have his or her views listened to and taken into account in all matters affecting him or her

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (CRC, article 12)

The child's right to privacy

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (CRC, article 6)

Source: "Convention of the Rights of the Child".

³ UNICEF and others use the term 'protective environment' to refer to the different elements that protect children from discrimination, violence, exploitation, abuse and neglect. A protective environment is comprised of members of the family, community and society as well as laws, policies, regulatory frameworks, services, structures, institutions, and decision-making mechanisms. These elements act individually and collectively to protect children.

⁴ The UN High Commissioner for Human Rights has emphasized that the human rights of anyone who is trafficked should be at the centre of anti-trafficking actions. "The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims." Principle 1 in the High Commissioner's "Recommended Principles and Guidelines on Human Rights and Human Trafficking," Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, UN document E/2002/68/Add.1, 20 May 2002. The "Principles" were accessed at www.ohchr.org/english/about/publications/papers.htm

States look primarily at the activity as a crime, a lens that focuses efforts on the perpetrators and even casts victims in the role of objects of wrongdoing. What is missing is an equal emphasis on upholding the rights of the individuals who are trafficked. In the case of children, law enforcement officials determined to detect, prosecute and punish criminals may be sensitive to the needs of the child, but unless the rights of the child are fully respected and protected, the requirements of the CRC are not met.

The CRC contains a number of principles and provisions that underpin a child-rights approach and which are reflected in the UNICEF Guidelines. The first of these is the principle that children have a right to exercise their rights without discrimination of any kind. This implies that children who are trafficked from one country to another are entitled to exercise their rights in a country of which they are not a national.

The second principle concerns the child's right to express his or her views and to have these taken into account. This is especially important in the case of a child who has been trafficked and where decisions are made by a range of agencies both in the child's country of origin and in any other country to which a child is trafficked.

Children also have rights to freedom of expression, of association and to participate fully in cultural and artistic life (guaranteed by articles 13, 15 and 31 of the CRC). Taken together with article 12, these rights constitute a child's right to participate in efforts to exercise their rights, including their right not to be trafficked.

The nature of the activities which are the subject of the UNICEF Guidelines and which have to be taken to protect children who have been trafficked also emphasize the importance of the child's right to privacy. This means it is essential to protect the privacy and identity of children who have been trafficked and to take measures to avoid the dissemination of information that could lead to their identification.

Chapter 2 Essential Information about Child Trafficking

2.1 What is trafficking?

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation constitutes 'trafficking in persons'. Exploitation includes, 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 (see Box 2).

The terms 'child trafficking' and 'trafficking in children' are both routinely used to refer to cases of trafficking in persons when girls or boys under 18 are trafficked. The terms 'child' and 'children' are used in the UNICEF Guidelines and the Reference Guide in accordance with the definition contained in CRC, article 1: "For the purpose of this present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

Young children and babies are also said to be trafficked in certain cases of irregular intercountry adoption when national or international norms governing adoption are not respected and intermediaries make excessive amounts of money out of the transaction.

In 2000, the United Nations (UN) adopted two international instruments that spell out what trafficking is: one covers both adults and children and the second specifically refers to children. Both are protocols to other conventions.

Box 2

The definition of 'trafficking in persons'

Article 3 of the UN Trafficking Protocol states:

(a) "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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Source: "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

The first instrument is the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (referred to here as the 'Trafficking Protocol' but also known as the 'Palermo Protocol').⁵ The Trafficking Protocol supplements the UN Convention against Transnational Organized Crime that was adopted at the same time.

The Trafficking Protocol names three elements that comprise trafficking for persons aged 18 and older:

- recruitment by an intermediary (or transportation or transfer or harbouring or receipt);
- abusive means of control – the threat or use of force or other forms of coercion – in the course of recruitment, transportation, transfer, harbouring or receipt;
- subsequent exploitation, or an intention to exploit, in one of several ways, namely the exploitation of the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In the case of children, however, the Trafficking Protocol is clear that it is not necessary for a child to have been subjected to abusive means of control, e.g., coerced or deceived, in the course of being recruited for the case to constitute trafficking. It is sufficient that a child under age 18 has been recruited and moved elsewhere to be exploited to be regarded as a victim of trafficking. In addition, if a child's recruitment or transportation – regardless of end intention – involves any of the means used to traffic adults, e.g., threats, violence, abduction or deception, the case is also considered trafficking.

The forms of exploitation that the Trafficking Protocol links with trafficking require some explanation. The terms "exploitation of the prostitution of others" and "other forms of sexual exploitation" are not specifically defined in the Protocol.⁶ However, the term "exploitation of the prostitution of others" is defined elsewhere⁷ and includes cases in which a child accepts money or any other consideration in return for acts of sex and passes this on to another person who thereby exploits the child's prostitution. "Other forms of sexual exploitation" are not the subject of another international legal instrument. This phrase may be interpreted as referring to pornography and a range of other forms of abuse such as forced marriage.⁸

'Exploitation' also includes activities that involve a child being subjected to force, coercion or servitude – "forced labour or services, slavery or practices similar to slavery, servitude." It also includes the removal of a child's organs for financial gain.⁹

In theory, the Trafficking Protocol definition makes a clear delineation between 'exploitation' in the context of trafficking and other forms of exploitation such as child labour or economic activities involving children. 'Exploitation' is defined in terms of sexual exploitation and forms of economic exploitation associated with coercion and servitude, as well as the removal of a child's organs for financial gain. However, in practice it can be difficult to distinguish between the normal dependency of a child, especially those around 13 years of age or less, on an adult or older child and a situation of manipulation, force or coercion. Furthermore, the Palermo Protocol definition does not specifically

⁵ The Convention against Transnational Organized Crime came into force in September 2003 and the companion Trafficking Protocol on 26 December 2003 after it was ratified by 40 countries, the minimum number needed. The texts of the Convention and both Protocols were accessed at www.unodc.org/unodc/en/crime_cicp_convention.html#final

⁶ The Interpretative notes for the official records [travaux préparatoires] of the negotiation of the UN Convention against Transnational Organized Crime and the Protocols thereto specify: "The Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws." UN document A/55/383/Add.1, November 2000, paragraph 64.

⁷ The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) was accessed at <http://www.unhchr.ch/html/menu3/b/33.htm>

⁸ David Weissbrodt and Anti-Slavery International, "Abolishing Slavery and its Contemporary Forms." Office of the United Nations High Commissioner for Human Rights. HR/PUB/02/4. Geneva and New York, 2002, paragraph 75.

⁹ The removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons is not considered exploitation. Interpretative notes for the official records [travaux préparatoires] of the negotiation of the UN Convention against Transnational Organized Crime and the Protocols thereto. UN document A/55/383/Add.1, November 2000, paragraph 65.

mention the recruitment of children for hazardous work or for begging or theft; however, they can be included under what is mentioned as "forced labour or services".

The use of the term 'exploitation' means that the individuals who profit from a child's exploitation are sometimes referred to as 'exploiters'. In cases of commercial sexual exploitation, these individuals are referred to as 'pimps'. In other cases, they may be employers and are sometimes referred to as 'controllers' because they control a child while she or he is earning for them. Sometimes these same individuals were responsible for a child's initial recruitment or movement. In others, the child has been moved from the trafficker to an exploiter.

The second international instrument, adopted in 2000, was the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.¹⁰ The protocol came into force in 2002. Although the title does not mention trafficking explicitly, the preamble of the Optional Protocol expresses concern at "the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography." The Optional Protocol, in article 3, requires ratifying States to prohibit forms of abuse associated with trafficking, whether they are "committed domestically or transnationally or on an individual or organized basis."

Box 3

Definitions of the "sale of children" "child prostitution" and "child pornography"

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Source: Article 2, Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

In addition, the Optional Protocol requires States to prohibit "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption" [article 3.1(a)(ii)].

The main international convention on intercountry adoption, referred to in the Optional Protocol as the "applicable international legal instrument," is the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention No. 33),¹¹ adopted in May 1993 by The Hague Conference on Private International Law. By January 2006, 68 States had ratified or acceded to the Convention. Once again, this convention does not use the term 'trafficking' or describe any forms of adoption as 'trafficking' but contains a clear requirement in article 32.1: "No one shall derive improper financial or other gain from activity related to intercountry adoption."

¹⁰ The Optional Protocol to the Convention on the Rights of the Child was accessed at www.unhcr.ch/html/menu2/dopchild.htm

¹¹ The Hague Convention entered into force in 1995. The full text was accessed at <http://www.hcch.net/e/conventions/text33e.html>

Box 4

'Good practice' for intercountry adoption

"A child's eligibility for intercountry adoption should be decided upon by the competent authorities of the State where the child habitually resides (the 'country of origin'). The procedure should be carried out by the authorities themselves or 'accredited' non-profit professional bodies, not by other intermediaries. Strict regulations and procedures to protect those children's rights and interests are vital; prospective adoptive parents, in particular, must be helped to understand this and be warned against trying adopt without due regard for them."

Source: UNICEF, "Intercountry Adoption," Innocenti Digest No. 4, 1999.

In 1999 the International Labour Conference adopted Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.¹² It includes the sale and trafficking of children as one of the 'worst forms of child labour' as well as debt bondage,¹³ serfdom, and forced or compulsory labour,¹⁴ including forced or compulsory recruitment of children for use in armed conflict.

In addition to listing most of the forms of exploitation mentioned by the UN Trafficking Protocol, the ILC requires every country ratifying Convention No. 182 to draw up a list of types of "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" (generally referred to as 'hazardous work') and to stop anyone under 18 being involved in such work. The authorities are required by this Convention to formally identify hazardous work of this sort after holding consultations with employers' organizations and trade unions in their country.

Although life-threatening or hazardous work is not specifically mentioned by the Trafficking Protocol as a form of exploitation associated with trafficking, if foreign children are brought into a country especially to be employed in such work, this could constitute trafficking. In any case, authorities should take action to stop anyone under 18, wherever they are from, from being employed in hazardous work.

2.2 Child trafficking as a violation of the child's rights

Child trafficking is a violation of the human rights of the child who is trafficked. It is also a crime. However, trafficking involves a series of distinct acts – recruiting a child, moving the child from one place to another, exploiting the child – that are sometimes carried out in two or more countries, making it difficult for law enforcement officials to gather evidence. Even when the whole trafficking chain takes place in a single country, the constituent acts may occur hundreds of kilometres apart.

In the course of being trafficked, children can experience many different violations of their rights and suffer both physically and psychologically. Getting child victims out of the control of traffickers, controllers and exploiters is a priority as is enabling victims to recover and reintegrate into society. These are sometimes long and difficult processes.

¹² The text of ILC Convention No. 182, which came into force in 2000, was accessed at: <http://www.ilo.org/ilolex/english/convdisp2.htm>

¹³ Debt bondage is defined by the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined." [Article 1(a).] The text of the Supplementary Convention was accessed at: <http://www.unhcr.ch/html/menu3/b/30.htm>

¹⁴ ILO Convention No. 29, the Forced Labour Convention (1930) defines forced or compulsory labour in article 2(1) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The text of this convention was accessed at: <http://www.ilo.org/ilolex/english/convdisp2.htm>

Different types of harm are caused during different phases of trafficking – i.e., recruitment and transportation, exploitation, withdrawal and recovery/reintegration. The trafficking phases are summarized in Figure 1 below:

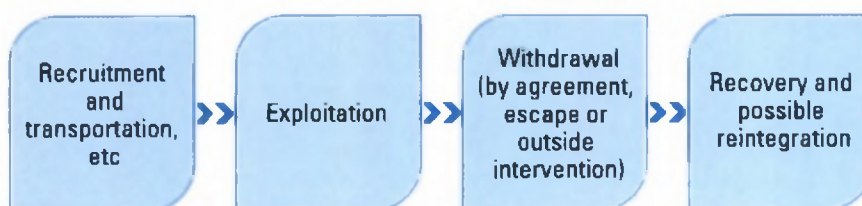


Figure 1: The four phases of trafficking

In practice, addressing trafficking in the context of child protection is often not this simple, with children escaping from a phase of exploitation but being caught up in it again before they recover. Thus recovery is ideally the last step without re-entry into re-trafficking and exploitation. However, the idea that there are different phases is important, as each phase presents different challenges and opportunities for those trying to prevent trafficking and to protect and assist children who are being trafficked.

2.2.1 Abuses of human rights experienced by children who are trafficked

Trafficking deprives child victims of exercising a wide range of rights, including the right to preserve his or her identity, the right to education, to healthcare, to rest and leisure as well as the right not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment and not to be deprived of liberty unlawfully or arbitrarily.

The child's right to education is addressed specifically in the Guidelines to remind authorities of their obligation to ensure that children who have been trafficked have the right to education also in the country that is not of their origin. This is particularly serious in the case of children who are trafficked before finishing their basic education (or, in countries where attendance at primary school is compulsory, their period in compulsory education). In the case of children who have been trafficked before completing their basic education or who, because of their age, are required by law in the country to which they have been trafficked to attend school, one implication is that authorities that are responsible for caring for such children must ensure they can resume their education as quickly as possible.

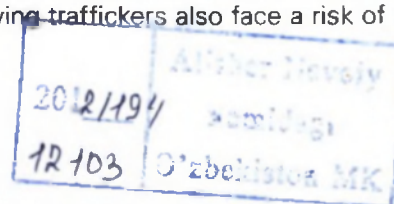
2.2.2 The harm inflicted on children in the course of trafficking

Child trafficking causes physical and some psychological harm to the children involved. Harm occurs in each of the phases of trafficking depicted in Figure 1.

When children are first recruited to be trafficked, they may leave home peacefully. However, some cases are marked by deception or violence, while some involve abduction and application of drugs to secure children's obedience.

Children who are moved illegally from one country to another are exposed to all the dangers of migrants being smuggled. They are at the mercy of both their smugglers and any police or other officials who come across them. Even children who cross borders legally are subjected to violence to make them obey orders.

Both while they are being moved and once the phase of exploitation starts, trafficked children are subjected to violence to make them obey orders. This includes sexual violence. In some areas, children being trafficked are routinely given a new (false) identity to cross borders and a process starts of losing their own personal identity. Children accompanying traffickers also face a risk of violence



from police, border guards or others who may try to intercept them. This is either because children are not recognised as victims, but perceived as criminals and illegal migrants, or because they are caught in conflicts between traffickers and law enforcement.

The harm inflicted on trafficked children while they are being exploited depends on the form or forms of exploitation to which they are subjected. Some of the many harmful consequences are listed in Figure 2 below. The effects of leaving home prematurely and being put to work in an exploitative situation depend on the age of the child concerned. In the case of younger children, both their socialization and education are halted prematurely, leaving a permanent mark on the child concerned.

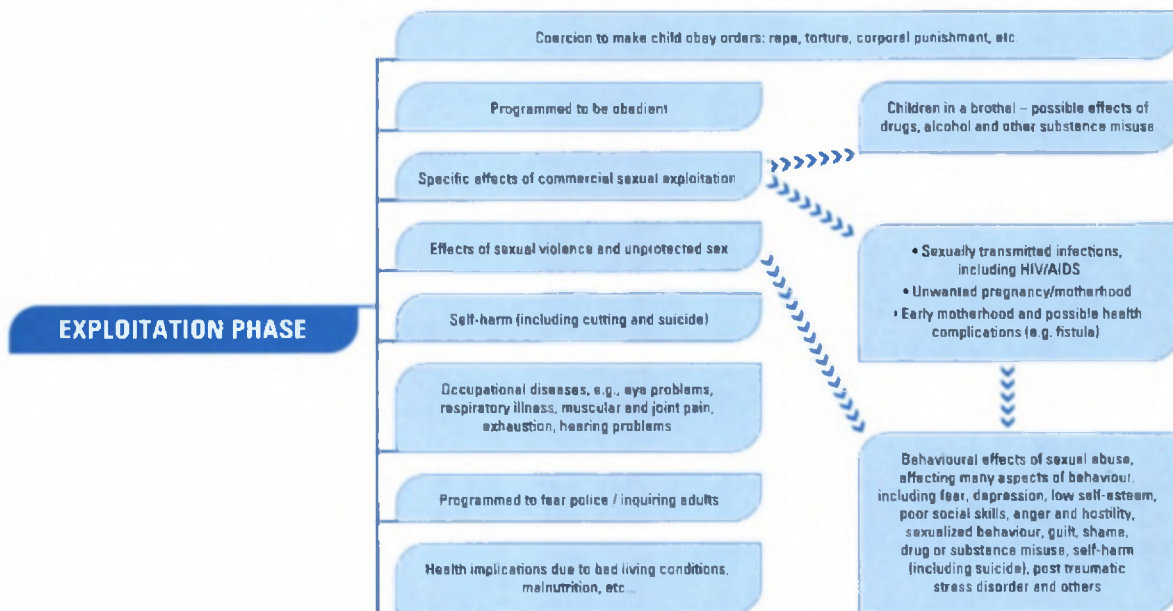


Figure 2: Harm inflicted on children in the exploitation phase of trafficking

Even after children are identified by law enforcement officials and withdrawn from exploitation, they may still experience further abuse. Traffickers may try to regain control over them or to intimidate them so they dare not talk to police. Children may be ill treated in police custody or in a residential centre where the care standards are inadequate. Indeed, some children have complained that conditions in residential care have amounted to incarceration and involved significant levels of abuse. When trafficked children return home, some experience abuse from members of their own family or home community, particularly if they are suspected of having been subjected to sexual exploitation.

However, in contrast to the periods while a child is under the control of a trafficker or is being exploited, law enforcement officials and child protection professionals are in a position to minimize the harm suffered by a child who is in the process of recovering. The UNICEF Guidelines suggest how to ensure this.

2.2.3 Obstacles to recovering from trafficking

The different types of harm inflicted on trafficked children mean that careful assessment is required by health and child welfare professionals to propose what forms of treatment might be needed for each child. The physical, psychological and behavioural consequences of trafficking and exploitation on a child are summarized below.

2.2.3.1 Physical health problems

Many physical health problems experienced by trafficked children are a result of ill treatment or neglect:

- malnourishment, dental problems, stunted growth, developmental delay;
- infectious diseases from poor hygiene;

- infections or mutilations caused by inappropriate 'medical' treatment;
- injuries from torture or cruel, inhuman or degrading treatment or punishment; and
- conditions related to working in difficult or dangerous conditions and for long hours, e.g., eye problems, respiratory illness, muscular and joint pain, exhaustion, hearing problems.

It is important to note that many of these physical health problems may not be readily apparent in a first post-trafficking medical examination. Understandably, health workers are first looking for obvious trauma; however, they should also be trained to follow up and identify the residual health impacts of trafficking and exploitation.

2.2.3.2 Effects of captivity and powerlessness

A child held in captivity may develop disturbances in their sense of time, memory and concentration. They suffer a loss of self-esteem and may have a sense of hopelessness, i.e., a sense that there is 'no future'. Sometimes exploited children forget what has happened to them – 'traumatic amnesia'. Personality disorganization or dissociation may result from prolonged or very severe abuse. Children may carry unexpressed anger against those who hurt them or against people who failed to help, and it can turn into self-hatred and suicidal thoughts.

2.2.3.3 Emotional and behavioral problems, particularly as a result of sexual abuse

Low self-esteem is reported among children who have been trafficked into different forms of exploitation. An international NGO, ECPAT-International, that works against the commercial sexual exploitation of children has noted a long list of effects that sexual abuse can have on children's behaviour. All of these problems can be treated, but it takes time and often a great deal of effort. These problems can be lingering and include:¹⁵

- anxiety and fear;
- depression;
- poor social skills;
- anger and hostility;
- inability to trust and build meaningful relationships;
- blurred roles and boundaries;
- appearing 'older' ('pseudo-maturity');
- sexualized behaviour;
- guilt;
- shame;
- feeling 'different' from others;
- isolation;
- substance use and misuse;
- self-harm (including suicide);
- post-traumatic stress disorder.

Other effects of stress and trauma are set out in detail in UNICEF publications about trafficked children.¹⁶

¹⁵ ECPAT-International, "The Psychosocial Rehabilitation of Children who have been Commercially Sexually Exploited: A Training Guide," 2003.

¹⁶ See Barbara Mitchels, "Let's Talk: Developing effective communication with child victims of abuse and human trafficking. A practical handbook for social workers, police and other professionals," the UN Administered Province of Kosovo, 2004.

2.3 Forms of trafficking – what is trafficking and what is not

Trafficked children who end up in a foreign country are hard to distinguish from other categories of children. Even in the activity of exploitation, trafficked children are often involved in the same type of ways of earning money as non-trafficked children. All the children involved deserve protection, but the particular forms of protection and intervention may differ, especially in detail.

2.3.1 Related categories of children who go to foreign countries

It is easy to confuse trafficked children with other categories of vulnerable children while they are in transit and before the phase of exploitation starts. When trafficked children cross a border legally they may be alone or accompanied by one or both parents, or by an adult who either pretends to be their parent or claims to have a legitimate reason for travelling with the child. They may be accompanied by other young people without any older adult.

This means that some trafficked children fall into the category of ‘unaccompanied children’. Unaccompanied children (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, would be responsible for doing so.¹⁷ The fact that no adult is accompanying them or is in close proximity to them does not mean that they are not operating under someone else’s control. Sometimes traffickers instruct trafficked children to cross a border by themselves and to apply for asylum in order to get temporary permission to remain in the country. So some trafficked children also fall into the category of ‘children applying for asylum’, increasing the potential for confusion.

Sometimes trafficked children may be accompanied by another adult family member in which case they fall into the category of ‘separated’ children. These children are separated from both parents or from their previous legal or customary primary caregiver, but not, necessarily, from other relatives.

Older adolescents may decide for themselves to leave home and migrate in search of work, either abroad or in a different part of their own country. Some migrate legally, but some cross borders illegally or prolong their stay in a country without getting authorization, thereby falling into the category of ‘irregular’ migrant. Some teenage migrants may already be under the influence of traffickers when they cross a border, while some cross as ordinary migrants but later come under the control of traffickers. This means that there is an overlap between trafficked children and the category of teenage migrant workers.

In reality, of course, these are overlapping rather than completely separate categories, as Figure 3 illustrates. These categories refer to children who are unaccompanied by a parent or guardian, even though some may be accompanied by adults who claim to be a parent or the child’s usual primary caregiver.



Figure 3: Overlapping categories of vulnerable children that may coincide with being trafficked

¹⁷ “Inter-agency Guiding Principles on Unaccompanied and Separated Children,” ICRC, 2004 page 13. Accessed at http://www.unicef.org/protection/files/english_guiding_principles.pdf

It is important that police and other authorities are aware of the rights of all the children who find themselves in any of these circumstances – and the particular forms of protection they need to make available to these children. It is also important that authorities understand that the categories are not exclusive: that a child who obviously fits into one category may also be a victim of trafficking.

The CRC guarantees all unaccompanied children the right to specific forms of protection:

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. (CRC, article 20.1)

2.3.2 Children seeking asylum

Any child who has fled from their own country because of a well-founded fear of persecution or as a result of armed conflicts, generalized violence or events seriously disturbing public order has a right to seek asylum and may not be refused access to another country's territory. Furthermore no child who is a refugee may be subjected to *refoulement* or expulsion. Similarly no child may be returned to their home country if they face a risk of ill treatment amounting to torture or cruel, inhuman or degrading treatment or punishment, from whomever that risk comes.

In many European countries children arrive by themselves and apply for asylum. They are given permission to remain while their asylum request is considered. This procedure has occasionally been abused by traffickers to enable children to enter a country, only for them to be taken back under the control of traffickers subsequently.

2.3.3 Children involved in crime 'in order to survive'

Some children are reported to have been deliberately brought into EU countries from countries elsewhere to take part in illegal activities. Others decide for themselves to migrate abroad in order to earn a living and resort to crime. It is sometimes difficult to distinguish between trafficked children who commit offences and other children who come into conflict with the law. Ambiguous cases occur in which it is not clear whether an adolescent who commits a crime is acting under duress because he or she is dominated and intimidated by another older person. For example, an adolescent boy who was caught shoplifting in Denmark had accompanied an older friend from their home in South Eastern Europe. The adolescent had borrowed money from his friend to finance his journey and was obliged to follow orders. However, it was difficult to assess whether he was actually in debt bondage.

In France and Romania child protection agencies and NGOs have recorded how adolescent boys and girls from Oa, an agricultural area in northwest Romania, migrate to France to earn a living there. Many of the children leave Romania before finishing their compulsory schooling, i.e., when aged 14 or 15, and once in France resort to petty crime. As a result, in the year 2000 more than 300 unaccompanied children from Romania were charged with offences and brought to court in the Paris area alone.¹⁸ However, very few of the children's journeys are reported to be organized by others, nor do they routinely hand over their earnings to an adult. Consequently the term 'trafficking' is not applicable in most of the cases.

In other parts of Western Europe, children have arrived from even further a field, such as sub-Saharan Africa, lodging applications for asylum in order to gain access to a country. If and when their application is rejected, however, some have had little choice but to resort to illegal activities in order to survive.

¹⁸ According to Terre des hommes and la Voix de l'Enfant, «Mineurs 'isolés' d'Oas en France : Analyse de situation en vue d'une intervention de prévention» 2003, quoted in M. Dottridge, "Kids as commodities? Child trafficking and what to do about it," 2004.

2.4 Who are trafficked children?

2.4.1 Trafficked children in general

Everyone under 18 years of age is a child. Child trafficking involves young children, adolescents and 17-year-old 'almost adults' who can be difficult to distinguish from young adults. The term 'child' is used in this Reference Guide for *anyone* under age 18, whatever their maturity.

Adults are also victims of trafficking. According to several reports, the majority are women and many are trafficked into commercial sexual exploitation¹⁹. However, in the case of anyone 18 years old or older, it is not the mere fact that they have been recruited and moved from one place to another and then forced to make money for others which defines the case as 'trafficking': cases of adult trafficking involve some form of coercion or deception at the stage when the adult concerned is recruited and moved.

Child trafficking sometimes involves moving children from one country to another – known as 'cross-border' or 'transnational' trafficking. However, it is not only when children are moved across a border that they are trafficked but when they are taken from one part of their own country to another, e.g., from a rural area to a city. This is known as 'internal trafficking'. Wherever they take a child, traffickers generally take advantage of the fact that the child concerned is no longer protected by relatives or friends and is in an unfamiliar environment where he or she does not know anybody to contact for help. This puts the child in a position of vulnerability, making it easier for others to subject the child to abuse.

It is difficult to establish how many children or adults are trafficked worldwide each year. In 2005 the International Labour Organization (ILO) estimated that approximately 2.45 million people had been trafficked among the 12.3 million estimated to be victims of forced labour.²⁰ The statistics that are available clearly reveal that trafficking is a gender issue. The vast majority of children who are trafficked into commercial sexual exploitation are girls.²¹ However, some boys are also trafficked into commercial sexual exploitation. Among children trafficked to beg, the proportion of girls is less marked.

Trafficked children can be divided into at least three subgroups according to age:

1. The main group is adolescent girls, and some adolescent boys, aged 16 or 17 years old, perhaps even 15 years old. These 'almost adults' are often lumped together with trafficked adult women. These adolescents typically do not regard themselves as 'children' and feel mature enough to decide to leave home on their own. In many parts of the world, the majority of children trafficked in this age group are girls trafficked into commercial sexual exploitation. Others are exploited to labour in sweatshops and as domestic workers.
2. The second group involves pre-pubescent children who are trafficked for labour rather than sexual exploitation. In West Africa, for example, a large number are reported to be used as live-in servants. In Europe they include children used to beg.
3. The third group involves even younger children, mostly babies trafficked for adoption.

¹⁹ See for example, International Labour Organization, "A global alliance against forced labour," Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005; Surtees, Rebecca, "Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005", Regional Clearing Point, International Organization for Migration, 2005; Limanowska, Barbara, "Trafficking in Human Beings in South Eastern Europe, 2004 Focus on Prevention in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Republic of Moldova, Romania, Serbia and Montenegro, and the UN Administered Province of Kosovo". UNICEF, UNOHCHR and OSCE/ODIHR, Published by UNDP, March 2005.

²⁰ International Labour Organization, "A global alliance against forced labour," Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005, page 14.

²¹ The ILO Global Report estimates that 98 per cent of those forced into commercial sexual exploitation are women and girls. Among those involved in forms of forced labour other than commercial sexual exploitation, most (56 per cent) are also women and girls. ILO, *op. cit.*, page 15.

According to the available data, it is the first group that makes up the majority of children trafficked in Europe²². Since this age group has finished compulsory education, most of them are old enough to enter employment legally, both in their own country and abroad. They are also old enough to leave home to migrate within their country and abroad.

In this age group most children who are trafficked leave home voluntarily, sometimes with the permission of one or both parents or of a guardian and sometimes against their parents' wishes²³. There are occasional reports of children being abducted, but such reports are relatively rare. Having decided themselves to migrate in search of a better future, young migrants end up in situations of exploitation and abuse, usually through no fault of their own.

Children who have not yet reached puberty are less likely to make decisions for themselves and are more likely to be sent away from home by their parents or guardian, sometimes after being consulted and sometimes not. In some cases a trafficker contacts the parents to suggest that their child will have a better future abroad and that they should send the child away. In others the child's parents take the initiative to send their child away. In some cases, parents or guardians are not fully informed about the risk that their child might suffer serious abuse. However, some close their eyes and ears to reports of abuse and hope their child will be one of the lucky ones who earn a significant amount of money.

2.4.2 Trafficked children in Europe

In Europe the most common forms of exploitation associated with trafficking in children are commercial sexual exploitation (child prostitution) and making children beg for money²⁴. There has been some debate about whether children who are brought to Europe from other regions and forced to work as domestic servants should be categorized as victims of trafficking rather than as victims of forced labour or servitude. Likewise, there is uncertainty about the status of children who are brought from one country to another to take part in crimes such as theft and burglary.

The huge illegal or semi-legal market for commercial sex in Europe has created a strong demand for both young women and adolescent girls. Trafficking in children, like trafficking in adults, has a strong gender aspect. However, this does not mean that boys and even adult men are not trafficked.

There are few reliable statistics on the number of either adults or children being trafficked in Europe. A variety of transit centres, shelters and rehabilitation centres collect information about the adults and children whom they assist. Details are collected systematically from adults and children who return to their countries of origin and are assisted by IOM-run centres. However, these only represent a proportion of those trafficked.

Over the five years from 2000 until the end of 2004, the IOM documented 6,255 cases of adults and children who were trafficked to, through or from South Eastern Europe, including 1,329 in 2003 and 1,227 in 2004. Most of those who were trafficked came from three countries: Albania, Republic of Moldova and Romania. Smaller numbers originated in the UN Administered Province of Kosovo and Bulgaria. The proportion of the total who were children when they were trafficked is reported to vary from country to country, generally accounting for 10 to 20 per cent. IOM statistics collected during

²² See for example, Dottridge, Mike, "Kids as Commodities? Child Trafficking and What to do about it," Fédération Internationale Terre des hommes, Geneva, May 2004; ECPAT Europe Law Enforcement Group, "Joint East West Research on Trafficking in Children for Sexual Purposes in Europe: the Sending Countries", edited by Muireann O'Briain, Anke van den Borne and Theo Noten, Amsterdam 2004; UNICEF (UK), "Stop the Traffic!", London, July 2003; Terre des hommes, "The Trafficking of Albanian Children in Greece", Terre des hommes Foundation, Lausanne, 2003; The Research Institute for The Quality of Life and Save the Children, Romania (under technical supervision of FAFO Institute for Applied International Studies, Norway), "Rapid Assessment of Trafficking in Children for Labour and Sexual Exploitation in Romania", ILO-IPEC, 2004; Kane, June, "Child Trafficking – The People Involved, A synthesis of findings from Albania, Republic of Moldova, Romania and Ukraine", IPEC, January 2005; Institute for Public Policy (Republic of Moldova), "Trafficking in Children for Labour and Sexual Exploitation in the Republic of Moldova, Results of a Rapid Assessment Survey", ILO-IPEC, 2003; Centre of Social Expertise of the Institute of Sociology, National Academy of Sciences (Ukraine), "Trafficking in Children for Labour and Sexual Exploitation in Ukraine, Results of a Rapid Assessment Survey", ILO-IPEC, 2003.

²³ Ibid, 22.

²⁴ Ibid, 22.

2004 suggest that the share of children among trafficking cases was increasing. For example, IOM reported that one in four trafficking victims assisted in Romania during 2004 had been trafficked while still children.²⁵

The patterns of recruitment and exploitation concerning children are sometimes quite different to those concerning adults, even when comparing patterns involving adolescent girls with those involving adult women who are only slightly older. In the Republic of Moldova, for example, where the majority of adult victims reported to have been repatriated between 2000 and September 2005 returned from the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, the UN Administered Province of Kosovo, and Turkey, the principal destination abroad for trafficked children was the Russian Federation. During this period IOM provided assistance in the Republic of Moldova to a total of 1,652 people who had been trafficked, of whom 101 were still children at the time they returned.²⁶

These patterns vary from year to year. For example, while considerable numbers of Albanian children were trafficked from Albania to Greece in the late 1990s and early 2000s, by 2005 the number was very small. Both the IOM and other organizations have published regular reports commenting on the trends.²⁷ These contain some data about children but focus mainly on adult women trafficked into commercial sexual exploitation.

The children who are trafficked include:

1. children who migrate voluntarily to another country and subsequently fall under the control of traffickers;
2. children taken from one European country to another to be exploited;
3. children from outside Europe who are brought to Europe to be exploited; and
4. children who are moved within their own country to be exploited.

The most media and public attention focuses on children taken to European Union (EU) countries where they have no legal right to stay or to earn money. However, children are also taken from one SEE country to another, e.g., from Republic of Moldova and Romania to Bosnia and Herzegovina, Serbia and Montenegro. Essentially, children are trafficked to any country where traffickers discern a market. So, children may be moved several times, e.g., an adolescent from Romania may be trafficked to Serbia, then to Italy and later to Belgium.

Trafficking in the post-Soviet transition has also included intercountry adoption. While most adoptions are legitimate and legally valid, there have been cases where children were put up for adoption due to direct inducements to the parents or payments to illegitimate intermediaries. The spectre of irregular adoption led to bans on intercountry adoption in Romania in 1991²⁸ and again in 2001,²⁹ Albania in 1992 and Georgia in 1997.

²⁵ Rebecca Surtees, "Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005," Regional Clearing Point, International Organization for Migration, 2005.

²⁶ IOM Chişinău Counter-trafficking Unit. Trafficking cases assisted in 2000-September 2005.

²⁷ Rebecca Surtees, *op. cit.*

²⁸ More than 10,000 intercountry adoptions took place in a period of 18 months; UNICEF, "Intercountry Adoption," 1998.

²⁹ This ban followed protests by the European Parliament Rapporteur on Romania that the way intercountry adoptions occurred resulted in abuses of the UN Convention on the Rights of the Child.

2.4.3 Other forms of exploitation of trafficked children in Europe

Commercial sexual exploitation, irregular intercountry adoption and 'worst forms of child labour' have been noted as end activities in child trafficking. This section describes other common forms of exploitation of trafficked children in Europe (see Figure 4) and, importantly, how they differ from similar forms of employment that do not involve trafficking.

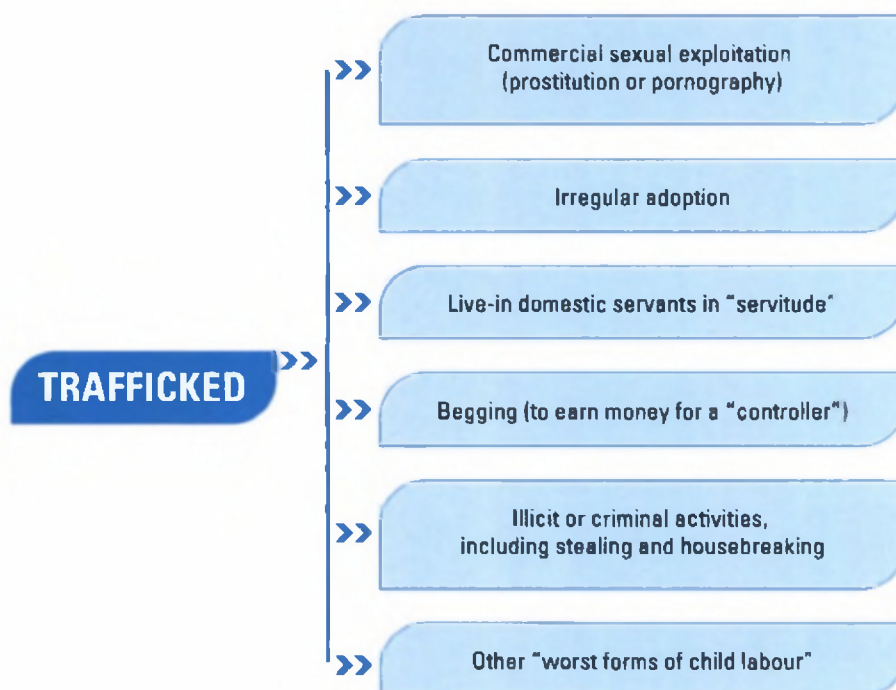


Figure 4: Forms of exploitation associated with child trafficking

2.4.3.1 Child domestic servants and 'au pairs'

Child 'domestics' or 'domestic workers' are defined in a UNICEF report³⁰ as children under the age of 18 who work in other people's households doing domestic chores, caring for children and running errands, among other tasks. Live-in domestics work full time or part time in exchange for room, board and sometimes remuneration. The term 'child domestics' does not refer to children who carry out domestic tasks in their own family home.

Employing an adolescent as a domestic servant is legitimate if the adolescent is more than the minimum age for employment and subject to regular conditions of employment, whether the adolescent lives in the employer's residence or elsewhere. However, some forms of live-in domestic work are associated with trafficking. In several Western European countries there have been reports both of younger children (who by law should be attending school full time) working as live-in domestics and of older adolescents being kept in conditions of virtual captivity while working as live-in domestics, i.e., victims of servitude and forced labour. Children recruited into either of these categories are victims of trafficking. Most reports of this sort have concerned children who come from sub-Saharan Africa.

Some EU countries allow 17-year-olds and young adults from other countries to come and work as 'au pairs' for a year or so; the idea is to learn the country's language and culture while carrying out domestic chores or childcare in exchange for a room and meals. Regulations governing 'au pair' work usually specify the maximum number of hours that an 'au pair' may be asked to work each

³⁰ UNICEF. "Child Domestic Work," Innocenti Digest No. 5, May 1999.

day. However, it is not unusual for employers to demand more. In cases where an adolescent 'au pair' is deliberately recruited into an abusive situation and/or is not allowed to leave the home, this can constitute trafficking.

Box 5

A trafficked domestic worker in London

'Lucy', a Nigerian girl, was 13 years old when she was brought to the UK by a Nigerian woman who passed her on to a Nigerian family. She was made to work hard day and night, looking after the children. She was never allowed out for any free time and was beaten and physically abused. A member of the public reported the situation to an NGO. Only after many meetings with a worker from this organization did Lucy report her abuse and decide to leave.

Source: UNICEF (UK), "Stop the Traffic"!, 2003.

2.4.3.2 Begging

By 2002 NGOs estimated that more than 2,000 children from Albania had been trafficked to Greece over the previous five years to earn money by begging.³¹ In both Greece and other countries children can be seen begging in public places. Initially these children washed car windscreens and asked for money at traffic lights in Thessalonica and other Greek cities and were called 'traffic light kids'. More recently they have been found playing music or selling cheap items to diners in restaurants. A few sit with begging bowls, e.g., outside churches.

Box 6

Child beggars—Albanian children in Greece

- Mario was kidnapped in Tirana when he was nine. He became a 'robot'* in Athens, forced to beg and commit small robberies 14 hours a day. Police members arrested him three times and sent him in a social institution, where he's been taken twice by his bosses. The third time, no one came to take him. Mario decided to stay. He is now 14 and doesn't want to go back to Albania anymore, afraid to come across his boss. He has regular contact with his mother over the phone.
- Alketa, 12 years old, is forced to beg and is sexually exploited in Thessalonica. She has been expelled by the Greek police. She stayed 23 days in Albania in a social and school reintegration program. Under pressure from the trafficker (who exploits her mother too), she went back to Greece. An NGO from Thessaionica found her back a few days later. Her hair colour had changed. She disappeared for three months but turned up again in Elbasan, her home town in Albania.

*Trafficked child beggars refer to each other as 'robots'.

Source: Terre des hommes, "The Trafficking of Albanian Children in Greece," 2003.

Children have also been trafficked from elsewhere in South Eastern Europe to other European Union countries to beg, as well as to other countries in Central and Eastern Europe. They are also trafficked to beg in their own countries. There have been reports of entire families being trafficked to beg, e.g., from Ukraine to Poland in 2004.

Children beg for money in a variety of ways and a variety of circumstances. Some sit with begging bowls, while others offer services such as washing windscreens or playing music. Some are desti-

³¹ B. Limanowska, "Trafficking in Human Beings in Southeastern Europe," 2002. "Current situation and responses to trafficking in human beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia, Republic of Moldova and Romania," UNICEF, UNOHCHR and OSCE/ODIHR, June 2002.

tute and seeking money to survive, while others are seeking pocket money. Entire families sometimes move from place to place because the parents consider begging a legitimate way for the family to earn money. In cases where child beggars hand their earnings over to their own parents, the term 'trafficking' is not appropriate. However, if parents hand their child over to someone else, even a close relative like an uncle or aunt, to beg then the case may amount to trafficking³².

2.4.3.3 Removal of body organs

Very little evidence is available to confirm that children in Europe have been victims of trafficking for the removal of organs, blood or other body tissues for commercial transplantation and other medical uses. In 2003 a member of the Council of Europe Parliamentary Assembly investigating trafficking in organs visited the Republic of Moldova. She reported meeting a number of young men aged 18 to 28 who had been driven by poverty to sell a kidney, but did not mention cases of anyone under 18.³³

2.5 How children are trafficked and by whom

2.5.1 How children are recruited

Children are recruited in different circumstances. Traffickers recruit children while they are still living in their parental home; after they have left home; and sometimes after the children have already left their own country.

In the case of younger (pre-pubescent) children, traffickers generally contact their parents and obtain their agreement to taking their child. They may exploit the parents' extreme poverty and offer an advance on the child's subsequent earnings or apply other forms of pressure to obtain control of the child. They may suggest the child will have a rosy future if she or he accompanies them, in effect deceiving the parents.

A relatively small number of children, both young ones and older adolescents, are reported to be abducted.

Older adolescents regularly report that they were trafficked after being taken in by false promises – once again, they were victims of deception. Girls report that they were trafficked after being deceived by an apparent boyfriend who offered to take her abroad or to get married. False promises are also made on the basis of bogus job offers. These are used in particular to ensnare girls into commercial sexual exploitation once they are away from home or in a foreign country. Testimonies of adolescents who have been trafficked regularly mention a boyfriend, close relative, neighbour or friend who made what appeared to be a kind offer to accompany the child abroad but who subsequently trafficked the child.

2.5.2 How traffickers maintain control over children

Trafficked children are subjected to a wide variety of methods to control them and to make them obey orders. These vary from physical torture which may leave visible scarring to much more subtle forms of control that leave no physical marks and can, therefore, be difficult to detect. Children in all forms of exploitation are conditioned to believe that they have no alternative and are thereby deprived of motivation to escape.

Traffickers take advantage of the dependency of younger pre-pubescent children – for food, shelter and even emotional needs – to persuade the children to do as they are told. Traffickers exploit the fact that children have a less-developed capacity than adults to assess risk, to articulate and voice their worries (about being exposed to danger), to distinguish right from wrong (when being required to commit a crime) and to look after themselves (including taking action to defend themselves from

³² For more details see. Source: UNICEF, "Trafficking in Children in the UN Administered Province of Kosovo. A study on protection and assistance provided to children victims of trafficking," 2004.

³³ Ruth-Gaby Vermot-Mangold, Rapporteur, Trafficking in organs in Europe, Council of Europe Parliamentary Assembly Document 9822. 3 June 2003. Accessed at <http://assembly.coe.int>

harm). The forms of control and dependency involved in trafficking have been compared to those involved in domestic violence.³⁴

Some of the most obvious forms of coercion are:

- rape and sexual abuse;
- beatings or slaps;
- threats of physical punishment (including showing photographs of another child with injuries apparently inflicted as punishment);
- threats that the child's family will be informed about the child's activities (in the case of those providing commercial sex);
- threats to relatives;
- withholding food and starvation;
- forced use of alcohol and drugs;
- injections of sedatives;
- verbal abuse;
- prohibition on leaving a flat or house (captivity or restrictions on the child's freedom of movement);
- confiscation of passport or identity document (for 'safekeeping'), sometimes with later threats that, if found in a foreign country without a passport, the child will be imprisoned.

Box 7

Forcing children to beg

- Albanian girl trafficked to Greece: "Our bosses ill treat us when we play or don't want to work."
- Former police officer: "Numerous children described to us the ill treatment they had been subjected to, such as being burned with cigarettes on their bodies, slapped, insulted, made to swallow shampoo for having looked ill, and obliged to sleep outside ... "
- Albanian children were taught that the police would beat them, that social workers were also a source of danger and that the only person the child could trust was his or her 'boss'.

Source: Terre des hommes, "The Trafficking of Albanian Children in Greece," 2003.

Even after children are no longer under the direct control of their trafficker or exploiter, they may continue to behave as if they still had to obey orders. Consequently, they may remain silent about their experience through fear. Directly asking such children if they are still obeying someone else's instructions or are still under a trafficker's influence is not likely to produce a meaningful answer.

2.5.3 Trafficked in their own country

Whenever trafficking in children or in adults is reported by the media, the focus is usually on cross-border trafficking, involving people trafficked to one or more other countries. However, trafficking also takes place *within* countries, without the children concerned ever going abroad. It is particularly common within large countries in which either children or adults can be moved out of reach and contact of families and friends, rendering them as vulnerable as they would be abroad. Traffickers still rely on coercion though the techniques may be somewhat different than those used when victims are taken abroad. For example, traffickers may rely on debt bondage and various forms of intimidation rather than on confiscation of identity documents and language barriers for the traffic-

³⁴ "If the dependency switch has been turned on, the will is overborne by coercive forces," Lou DeBaca, former Involuntary Servitude and Slavery Coordinator, US Justice Department, quoted in the Des Moines Register, 1 August 2003.

ked person. Since trafficking in persons is so routinely connected with the cross-border movement of the children and adults concerned, there is a serious risk that victims of internal trafficking are overlooked.

Box 8

Internal trafficking in the UN Administered Province of Kosovo

A study in the UN Administered Province of Kosovo noted a tendency for victims of internal trafficking to be exploited in different locations than foreign victims. Kosovar victims are more often exploited on an *ad hoc* basis in apartments and smaller coffee bars or brought directly to the home of buyers. Some NGOs mentioned that they had knowledge of girls being exploited in abandoned houses just after the 1999 conflict. Kosovar victims of internal trafficking, especially children, seldom seem to receive any financial payment, but instead are given occasional presents of clothes or make-up.

Source: UNICEF (the UN Administered Province of Kosovo), "Trafficking in Children in the UN Administered Province of Kosovo: A study on protection and assistance provided to children victims of trafficking," 2004.

2.5.4 Who traffics children?

The UN Trafficking Protocol seems, by its very link with the UN Convention against Transnational Organized Crime, to suggest that trafficking (of adults and of children) is usually carried out by 'organized crime' and members of organized criminal groups. While it is common for several different criminals to be involved in trafficking cases, particularly in cases of trafficking involving several countries, it by no means always involves mafia-type crime organizations. For example, teenage girls are often reported to have been trafficked by relatives, including female relatives, as well as young men posing as boyfriends or fiancés. Similarly younger children are reported to have been trafficked into begging by relatives.

The close social links between traffickers and the families of the children involved often make it difficult to secure the cooperation of children and their families in providing information that would help prosecute a trafficker and secure a conviction.

Traffickers are assisted by other intermediaries, only some of whom are aware that they are contributing to a criminal endeavour. These include:

- Corrupt police who are aware of recruitment by traffickers and do nothing to stop it, either because they have been bribed or for other reasons.
- People who transport children from one place to another, both in private cars and in public transport.
- Forgers who provide traffickers with forged passports or other identity documents.
- Corrupt border officials who accept bribes to grant visas or to allow children to cross borders without the required identity documents or without their parents' explicit permission (which is required in some countries before a child can go abroad without being accompanied by a parent).
- Inefficient border officials who do not check adequately whether the adults accompanying adolescents are actually their parents or are entitled to be taking them abroad.

2.6 Who has a responsibility to address trafficking in children and why?

By ratifying or acceding to the Convention on the Rights of the Child, States Parties accept an obligation to take action to prevent child trafficking. The main obligation concerning measures to prevent trafficking is in article 35, which states:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. (CRC, article 35)

The CRC also commits States Parties to taking action to enable children to recover from abuse inflicted either while being trafficked or in other circumstances:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. (CRC, article 39)

The obligations accepted by States Parties require governments and statutory agencies to take appropriate action: legislative bodies; ministries; law enforcement agencies, including police, labour inspectorates, prosecutors and the courts; immigration services; and social services and child protection agencies. The States Parties are also obliged to ensure that non-state parties also uphold and respect child's rights.

The obligation to make the best interests of the child a primary consideration in all actions concerning children goes beyond statutory agencies and also applies to private welfare bodies as well as public ones, e.g., residential facilities run by an NGO.³⁵

In addition to the measures which States are required to take by CRC article 35 to prevent trafficking in children, governments commit themselves under the terms of article 19 to taking a set of measures (legislative, administrative, social and educational) to protect children from a much wider range of abuse: "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" while they are in the care of their parents, legal guardian or anyone else. According to the same article:

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. (CRC, article 19)

Effective prevention means ensuring that the forms of protection to which children are entitled on the basis of rights guaranteed by the CRC are available in practice. This requires government and government agencies (including social services, child protection agencies and the police) to take action to prevent child trafficking and also to ensure that children are protected against all forms of discrimination, violence, abuse, exploitation and neglect. The aim should be to create a protective environment around children, in particular by strengthening protection at three different levels:

1. enhancing the capacity of those responsible for their primary care (parents, guardians or institutions) to protect them, notably how to recognize abuse and exploitation and what to do when they occur;
2. ensuring that there are appropriate laws to protect children and that suitable systems are in place to ensure these are implemented to protect and realize child rights;
3. protecting children from adverse attitudes, traditions, customs, behaviours and practices.

³⁵ See chapter 1, section 1.3, for the text of CRC article 3.1 referring to the child's 'best interests'.

2.7 What type of response is needed and at which part of the trafficking cycle?

The four distinct phases of trafficking were described in Chapter 2: recruitment and transportation; exploitation; withdrawal; and recovery/reintegration. There are opportunities for different kinds of responses at each phase and even before trafficking takes place, as presented in Figure 5³⁶.

The recovery phase often has several stages and involves different places. For example:

1. initially in or near the place where she or he was being exploited and abused;
2. in a residential facility or shelter while still in the country to which the child was trafficked, either recovering or waiting to give information to law enforcement officials or a court;
3. following return to her or his country of origin, in a residential facility while child protection officials examine the feasibility of reuniting the child with her or his family; and
4. after returning home or starting to live independently.

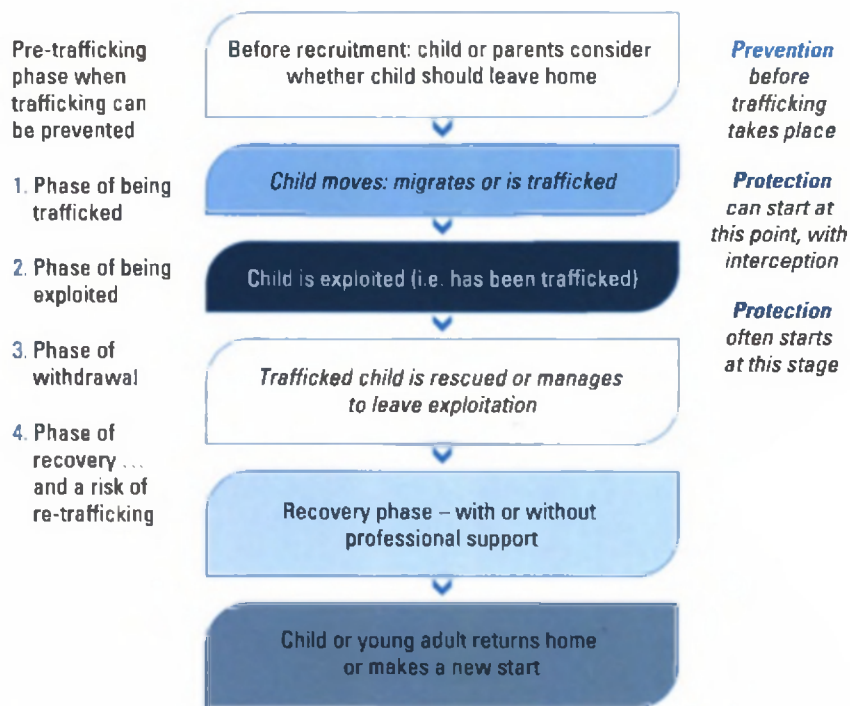


Figure 5: Phases of trafficking and opportunities to respond

2.7.1 Why stopping trafficking is a challenge

Often it is only clear that a child has been trafficked once the phase of exploitation starts. The challenge is to identify the signs that a child is being moved to be exploited before exploitation actually starts – and to intervene. This has to be done without violating other aspects of children's rights: it would be disproportionate and unjustified, for example, to prohibit children from leaving their home communities just because some end up being trafficked. Equally challenging is more proactive prevention: profiling children who are likely to be trafficked and using special protection measures to prevent that from happening.

³⁶ Please note that the phases of transport and exploitation can be overlapping (exploitation in transit countries, during the transport, etc.) and/or repeated (movement – exploitation – again movement – exploitation...). As mentioned earlier, recovery is only one solution, the ideal one. For example, victims can exit the trafficking process but still be exploited.

In view of the number of young people below the age of 18 who are on the move, both within their own countries and across borders, either to seek work or for purely social reasons, this is an immensely difficult task. It would not be acceptable, for example, to put a ban on children leaving home or leaving their own countries in order to stop trafficking. Indeed, when such blunt measures have been tried even worse abuses often occur because children simply resort to secret and more risky channels.

Children who have been trafficked are regularly misidentified by the authorities. Once they are misidentified, incorrect and inappropriate decisions are taken about what should happen to them next and they are not given the special protection measures to which they are entitled.

Examples of misidentification include:

1. A girl, age 17, trafficked for commercial sexual exploitation is arrested and charged with practising prostitution and being in the country illegally. She is deported, immediately recovered by the gang that trafficked her and sent to a different country and back into commercial sex.
2. A girl, age 16, involved in commercial sexual exploitation in an EU country shows the police a forged passport which indicates that she is 18 years old and a national of another EU country. The police accept the documentation and the girl is consequently left to fend for herself rather than receiving protection.
3. A boy, age 15, is trafficked to steal from houses. He is arrested, convicted as a criminal and sent to a juvenile detention centre. Upon release he returns to the gang for whom he was working.
4. A 13-year-old boy trafficked for begging is arrested as an illegal immigrant and summarily deported. He is left at a border crossing, spotted by traffickers and taken back to beg again.
5. A boy, 11 years old and trafficked to beg and pick pockets, is arrested for stealing and being below the age of criminal responsibility is sent to a social services residential facility for children. He is able to keep his mobile telephone and is contacted by his 'controller' and instructed to walk out of the centre. A few days later he does and returns to the criminal gang that trafficked him.

Misidentification also occurs the other way around. Children who are not being trafficked may be stopped because an immigration official or police officer suspects that they are being trafficked and the child feels she or he is an object of discrimination.

The major challenge to identifying children as victims of trafficking is that children, like adults, are on the move for so many different reasons. At the same time unaccompanied children have rights to special forms of protection. Children who travel to a country other than their own and request asylum are entitled to forms of protection specified by the United Nations High Commissioner for Refugees. Children who are being trafficked so that they can be subjected to exploitation and trafficked children who are already being subjected to exploitation are entitled to some very specific forms of protection, as outlined in this Guide.

Chapter 3 Preventing Child Trafficking

This Reference Guide focuses primarily on the action necessary to protect and assist children who have already been trafficked. Alongside this action to enable children whose rights have been violated to recover, States are also under an obligation to take steps to prevent child trafficking from occurring in the first place. However, while there is a high degree of consensus among specialists involved in protecting and assisting trafficked children about what constitutes 'good practice', the same is not yet true about methods to prevent child trafficking.

Efforts to prevent child trafficking, both in Europe and other regions, have concentrated on two main strategies:

- deterring traffickers and their associates by prosecuting and punishing them and changing national laws to enable such actions, and
- distributing information to children and their parents about the abuse inflicted on children who are trafficked and the risk that children who migrate or are sent away from home to work or earn money for others will be trafficked.

It is not clear, however, that either of these strategies has been effective in preventing children from being trafficked. Alternatives are available but they tend to be overlooked.

This chapter examines how to identify which prevention tactics are likely to be most effective in particular circumstances.

3.1 Opportunities to prevent child trafficking

At its simplest 'prevention' means taking action to stop something that is otherwise likely to happen. 'Action to prevent child trafficking' consequently refers to a wide range of efforts to address the causes of trafficking, both to influence the actions of individuals and to tackle underlying and root causes.

Chapter 2 described the four phases of child trafficking: recruitment and transportation; exploitation; withdrawal; and recovery/reintegration. Each phase offers different opportunities to intervene, either to influence individuals directly involved in trafficking or exploiting children or to protect the children themselves. These opportunities are summarized in Figure 6 which shows that prevention strategies can be deployed to influence individuals involved on both the 'supply' and 'demand' sides of trafficking.

This model for understanding child trafficking reveals that different types of prevention are appropriate at different phases of the trafficking cycle. It identifies a series of individuals and some of their reasons for involvement in the trafficking process, which can potentially be influenced to change the course of action.

Once the process of trafficking starts there are various opportunities to intervene and protect a child who is being transported from one place to another (by intercepting the child) or is already being exploited (by withdrawing the child from the control of whoever is making money out of her or him). Interception is viewed in some countries as an effective form of prevention in that a child may be intercepted before the phase of exploitation (and serious abuse) starts. However, distinguishing between children who are being trafficked and other children who are on the move for legitimate reasons is notoriously difficult. Unless a significant proportion of the children who are intercepted are genuinely being trafficked, this practice is likely to substantially offend the rights of at least some and perhaps many children. In this case, the strategy is difficult to justify.

Overall, intervening during the trafficking process however, may be a case of 'too little, too late' unless the factors that determine the behaviour of crucial actors are also addressed. This means that different causes of child trafficking need to be investigated and their interdependence analysed.

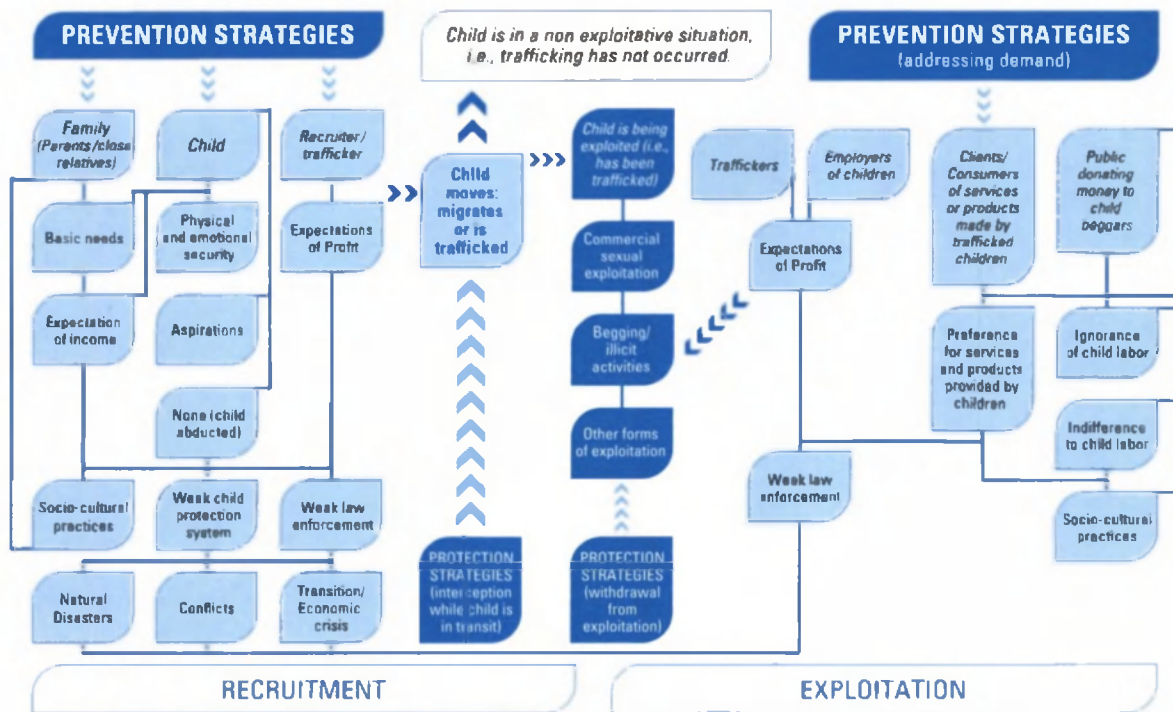


Figure 6. Trafficking process: individuals involved and causes of trafficking

3.2 The role of measures to protect children in preventing trafficking

Preventing child trafficking also involves taking measures to strengthen the forms of protection available to children. This includes protection against other types of abuse which, evidence shows, trafficked children are more likely to have experienced than other children *before* ever being trafficked. Indeed, such abuse is a contributing factor or even a direct cause of the child being trafficked. Analysis finds that the factors that heighten vulnerability to trafficking are the same as those that increase vulnerability to other forms of violence, abuse and exploitation. It is, therefore, important to improve the effectiveness of child protection services and related institutions *in general* as well as those specifically and directly involved in combating trafficking. This requires government and government agencies to ensure that children are protected against *all* forms of discrimination, violence, abuse, exploitation and neglect.

The recognition of a child’s right to special protection measures was accepted by Member States of the Council of Europe in the new European Convention on Action against Trafficking in Human Beings (2005).³⁷ Article 5 in the chapter on “prevention, cooperation and other measures” obliges all countries which ratify the Convention to promote a human rights-based and child-sensitive approach in the development, implementation and assessment of all policies and programmes designed to prevent trafficking in human beings.

The same article states: “Each Party will take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.” The term ‘protective environment’ is used by UNICEF and other organizations to refer to the different elements around the child that act to fulfil the rights of the child to protection from discrimination, violence, exploitation, abuse and neglect. These elements act individually and collectively to protect children. The protective environment is comprised of individuals in the family, community and society who surround the child as well as of policies, legislative and regulatory frameworks, services, structures, institutions, and decision-making mechanisms that make up the system to protect children.

³⁷ The Council of Europe Convention on Action against Trafficking in Human Beings is found at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>

3.3 The steps to take to design prevention initiatives

In countries where children are already being trafficked (into or out of an area), it is important to put the children concerned at centre stage and to make use of the information and advice they can give. This involves a number of steps, as follows:

1. Collect information from children (and young people who have been trafficked as children) to understand the circumstances in which they were trafficked and how/why traffickers were able to gain and keep control of them.
2. Analyze the information both to understand the traffickers' methods and to identify opportunities to increase the ability of children to avoid falling under the control of traffickers.
3. Analyze the various causes of child trafficking and identify opportunities to intervene in order to have a preventive effect. Different analytical models may be used for this purpose, including the dialectical model of causal hierarchy, the economic model of "supply and demand" dynamic, the "push and pull" factors model and the individual behavioural model.
4. Find out whether children who have been trafficked have any common characteristics which made them more vulnerable to traffickers than other children.
5. Identify the remedial actions necessary to reduce vulnerability.
6. Consult children who have already been trafficked about the impact on them of any previous initiatives to prevent trafficking. Did the initiative have any effect on them? Why did it fail to prevent them from being trafficked? What might have been more effective?

Once a preventive action is being implemented, it is always necessary to assess its impact. This should include talking to the children targeted as well as others affected. Since many prevention efforts rely predominantly on information campaigns to try to influence children and adults, simply confirming that they have acquired new knowledge is not enough. It is necessary to establish whether they are likely to behave or have behaved in a different way as a result of the new knowledge.

3.4 Examples of strategies to prevent child trafficking

One possible way of analyzing the strategies to prevent child trafficking is to divide them into strategies pursued in areas where children are recruited, i.e., the supply side, and those used in the areas where trafficked children are exploited, i.e., the demand side.

3.4.1 Examples of strategies to prevent child trafficking on the 'supply side'

Prevention strategies on the supply side of trafficking are closely related to the circumstances in which children or their parents decide to leave home or go abroad. They should stem from a good understanding of the causes that lead to trafficking and their interaction. These causes occur at different levels and include, for example, children's perceptions of their circumstances but also the failure of individuals and systems to protect children when it is their duty to do so. The latter include parents, family members, friends as well as systems of social protection, education, health and law enforcement.

3.4.1.1 Efforts to influence children directly

Different ways of influencing children have been tried, each with different objectives.

- Giving children information about trafficking (stressing the risks of abuse once a child leaves home or leaves her or his country to earn a living elsewhere and explaining what behaviour might precipitate children into the control of traffickers);
- educating children and developing skills that will help them avoid being trafficked (e.g., life skills);
- urging children not to drop out of school before completing their compulsory schooling, not to leave home prematurely, or not to migrate abroad;

- giving adolescents advice on how to migrate safely, e.g., sensible precautions to take when considering work abroad or actually working abroad; working abroad and how to check whether offers of jobs abroad are genuine (and safe to accept).
- promoting employment for school leavers near home by providing vocational training and better job opportunities; and
- providing protection against domestic violence and discrimination to adolescents who are likely to leave home if no action is taken to protect them; and
- creating safe alternatives, such as semi-independent living projects, for adolescents who cannot be adequately protected while remaining in their own families.

The most extensively used of these strategies is the first one. This involves disseminating information in various media: books, leaflets, posters, school classes, radio programmes and films. However, the key message contained in information about trafficking varies. In some cases children are made aware of the risks associated with leaving home and migrating to earn a living elsewhere (whether in their own country or abroad) and given some idea of what precautions they ought to take. In other cases they are given information simply to deter them from leaving home or migrating without being offered any alternatives. Evidently the intentions behind these two messages are different, but the information they deliver (stressing the abuse to which trafficking victims are subjected) may look substantially the same.³⁸

There is a risk that any information of this sort can produce inaccurate stereotypes (about what sort of people are most likely to be trafficked, what sort of people are traffickers, which countries are associated with trafficking and so on). For example, in the Republic of Moldova a girl who was trafficked into commercial sexual exploitation in the Russian Federation reported that before she left Moldova she had learned that adolescent girls were in danger of being trafficked in Turkey, but not in Russia. Consequently it did not cross her mind that she should take precautions in Russia to avoid being held captive in a brothel.³⁹

Box 9

Influencing young people with a film

A high-profile information campaign accompanied the 2003 release of the film *Lilya-4-ever* in Central and Eastern Europe. The campaign message warned adolescents and young adults of the risks involved in accepting money in return for acts of sex. The film tells the story of a teenage girl in an anonymous Russian city whose single mother emigrates, leaving her behind. Lilya is trafficked to Sweden by a young man pretending to be her boyfriend. She is kept locked up in an apartment there and obliged to have sex with men who pay her captors. The film has a tragic ending. In the Republic of Moldova, a cinema chain agreed to show the film for free in its cinemas during the 2003-2004 winter holidays. More than 30,000 Moldovans are believed to have seen the film. A number of efforts ran in parallel with the film: organizations handed out leaflets in cinema lobbies and cinemagoers were asked what they had learned from the film. These additional actions helped prevent creation of stereotypes about profile of trafficked victims, ways of recruitment and main destinations.

Secondly, if lack of information did not play a big role for children who ended up being trafficked, then these campaigns are failing to address the real causes of trafficking. Other causes such as exposure to domestic violence, lack of employment opportunities or extreme poverty may be more relevant – and impossible to address through information campaigns alone.

³⁸ For a more detailed assessment of the messages in information campaigns that are designed to prevent trafficking (in adults as well as children), see R. Rosenberg, S. Lazaroiu and E. Tyuryukanova, "Best Practices for Programming to Prevent Trafficking in Human Beings in Europe and Eurasia," Development Alternatives Inc for USAID, 2004.

³⁹ M. Dottridge, "Action to Prevent Child Trafficking in South Eastern Europe: A Preliminary Assessment," UNICEF and Terre des hommes Foundation (forthcoming).

Box 10

IOFA advice to young people thinking of migrating abroad

In Latvia the International Organization for Adolescents ran an anti-trafficking campaign targeted at adolescents and young adults. Here is its checklist of things to do to protect against false job promises abroad:

1. Verify whether a job agency or opportunity was legitimate;
2. Ask for an employment contract;
3. Have someone review a contract and comment on it;
4. Review and signing a contract for employment;
5. Leave a copy of the contract with relatives or friends;
6. Leave a copy of a passport with relatives or friends;
7. Leave contact information with relatives or friends;
8. Leave employers contact information with relatives/friends;
9. Create a password/code language to let people know, "I'm in trouble";
10. Attend to a career counselling session at a youth centre.

Boak, A. Boldosser and O. Biu, *Smooth Flight: A Guide to Preventing Youth Trafficking*. International Organization of Adolescents [IOFA], 2003, page 95).

3.4.1.2 Identifying children who are at 'high risk' and focusing protection efforts on them

One distinct strategy involves identifying children who are at particularly high risk of being trafficked and focusing protection efforts on them. This strategy is sometimes coupled with efforts to influence the behaviour of the children concerned, while sometimes the emphasis is on changing the behaviour of their parents or other key actors.

This approach is based on initial research that identifies the characteristics of children who have already been trafficked and finds out what distinguishes them from other children. In some cases the distinctive characteristic is their social identity. For example, children from particular ethnic groups or geographical areas are trafficked in disproportionately high numbers. In other cases, the distinctive characteristic concerns their family and household (such as extremely poor and/or one-parent households) or a particular experience from earlier in their childhood (such as domestic abuse or a period spent in a boarding school or a residential institution).

The type of preventive action that is appropriate must be adapted to tackle the characteristics which are considered to put some children at greater risk than others of being trafficked. For example, NGOs in southern Albania trying to prevent children from the Roma and Egyptian minorities from being trafficked to Greece focused their efforts on keeping high-risk children from dropping out of school, while also providing their households with in-kind income supplements.

The analysis of existing data about children who have been trafficked in Europe shows that the nature of the characteristics which they share in common varies. Only in the case of children who share a common ethnic identity (such as those belonging to Roma-related minorities) do they have an objective characteristic which makes it feasible for a child protection agency to identify such children with relative ease. (However, child protection agencies run the risk of being accused of discrimination if they assume that Roma children are at greater risk of being trafficked than non-Roma children without having adequate evidence).

When a particular geographic region, such as the province of Moldova in northeast Romania, is reported to have a disproportionately high number of trafficked children, it is obvious that preventive efforts should be concentrated there. It is not clear, however, which particular children require spe-

cial protection measures or what the measures should be. Further investigation is required to get a better picture. When the characteristic which trafficked children share in common concerns their experience at home – e.g., a higher than average incidence of domestic abuse – it would be possible to focus on them if the domestic abuse was noticed and reported, but not otherwise. This is an extra reason for trying to improve rates of detection and protection measures in such cases.

3.4.1.3 Efforts to influence parents and other adults

Since parents and other adults sometimes play a key role in sending their children away or allowing school age adolescents to migrate, they too can be a key target group to influence. This may be done through:

- disseminating information about trafficking to parents and other adults in communities where children are being trafficked (describing the harm suffered by children who are trafficked);
- educating parents on the benefits of school education and the harm caused when children drop out of school to start work prematurely;
- reducing parents' dependency on their children's earnings (and their vulnerability to pressure from traffickers to accept a loan or advance on their child's future earnings) by reducing household income poverty, e.g., by giving households an income supplement or other material assistance or enabling parents or other members of the household to generate an income;
- reducing domestic violence (both violence against children and violence against other members of the household, particularly a child's mother), which encourages children to leave home.

Evidently the first option here can influence a variety of other people in a community who might be able to play a role in identifying children who are at risk of being trafficked. Informing adult members of a community that children within the community are being trafficked may be a first step towards establishing a community-based protection network in which professionals who are in regular contact with children share information about children assessed as being at risk (of being trafficked) and agree on a common strategy for protecting each child who is at risk.

3.4.1.4 Efforts to address weaknesses in child protection systems

A further strategy to prevent trafficking is to identify and address the weaknesses and shortcomings in child protection systems.⁴⁰ On numerous occasions both national child protection agencies and systems designed to protect children from abuse perform ineffectively or fail to function altogether. For example, weaknesses in the system may be linked to lack of adequate procedures and capacities in schools, health and social service institutions for the early identification of vulnerability to trafficking due to violence, abuse, lack of parental care, lack of referral mechanisms to get children to appropriate support services and lack of such services altogether. Another example is the ineffective implementation of laws against child trafficking or against the exploitation of children. Law enforcement officials and social workers may also fail to identify children who have been trafficked and then fail to intervene in a way that results in the child leaving the control of the trafficker or exploiter.

Identifying these short-comings and remedying them is a strategy to prevent trafficking, as well as other sorts of child abuse. Thus, strengthening the child protection system is a priority for both preventing child trafficking and protecting the rights of child victims of trafficking. Ensuring protection systems are effective means having adequate laws and procedures in place, having structures, organizations and professionals with a relevant mandate and resources to implement these measures, and making sure there is adequate coordination (and exchange of information) among private and public agencies and organizations from different sectors.

⁴⁰ The child protection system does not exist as distinct, easily identifiable 'entity', however, it can be envisioned and mapped out by identifying all the obligations for child protection within the social sectors, justice and law enforcement systems. The 'map' that emerges is actually a network of provisions, measures, structures and services that reveal the intersectoral and cross-sectoral nature of the child protection system.

3.4.2 Examples of strategies to prevent child trafficking on the 'demand side'

Many recent international agreements urge that the 'demand' for the services of trafficking victims should be tackled more systematically.⁴¹ It is often assumed that 'demand' refers primarily, or solely, to demand for commercial sex from men and boys. However, the main 'demand' for adults and children who are trafficked comes from those who can potentially make a profit out of them, either in the course of recruiting and moving them or once they are earning money and being paid little or none of the proceeds.

This potential, together with the shortcomings of migration and protection laws and failures of law enforcement officials, prompts traffickers, employers (pimps, the owners of brothels or sweat shops and even householders who employ child domestic workers) and various third parties (recruiters, agents, transporters, corrupted law and migration officials and others) to make a deliberate decision to profit from trafficking in children.

Some actors participate knowingly in human trafficking, others may be ignorant of the way they help traffickers. For example, bus drivers who accept fares and transport children knowing that this is unlawful or members of the public who, thinking they are helping children, donate money to child beggars who have been trafficked for just that purpose.

A common narrow understanding of the term demand, means that activities tackling causes which relate to the demand commonly place an accent on the behaviour of clients in the sex industry although this type of demand has very distinct characteristics.⁴² As such they overlook the wide range of other aspects of demand for services including for forced labour and begging. Understanding the different reasons that cause people to donate money which goes to traffickers or to use services provided by trafficked children (deliberately or not), as well as to procure children or profit by participating in the trafficking process, is important in order to design sensible strategies to reduce demand for trafficked children.

Strategies to address 'demand' for trafficked children include the following:

- prosecuting traffickers and their associates in order to deter others from engaging in trafficking;
- making the purchase of sexual services from certain categories of individuals a crime (e.g., from children below the age of consent for sexual relations; or from any child under age 18; or from anyone, adult or child, whom the person paying for sexual services knows to have been trafficked or thinks might have been; or from anyone who has been trafficked (whether or not the purchaser was aware of their status);
- prohibiting the 'exploitation of the prostitution of others' (whether the 'others' are children or adults);
- influencing men and boys who pay for sex in non-punitive ways (e.g., through public information programmes);
- influencing members of the public who donate money to child beggars who have been trafficked;
- influencing members of minority communities in which adolescents are commonly employed as domestic workers (particularly school-age children who are working full-time and failing to attend school).

⁴¹ The Council of Europe's Convention on Action against Trafficking in Human Beings (2005) requires State Parties "To discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures..." (article 6) and to consider adopting "such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation" when the person using these services is aware that the person is a victim of trafficking (article 19).

⁴² See "'Demand for sexual services deriving from exploitation' in "'Report of the Special Rapporteur on the sale of children, child prostitution and child pornography,'" by Juan Miguel Petit', Report to the 62nd session of the UN Commission on Human Rights, UN document E/CN.4/2006/68, 12 January 2006.

Box 11

Reducing donations to trafficked beggars

When Albanian children first appeared on the streets of Thessalonica and other Greek cities in the late 1990s, washing car windscreens to earn money, a Greek NGO, ARSIS (Association for the Social Support of Youth), responded by setting up a drop-in centre for the street children and began collecting information about their predicament. Once ARSIS realized that the children were victims of trafficking, the NGO set about influencing policy makers and city officials. It was some years before ARSIS concluded that it would be in the children's best interests to cut the supply of money on which the traffickers depended - the money which the Greek public donated to children who washed their windscreens (and later begged outside churches, played music and sold flowers and other articles to people in restaurants). This meant reaching the public, initially in Thessalonica and later in other cities, to tell them that the children were being exploited and to suggest that the children would be better off without their charitable donations.

ARSIS did not want to reduce the public's inclination to be charitable, so it made sure that the campaign messages, "Don't give money to children in the streets" and "You don't help children in the streets by giving them money", were accompanied by an explanation that the children were being abused by others, not simply collecting money to survive. ARSIS enlisted the support of journalists in getting the message across, particularly once members of the public expressed concern that the children might be punished by their controllers if they failed to earn as much as they used to. The number of Albanian children begging in Thessalonica and other Greek cities has fallen considerably. This is for several reasons; the campaign to reduce donations is just one of them.

From: ARSIS newsletter, December 2004, and Terre des hommes, *The Trafficking of Albanian Children in Greece*, 2003.

3.4.2.1 Improving systems to protect children in areas through which children are trafficked and where they are exploited

Just as there are some elements of the child protection system that act to protect children in the areas where they are recruited to be trafficked, so other elements of child protection or other systems, e.g., law enforcement, border control, are intended to protect children who are in transit or once they are being exploited. The latter are also meant to address the demand for trafficking. Once again, these systems or their elements often fail to perform adequately, thus strengthening them is another route to prevention. Five strategies are particularly relevant:

- setting procedures and mechanisms to enable immigration and law enforcement officials to identify trafficked children while they are in transit, notably at border crossings;
- imposing special requirements for children crossing borders including standardization of identity documents such as passports, requirements that children crossing a border without either parent should in certain circumstances be required to show that one or both parents has agreed to their leaving their own country and visiting another country;
- regulating employment in the informal sector including employment sectors that specially involve young people and those that attract both adolescent and adult migrants. For example, regulation of au pair employment can fix a minimum age for adolescents from abroad to come and work as part-time nannies and domestic helpers. Authorities can regulate the activities of employment agencies which supply manual labour to farms and other businesses, with reports in some EU countries of forced labour or unsatisfactory working conditions;
- setting systems to identify children earning money in the informal sector in exploitative circumstances, including children who have been trafficked and others involved in 'worst forms of child labour'; and
- ensuring adequate cooperation between agencies involved in child protection in different countries.

Of course, it is important that systems to identify trafficked children in transit or provide protection to children who are on the move (such as unaccompanied or separated children) should not prevent children from exercising their rights to freedom of movement or to seek a better future for themselves. Several countries have imposed blanket bans on certain categories of young people leaving the country, ostensibly to prevent them being trafficked. These strategies have been widely regarded as inappropriate. On one side, they push traffickers to find other ways of trafficking that are more difficult to uncover. On the other, they lead to abuse of a child's right to free movement.

3.5 Key lessons about efforts to prevent children from being trafficked

A recent study of efforts to prevent children from being trafficked in four SEE countries noted that extra efforts were needed both by the governments of the countries concerned and the authorities of the numerous countries to which their children were being trafficked (countries in the EU, along with the Russian Federation and Turkey). The study ends with eight recommendations about the steps needed to make prevention more effective.⁴³

1. Improve the collection and analysis of data about children who have already been trafficked, so that prevention actions can take advantage of this data. The type of evidence needed about the reasons why a particular child was trafficked is different to the evidence routinely collected when assessing the needs of an abused (trafficked) child or when investigating what crimes have been committed against the child.
2. Be ahead of traffickers – go where children are. This means that anti-trafficking organizations should try and work in parallel to traffickers in a strategic way, accepting no geographical limit on their area of operation (and therefore getting involved in initiatives in areas of both recruitment and exploitation and, if necessary, in between), working in a network with others (just as traffickers work in networks), securing the trust of children's parents and demonstrating to them that there is a material benefit to cooperating with an anti-trafficking organization, rather than only with traffickers.
3. Ensure better strategic planning for information campaigns. Such campaigns should have a strategy which matches the situation in the country or area where they are being implemented, rather than being an 'off the shelf' campaign designed for use anywhere.
4. Ensure life skills education is part of the mainstream school curriculum.
5. Develop child protection systems and the infrastructure necessary to protect children (both in their countries of origin and in the countries to which children are trafficked).
6. Provide clear information to the general public about what constitutes child abuse in general and child trafficking in particular and how to respond.
7. Target efforts to reduce demand more strategically.
8. Ensure that all efforts to prevent child trafficking respect child rights principles and provisions, and are rooted in good quality data and analysis, programme logic, monitoring and evaluating practices and measuring progress towards the expected results.

⁴³ M. Dottridge, *op. cit.*

Chapter 4 Identification of Children Who Have Been Trafficked

4.1 General principles

Statutory agencies have a responsibility to take proactive measures to identify child victims of trafficking.

Pro-active identification measures

- States shall take all necessary measures to establish effective procedures for the rapid identification of child victims.
- Efforts should be made to coordinate information sharing between agencies and individuals (including law enforcement, health, education, social welfare agencies and NGOs) so that child victims are identified and assisted as early as possible.
- Immigration, border and law enforcement authorities shall put in place procedures to identify child victims at ports of entry and in other locations.
- Social service, health or education authorities should contact the relevant law enforcement authority where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.
- NGOs and civil society organizations should contact relevant law enforcement authorities and/or social service authorities where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.

Presumption of age

- Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.
- Pending verification of the victim's age, the victim will be treated as a child and will be accorded all special protection measures stipulated in these guidelines.

4.2 Implications of the principles

Identifying trafficked children is often a challenge. Government officials responsible for policy, as well as a wide range of law enforcement and child welfare agencies, have a duty to adopt procedures, which will allow them to identify trafficked children as rapidly and efficiently as possible.

Trafficked children may be identified at different points in the trafficking process: when accompanied by traffickers away from their usual place of residence; when leaving their own country; when crossing a border into a foreign country; or while being exploited. Different institutions, both governmental and non-governmental, also have a role to play in identifying children at these different phases of the trafficking process.

4.2.1 Information sharing

Sharing information usually requires standard methods of recording and retrieving information about children who have been trafficked or are believed to be at risk, for example by creating a common data-base to which relevant agencies have access. The confidentiality of this data-base must be ensured, so that the privacy of all those about whom personal information is recorded is guaranteed. Experience shows that it is not sufficient simply to record a name and other personal details about a child, as these may be forged or changed by traffickers. It is consequently important to have a photograph of the child concerned and may be helpful to adopt some other procedures which are described in this chapter.

4.2.2 Presumption of age

Whenever a young person is identified as a possible victim of trafficking and it is unclear whether she or he is still a child or in fact a young adult (i.e. is 17 or below, or 18 or above), the authorities must act on the assumption that the young person concerned is a child and is entitled to the additional protection which that entails.

In the case of older adolescents, part of the challenge in identifying a child as a victim of trafficking is establishing whether they are indeed children who are under 18, or in fact older (and therefore adults). Immigration officials are likely to be familiar with the cases of adults who pretend to be aged less than 18 in order to benefit from the protection available to children. In trafficking cases, the opposite may occur: young people aged under 18 are given identity documents (e.g. a passport) which has been forged or altered to suggest that they are already adult. This enables them to cross borders without immigration officials checking whether they are accompanied by a parent or if they have their parent's permission to be travelling abroad. It also enables them to engage in certain forms of employment or income-generating activities which are not open to children (for example, activities which are considered likely to harm the health, safety or morals of children).

In addition to distinguishing between those aged 18 and older and those under 18, it is sometimes desirable to identify which children are particularly young, for example children who are still of compulsory school age or too young to be employed, as this may help identify them as victims of trafficking. For more details, see section (4.5.1).

4.3 Who has responsibility to take action?

4.3.1 Ensuring that policies and procedures are appropriate

Government officials who are responsible for policy as well as a wide range of law enforcement and child welfare agencies, among others, have a duty to adopt procedures that allow them to identify trafficked children as quickly as possible. Government agencies that are responsible for immigration and for controlling border points have a special responsibility to have appropriate procedures and systems in place. They need to be able to identify children when they enter a country and assess whether children who pass through border points may have been trafficked.

4.3.2 Immigration service

If a child who is accompanied by an adult arrives at a border point and is not able to demonstrate through valid identity and travel documents that the accompanying adult is an immediate relative or has a *bona fide* reason for accompanying the child (such as a school trip or a sporting visit), the immigration official should try to establish what the relationship between the child and the adult is and whether the child is being trafficked.

CHECK LIST FOR IMMIGRATION OFFICERS (BORDER OFFICIALS) TO ASSESS WHETHER A CHILD IS 'AT RISK' OF BEING TRAFFICKED  P 115

4.3.3 Social services (including child welfare or child protection agencies), health and education authorities

Social services, health and education authorities can all play a role in identifying children who are being exploited and possibly trafficked, both in their country of origin or in a foreign country. They can be aware of and alert to signs that children are being exploited, e.g., not attending school regularly or being too exhausted to learn anything. Social services have a special role to play in checking on the welfare of children who have been identified at a border point as possible victims of trafficking (or at risk of abuse for other reasons) and referred by the immigration service or police.

Social services, health workers and education authorities can also be active in children's places of origin, identifying those who are vulnerable to being trafficked. For example, children that drop out of school before finishing their compulsory education in circumstances where there is reason to suspect that they may be trafficked.

4.3.4 Police and other law enforcement officials

Law enforcement officials come into contact with trafficked children both when the children involved come into conflict with the law (for example when begging on the streets or carrying out petty crime under orders of a trafficker or other controller) and in the course of operations to detect traffickers and to withdraw children from their control (sometimes described as 'rescuing' them). Whatever the circumstances law enforcement officials are under an obligation to give priority to protecting the children involved (as they must make the child's best interests a primary consideration and protect children who are at risk of harm). They should not treat children as criminals, but as victims.

4.3.5 Labour inspectors

In some circumstances labour inspectors may identify children in a workplace who should not be working (because they are too young) or should not be involved in the work they are doing, or who might be victims of forced labour. In any of these cases, the children concerned might have been trafficked, and labour inspectors should contact the responsible social services and police authorities.

4.4 Who else may take action?

Alongside statutory agencies and official bodies, many NGOs and civil society organizations have been involved in identifying trafficked children. Some have a legal entitlement to look after unaccompanied or abused children. Others may come across children who they suspect to have been trafficked in the course of work which is not directly linked to trafficking: for example, providing services or assistance to street children or to sex workers. Their responsibility is usually to alert law enforcement officials or child protection officials to the presence of children who they suspect have been trafficked, rather than playing a direct role in withdrawing the child from the control of traffickers. It may be necessary for members of such organizations to accompany law enforcement officials during raids on the premises where trafficked children are believed to be kept, in order to identify them. In some particular circumstances it is also easier for NGO staff to get the confidence of trafficked children than law enforcement officials, for example by contacting children who are begging or working on the streets in an informal way and talking to them in their own language. Drop-in centres run by NGOs have been an important contact point for both trafficked child beggars in Europe and trafficked child domestics in parts of sub-Saharan Africa.

In some countries, once children have crossed the border and are being exploited in the country to which they have been trafficked, it is more frequent for NGOs to identify the children involved than law enforcement officials. For example:

1. In the case of teenagers involved in commercial sexual exploitation, NGOs providing services to adult sex workers (such as advice on issues of sexual health or reproductive health) may come into contact with such children;
2. In the case of children employed as domestic servants, NGOs providing services to street children (for example, running drop-in centres) may learn of their predicament.

As the NGOs involved might not have been set up in either of these cases specifically to identify trafficked children, it is important that their paid and voluntary staff should be aware that they may come across indications that a child has been trafficked, and be aware in advance of how they should respond.

4.5 Key challenges and examples of good/bad practices

4.5.1 Age determination

UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum state the following:⁴⁴

- 5.11 If an assessment of the child's age is necessary, the following considerations should be noted:
- a) Such an assessment should take into account not only the physical appearance of the child but also his/her psychological maturity.
 - b) When scientific procedures are used in order to determine the age of the child, margins of error should be allowed. Such methods must be safe and respect human dignity.
 - c) The child should be given the benefit of the doubt if the exact age is uncertain.

Where possible, the legal consequences or significance of the age criteria should be reduced or downplayed. It is not desirable that too many legal advantages and disadvantages are known to flow from the criteria because this may be an incentive for misrepresentation. The guiding principle is whether an individual demonstrates an 'immaturity' and vulnerability that may require more sensitive treatment.

To assess age, initial indicators would include:

1. the physical appearance of the young person concerned
2. his/her psychological maturity;
3. the young person's statements; and
4. the documentation she or he carries, or lack of a passport or other documentation.

If the young person's age is still in doubt, the next two checks could be:

5. a medical examination – *only* with the consent of the subject – and the opinion of a professional health worker.
6. check with an embassy or other authorities in the young person's apparent country of origin – but *only* if it is absolutely clear the young person has no intention to seek asylum. Under *no* circumstances should such contact be made if the child is seeking asylum.

Before proceeding with these checks, a guardian should be appointed for the young person involved, precisely because she or he may be a child and, as a child, is entitled to the presence of an adult whose responsibility is to ensure that the best interests of the child are upheld. (The chapter five comments on the process for appointing a guardian.)

While there are various methods for estimating a young person's age, these only produce 'estimates'. They are not precise; so, a considerable margin of error is called for. In Sweden the authorities consider that the following leeway must be allowed for discrepancies:⁴⁵

- 0–2 years of age – 6 months' discrepancy;
- 2–9 years of age – 12 months' discrepancy;
- 9–18 years of age – 24 months' discrepancy.

This means that in the absence of convincing proof of age a young person who is actually close to 20 years old could end up being considered a child. This practice basically errs in favour of protecting children.

⁴⁴ United Nations High Commissioner for Refugees (UNHCR), "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum," February 1997.

⁴⁵ SOSFS Recommendations: Socialstyrelsens författningssamling, 1986:26 and 1993:11, Sweden, quoted in Separated Children in Europe Programme. Workshop on Age Assessment and Identification. Bucharest, 20-22 March 2003. Report by Kate Halvorsen.

Age assessment includes physical, developmental, psychological and cultural factors. If an age assessment is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child's ethnic/cultural background should carry it out. Examinations should never be forced or culturally inappropriate.⁴⁶

4.5.2 Identification procedures at border points

The experience in the United Kingdom suggests that it is good practice to allocate a unique identification number (reference number) to every child who is 'assessed to be at risk' by immigration officials.⁴⁷

The police designed a special form with a title such as "Notification of Unaccompanied Minor Arrival at XX Airport/border post." This form is used to record basic information about the child and details about her or his journey and identity document. The form is also used to record details about anyone who meets the child and anyone else who is scheduled to receive them (referred to in the UK as 'meeters and greeters' and 'sponsors'). A copy of the form is then forwarded (e.g., faxed) to the relevant child welfare or social services department in the area where the child is scheduled to be going so that she or he can receive a follow-up visit and assessment by a social worker.

This system allows the authorities to track migrant children once they leave an airport, port or other border point and keep an eye on their progress and keep in contact if they move between local authority areas.

Experience elsewhere suggests that it is particularly important to include a photo of a child who is considered to be 'at risk' in the record about her or him. This makes it feasible to identify a trafficked child even if their name is changed and identity documents forged.

In Sweden, for example, detailed information is collected at border points on children considered to be 'at risk' of trafficking and/or exploitation. During the first contact with the child, certain basic information is collected and the child is photographed and fingerprinted if he or she is over 14 years of age. Case workers are primarily interested in determining the identity of the child, the travel route and necessary information about the child's family and family situation both in Sweden and in the country of origin. This information is collected over a period of time (several weeks). The Swedish Immigration Board's guidelines are based on UNHCR guidelines.⁴⁸

4.5.3 Identifying victims of trafficking by police

The police in one EU country have developed a list of indicators to assess whether an individual may have been trafficked for sexual exploitation and whether personal details about the individual should be recorded on a police data-base. The indicators were developed principally to apply to adult women. This example offers some useful lessons. Rather than depending on a single indicator, police question possible victims and collect evidence about some 30 different criteria. These are attributed different weights (by giving each criterion a different number of points) when making an overall assessment of whether a particular individual is likely to have been trafficked. Secondly, some indicators that were expected to be good and relatively easy to find out about (for example, whether an employee working in a bar had a relatively high debt to the bar owner – and was in debt bondage) were found not to work and were dropped.

In principle, simple indicators such as whether a child has any documents, speaks the local language, is living in substandard and guarded accommodation, is not living with parents or relatives or is involved in criminal or illegal activity or has visible marks of harm and abuse, may be the first signs that

⁴⁶ Separated Children In Europe Programme. Statement of Good Practice. Save the Children and UNHCR. Third Edition, 2004.

⁴⁷ Conclusions from Operation Paladin, London, UK, May 2004.

⁴⁸ Separated Children in Europe Programme, Workshop on Age Assessment and Identification, Bucharest, 20-22 March 2003. Report by Kate Halvorsen, pages 12 and 13.

the child might be trafficked. These indicators may be improved by further exploring indicators related to travel arrangements (whether their travel and visa was arranged and paid for by a third party or whether they possess a forged or fake passport), the individual's working conditions (whether they have to work disproportionately long hours, are they escorted to work, etc...) or the health status (bruises, scars, signs of sexual abuse, etc...).

4.5.4 Identifying trafficked children who are being exploited

Many trafficked children are exploited in locations that have restricted access or are closed to the public, such as private residences (in the case of children trafficked to work as unpaid domestic servants in Western Europe) and private houses that are being used secretly as brothels (in the case of both children and women trafficked for sexual exploitation in many different destinations).

Without prior intelligence about the presence of trafficked children or a suspicion that they might be present, law enforcement officials and labour inspectors are unlikely to come across these particular children. However, they may come across young people who are working without a work permit, have no residency permit or legal entitlement to be in the country or earning money through illegal activities. While none of these circumstances is a clear indicator that the young person concerned has been trafficked, any of them can suggest they *may* have been trafficked. This possibility must be taken into account when deciding what should happen to the child and what sort of protection she or he should be given.

Some forms of exploitation, such as begging, do take place in public. The difficulty for both ordinary members of the public whom the children ask for money and child welfare agencies is to establish whether such children are earning money for themselves or operating under someone else's control (in which case they may have been trafficked).

4.5.5 Operations to withdraw children from the control of traffickers or others exploiting them

Law enforcement officials are sometimes accompanied by others on operations to locate children who are being exploited and to withdraw them from the control of traffickers or others who are exploiting them. For example, they may be accompanied by members of NGOs who know where the children concerned are located; or journalists who have asked to accompany the police on a 'raid'.

Whoever is involved, they must be instructed to give priority to protecting the children and ensuring they are not subjected to further trauma in the course of an operation to rescue them.

For example, in one country an NGO involved in counter-trafficking work informed the police of a brothel where teenage girls were involved in commercial sexual exploitation. The NGO offered to accompany the police and invited a journalist making a film about child prostitution to accompany the raid in order to film the children being rescued. The police burst into the unlit brothel and rushed through the halls and rooms in an effort to prevent the brothel owners from hiding children or escaping with them. The police waved their flashlights around, catching terrified children in their beams. The cameraman followed the police, turning on a powerful light to enable him to film. He filmed some girls close up, cowering in the corner of a room, obviously unsure what was happening and very scared. These images were incorporated into a film that was shown publicly – without any effort to hide the girls' identities.

It is possible that the police knew of no other way of securing the property and that the trauma they and their flashlights caused was unavoidable. However, while better preparation might have helped, it was unacceptable that the journalist involved added to the children's trauma by pointing a large camera with a powerful light at them. It was also unacceptable that he (or his editor) showed these images publicly, both showing the children in a degrading situation and revealing their identities to many people.

4.5.6 The challenge of keeping up-to-date with traffickers' techniques

The various agencies involved in trying to identify victims of trafficking must constantly update their knowledge of techniques and patterns in trafficking. This means that a research component must be built into operations and programmes, so those involved in combating trafficking can be updated quickly and regularly. It also requires an emphasis on information exchange between specialist agencies in neighbouring countries, as well as with independent investigators (such as academics, NGO researchers and specialists collecting information for intergovernmental organizations).

Box 12

The Story of 'Jane': a Nigerian girl in the UK

"They left the flat and drove to a port. The man made her wear a big coat, to make her look bigger and older. She only had light summer clothes on. The man went to buy the tickets, and left Jane in the car. Jane saw a police car. When the man came back he was stopped by the police, who questioned him. The man said that he didn't know Jane, but was just giving her a lift. They looked at Jane's passport and asked her name. She couldn't remember the name in the passport, but told them that she was 28. They didn't believe her, and said she was a child. They asked her if she knew the man. Previously, the man had told her to say that he is her boyfriend, but now he denied knowing her so she became confused. She told the police that she didn't know the man because that was the truth, she didn't know who he was."

"The police let the man go and took her to the police station."

Following her arrival at the police station, Jane told the British police everything that had happened to her, but they did not believe that she was under 18 and kept her in detention.

"The man, who was taking Jane to Germany, was known by the police for suspected trafficking cases. When they typed in his name they spelt it wrong, which is why he was allowed to go when Jane was taken to the police station. He left the country the next day. He returned two days later and Dover [border control] alerted the police and he was picked up, and his passport was taken from him. The police asked to inspect his flat and he agreed. They found photos of Nigerian girls, phone numbers in Nigeria, UK and Italy, addresses and evidence of voodoo. The case was sent to the Crown Prosecution, who said all the evidence was circumstantial and the case never made it to court. Again the suspected trafficker left the country, using a second passport, but the social worker thinks that he will have returned and will be trafficking girls again."

Source: Carron Somerset, "What the Professionals Know: The trafficking of children into, and through, the UK (United Kingdom) for sexual purposes," ECPAT-UK, November 2001.

Chapter 5 Appointment of a Guardian

5.1 General principles

- As soon as a child victim is identified, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim throughout the entire process.
- Social service authorities, or other appropriate institutions, shall establish a guardianship service to be implemented directly or through formally accredited organization(s).
- The guardianship service will appoint a guardian as soon as it receives notification that a child victim has been identified.
- The guardianship service will be held responsible/accountable for the acts of the appointed guardian.
- The State shall ensure that this service is fully independent, allowing it to take any action it considers to be in the best interests of the child victim.
- Individuals appointed as guardians must have relevant child-care expertise and knowledge and understanding of the special rights and needs of child victims, and of gender issues.
- Guardians should receive specialized training and professional support.

5.2 Implications of the principles

As soon as a child is identified as a probable victim of trafficking or there are reasonable grounds to believe that the person is a child and a victim of trafficking, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. If possible, the same person should be assigned to act as guardian throughout the entire process.

According to the UNICEF Guidelines for Protection of the Rights of Child Victims of Trafficking “regardless of the legal status of the individual appointed as the guardian (e.g. legal guardian, temporary guardian, adviser/representative, social worker or NGO worker) their responsibilities should be:

- a) to ensure that all decisions taken are in the child’s best interest,
- b) to ensure that the child victim has appropriate care, accommodation, health care provisions, psycho-social support, education and, language support,
- c) to ensure that the child victim has access to legal and other representation where necessary,
- d) to consult with, advise and keep the child victim informed of his/her rights,
- e) to contribute to identification of a durable solution in the child’s best interest,
- f) to provide a link between the child victim and various organisations who may provide services to the child,
- g) to assist the child victim in family tracing,
- h) to ensure that if repatriation or family reunification is carried out, it is done in the best interest of the child victim.

The role of a guardian is not the same as that of a legal representative. The role of a guardian is to be an advocate for the child in a wide range of discussions and decisions about what should happen to the child, in particular to ensure that the decision-making process primarily considers the best interests of the child. The role is also to be a link between the child and the various agencies the child comes into contact with, to ensure the child is kept informed of any relevant developments with respect to him or her, and to accompany the child in a physical way, in particular when she or he is moved between various places. However, if it is appropriate for a child to initiate or take part in legal proceedings, she or he will also need a legal representative (a qualified lawyer).

The guardianship service is to appoint a guardian as soon as it is notified that a child victim has been identified. This process should happen very rapidly, so that a guardian is both appointed and reaches the child *within a matter of hours*, especially if the child needs urgent medical or psychological assistance. This rapid response is evidently a challenge for the relevant agencies. For example, in the case of separated children such as those applying for asylum, it is currently considered good practice to have a guardian or advisor appointed *within a month*.⁴⁹

If it is difficult to appoint a guardian within hours of a child being identified, it may be necessary to appoint a temporary guardian who can accompany the child for the first few days, e.g., someone who is based near a border point where trafficked children are identified relatively frequently (such as an airport). However, it is much more preferable for the same person to perform this role throughout the various phases of processing the child.

5.2.1 Appointments of guardians for trafficked children in their own country (i.e. for children who have not been taken abroad or who have returned to their own country after being trafficked abroad)

When children are trafficked within their own country and it is clear that the child's parent, parents or legal guardian were not complicit in the child being trafficked or subjected to exploitation, it is not usually appropriate to appoint a guardian. The procedure is rather to contact the child's parent(s) rapidly and enable them to fulfil their parental role. However, if the parents or current legal guardian cannot be contacted, it may still be appropriate to appoint a guardian on a temporary basis to ensure that the child's best interests are upheld. If the child is placed in a residential facility, even on a temporary basis, it is important that whoever cares for them is legally entitled to do so.

In principle, when children who have been trafficked abroad return to their country of origin, they should not require the support of a guardian and there should be no need for the authorities in the child's country of origin to appoint one. However, in practice it may be inappropriate for the child to return to her or his parents, or the child is unwilling to do so. In these circumstances, it is not acceptable for the authorities in the child's country of origin who have taken responsibility for the child to expect the child to manage on his/her own without further support, even if he/she is aged 16 or 17.

Unless the child has *no* parents or legal guardian, it is still inappropriate to appoint anyone as the child's guardian. The guardianship service may appoint someone to be the child's *advisor* in such circumstances. This person takes on the role of ensuring that any decisions made by the authorities about what happens to the child give primary consideration to the child's best interests.

5.3 Who has responsibility to take action?

A guardian should be appointed by the country's official *guardianship service*. If no such service or similar statutory agency exists, the national authority responsible for social services, or another appropriate institution, is responsible for establishing a guardianship service. This may be a service that itself identifies, selects and accredits guardians, or one that accredits other organizations to do so. The guardianship service has a responsibility to monitor or check how individual guardians perform.

As a matter of principle, appointments of guardians should *not* be made by a Ministry of the Interior, immigration service or police. This avoids the perception that such appointments would reflect the interests and/or policies of the government rather than focus primarily on the best interests of the child. The government must guarantee that the guardianship service is fully independent so it can act without compromise in the best interests of trafficked children. It is important that guardians are *not* accountable directly to government ministries or law enforcement agencies, which have other priorities and policies to implement.

⁴⁹ "Separated Children in Europe Programme, Statement of Good Practice," Third Edition, 2004, Save the Children and UNHCR, Point 6 (page 16).

Once appointed, a guardian is accountable to the guardianship service (or whichever other agency responsible for child protection or child welfare has appointed the guardian) for his or her performance in upholding the child's best interests and carrying out assigned responsibilities.

The *Ministry of the Interior* or other relevant law enforcement agency does have a responsibility to provide local offices of the immigration service and the police (and other relevant law enforcement agencies) with contact details for the guardianship service along with instructions on when and how to ask for a guardian to be appointed. As soon as a child who may be a victim of trafficking is identified by the immigration service or by a law enforcement agency, the agency involved should contact the guardianship service and ask for a guardian to be made available and sent to wherever the child is located.

When a branch of *social services* identifies a child who appears to be a victim of trafficking, they too can make direct contact with the guardianship service. As pointed out in Chapter 3 ('Identification'), when an NGO is the first to identify a child victim of trafficking, they should normally inform a law enforcement agency or, if the child approaches the NGO, a branch of social services that is responsible for contacting the guardianship service.

5.4 Who else may take action?

NGOs may be asked to take a guardianship role, either individuals belonging to an NGO or the NGO as an institution. However, their role must be adequately regulated by the guardianship service.

5.5 Key challenges and examples of good/bad practices

5.5.1 What sort of people should be appointed as guardians?

Individuals appointed to act as guardians for trafficked children may be drawn from a pool of individuals ready to act as guardians of separated children. They may have various specialist backgrounds. However, in order to carry out their role effectively, they should have relevant child-care expertise and an understanding of the special and cultural needs of separated children. They need good understanding in a number of areas:

- the experiences that children who have been trafficked or subjected to commercial sexual exploitation are likely to have undergone;
- the special rights and needs of children who have been trafficked;
- the particular *and* cultural needs of unaccompanied children; and
- gender issues, especially the differences in the circumstances, experiences and impacts of phenomena like trafficking and exploitation on girls and boys, young men and young women.

Candidates should receive training and professional support, both before and while acting as guardians. They should undergo thorough police and reference checks concerning their personal and employment history to ensure that there is nothing (especially any type of child maltreatment) to caution against their qualification as a guardian.

A guardianship service does not have to identify, select and accredit individuals itself. It can do so indirectly, but any other organization or agency involved must be formally accredited.

5.5.2 Key challenges for a guardian

The responsibilities of the guardian of a trafficked child are complicated. Guardians may find themselves coming under conflicting pressures with the police or other officials making demands which the guardian fears may not be in the best interests of the child. Such contradictions occur in particular when the police or prosecution service (or procuracy) intend to launch a criminal prosecution and want a trafficked child to give a statement as evidence or to actually take part in a trial or other legal proceedings.

Any decisions which a guardian makes must *always* be in the best interests of the individual child for whom he or she is the guardian, e.g., rather than in the interests of 'society' or any 'greater good'. A guardian is not entitled to make choices which *may* seem to be in the best interests of trafficked children in general (e.g., to proceed with the prosecution of a child trafficker), nor those that are manifestly not in the best interests of the individual child concerned (e.g., whose security might be jeopardized by providing evidence, exposing the child or relatives to a risk of reprisals). Similarly, at any meetings that a guardian attends to consider or decide what is to happen to an individual child, the guardian must insist that the best interests of the child are a primary consideration in the decision and must always call for action that is in the best interests of the child concerned.

The guardian has *the right to refuse* to allow a child to give testimony in criminal and civil (judicial) proceedings if this is in the best interests of the child. The guardian also has the right to refuse to give testimony about the child if he or she is called on to do so. Guardians should also be guided by the principle that they must 'do no harm' to the child for whom they are responsible, either by their actions or by any decisions they are involved in taking on the child's behalf. It is important that the police and prosecution services are aware of these stipulations and understand that they are not entitled to put a guardian under any pressure to take any action which the guardian considers to be against the best interests of the child.

Guardians are in an especially privileged position to listen to a child's own views, both about what has happened to them and what the child wants to happen in the future. In general, it is the guardian's responsibility to ensure that the child's views are heard and taken into account as much as possible. Sometimes children express a view or a wish concerning their future that in the judgment of the guardian runs counter to the child's best interests. For example, a 13-year-old boy found washing car windscreens may say that he wishes to continue with this income-generating activity rather than return to school. It is then the guardian's responsibility to explain to the child the legal requirements for school attendance and to discuss options that come closest to the child's own wishes or aspirations.

The guardian's responsibilities for looking after the child's best interests go further than simply ensuring that the child's views are heard and acted on: there are many circumstances in which children are unaware of the risks attached to an option which they favour and it is up to the guardian to point them out. For example, trafficked children may remain under the influence of their trafficker long after direct control has ended and continue to ask for a course of action which is essentially in the interests of the trafficker rather than of the child.

Chapter 6 Questioning, Interviews and Initial Action

6.1 General principles

The procedures set out below focus on the role of law enforcement officials in collecting and recording information from children who may have been trafficked.

Registration

- Law enforcement authorities, i.e., police, should register child victims through initial questioning; immediately open a case file on the child victim; begin to collect relevant information, for judicial proceedings; and, at the same time, look into measures to be taken for the disposition of the child.

Initial questioning

- Child victims should be questioned in a child-sensitive manner, only by specially trained law enforcement officers and preferably by officers of the same sex as the child.
- Initial questioning of a child victim should only seek to collect biographical data and social history. Information regarding the experience of the child whilst trafficked and any knowledge they may have of illegal activities etc. should not be sought at this point.
- Law enforcement authorities should avoid questioning a child victim on their premises or in the location where the child has been exploited and/or in the presence or physical proximity of any suspected trafficker. Whenever possible, initial questioning should be delayed until the child has been relocated to a safe place.

Initial action

- Upon identification of a child victim or when there is a presumption that a victim is a child, law enforcement officials are responsible for immediately organizing the transfer of the child victim to a shelter or safe location and for immediately contacting the guardianship services.
- In the process of appointing a guardian, law enforcement officials should protect the child's privacy and confidentiality.
- The Ministry of the Interior or other relevant law enforcement agencies should make available to every law enforcement station the necessary contact details of the guardianship service.
- Responsibility for contacting the guardianship service and for the formal hand-over of the child into the care of the guardian should rest with the most senior-ranking police officer or the officer in charge of the investigation.
- Upon presentation of the guardian, the officer responsible will sign the necessary paperwork (which shall be presented by the guardian) confirming that they have handed over the child to ex officio guardianship. At that point, they must recognize the right of the guardian to request a halt to proceedings, to speak to the child alone, and to take all necessary measures that are in the best interest of the child.
- Relevant law enforcement authorities shall ensure that, once appointed, a guardian is allowed (and encouraged) to accompany the child victim at all points.

Interviewing child victims about their experiences

- Police and other law enforcement authorities should only question child victims about their trafficking experience in the presence of the appropriate guardian.
- Law enforcement authorities should minimize the length and scope of questioning so as to minimize further trauma or psychological distress to the child victim.
- Law enforcement authorities should defer to the guardian for information that does not legally require the first-person testimony of the child.

- As consent of the child is not relevant for legal purposes, law enforcement authorities should use any information suggesting that the child 'consented' to certain forms of exploitation for general investigative purposes only.
- The apparent consent of a child victim to the intended exploitation must not be used as:
 - evidence in the pursuit of criminal charges against the child related to the child's status as a victim of trafficking or situation as a child; or
 - the *sole* basis for retention of the child in police custody for further questioning, whether related or unrelated.
- Law enforcement authorities (i.e., prosecutors and judges) should ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons or that child victims are detained for reasons related to their status as a victim.

6.2 Implications of the principles

Registration is the compilation of key personal data: full name, date and place of birth, father's and mother's name, current and previous address, age and (if appropriate) present location. This information is collected for the purpose of establishing the identity of the child, for protection and, in some circumstances, to facilitate tracing the child's parents or other relatives.⁵⁰ An important part of the registration process is also age assessment as it helps determine whether the victim is a child (for more details see Chapter 4 [section 4.51]).

The process of registration is supplemented by further information in order to meet the specific needs of the child and to make plans for her or his future. Thus, apart from interviews aimed to determine basic personal information, there are four other categories of interviews commonly carried out with child victims of trafficking: interviews to determine the child's legal status, interviews to determine which services the child needs (seeking information on the child's well-being and social history), interviews to collect information on possible crimes to determine whether the child involved is a victim of trafficking, and interviews intended to provide therapeutic support to children suffering from post-traumatic stress.

People seeking information and questioning a child must always think first about what is best for the child. Furthermore, the interview techniques used must be 'child friendly'. This is because techniques employed when interviewing children who have been abused have a very substantial influence on the results of the interview.

Thus, any law enforcement official who is involved in questioning children about possible offences committed against the child or about offences which the child is suspected of having committed requires special training.

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After a child is identified as a possible victim of trafficking, or a young person suspected of being trafficked is considered to be possibly under 18, law enforcement officials or others talking to the child are responsible for referring the child to other agencies for various services and assistance, including accommodation and the appointment of a guardian. This implies that every law enforcement station has the contact details of the guardianship service and, most importantly, that police authorities recognize the right of a guardian to act in the best interests of a child and withdraw a child from further questioning.

Ideally even the initial questioning should be postponed until the child is relocated to a safe place and a guardian is appointed. In practice, this might be difficult to observe. Still, law enforcement

⁵⁰ Inter-agency Guiding Principles on Unaccompanied and Separated Children, op. cit., page 33. A four page Inter-Agency Registration Form for Unaccompanied and Separated Children is also available in the ARC (Action for the Rights of Children) resource pack, Separated Children, December 2004, pages 162 to 165. This can be found at: http://www.savethechildren.net/arc/files/c_sepchil.pdf

officers should not attempt to retrieve information on illegal activities or on the child's experiences immediately upon identification. It is unrealistic to expect children to speak openly in the presence of traffickers, or even law enforcement officials or in places where they feel uncomfortable. Further questioning and interviewing of a child should be only done in the presence of a guardian (and preferably also social worker) and performed by trained personnel.

Furthermore, as children suffer if asked repeatedly to describe incidents which have caused them distress, once a guardian has been appointed people questioning a child should check whether the guardian can in fact provide basic information to avoid questioning the child unnecessarily. Requests for all information that does not legally require the first person testimony of the child should be referred to the guardian. In addition, repeated questioning about the child's experiences should be avoided. To avoid repeat questioning, all information gathered from registration and from interviews with the child should be recorded in a case file that should be open after identification and should follow the child through all stages of protection and assistance.

Once personal information is recorded, governments have a responsibility to ensure that appropriate systems and procedures are in place to keep personal information confidential and to protect the privacy of the individuals concerned. These include regulations to prevent the unauthorized transmission or publication of information about children who have been trafficked.

6.3 Who has responsibility to take action?

Managers of law enforcement agencies which may be involved in questioning children who have been trafficked (i.e. senior officers of the immigration service, of appropriate police bodies and of the labour inspectorate) are responsible for ensuring that appropriate systems are introduced for registering, storing and exchanging information about children who may have been trafficked, for submitting requests to the guardianship service for the appointment of guardians for such children and for ensuring that law enforcement officials who question children receive appropriate training before doing so.

The most senior officer in charge of each investigation involving a child who may have been trafficked is responsible for:

- assessing whether any measures are necessary for the child's protection, including measures necessary once the child is transferred to be accommodated elsewhere;
- contacting the guardian and formally handing over the child into the care of the guardian (and also for maintaining a formal record that the child has been handed over to the ex officio guardian, that the guardian has a right to halt interview proceedings, to speak to the child alone and to take all necessary measures that he or she deems to be in the best interests of the child);
- ensuring that the guardian accompanies the child during any subsequent interviews concerning the investigation;
- ensuring that appropriate child-friendly interviewing techniques are used.

The law itself should make it clear that an offence has occurred whether or not the child trafficked knew what form of exploitation they were going to experience or whether they gave their consent in any way.⁵¹ For example, if a 16-year-old boy or girl says he or she was willing to earn money for someone by having sex with other people, it is still an offence.

Justice authorities, including prosecutors and judges, are responsible for ensuring that a child who is believed to be a victim of trafficking is not, in any circumstances, subjected to criminal sanctions or detained in relation to their situation as a trafficked person. Since the victim is a child, whether they consented to being involved in any illegal activities in the course of being trafficked or exploited is irrelevant and *cannot* be used as basis to bring charges against the child or retain her or him in police custody.

⁵¹ Under the terms of the UN Trafficking Protocol the consent of a child to any form of exploitation mentioned in Article 3(a) has no bearing on whether trafficking in persons is determined to have occurred.

6.4 Who else may take action?

Other agencies that come into contact with a trafficked child *before* law enforcement officials, such as a child welfare agency or an NGO, should normally notify an appropriate law enforcement agency as soon as they become aware of a child who has been trafficked or is being exploited. Once notified about such a child, it is the responsibility of a law enforcement official to open a case file on the child victim and begin to collect information to facilitate possible judicial proceedings and to take other measures that are necessary to ensure the care of the child.

6.5 Key challenges and examples of good/bad practices

6.5.1 Ensuring the best interests of the child are a primary consideration

The best interests of the child who may have been trafficked are a primary consideration for law enforcement officials involved in forensic interviews and in making decisions about the child's case. They must give priority to the measures necessary to protect the child. This may mean leaving the collection of detailed information about any crimes which have been committed against this child (and/or other children or adults) until later.

Recording basic personal data (biodata) about the child is a priority, along with taking a photograph of the child concerned. Photograph portraits are very useful. Agencies in different areas or countries that exchange information can be assured they are referring to the same child. A photograph can be crucial in investigating and establishing the true identity of a child. A trafficked child may have been given not only false identity documents but sometimes a truly false identity, including a new name, by traffickers. Some trafficked children are repeatedly given new names as their traffickers move them from place to place.

6.5.2 The importance of respecting a child's right to privacy and ensuring information remains confidential

From the moment that personal information about a trafficked child is first recorded, law enforcement officials (and others handling the information) must give attention to ensuring the confidentiality of the information and protecting the child's right to privacy. This is particularly relevant once the information is shared with others, e.g., placed on a common database, sent to an agency in another country or simply when a guardian is contacted.

Simple procedures can help keep information about a trafficked child confidential. For example, when a file is opened about a child who is believed to have been trafficked, the child's name should not be revealed on the front of the file or anywhere else where others might see it. The use of a reference number (instead of a name) can help protect the child's privacy.

Ironically, recent data protection legislation in some European countries may make it more difficult to store information about trafficked children and to track their movements, thereby making it more difficult to protect children. This is because some legislation limits the rights of law enforcement agencies and others (such as NGOs) to keep personal data (about children or adults). It is clearly important that agencies trying to thwart traffickers and to protect children should abide by their own national data protection legislation. It is possible that agencies involved in working against trafficking may be told that they are not entitled to store certain categories of information. For example, an agency which is storing personal data about trafficked children, such as photographs, in order to share it with other professional agencies and to identify children who have been trafficked, may be told that they are not entitled to do so. In such cases, it should be possible to seek explicit authorisation from a data protection authority to continue storing personal information about children. In some circumstances, it may be necessary to ask for changes in a law on data protection, in order to ensure that effective counter-trafficking initiatives can be carried out by child protection agencies and experienced NGOs, as well as law enforcement agencies.

Chapter 7 Referral and Coordination/Cooperation

7.1 General principles

Referral to appropriate services

- Child victims shall be referred expeditiously to appropriate services.
- The state, through relevant ministries, shall assist law enforcement authorities, social service authorities, relevant administrative bodies, international organizations and NGOs/civil society organizations in the establishment of an efficient referral mechanism for child victims.

Inter-agency cooperation

- All relevant ministries and government bodies (including police, social service authorities, Ministries of the Interior) involved in the referral and assistance to child victims should adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims in order to ensure an effective continuum of care and protection for child victims.
- The Ministry of the Interior shall actually designate 'liaison officers' as responsible for liaison with the social services authorities/guardianship service, and in particular, the guardian of the child victim.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, the Ministry of the Interior shall assist in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.
- Liaison officers shall also liaise with members of the relevant law enforcement agencies dealing with child victims.
- Liaison officers (along with, where appropriate, legal counsel for the Ministry,) shall be responsible for representing the Ministry of the Interior, in meetings in which the final disposition of the child is decided in conjunction with the other relevant administrative and judicial bodies.

7.2 Implications of the principles

Many different organizations are likely to be involved in the process of identifying and protecting a child who has been trafficked. If two or more countries are involved, as they are in cases of cross-border trafficking, the authorities of several different countries need to coordinate their activities and to exchange information.

It is important that different organizations within a single country, which have a role in protecting and assisting children who have been trafficked, coordinate their actions and cooperate to ensure timely and efficient referral of victims to appropriate services. Cooperation is essential to ensure that trafficked children receive appropriate services and that appropriate decisions are taken with regard to their cases. Cooperation is also required if efforts to prevent child trafficking are to be effective.

Coordination and cooperation either require the establishment of a special coordination mechanism at national level or can be based on an existing cooperation mechanism. One argument for establishing a special mechanism for coordinating trafficking cases is the variety and particular mix of organizations with a role to play, e.g., law enforcement authorities, social service authorities, administrative bodies, international organizations, NGOs and civil society organizations.

The same coordination mechanism can be used for cases of both trafficked adults and children. However, trafficked children do have characteristics different from trafficked adults, so the coordination and referral processes must be designed to take the specific needs of children into account.

At national level, coordination is required between different law enforcement services (such as police with specific responsibilities for borders, or police dealing with offences committed by children, police intelligence services and other branches of the police), the immigration service, statutory agencies responsible for child protection (i.e. government organized and financed ones, whether they deal with social welfare issues in general or child welfare in particular) and NGOs involved in anti-trafficking activities or related work concerning children. In the case of agencies belonging to the State, it may be appropriate to ensure coordination at ministerial level or to involve representatives of each of the agencies involved. Part of the coordination process involves ensuring clear lines of coordination, setting up principles and procedures for information exchange and joint actions, and appointing a person in each organization as a 'liaison officer' for others to contact.

It is unlikely to be enough to establish good coordination only at national level, for law enforcement agencies, statutory agencies and NGOs also need local level coordination of both their activities on behalf of individuals who have been trafficked (whether they have been trafficked into the country concerned or repatriated back to their country of origin) and their activities to prevent the trafficking of individual children who are assessed as at risk (of being trafficked).

At local level, the agencies and services involved are likely to include: police, social services or child protection service, education service or schools, and NGOs. The level at which regular communication or coordination should be established is bound to depend on the nature of the cases of trafficking reported to be occurring.

When it comes to coordination between countries, the process is different. It concerns both intelligence-sharing activities, requesting and providing information about individuals who have been trafficked and arranging the return to their own country (or their normal country of residence) of children who have been trafficked abroad and whose safe return can be guaranteed.

7.3 Who has responsibility to take action?

The Government is responsible for ensuring the establishment of an efficient referral mechanism for children who have been trafficked.

The Ministry of the Interior is responsible for designating 'liaison officers' to liaise in general with social services, child welfare services and the guardianship service, and in particular with the guardian of the child victim. Such liaison officers also liaise with members of relevant law enforcement agencies which come into contact with child victims. It should be clear to a trafficked child's guardian and representatives of all the agencies investigating the child's case or providing care, whom to contact in the Ministry of the Interior (i.e. precisely which liaison officer is responsible for a particular child's case).

The Ministry of the Interior liaison officer (along with, where appropriate, legal counsel for the Ministry) is also responsible for representing the Ministry of the Interior at meetings where decisions are made with the other relevant administrative and judicial bodies about which durable solution is appropriate for a child. However, no decision by these bodies to repatriate a child victim to her or his country of origin may be executed without the authority responsible for child welfare being satisfied that this would not place the child in danger or at risk.

Furthermore, all organizations involved in the referral and assistance to children who have been trafficked (social services, other service providers, police, immigration authorities, etc.) should adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims in order to ensure an effective continuum of care and protection for child victims.

The Ministry of the Interior is responsible for assisting in contacts with the corresponding authorities in the child's country of origin, coordinating with and channelling contacts through the Ministry of Foreign Affairs as appropriate. However, in cases where a child requests asylum or gives any indication that she or he is considering requesting asylum, no contact should be initiated with the authorities in the child's country of origin.

As far as coordination and links between countries are concerned, the UN Trafficking Protocol (Article 8) requires the authorities of a country which receives a request for information to verify "without undue or unreasonable delay" whether a child or adult who has been trafficked to another country "is its national or had the right of permanent residence in its territory" at the time they were trafficked.

7.4 Who else may take action?

NGOs and civil society organizations which provide services of any sort to children who have been trafficked have a responsibility to coordinate their activities with others, when this is in the best interests of the child. This includes taking part in any referral mechanism established to coordinate actions on behalf of children who have been trafficked. The NGOs involved may be part of national civil society or be international NGOs which focus either specifically on trafficking or on a wider range of child rights or child welfare issues.

7.5 Key challenges and examples of good/bad practices

7.5.1 A model for ensuring coordination at national level – the National Referral Mechanism recommended by the OSCE

The Organization for Security and Co-operation in Europe (OSCE) has urged governments to set up a National Referral Mechanism to provide coordination,⁵² describing this as "a co-operative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of trafficking in human beings in co-ordination and strategic partnership with civil society and other actors working in this field."⁵³

The OSCE handbook about national referral mechanisms describes their objectives as follows:

The basic aims of a 'National Referral System' or NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met.

The structure of an NRM will vary in each country; however, NRMs should be designed to formalise co-operation among government agencies and NGOs dealing with trafficked persons. An NRM usually includes a national co-ordinator, who is often a high-level government official, and a roundtable made up of senior representatives of government agencies and civil society who develop recommendations for national policy and procedures regarding victims of trafficking. NRMs also often include ad hoc working groups that deal with specific issues relating to victims. NRMs are likely to be most effective if they are founded on a formal co-operation agreement among the participants – for example, a memorandum of understanding – that sets out the specific role and duties of each participant.⁵⁴

⁵² The OSCE Action Plan to Combat Trafficking in Human Beings (July 2003) proposed the establishment of a 'National Referral System' in every State (in section V of the Plan, under article 3 on 'Protection and assistance'). The Action Plan was endorsed at the December 2003 Maastricht OSCE Ministerial Council meeting (OSCE Ministerial Council Decision No. 2/03, "Combating Trafficking in Human Beings"). Part of the text of the Plan can be found in Annex 2, 'Selected excerpts from European regional instruments'.

⁵³ Details of the steps suggested to set up a National Referral Mechanism can be found in a handbook published by the OSCE/ODIHR (Office for Democratic Institutions and Human Rights) in 2004: National Referral Mechanisms. Joining Efforts to protect the Rights of Trafficked Persons. A Practical Handbook. This can be found in English, Russian and Albanian at <http://www.osce.org/odihr/documents.html>

⁵⁴ OSCE/ODIHR, op. cit., page 15.

According to the OSCE/ODIHR Handbook, an NRM should incorporate:

- Guidance on how to identify and appropriately treat trafficked persons while respecting their rights and giving them power over decisions that affect their lives;
- A system to refer trafficked persons to specialised agencies offering shelter and protection from physical and psychological harm, as well as support services. Such shelter entails medical, social, and psychological support; legal services; and assistance in acquiring identification documents, as well as the facilitation of voluntary repatriation or resettlement;
- The establishment of appropriate, officially binding mechanisms designed to harmonize victim assistance with investigative and crime-prosecution efforts;
- An institutional anti-trafficking framework of multidisciplinary and cross-sector participation that enables an appropriate response to the complex nature of human trafficking and allows its monitoring and evaluation.

The way to set up co-operation structures among governmental organizations and service providers from civil society is the other central component of an NRM. This cooperation can reconcile what at the outset may appear to be conflicting legal positions (see Annex 3, "Standard Operating Procedures in the UN Administered Province of Kosovo" for an example of a formal agreement that specifies the roles of various government ministries and intergovernmental organizations).

Cooperation among different actors is most effective when there is an exact delineation of their competencies and responsibilities. A comprehensive structure involving differing approaches, goals, and mandates can only be effective over the long term where this structure is clearly defined and accepted by everyone involved.

The OSCE/ODIHR handbook outlines the following steps to establish an NRM:

1. Carry out a comprehensive assessment of the nature and extent of trafficking in the country. This includes an assessment of the relevant laws that are in place (and their adequacy for punishing traffickers, providing protection to victims, compensating them, etc), and an analysis of which individuals and organizations are involved in counter-trafficking work.
2. Set up a coordinating structure, an NRM, or improve existing coordination at the national level up to the standard required by an NRM.
3. Set up a 'Roundtable for Combating Trafficking in Human Beings', bringing together all major national actors involved in responding to trafficking (See Box 13).

Establishing an NRM is a dynamic process; all the components do not necessarily have to be in place at once but can be developed in stages. The OSCE/ODIHR handbook identifies five essential ingredients of an NRM. These are:

1. Identification of Presumed Trafficked Persons
2. Basic Principles of Co-operation Agreements
3. Support and Protection Services
4. Repatriation and Social Inclusion
5. Specific Legal Provisions

Box 13

A Roundtable for Combating Trafficking in Human Beings – structure and role

The Roundtable established at national level should include representatives of appropriate federal and/or state ministries, such as Interior, Foreign Affairs, Social Affairs, Labour and Health, as well as any other government offices that have a role in combating trafficking, national and international NGOs, and international organizations.

The Roundtable can be chaired by a National Coordinator, usually a high-ranking national official and representative of a national-level ministry. This position could be responsible for the regular functioning of the roundtable and for convening regular status meetings. The National Coordinator should be able to give sufficient time to this post to carry out the responsibilities (i.e. should not be preoccupied by numerous other responsibilities).

The OSCE/ODIHR Handbook recommends that a formal co-operation agreement – such as a memorandum of understanding – be signed between the government agencies and NGOs most heavily involved in the referral process. Such an agreement will set out clearly the specific responsibilities of each actor (e.g. police, shelter operators, etc.) and make clear how the referral process will work in practice.

While many of the organizations coordinating their activities in the case of trafficked children may be the same as those involved in action concerning adults who are trafficked, organizations which focus on children should be included in a roundtable which is convened with the specific purpose of focusing on children. This can identify procedures for children which need to be different to those designed to meet the needs of adults and can also facilitate the exchange of information about trafficked children.

7.5.2 Other models for ensuring coordination and cooperation at national level

Other forms of coordination can be achieved when the government adopts a plan which specifies what actions are to be undertaken, by which organisation(s) and when. A plan can potentially specify what the role and responsibilities of different organizations involved in referrals are expected to be. However, the problem is that, in contrast to a national referral mechanism, a plan does not ensure the pooling or exchange of information about reported patterns of trafficking on an ongoing basis.

Plans have been adopted on overlapping issues: a national plan of action to combat trafficking in human beings; a national plan to combat trafficking in children; a national plan to combat the worst forms of child labour; and a national plan to combat the commercial sexual exploitation of children.

For example, at the request of the National Committee on Combating Trafficking in Human Beings of the Republic of Moldova, in January 2004 the country's Ministry of Health issued a Plan of Action on Combating Trafficking in Children and Illegal Transportation of Children out of the Country. The plan stipulated a series of activities to be carried out during one year and was 'time bound'; that is to say, it set a time-table, indicating by what date specific activities were to be carried out, as well as the ministries or organizations which were to be involved. Although the Plan involved intergovernmental organizations such as UNICEF, the IOM and the OSCE, it was predominantly addressed to government ministries and the immigration service (border guard).

Two European countries have appointed national 'rapporteurs' on trafficking in persons for purposes of sexual exploitation, the Netherlands and Sweden.⁵⁵ They do not coordinate action on trafficking in human beings, but report on action already taken.

⁵⁵ In pursuit of section III.1.4 ('National Rapporteurs') of the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (26 April 1997), which called on EU Member States to "Provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women".

7.5.3 Coordination for prevention purposes

In most countries where trafficked children are found, it is likely that some organizations will also be undertaking activities to **prevent** child trafficking. In this case, it is not sufficient just to coordinate protection activities. Coordination is also required between those responsible for protection and those involved in prevention, particularly when prevention activities include action to prevent individual children from being trafficked or re-trafficked.

7.5.4 Models for ensuring coordination and cooperation between countries

Bilateral agreements have been adopted by countries in order to agree on procedures to follow with respect to both unaccompanied children and trafficked children. For example, France and Romania adopted a bilateral treaty in 2002, while Albania and Greece adopted one in February 2006.⁵⁶ However, the problem is that bilateral agreements potentially take such a long time to draft and agree that the pattern of child migration or trafficking which it is intended to address may have changed by the time it comes into effect. To help address this, in one region of the world UNICEF has prepared a Model Bilateral Agreement On Cooperation And Mutual Legal Assistance In Protecting Children From Trans-Border Trafficking.⁵⁷

Regional inter-governmental organizations have the potential to facilitate coordination and cooperation between countries. A group of experts on trafficking in human beings, convened by the European Commission, recommended the establishment of a European Anti-Trafficking Network to facilitate co-operation, contacts and exchange of information and experience between all involved agencies and stakeholders of EU Member States – governmental and non-governmental.⁵⁸ No such network has yet been set up.

7.5.5 Ensuring the confidentiality of personal data which is shared with others

The previous chapter mentioned the importance of respecting a child's right to privacy and ensuring information remains confidential (Chapter 6, section 6.5.2). As coordination between different organizations may include sharing information about individual children who are considered to be at risk of being trafficked, as well as information about others who have already been trafficked and general intelligence about patterns of trafficking, it is important that appropriate regulations should be adopted and implemented to protect personal data. It is important to protect personal information about a trafficked child both in her or his country of origin and in the country to which the child has been trafficked.

In order to minimize the risk that personal information is used inappropriately, it should not be reproduced or shared unnecessarily.

Both the EU and other inter-governmental organizations have adopted standards concerning data protection. For example, Article 8 of the Charter of Fundamental Rights of the European Union on 'Protection of personal data' stipulates that:

- Everyone has the right to the protection of personal data concerning them.
- Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.⁵⁹

⁵⁶ For full text of the bilateral agreement between Albania and Greece, see Annex 4.

⁵⁷ UNICEF Regional Office West and Central Africa, August 2004.

⁵⁸ European Commission Directorate-General Justice, Freedom and Security, Report of the Experts Group on Trafficking in Human Beings, Brussels, 22 December 2004, page 74. The Report is found at: http://europa.eu.int/comm/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf

⁵⁹ The EU Charter of Fundamental Rights is found at: http://www.europarl.eu.int/charter/default_en.htm

Chapter 8 Interim Care and Protection

8.1 General principles

Care and protection

- Child victims are entitled to receive immediate care and protection including security, food, and accommodation in a safe place, access to health-care, psychosocial support, legal assistance, social services and education.
- Care and assistance shall respect the child's cultural identity/origin, gender and age.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Child victims should be cared for by adequately trained professionals who are aware of the special rights and needs of child victims, and are knowledgeable about gender issues.
- Social service authorities should establish the services specifically needed by children who are trafficked and/or exploited, and where appropriate link these services with relevant international organizations and NGOs.
- Guardians, in cooperation with social service authorities and NGOs, shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.

Accommodation in a safe place

- Child victims should be placed in safe and suitable accommodation (i.e. temporary shelter or location of alternative care arrangement) as soon as possible after their identification.
- Social service authorities, in cooperation with NGOs and international organisations, shall develop standards of care for places where child victims are accommodated.
- Under no circumstances should a child be placed in any type of detention facility, including police cells, prisons or even special detention centres for children.

8.2 Implications of the principles

Child victims need protection from traffickers and their associates – the persons who have made money from moving or exploiting children – who might harm, harass, threaten or intimidate the child they have trafficked or the child's relatives or friends. However, once they are no longer under the direct control of the trafficker or exploiter, child victims still require protection. Children remain vulnerable or sensitive to a range of maltreatment, e.g., from:

- other traffickers who are ready to take advantage of them;
- staff or other children living in the same shelter or residential facility;
- journalists or others who may violate their right to privacy by revealing their names or other personal details publicly; and
- members of the public, who attack, criticize or discriminate against children because of stigma and blame attached to trafficked children and the activities in which they may have engaged, such as prostitution or theft.

Children trafficked abroad, like all foreign citizens, are entitled to contact their country's diplomatic and consular representatives. They should not be held in immigration detention centres or other detention facilities (such as juvenile detention centres) – even to protect them from traffickers. Safe and suitable alternatives should be developed in conjunction with child welfare authorities. In principle, trafficked children should not be held in the same facilities as adults who have been trafficked, whether shelters or detention centres. Safe and suitable accommodation takes various forms, including a shelter, a transit home or other home providing residential care for children, a foster family's home, etc.

To be 'safe' the accommodation must not be accessible to traffickers or their associates or to other outsiders who might cause further harm to children who have been trafficked. A 'safe house' for trafficking victims should not be publicly known as such; its purpose and address should be kept secret. In addition, access to such accommodation should also be monitored and restricted to those who have authorization or a legitimate reason to enter.

Child victims of trafficking require various forms of assistance – e.g., health care, psycho-social support, welfare, education – dependent on the nature and impact of their exploitation as well as their legal status. Individual care and protection plans should be developed by appropriately trained professionals (e.g., lawyers, social and health workers). Trafficked children have a right to reasonable standards of care, both in terms of residential care and of the professional services which they receive. It is also important that they not be exposed to the possibility of further abuse at the hands of anyone providing them with care.

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8.3 Who has responsibility to take action?

The State is responsible for providing special protection and assistance to any child who is temporarily or permanently deprived of his or her family environment.⁶⁰

Social service authorities are responsible for developing standards of care for children who have been trafficked, in cooperation with NGOs and international organizations. The CRC requires States Parties to ensure that minimum standards for care and protection are set and to check that these are adhered to.⁶¹ If minimum standards of care have not yet been set, the national-level authority responsible for child welfare or social services is responsible for developing such standards, consulting care professionals, NGOs and inter-governmental organizations with relevant expertise while it does so.

Social service authorities are also responsible for providing care to trafficked children and ensuring that appropriate services are available, whether the care is provided directly by social services or indirectly by international organizations or NGOs. Meeting the needs of a child who has been trafficked (ensuring they are provided and paying for them, for example providing trafficked children with accommodation, medical attention and food free of charge) is the responsibility of the social services authorities. Governments should ensure that this is clear in relevant National Action Plans and reflected in the State Budget.

Social service authorities may delegate responsibility for caring for children to private charities or organizations, but remain responsible for the provision of adequate care. If significant numbers of trafficked children are identified and need looking after temporarily, this may require the establishment of one or more special residential facilities. The social services authority can seek the cooperation of international organizations and NGOs with relevant expertise in setting these up.

The person appointed as *guardian* for a trafficked child is responsible for ensuring that an individual needs assessment is carried out for the child and that appropriate care and protection provisions are identified. The guardian can make some preliminary assessment himself/herself of the child's priority needs. However, as soon as possible the guardian should seek professional advice, ensuring that a needs assessment is carried out by a relevant professional (health professional, lawyer, educationalist, etc.) with respect to each of the child's possible needs.

⁶⁰ Article 20.1 of the Convention on the Rights of the Child says: "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State".

⁶¹ Article 3.3 of the Convention on the Rights of the Child says: "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

The guardian is also responsible for explaining to the child at an early stage that they can potentially contact their country's diplomatic and consular representatives and for pointing out the possible implications.

Social service authorities are responsible for ensuring that the care and protection provisions identified in a needs assessment are made available. The *professional staff* looking after trafficked children have a responsibility to respect the children's cultural identity and to ensure that the health care, psychosocial care and education which they make available reflect the children's cultural needs.

Both the *law enforcement officials* responsible for investigating a trafficked child's case and the person appointed as the child's *guardian* have a responsibility to assess what security measures are needed to protect the child. This includes trying to find out whether the child is still operating under the control of a trafficker. It is possible that a child who has been interviewed by law enforcement officials and referred to residential accommodation has been instructed to telephone a trafficker or to go to a specific address once they leave the custody of the immigration service, police or residential facility (in which case the child either has a note of the telephone number or address, or has learnt it by heart). Consequently, the fact that a child has a mobile telephone (a 'cell phone') in her or his possession on arrival in safe accommodation may signify that the child is at risk of being telephoned and recalled by her or his trafficker.

8.4 Who else may take action?

NGOs and international organizations play a role in providing care to trafficked children. For example, the International Organization for Migration (IOM) runs shelters for both adults and children who have been trafficked in many countries in South Eastern Europe. Their role should be adequately regulated and aligned with national standards of care (when they exist).

8.5 Key challenges and examples of good/bad practices

8.5.1 Safeguarding children's security versus violating their rights

Sometimes the potential threat to a trafficked child from the individuals involved in trafficking or exploiting her or him is very great or imminent. Organizations responsible for protecting the child might then decide the best way to protect the child is to place him or her in a restricted-access facility, i.e., effectively in detention. While it is important to provide a responsible level of protection, keeping trafficked children in any situation which they interpret as 'imprisonment' is likely to cause them further harm. This is because they naturally resent imprisonment and want to enjoy the freedom of movement which they were generally denied while being trafficked. It is also because they are likely to interpret their imprisonment as a form of punishment for having been trafficked – precisely the opposite message to the one which they need in order to recover from their experience.

Any limits placed on a child's freedom of movement and freedom to communicate while she or he is in care must not be imposed gratuitously or automatically. However, failing to impose any limits – for example, because those responsible for the child's care consider it an unacceptable abuse of the children's rights – may be irresponsible and amount to failing to come to the assistance of children who are in danger. Any limits which are imposed should be in response to specific threats for which there is some evidence, not because the director of a shelter or residential centre wants to take all possible precautions.

Traffickers are known to have taken advantage of the rules governing residential care in order to reassert their control over children. At simplest, they appear outside a shelter or residential centre and summon 'their' child. However, as they risk being identified and arrested, the techniques used are usually less direct: children are 'pre-programmed' to leave and contact them, or traffickers make use of telephones, particularly mobile telephones, to contact 'their' child and give the child instructions.

In one EU country, for example, trafficked children from Eastern Europe who are placed in residential care are reported routinely to arrive with a mobile telephone in their possession. The staff of residen-

tial centres where trafficked children are accommodated are apparently not allowed to confiscate or immobilise mobile telephones in the children's possession. Some trafficked children are reported to have received telephone calls within one or two days and to have left shortly afterwards. The calls are not uniquely from traffickers. Sometimes trafficked children telephone their parents, in their country of origin, and it is their parents who instruct them to re-join their trafficker. In contrast, in another EU country, the staff of a residential centre for trafficked children apparently confiscate mobile phones as a matter of routine and stop or limit the children in their care from making telephone calls for about one month after their arrival – on the grounds that such calls are generally used to encourage the child to leave residential care and to rejoin traffickers.

If there have been no cases in which children living in a residential facility have used mobile telephones or a telephone in the facility to make or receive calls that have resulted in them leaving and returning to their trafficker, it would not be reasonable to confiscate telephones or prohibit children from making calls. In particular, children should not be prevented from communicating with their parents unless there are grounds to fear that this is likely to lead to further abuse of the child. Rather than stopping a child from talking to her or his parents by telephone, it may be more appropriate to allow the child to make a call under supervision.

8.5.2 Children who chose to leave residential accommodation

A significant proportion of trafficked children who have been sent to residential centres across Europe subsequently walk out without telling staff where they are going or why. The numbers of children involved are significant. For example, in the case of a special school in Athens (Greece) which takes in unaccompanied children referred there by a Public Prosecutor, out of the 644 children arriving there between November 1998 and October 2001 (543 of whom were from neighbouring Albania), 487 subsequently walked out (75 per cent) and no information is available about what happened to them subsequently.⁶²

There is evidence that some children leave residential care in order to return to their traffickers, either because they have been 'pre-programmed' to do so or because they are fearful of the consequences for them or their family if they do not. However, others leave because they do not want to return to their home country and prefer trying to get by on their own to the prospect of remaining in residential care. This is interpreted by some as an indictment of the low quality of residential care available. Little accurate information is available to indicate what happens to children who try to 'go it alone'. Various professionals involved in combating trafficking have voiced the fear that such children 'disappear' back into the hands of traffickers to be further exploited. The absence of meaningful data makes this risk difficult to assess. An NGO investigated whether children who had 'disappeared' from residential facilities in Greece had moved to secret brothels or other places where they were again controlled by traffickers and could find little evidence for this.

8.5.3 Care and assistance which respect the child's cultural identity and origin

Culture provides children with identity and continuity. The process of trafficking and exploitation in another country can disrupt nearly every aspect of the cultural ties for children. The consequences of this disruption for children can be extremely serious.

Under normal circumstances, parents provide the primary role model for their children, contributing significantly to the development of their identity and to their acquisition of skills and values. Separation from their parents or primary carers deprives trafficked children of these role models. Younger children who remain in care, either in the country to which they have been trafficked or after return to their country of origin, are likely to suffer particularly from the damaging impact of this separation.

Providing care which respects a child's cultural identity is very important but a great challenge, particularly when trafficked children come from cultures that are significantly different to the country into which they have been trafficked.

⁶² Terre des hommes, "The Trafficking of Albanian Children in Greece", 2003, quoting information from Greece's Directorate for Child Protection.

The CRC notes that children from 'other' cultures (especially those belonging to minority groups) have a right to enjoy their own culture, to profess and practise their own religion, and to use their own language (CRC, Article 30). Equally relevant to trafficking cases in which a child has been deprived of aspects of his or her identity, the CRC stipulates that:

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. (CRC, Article 8.2)

However, at the same time, care should be taken not to perpetuate those aspects of cultural traditions that are harmful to and discriminate against children, such as discrimination against girls in general or an assumption that conventional school education is of no use to children from Roma or other marginalized social groups. Such cultural conventions may have been factors contributing to a child being trafficked in the first place.

Respecting the child's cultural identity and ensuring that the health care, psychosocial care and education which professional carers make available reflect the child's cultural needs means in particular:

- encouraging children to use the language which is their mother tongue and, if no staff or other children in the same residential home speak this language, arranging opportunities for a child to talk with others who use the same language.
- finding out what the child's religious beliefs are and enabling them to practice their religion. This may entail respecting the use or avoidance of certain drinks and foods.

8.5.4 Respecting gender and age

The sex of trafficked children also has major implications. Girls are more likely to have been subjected to sexual abuse and to need health and psychosocial care to recover from this. However, in many countries it is routine for teenage girls who have been trafficked to be placed together with young adult women who have been trafficked, on the assumption that the abuse they have experienced is the same and that they can therefore recover together. This assumption overlooks the particular harm caused to girls on account of their immaturity and the particular needs that they have in recovering. On the one hand it may result in young adults being treated inappropriately, as if they were still children; on the other, it is important to ensure that adolescent girls are given care and opportunities which would not be appropriate for adult women.

The age of trafficked children clearly has major implications for the attention they will need. Younger children are likely to be less able to look after themselves in a wide variety of ways. Ensuring that children aged 10 or 12 restart school education is a priority, whereas 16 or 17-year-old adolescents may see themselves as too old to return to school and benefit more from other forms of training (such as vocational training).

8.5.5 Suitable categories of accommodation

Although victims should be placed in safe and suitable supervised accommodation, many countries in Europe have no special residential care facilities for trafficked children. Consequently they tend to be sent to shelters or residential homes designed for other purposes, such as shelters for victims of domestic violence (intended principally for adult women accompanied by young children), and residential homes established for particular categories of children, such as juvenile offenders or unaccompanied children arriving from abroad and seeking asylum.

In most cases these facilities are not suitable except on a very short term basis. For example, shelters for victims of domestic violence may offer some security, but provide no programme of activities to help an adolescent girl recover from her experiences. In most cases these facilities are not suitable for trafficked children except on a very short-term basis. A Kosovar teenager in a shelter for victims of domestic violence described her circumstances: "There were mothers with small kids. They are different types of cases, married girls having problems with their husbands or divorced mothers. There was a girl with the same experience as mine. Most of the time we were together.

It was very noisy in that house. Those ladies were having fights for small things. I couldn't stand that and I was more isolated. I had duties assigned and I was looking after myself."⁶³

Residential care designed for the age group of the child involved often appears the most suitable arrangement while they remain in a country other than their own on a temporary basis and when they first return to their own country. In principle it is desirable to minimise the length of a child's stay in residential care, to avoid children becoming 'institutionalised'. However, a period in residential care can also be helpful for trafficked children, to provide them with appropriate care and give them an opportunity to recover. When trafficked children return to their own country, a period in residential care offers an opportunity for the child's own needs to be assessed and for the circumstances of the child's family to be checked before the child is reunited with her or his family.

Children's stay in residential care is unlikely to be positive if they feel they are being kept in captivity or being subjected to a paternalistic or patronizing regime. It must be remembered that though young in years these children have endured situations that are well beyond their age in terms of experience and even beyond the experiences of the adults taking care of them.

8.5.6 Suitable care

The specific forms of care which an individual trafficked child needs depend on the harm she nor he has experienced, as well as other factors. Ensuring these needs are assessed and met in terms of care and protection are key responsibilities of the guardian appointed for the child.

The child's needs fall broadly into five categories:

1. security;
2. physical and psychological health care;
3. legal assistance;
4. welfare;
5. education.

Alongside conventional efforts to promote a child's psychological health, the experience of being trafficked means that explicit efforts should be made to re-establish the child's sense of self-esteem and of being able to make decisions and control her or his life. In other words, specific efforts are needed to empower the child.

8.5.6.1 Security

When law enforcement officials first make contact with a trafficked child, they need to assess the measures needed to protect the security of the child. Re-assessment is needed periodically thereafter, especially when the child's place of residence changes. As noted in section 7.5.1 above, it is important that security measures not be disproportionate nor result in further abuse of the child's rights.

8.5.6.2 Health

Health professionals and social workers can help children recover from the experience of trafficking by providing medical treatment and psycho-social care. As in other forms of child maltreatment, often the psychic wounds are much more difficult to heal than any physical hurts. Psycho-social care addresses the child's behaviours and ability – or inability – to interact with other people in a socially acceptable way. For many trafficked children, access to psycho-social counselling is vital to their recovery.

⁶³

A 16-year-old girl, first trafficked at age 14, quoted in: "Trafficking in Children in the UN Administered Province of Kosovo: A study on protection and assistance provided to children victims of trafficking," UNICEF, 2004.

a) The special needs of some categories of children

Trafficked children may have special needs that require particular types of treatment. Some of these needs are explicit, such as pregnancy or a visible disability; others will only be discovered by sensitive questioning and observation over time.

For example a Ukrainian boy trafficked to Poland said he was confined to a special chair for a disabled child as part of the traffickers' charade for the child to beg for money. Although the boy did not have a disability, he suffered physical distress as a result of being forced to remain in a cramped position for many hours at a time. He also suffered psychological distress from routinely being treated as if he was disabled, as well as from being bullied and coerced by his traffickers. Part of the boy's distress was due to the fact that his mother had been simultaneously trafficked yet refused to seek assistance – a circumstance that could cause a child to both devalue the protective capacity of a parent and fear their traffickers.⁶⁴

b) Children subjected to sexual abuse

Children who have been trafficked for commercial sexual exploitation have generally suffered psychological distress as well as physical assault. They have often been traumatized by a series of terrible events. It is, therefore, a challenge to health care professionals and other expert carers to help them recover.

The needs of children who have been subjected to commercial sexual exploitation should be assessed by health professionals who have experience in such cases. Such experts have the skills to recognize and uncover the specific forms of harm common to sexually abused children, as well as the special sensitivity needed to enable children to talk about sexual abuse. These health professionals also have an informed understanding of prognoses and paths to recovery.

Similarly the psychological and behavioural effects of abuse should be assessed and treated by professional carers who have special training.⁶⁵ National authorities responsible for social services or child welfare have a responsibility to ensure there is an adequate number of health professionals who are adequately trained to meet the need of trafficked children for psycho-social counselling and/or psychotherapy. If psychotherapists are not currently available, some of these tasks may be carried out by trained counsellors and experienced volunteer helpers, under appropriate supervision.

While trafficked children are recovering, especially when they are in primary psychotherapy or counselling, it is important that these children have a sense of security, predictability and control in their lives.⁶⁶ This requires a consistent approach by the variety of adults who come into contact with trafficked children: staff responsible for day-to-day care; professionals responsible for medical treatment or therapy; and police responsible for investigating the criminal aspects of the case.

⁶⁴ Case cited in: Centre of Social Expertise of the Institute of Sociology, National Academy of Sciences (Ukraine), "Trafficking in Children for Labour and Sexual Exploitation in Ukraine: Results of a Rapid Assessment Survey, for," ILO-IPEC, 2003.

⁶⁵ Refer to: B. Mitchels, "Let's Talk: Developing Effective Communication with Child Victims of Abuse and Human Trafficking," UNICEF, 2004, accessed at www.childtrafficking.org; Mark Jordans, "Specialized Training Manual on Psychosocial Counseling for Trafficked Youth: Handling the Trauma of Sexual Exploitation," ILO-IPEC, 2002, accessed at www.ilo.org/public/english/standards/ipec/publ/download/counsel_traffic02_en.pdf; ECPAT-International, "The Psychosocial Rehabilitation of Children Who Have Been Commercially Sexually Exploited: A Training Guide," 2003, accessed at www.ecpat.net/eng/index.asp

⁶⁶ 'Psycho-social counselling' involves a combination of components of client-centred counselling and problem-solving counselling. 'Psychotherapy' involves treating emotional and behavioural disturbance (for example post-traumatic stress disorder), and trauma (for example, post-traumatic stress, anxiety or depression, which give rise to concern for the child's mental health), helping the child to make sense of their experience and to put it into the context of their life, to cope with loss, separation and bereavement and to complete their developmental tasks of childhood.

ECPAT-International has identified four phases through which children exposed to sexual exploitation progress:

- the 'honeymoon phase';
- the 'adjustment phase';
- the 'settling phase'; and
- the 'moving on phase'.

It is in the 'adjustment phase' that children demonstrate the most serious behavioural difficulties, such as resisting discipline, becoming angry, and bizarre behaviour, such as hoarding food or hiding their possessions. During this phase, children require the closest attention and support.

The course of treatment for social and emotional problems takes time to have the desired effects. This is one reason for trafficked children to remain in residential care. Children who have been primarily exploited for labour may also have been subjected to sexual abuse. They, therefore, require specific treatment but may, however, be unwilling to admit that they were abused. In any case, it is more obvious – and, therefore, easier – to address the physical consequences of sexual abuse (e.g., physical trauma, pregnancy, sexually transmitted infections) than the more subtle psycho-social impacts.

It is important that sexually exploited children be checked for sexually transmitted infections, the most serious of which is HIV/AIDS. However, it is equally important that teenagers who are mature enough to understand the implications should *not* be compelled to have a test for HIV/AIDS.⁶⁷ Those who do agree to be tested should receive pre-test counselling. Whatever the outcome – HIV-negative, HIV-positive or AIDS status – children need to be professionally prepared for the test process and varying results.

c) Children suffering from post-traumatic stress disorder (whether from sexual or other forms of abuse)

After any traumatic event, most people, children and adults, experience some psychological and physical effects. This is a natural part of the human response to stress. When these effects continue for a long time, or if the symptoms are very severe, medical or psychological help might be required to treat what is called 'post-traumatic stress'.

Some trafficked children experience a single traumatic event. However, many are subjected to a series of traumatic experiences, sometimes continuously.

The symptoms of post-traumatic stress may manifest themselves in many ways but there is now a slate of recognizable signs.⁶⁸

One signature symptom is the resurgence of memories of the traumatic events in the form of thoughts, memories and dreams. Sometimes these are very real and the person feels as though the traumatic event is happening again, right then. This 'reliving' experience is uncontrollable and difficult, if not impossible, to shut out. Often nightmares occur and children may be afraid to go to sleep.

Some children try to avoid activities, places and people that remind them of the trauma. Avoidance symptoms include apathy, depression, tiredness, emotional numbing and 'no vision of the future'. Children affected may hold back feelings and memories; reminders of the past may be depressing. Sometimes social or family taboos stop children from talking about their experiences. However, children very often find relief in talking about the events.

⁶⁷ The UN Guidelines on HIV/AIDS and Human Rights note that: "There is no public health justification for such compulsory HIV testing. Respect for the right to physical integrity requires that testing be voluntary and based on informed consent" (Guidelines on HIV/AIDS and Human Rights, Annex 1, section C, point 9, UN document E/CN.4/1997/37, 20 January 1997). These Guidelines are found at: <http://www.unhcr.ch/huridocda/huridoca.nsf>

⁶⁸ Barbara Mitchels, "Let's Talk," 2004, op. cit.

Most children recover from trauma with social support and help from their friends, family and community, or other agencies. Some cannot function in their day to day life, and they continue to experience great psychological suffering. It is these children who may need expert medical or psychological help.

8.5.6.3 Legal assistance

The guardian of a trafficked child should secure professional legal advice or legal representation for the child in any of the following circumstances:

1. There is a possibility that the child may be charged with an offence, either in connection with illegal entry into a country or an offence of any other sort. A lawyer (and the child's guardian) should accompany the child at every interview with law enforcement officials.
2. The child is asked to give evidence that may be used in a court case.
3. The child appears to have a well-grounded fear of persecution if returned to her or his country of origin and it may be in her or his best interests to seek asylum in the country to which she/he has been trafficked. No one who applies for asylum may be repatriated (subjected to 'refoulement') while their asylum application is being considered and until and unless it has been turned down.
4. An assessment is needed to determine whether the child is entitled to compensation, either for harm or prejudice caused to the child, or because of unpaid or underpaid remuneration based on income the child has earned during a period of exploitation. A claim may involve suing a trafficker, but might alternatively involve asking that a portion of the trafficker's confiscated assets to be paid to the trafficked child.
5. It is necessary to secure the most appropriate durable solution that is in the child's best interests.

A legal representative should be available at no cost to the child. The guardian should look for a legal representative who is skilled in representing children, has knowledge of the experiences of trafficked children, and is aware of the risks a trafficked child faces if returned to the country of origin. The legal representative should have knowledge of child-specific forms of persecution and the asylum process.

8.5.6.4 Welfare

Trafficked children have a range of practical needs, depending on their circumstances. They may need clothing, toys, books, musical instruments and other equipment. They may need to communicate with relatives or other acquaintances.

Social service authorities are responsible for meeting these needs, whether in the child's country of origin and in any other country to which the child is trafficked. If they are unable to meet these needs, they are obliged to cooperate with specialized international agencies to fulfil their commitments to provide assistance and protection. The child's guardian should coordinate with social services and NGOs or other organizations that are equipped to meet the child's material needs.

8.5.6.5 Education

The age and specific needs of trafficked children will determine whether they attend school in the destination country. First of all, trafficked children should have access to the same statutory education as national children, i.e., if it is compulsory for national children of their age to attend school, so should they. If there is a strong likelihood that the trafficked child will remain no more than a few weeks in the destination country, there is no need to put them in the national education system. However, if it is even likely the trafficked child will remain longer, she or he should attend school. Trafficked children may well have been taken out of school prematurely already and so have an acute need to catch up on their formal education.

There are obvious cases in which treatment for the physical, psychological or behavioural effects of trafficking are a priority. The child's guardian should assess when a school-age child is ready to

restart school and whether the child should receive education in his or her mother tongue or begin learning a second language.

A child's lack of basic education (numeracy and/or literacy), life skills⁶⁹ and vocational training may have been factors that made them vulnerable to traffickers in the first place. Efforts to address these needs are often postponed on the assumption that they are the responsibility of the child's home country and can wait until the child returns home. It is important that efforts to address these needs *not* be postponed until a durable solution is implemented – in part to take advantage of any spare time the child has while awaiting decisions about a durable solution and in part to enhance their life chances later on.

The education professionals will ideally have some knowledge or understanding of the child's cultural background.

8.5.6.6 Empowerment

The process of empowering a victim of trafficking, whether a child or an adult, enables the person concerned to stop feeling powerless and manipulated or ordered around by others and instead to feel in control of their life and their future. Progress remains limited while a child is in interim care, but it is important that the way the child is treated while receiving care promotes the child's confidence and ability to take back control. Progress can be undermined when the management of a residential facility imposes inappropriate discipline and rules on the children living in the facility, or if law enforcement officials who are conducting forensic interviews fail to give the child any feeling of control or influence during the interviews or in the process leading to the prosecution of a trafficker.

8.5.6.7 Looking after the carers (staff looking after trafficked children)

In order to ensure that professional staff caring for trafficking children can provide the care needed by the children, it is important that attention be paid to guaranteeing their security and ensuring they do not suffer from inappropriate levels of stress.

Managers of residential facilities (or the law enforcement officials supporting them) must protect the facilities from any intrusion by traffickers or their associates, and safeguard the security of individual staff when they are outside the facility.

Post-traumatic stress reaction is not confined to those who directly experience trauma.⁷⁰ Professionals and helpers may themselves experience 'compassion fatigue' or 'burn out' just by listening to many accounts of trauma of others. Professionals and helpers working with trafficked children may find themselves working long hours in difficult conditions. They often feel that they have insufficient training and experience to deal with the problems they must face. Professionals and helpers need adequate rest and time away from their work, as well as appropriate support for their work by colleagues and management within their own administrative bodies.

⁶⁹ Life skills include learning to negotiate, coping with decision-making, problem solving, critical thinking, communicating effectively, interpersonal relationships, resolving conflicts, being self-aware and empathetic towards others, and coping with emotions and with stress.

⁷⁰ B. Mitchels, op. cit. page 19.

Chapter 9 Regularization of Status

9.1 General principles

- Ministries of Interior and/or other relevant state authorities shall establish policies and procedures to ensure that child victims, who are not nationals/residents of the country in which they find themselves, are automatically granted a Temporary Humanitarian Visa and are entitled to stay in the country on a valid legal basis pending identification of a durable solution.
- For children without documentation, Ministries of the Interior and/or other relevant state authorities will provide temporary documents.
- In conjunction with the Ministry of the Interior and, where relevant, social service authorities, the child's assigned guardian is responsible for initiating application procedures for the issuance of a Temporary Humanitarian Visa and the concordant leave of stay, acting on behalf of the child in any administrative presentations or procedures this may require.
- Such status shall be afforded to the child victim until the relevant judicial and administrative bodies have made a decision regarding the disposition of the child.

9.2 Implications of the principles

Children who have been trafficked to another country often have no valid identity documents or no valid entitlement to be in the country into which they have been trafficked. Sometimes they have entered a country with their own passport, but this has been taken from them by their traffickers (as one way of keeping control of them). In other situations they have been issued with a false passport, for example one suggesting they are older than is actually the case. In yet other situations, their entitlement to be in the country to which they have been trafficked (such as a fixed-term visa) has expired. In all these situations child victims have no legal basis to be in the country to which they have been trafficked. At the same time, the authorities responsible for them also need time to get hold of the information they need to make decisions about what should happen to a child

Summarily deporting any child who is believed to have been trafficked is inherently abusive. In fact, repatriating a child facing a risk of torture would violate the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)⁷¹ and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984). In the case of European Union Member States, it would also violate the Charter of Fundamental Rights of the EU. For example, the principle of non-refoulement could be violated if a victim of trafficking is summarily deported without having first assessed whether the child would be at risk of persecution in his/her home country (or in the country to which she/he is deported if this is another one). There is also a risk that the deported child might be subjected to torture by traffickers.

Promptly regularizing the child's legal status is an important step in the protection process so that a trafficked child is not repatriated inappropriately. At a minimum this means granting the child temporary legal status that allow her or him to remain in the country to which they have been trafficked and now find themselves – at least until risk and security assessments are carried out and a durable solution for the child is determined. This process is likely to take months rather than weeks.

In many cases, regularizing the child's legal status also means giving the child a temporary identity document as well as a visa. Any Temporary Humanitarian Visa issued to a trafficked child should be valid for long enough to reassure the child that his or her status is secure for the foreseeable future and the document should be formulated in terms which provide reassurance. In illustration of the last point, in some countries temporary permission to remain takes the form of a delayed expulsion order that authorizes the child to stay for just 45 or 90 days before being expelled. This type of conditional document is unlikely to provide the sense of security which a trafficked child needs to recover.

⁷¹ As amended by Protocol No. 11 (1998). The text of the European Convention is found at: <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

9.3 Who has responsibility to take action?

Ministries of the Interior and/or other relevant state authorities have a responsibility to provide non-national children who have been trafficked into the country with temporary documents (if they have none) and a Temporary Humanitarian Visa or other temporary legal authorization to remain in the country while a durable solution for the child is identified.

When a country does not have a policy or procedure for issuing 'Temporary Humanitarian Visas', the Ministry of the Interior is responsible for putting these into place.

Ministries of the Interior and/or other relevant state authorities have a responsibility to ensure that the immigration service has instructions not to deport children who have no legal entitlement to be in the country but who are believed to have been trafficked.

Social services authorities are responsible for working in conjunction with the *Ministry of the Interior and guardians* to facilitate applications for the issuance of a Temporary Humanitarian Visa. The child's guardian is responsible for initiating application procedures for the issuance of a Temporary Humanitarian Visa and acting on behalf of the child in any administrative presentations or procedures this may require.

9.4 Who else may take action?

Only government authorities can regularize the immigration status of a foreign child.

9.5 Key challenges and examples of good/bad practices

9.5.1 Problems arising from imprisonment and deportation

It has been emphasized earlier in this Reference Guide that children who have been trafficked must not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination (see Chapter 5). In addition to not detaining, charging or prosecuting trafficked children, the authorities are also required to refrain from deporting or expelling them, or using any summary, administrative or informal procedures to exclude them from the country into which they have been trafficked.

Although these provisions seem obvious to anyone who has had direct dealings with trafficked children or witnessed the further trauma which both imprisonment and summary deportation cause to children, both practices continue to be reported with alarming frequency. In most cases the authorities responsible have not identified the child concerned correctly as a victim of trafficking. In numerous cases, a child's lack of valid entitlement to be in a country is interpreted as an offence and a reason for detaining or deporting the child concerned. In other cases, it is the child's involvement in offences carried out while in a country, such as theft, which causes the police to assume that she or he is a criminal and should be punished accordingly.

These commonly made presumptions underline the need for law enforcement officers and immigration service personnel who come into contact with foreign children to have undertaken training about trafficking.

In a number of EU countries, the issuance of a temporary stay visa for victims of trafficking is conditional on the victim's willingness to cooperate with the police and provide any evidence they have that would support the prosecution of a trafficker. When trafficking victims are under age 18, this conditionality contravenes the authorities' legal obligation to protect the child concerned. Under the

terms of an EU Council Directive adopted in 2004,⁷² anyone who is the national of a country outside the EU and who has been trafficked into an EU country, whether adult or child, should be allowed “a reflection period” so that they can recover and take an informed decision as to whether to provide information to law enforcement agencies. If they agree to cooperate, they are to be given a temporary residence permit valid for at least six months (under article 8 of the Council Directive). The Directive stipulates that if someone under 18 is offered a reflection period or a temporary residence permit conditional on providing information to law enforcement agencies, the authorities must take account of the best interests of the child concerned.⁷³

⁷² Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, who cooperate with the competent authorities. Article 6.1 states: “Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.” The duration and starting point of the reflection period are to be determined according to national law. Three EU Member States (Denmark, Ireland and the United Kingdom) opted not to implement this Council Directive.

⁷³ “Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.” (Article 10 a).

Chapter 10 Individual Case Assessment and Identification of a Durable Solution

10.1 General principles

- Child victims should not be returned to their country of origin unless, prior to the return, a suitable care-giver such as parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection.
- The views of the child should be taken into consideration when considering family reunification and/or return to the country of origin and in identifying a durable solution for the child.
- Social service authorities, in cooperation with Ministries of Interior where necessary, should take all necessary steps to trace, identify and locate family members and facilitate the reunion of child victim with her/his family where this is in the best interest of the child.
- The respective Ministries, in conjunction with relevant social service authorities and/or the child's guardian, are responsible for establishing whether or not the repatriation of a child victim is safe, and for ensuring that the process takes place in a dignified manner and is in the best interest of the child.
- Ministries of Foreign Affairs, Ministries of the Interior and other relevant state authorities shall establish agreements and procedures for collaboration with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted in order to determine the best course of action for the child.
- The guardian, acting through and with the assistance of the Ministries of the Interior or other relevant state authorities and the relevant social service authority shall begin the process of obtaining documentation and information from the child's country of origin in order to conduct a risk and security assessment. This evidence will be used to decide whether to reunite the child with her or his family and whether to return the child to their country of origin.
- Once sufficient documentation and information has been gathered, the relevant social service authority shall decide in conjunction with the guardian, the Ministry of the Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin, on the final disposition made in favour of the child.
- If the decision is made against family reunification and/or repatriation, then the guardian shall remain responsible for the child victim, until the appropriate judicial body appoints a legal guardian for the child.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, Ministries of the Interior shall assist those authorities in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.

10.2 Implications of the principles

When a trafficked child is first identified, priority should be given to the child's immediate needs. Once these are met, it is time to find out what longer-lasting arrangements would be suitable for the child. These arrangements are referred to as a 'durable solution'.

10.2.1 Principles to guide decisions about a durable solution

The decision-making process is not always simple and requires careful coordination between different agencies, including the Ministry of the Interior and the authority responsible for social services

or child welfare, as well as those responsible for the interim care of the child and with law enforcement officials who might wish to ask the child to provide them with further information or to take part in legal proceedings.

Principles to take into account in making decisions about durable solutions are:

1. The child's best interests must be a **primary** consideration in the decision;
2. The decision-making process must involve at least one person (the child's guardian) whose explicit responsibility is to advocate the child's best interests;
3. The (trafficked) child has a right to have her or his views heard and taken into account in the decision;
4. Every child has the right to maintain contact with his or her family;⁷⁴
5. Every child has a right to return to her or his country of origin;⁷⁵
6. Every child has a right to protection (wherever she or he is located), which must be taken into account in considering whether it is safe for the child to return to the country of origin;
7. Every child has the right to seek and enjoy asylum from persecution and the right to be protected against refoulement.

The ways in which the child's best interests should be taken into account in decisions about a durable solution has been the subject of comment by both international organizations and the Committee on the Rights of the Child (the treaty-monitoring body established to monitor the implementation of the CRC). Parts of this comment are cited below.

The first and most noteworthy principle to be observed in the decision-making process is that the best interests of the child concerned are a primary consideration. The primacy to be given to the child's best interests means that the lead agency responsible for decisions on durable solutions may not give priority to other factors which particular authorities consider crucial and want to be taken into account. Thus, decision makers are required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so a comprehensive decision that best protects the child's rights can be taken.⁷⁶

As many government entities participate in a process of decision-making, the process and the weight to be given to different considerations needs to be explained to every ministry or agency which may be involved in decisions of this sort, to ensure that they understand what the best interests of the child signify and that they are not entitled to try and superimpose their own institution's priorities.

Another important principle is that the child concerned must be given a chance to take part in the decision-making process and to say what solution she or he would prefer, as the child's views regarding her/his future and ability to return to her/his country of origin are absolutely essential to any assessment of durable solutions.

⁷⁴ Under the terms of article 9 (3) of the Convention on the Rights of the Child, "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests".

⁷⁵ Under the terms of article 10 (2) of the Convention on the Rights of the Child, "States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country".

⁷⁶ United Nations High Commissioner for Refugees (UNHCR), *Guidelines on Formal Determination of the Best Interests of the Child*, forthcoming (2006).

10.2.2 Deciding on the best durable solution for a trafficked child

In the past it was widely assumed that the outcome of any process to decide what should happen to a trafficked child would result in the child returning first to her or his country of origin and then to the family home (i.e., family reunification). However, experience shows it is not necessarily in the child's best interest to automatically be returned to either their family or country of origin. In principle trafficked children may not be returned to their country of origin if there are reasons to believe that their safety or that of their family would be in danger. A process of investigation, including tracing the trafficked child's family and assessing the security and risk implications associated with each possible durable solution, is needed before a decision about a durable solution is made. This process is necessary even if the child concerned expresses a wish to return to her or his country of origin.

There are basically three options as far as durable solutions are concerned for children who have been trafficked outside their own country:

1. local integration (in the country to which a child has been trafficked or, in cases of internal trafficking, integration in the area to which a child has been trafficked);
2. return to country of origin and integration there; and
3. moving to a third country for integration there.⁷⁷

The **tracing process** is intended to identify whether a child has a suitable caregiver (parents, guardian or other adult carer) or, as an alternative, whether there is an appropriate government agency in the child's country of origin that is able to provide adequate care and protection for the child.

The **security assessment** focuses primarily on possible threats to the child or her/his relatives from traffickers and their associates. As such it considers security threats that are specific to a child who has been trafficked and those affecting any children returning to the child's country of origin. For this purpose, the relevant social service or child welfare authority in the country in which a trafficked child is located should collect information from law enforcement officials or an intelligence agency involved in law enforcement in the child's country of origin, or from an international police organization.

Risk assessment explores the circumstances of the home and community to which the child is likely to return, in order to assess whether it is in the child's best interests to return there. Initiated by the same social service or child welfare authority wherever the child is located, it requires information from an agency in the child's country of origin, which is familiar with the child's family or the home of the person who is going to take responsibility of the child (or the institution which is going to do so) and the surrounding community.

GUIDELINES ON DETERMINING WHETHER A RETURN TO FAMILY AND/OR COUNTRY OF ORIGIN IS IN THE CHILD'S BEST  P135

The results of the tracing process, security assessment and risk assessment must be considered by the relevant government ministries in the country to which a child has been trafficked, in conjunction with the relevant social service or child welfare authority and the child's guardian. Trafficked children should not be returned to their country of origin unless the authority responsible for child welfare in the country where the child is located is satisfied that the return will not place the child in danger or at risk.

Furthermore, a trafficked child should not return to her/his country of origin until and unless a suitable carer is ready (and has agreed) to take responsibility for the child there. In this case, it is essential that a suitable person or agency in the child's country of origin should have been contacted and should have agreed to provide the child with appropriate care and protection before a trafficked child can return to her or his country of origin. It must also be clear that this person or agency has the ability and resources necessary to look after the child. Suitable care-givers in the child's country of origin include a parent, another relative, another adult care-giver, a government agency or a child-

⁷⁷ The modalities of implementing these three options are the subject of the Chapter 11 in this Reference Guide. The current chapter focuses on the decision-making process to choose which of the three is most appropriate.

care agency. In principle, the return of children to residential care institutions should be avoided unless all attempts to locate the child's family or find a family-based solution have been exhausted.

When the option of a trafficked child remaining in the country of destination is under consideration, decision-makers still need to examine whether this decision is in the child's best interests. This should include taking into account the child's culture and language, but also ensuring that priority is given to family based care options over institutional ones, especially for children under 16 years of age. This could be a fostering arrangement, while only very rarely would adoption be appropriate. As a matter of principle, any arrangement found for caring for a child in a destination country should involve an individual taking responsibility for the child, rather than an institution. Similarly, an individual should be appointed to act as the child's legal guardian and a plan should be developed for the child's integration, covering all aspects of her or his needs, including education or vocational training. The same considerations should be applied when it is determined that it is in the child's best interests to be resettled in a third country (for example, when a child has a family member in a third country who is willing and able to care for the child). In this case all arrangements should be made prior to the child's arrival.

It is important to note that if a trafficked child applies for asylum (or is a refugee), the procedures outlined in this chapter are not the correct ones to follow. Instead, alternative procedures which are already in place for considering applications for asylum should be followed. The UNHCR has developed comprehensive guidelines on protection and care of refugee children which set forth clear principles and procedures to ensure the protection and care of all refugee children, including the most vulnerable – those who are unaccompanied.⁷⁸

If the asylum authorities (or UNHCR in situations where it is responsible for conducting refugee status determination) conclude that the child has a well-founded fear of persecution pursuant to the 1951 Convention Relating to the Status of Refugees (or is entitled to international protection based on other provisions in the national legislation or falls within a UNHCR extended mandate), UNHCR can assess whether the child can locally integrate into the first country of asylum or whether she or he falls within UNHCR resettlement criteria.

10.3 Who has responsibility to take action?

The Government is responsible for establishing a clear procedure for making decisions about children trafficked into its country from abroad, for monitoring this procedure and ensuring it functions well, and for ensuring that the best interests of the child are a primary consideration in decisions about a durable solution for each trafficked child. The Government as a whole also has a responsibility to ensure that the non-refoulement principle is respected.⁷⁹

Various Government ministries have a role to play in reaching a decision on a durable solution about a trafficked child's future. The *relevant social service authority* is responsible for deciding, in conjunction with the guardian, the Ministry of the Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin,⁸⁰ on the final disposition made in favour of the child. However, before this decision can be reached, there are numerous other steps.

⁷⁸ For further details, consult The UNHCR Resettlement Handbook November 2004, at <http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3d464a844>

⁷⁹ I.e. that no child who is a refugee or applying for asylum is sent back to her or his country of origin and that no child at risk of being subjected to torture in her or his country of origin is returned there. For fuller details on the non-refoulement principle, see section 10.5.1 below.

⁸⁰ No authorities from the child's country of origin (including Embassy representatives) may be contacted if the child is a refugee or seeking asylum.

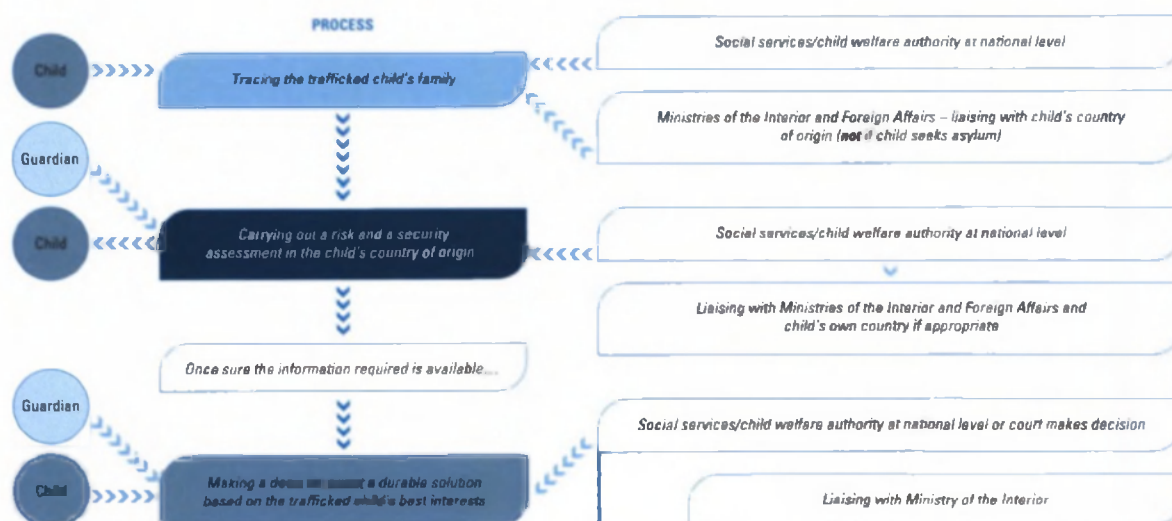


Figure 7: Who has a role in decisions about a durable solution for a trafficked child?

Relevant government Ministries, in conjunction with the relevant social service authorities and/or guardian, are responsible for establishing whether or not it would be safe for a child victim to return to her or his country of origin. If a National Referral Mechanism has been established, the relevant ministries and authorities should already be part of the National Referral Mechanism.

The *Ministry of the Interior* and *Ministry of Foreign Affairs* are responsible for agreeing procedures for channelling inquiries to the child's country of origin and implementing these. This may require additional bilateral agreements and procedures between them to those adopted when a National Referral Mechanism is established.

In cases when the child concerned is not a refugee or seeking asylum, the social services authority, working together with the *Ministry of the Interior Liaison Officer* and with the assistance of the *Ministry of Foreign Affairs*, is responsible for tracing the child's family. In cases of cross-border trafficking, those responsible for tracing will have to make contact with authorities in another country, either starting with the Embassy of the child's country of origin or keeping that Embassy informed.

When the child has expressed a wish to apply for asylum and an application has been submitted on their behalf, the asylum authorities will be responsible for making a decision.

The authorities in a trafficked child's country of origin (and those in any country where a victim of trafficking had a right of permanent residence before being trafficked) have a responsibility to respond to inquiries about a trafficked child and to facilitate and accept the return of the child without undue or unreasonable delay, paying proper attention to the child's safety.⁸¹

The child's guardian is responsible for working closely with the *authority responsible for social services or child welfare*, the *Ministry of the Interior* and any others who need to be consulted in the process of collecting information about the child's background and assessing the implications of a trafficked child returning to her/his country of origin and possibly to her/his family home. The guardian is also responsible for ensuring that the child concerned is given an adequate opportunity (or opportunities) to express her or his views on the possible options, and for ensuring that these views are given appropriate consideration in the decisions taken about the child.

⁸¹ Under the terms of the UN's Trafficking Protocol (Article 8 on 'Repatriation of victims of trafficking in persons').

Box 14

What refugee panel members need to demonstrate according to the United Nations High Commissioner for Refugees (UNHCR)

- an understanding of child rights;
- a thorough knowledge of UNHCR guidelines in relation to children;
- a solid understanding of the practical implications of stages of child and adolescent development and psycho-social well-being including knowledge regarding the psychological, emotional and physical development and behaviour of children;
- expertise on trafficking;
- an understanding of the specific issues involved in the best interests determination;
- a sensitivity to cultural background, age and gender related issues;
- a knowledge of the legal context and protection implications of the BID (best interests determination);
- an understanding of the cultural and religious context of the child;
- a knowledge of the social and economic context of the child.

Source: UNHCR, Guidelines on Formal Determination of the Best Interests of the Child, forthcoming (2006).

The child's guardian and a representative of the authority responsible for social services or child welfare (usually a social worker) are responsible for assessing when a sufficient amount of information has been obtained to make a decision about a durable solution for a trafficked child.

In countries which have ratified the European Convention on the Exercise of Children's Rights,⁸² any *judge or court* involved in making the decision about what should happen to a trafficked child is likely to have a legal obligation to consult the child involved in a particular way.

If a decision is made that a child should neither be returned to her or his country of origin, nor moved to a third country, then the same guardian remains responsible for the child until the appropriate judicial authority appoints a permanent legal guardian for the child.

10.4 Who else may take action?

International organizations such as the IOM play a role in tracing the child's family or in carrying out a risk and security assessment. When a trafficked child is a refugee or applies for asylum, the UNHCR is responsible for the child's protection. NGOs may be requested to provide information about the conditions in which a trafficked child's family are living and the possible risks to the child of being reunited with her or his family.

The process for tracing the parents, guardian or relatives of a child who has been trafficked to another country is significantly different to the process for tracing other categories of unaccompanied children, when National Red Cross or Red Crescent Societies and the International Committee of the Red Cross (ICRC) are routinely involved. While Red Cross and Red Crescent Societies are not all dealing with trafficking cases, some national societies in Europe have already opted to play a greater role in both prevention of trafficking and the treatment of victims of trafficking,⁸³ so can be contacted to see if they can help with tracing. National and international NGOs can play an important role, for

⁸² See Annex 2 ('Selected excerpts from European regional instruments') for Article 6 of the European Convention on the Exercise of Children's Rights. The text of the European Convention on the Exercise of Children's Rights is found at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/160.htm>

⁸³ For example, in December 2004 the Belarus Red Cross signed an agreement with the IOM to set up youth centres which would provide vocational training to young people, as well as psychological and medical support to victims of trafficking. See: The Bridge, spring 2005, International Federation of Red Cross and Red Crescent Societies, Regional Delegation for Central Europe. This can be found at: http://www.drk.dk/graphics/English/trafficking/reference_other/thebridge.pdf

example in situations where the authorities in a child's country of origin are slow or inefficient in providing information, but when NGOs in both the countries involved have already set up systems for exchanging information and tracing trafficked children. For example, the national branches of International Social Services may be able to perform this role.

NGOs and inter-governmental organizations are sometimes in a position to work together across political and linguistic boundaries with less need for protocol than government agencies. There have consequently been examples of both NGOs and inter-governmental organizations sharing information (about both individual children who have been trafficked and about patterns of child trafficking) across national borders in an efficient and effective way.

10.5 Key challenges and examples of good/bad practices

10.5.1 Non-refoulement

Some children who are trafficked are also refugees or may wish to request asylum in the country to which they have been trafficked. In such cases, the authorities may not repatriate such children (or send them to another country from which they might be repatriated), as this would constitute refoulement and they would be at risk of persecution.

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees set standards that apply to children in the same way as to adults:

- (1) a child who has a "well-founded fear of being persecuted" for one of the reasons stated in the 1951 Refugee Convention is a refugee;⁸⁴
- (2) refugee status is declaratory in nature,⁸⁵ that is to say a child who fulfils the criteria defining someone as a refugee already has the status of a refugee and is arguably entitled to the protection associated with this status before the authorities of the country where she or he is seeking asylum formally recognize the child's status;
- (3) a child who is seeking asylum or who holds refugee status cannot be forced to return to the country of origin or to the frontiers of any country which might in turn force them to return to their country of origin (the principle of non-refoulement).⁸⁶

If the child expresses a fear of returning to her or his country of origin or a wish to apply for asylum, or if the child's guardian has any reason to suspect that the child has a well-founded fear of persecution in her or his country of origin, the guardian should ensure that the child is promptly put into contact with a legal representative in order to make a request for asylum.

The Committee on the Rights of the Child has pointed out that the State's non-refoulement obligations:

apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.⁸⁷

⁸⁴ Including the risk of being subjected to the death penalty, torture or other cruel, inhuman or degrading treatment or punishment. The Refugee Convention refers to anyone "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" [Article 1.A (2)].

⁸⁵ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 (UNHCR Geneva 1992) Chapter 1: 28.

⁸⁶ UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, page 4.

⁸⁷ Committee on the Rights of the Child, General Comment No. 6, 'Treatment of unaccompanied and separated children outside their country of origin', adopted during the Committee's 39th session, 17 May to 3 June 2005, paragraph 27. General Comment No. 6 can be found at: <http://www.ohchr.org/english/bodies/crc/docs/GC6.pdf>

The Committee on the Rights of the Child has also pointed out the obligation that:

States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.⁸⁸

The CRC and other international instruments clearly oblige State parties not to extradite, deport, expel or otherwise remove children from their territory where there are suitable grounds to believe that they are under risks of irreparable harm.⁸⁹

10.5.2 The advantages of voluntary assisted return

If a decision is made that it is in a trafficked child's best interests to return to her or his country of origin, 'voluntary assisted return' is preferable to any form of repatriation in which an element of compulsion is used. Forcing a trafficked child to return to her or his country of origin is quite likely not to be a durable solution, for the following reasons:

- If children do not want to return home, they may well seek out new opportunities to leave their country, exposing themselves once again to the risk of being trafficked and abused.
- Proper preparations are less likely to have been made to receive children who are forcibly repatriated, creating a risk that they may be subjected to neglect, harm, abuse and that they may be trafficked once again. This also reduces the likelihood that return will be a durable solution.

10.5.3 Listening to the child's views and taking these into account

The child must be given opportunities to make comments and express views, and these views must be taken into account by decision-makers in accordance with the child's age and maturity.

By the time the process for deciding on a durable solution is underway, it should be apparent whether the child concerned wishes to apply for asylum, in which case there should be no question of the child returning to her or his country of origin. However, there may be other valid reasons why a child objects to returning to her or his country of origin. These may relate to the child's ambitions for the future (i.e. what the child aspires to, rather than is entitled to). However, they may also concern abuse which the child experienced in the past in her/his country of origin and a fear that this will be repeated.

The issues on which a trafficked child should be given an opportunity to express views are wide-ranging, and the most appropriate way of enabling the child to express her or his opinions will depend on the circumstances, as well as their age and maturity. Some key issues on which they should be asked to give their views are listed below.

1. The most obvious issue on which trafficked children must express an opinion concerns their possible return to their family. Children must be provided with an opportunity to give information confidentially about any abuse which they might have suffered at home and which would be a reason for not arranging for them to go back to live at home. Children who have no family to return to should likewise be asked their views about the prospect of returning to wherever they were living before being trafficked.

⁸⁸ Ibid, 87, paragraph 28.

⁸⁹ With respect to children seeking refugee status, the Convention on the Rights of the Child states, "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties" (article 22.1).

2. A second issue on which trafficked children must express an opinion concerns their reasons for leaving home (or the place where they were living) in the first place. If they decided themselves to leave, for example because they had no prospects of employment locally or were facing discrimination, it is unlikely that the situation at home will have changed. In such circumstances, returning home is unlikely to be a durable solution. If it is found that no barrier to family reunification exists, the children concerned must still be given an opportunity to comment on whether they are happy to return home, or whether they would strongly prefer a different option. If they state a clear intention to leave home again straight away, it will be apparent that family reunification is not a durable solution.
3. If there is an option of the child going to live with a close relative in either the country to which she or he has been trafficked, or a neighbouring third country, the child should comment on their relationship with this person and whether they would be happy with this solution.

Children who have been trafficked have generally experienced a period in which they were unable to control what happened to them. As part of the recovery process it is important that they be given as much control over the lives as possible: ensuring they have the opportunity to say what they want to happen to themselves next, and seeing adults take this seriously and implement decisions along the lines they have asked for is a necessary part of the recovery process.

Children who are still traumatised by their experience and who are depressed, anxious or upset may well not be able to understand the decisions which are being made or to make realistic decisions themselves. In such circumstances, health care professionals may advise delaying a decision which has long-term implications.

Not bothering to ask children for their views or overruling these as inappropriate will reinforce the sense felt by trafficked children that they still do not control their lives or their future. Appropriate techniques should be used to enable children to express their views.

10.5.4 Consideration of the continuing vulnerability of young people after reaching the age of 18

UNICEF's Guidelines concern anyone under 18. However, this does not mean that a young person who has been trafficked when younger than 18 no longer requires any protection after reaching the age of 18. Careful consideration needs to be given to a young person's continuing vulnerabilities when she or he reaches adulthood. In one EU country, the procedures currently in force have the effect of providing less protection to children who are trafficked when aged 16 or 17 than to either younger children or slightly older adults. This odd discrimination occurs because trafficked children are required to leave the country when they reach 18 unless they have already been receiving assistance for at least two years. Such procedures have the effect of stopping decisions being taken which are in the child's best interests. Like older children, young adults who have been trafficked need support and help in preparing either to return to their country of origin or to remain and integrate in the country to which they have been trafficked.

10.5.5 Challenges in ensuring the best interests of a child

The Committee on the Rights of the Child has pointed out that "non rights-based arguments" may not override considerations about which durable solution is in a child's best interests. The Committee has commented:

Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to society. Non rights-based arguments

such as, those relating to general migration control, cannot override best interests considerations.⁹⁰

Here are two examples of 'non rights-based arguments':

- An immigration service might argue that allowing a trafficked child to remain in the country would be a breach of the country's immigration regulations and create a precedent for other child migrants to get permission to stay in the country in the same way.
- In other circumstances, the police or officials responsible for bringing prosecutions argue that the 'needs of justice' require a child to remain in their country for a long period in order to give information as evidence at a trial.

Arguments such as these can be taken into consideration when a decision about the child's future is made, but may not be the primary consideration. This means that no solution that may place the child under the risk of any type of harm is considered to be in the child's best interest, for example. Similarly, returning the child to her or his country of origin under the premise that he or she will be placed in a shelter for child victims of trafficking does not respect the best interests of the child as a long-term solution for the child's care must be determined before the child is repatriated. Also ensuring that the child will be cared for in a residential care institution in the country of origin is not in the best interests of the child if he or she has family capable and willing of caring for him/her.

Thus ensuring the best interests of the child are respected requires good general knowledge and respect of child rights and entitlements stemming from them. The decision-making process and the weight to be given to different considerations needs explaining to every ministry or agency which may be involved in decisions of this sort, to ensure that they understand what the best interests of the child signify and that they are not entitled to try and superimpose their own institution's priorities.

⁹⁰ Committee on the Rights of the Child: General Comment No. 6, op. cit., paragraph 85.

Chapter 11 Implementation of a Durable Solution

11.1 General principles

While the precise steps to be taken to implement a durable solution vary (depending on whether the durable solution adopted involves local integration, return to the child's country of origin or resettlement and integration in a third country), the main principles are the same, whichever option is chosen:

- Once it is clear in which country or location a trafficked child will remain, child victims are entitled to receive long-term care and protection there, including access to health-care, psychosocial support, social services and education with a view to their social integration.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Arrangements for child victims in the medium- and long-term should in all cases favour family- and community-based arrangements rather than residential care.
- Regardless of what durable solution was selected the social welfare authorities should make adequate long-term care arrangements.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

Other guiding principles apply to different types of durable solutions as follows.

Return to country of origin

- Child victims, who are not nationals/residents of the country in which they find themselves, are as a general principle entitled to return to their country of origin.
- Child victims shall not be returned to their country of origin if, following a risk and security assessment, there are reasons to believe that the child's safety or that of their family is in danger.
- Ministries of the Interior or other relevant state authorities shall establish agreements and procedures for the safe return of child victims to their country of origin.
- A guardian or a social worker assigned to the case should accompany child victims who are being returned until placed in the custody of the Ministry of the Interior, IOM or another organization responsible for their return.
- States shall establish procedures to ensure that the child is received in the country of origin by an appointed responsible member of the social services of the country of origin and/or the child's parents or legal guardian.

Local integration

- In situations where the safe return of the child to his/her family and/or country of origin is not possible, or where such return would not be in the child's best interests, the social welfare authorities should make adequate long-term care arrangements.

Integration in country of origin – reception and reintegration

- Child victims should be cared for by adequately trained professionals who are aware of the special needs and rights of child victims, and of gender issues.
- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through cooperation with relevant international and non-governmental organizations.
- Social service authorities, in cooperation with relevant international and non-governmental organizations, should monitor the life situation of the child following his or her family reunification and/or placement in alternative care.

Resettlement and integration in a third country

- In situations where the safe return of the child to her/his country of origin and the integration in the country of destination are not possible, or where these solutions would not be in the child’s best interests, the States in both countries should ensure the child victim’s resettlement in a third country (unless the child applies for refugee status, in which case the authorities in the child’s country of origin should not be involved).
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child, including for education needs.

11.2 Implications of the principles

Whichever of the three alternatives for a durable solution is chosen, some standard steps have to be followed to ensure the child is integrated satisfactorily (see figure 8).

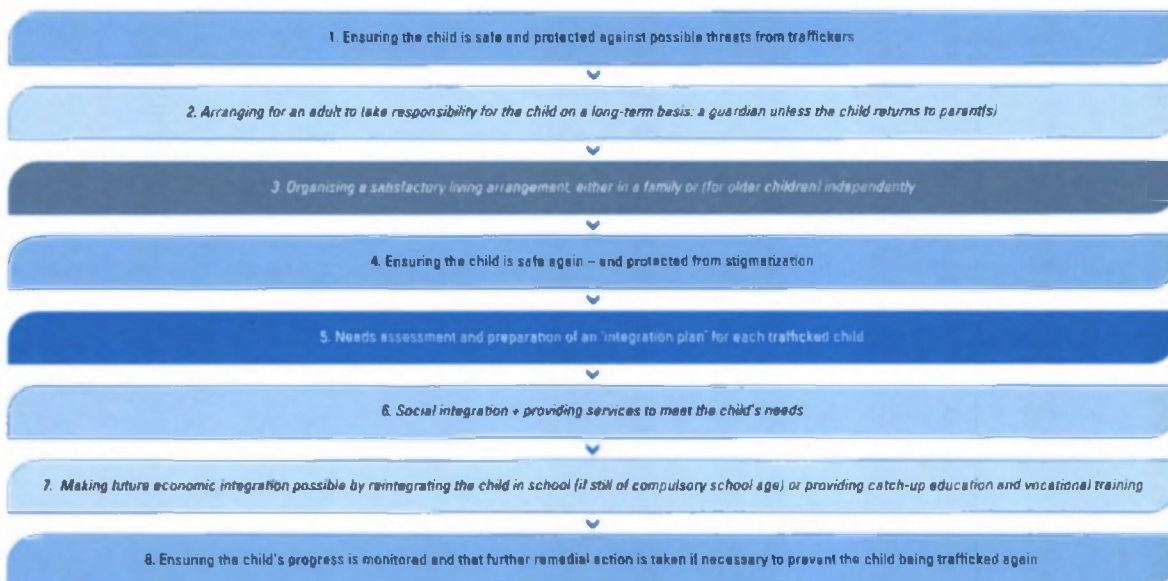


Figure 8: Standard steps to implement any durable solution

11.2.1 Local integration

Children who are going to remain in a country where they have neither nationality nor a legal right to reside must have their immigration status regularized. This permission can take the form of a simple ‘de facto’ right to remain, a humanitarian visa or ‘compassionate grounds’. This residency status should not be conditional – e.g., tied to the child’s involvement in legal proceedings – but viewed as a first step in long-term integration process.

Children who are ‘stateless’ should be assisted in acquiring a nationality. This includes children who say they come from a particular country but the authorities in that country deny that the child is a national.

When it is decided that the child will remain in the destination country, the child’s temporary guardian (appointed until a durable solution is identified and implemented) should contact the guardianship service, explain the decision and request the appointment of a permanent guardian. If the child is already 17 years old, it may be appropriate for the temporary guardian to continue as the child’s legal guardian until the child reaches 18. There are other circumstances in which it may also be appropriate for the same person to continue acting as guardian – particularly if a change is judged to be not in the child’s best interests.

Once a trafficked child is allowed to remain in a destination country, care/welfare authorities should conduct a further assessment of the child’s situation, this time assessing the child’s needs on a

long-term basis. This should take into account the child's age, sex, care history, mental and physical health, education, and family situation in the country of origin.

Every effort should be made to ensure that a child who has been trafficked can live with a family and within a community. Residential institutional care should be a last resort. In the case of older children (such as those who had already left home before being trafficked), semi-independent living arrangements may be appropriate.

Adoption is rarely a suitable option for a trafficked child. Before adoption can be considered viable or desirable, a rigorous assessment, conducted by an authorized organization, of the child's family circumstances in the country of origin is essential (the Hague Conference on Private International Law outlines procedures with respect to refugee children and internationally displaced children⁹¹).

Children who remain in the country to which they have been trafficked have the same rights to education, vocational training and employment as national children. However, trafficked children may have missed out on educational and training opportunities when they were younger, either because of the family's circumstances or because they were trafficked; in both cases, special remedial action is required. Unless the trafficked child already speaks the national language, she or he will require language support or training.

Similarly, trafficked children have the same rights to health care as nationals. Particular attention should be paid to their health needs arising from ill-treatment, physical deprivation and ill-health and from the psychological impact of violence, trauma and loss.

A trafficked child's need for support does not come to an end just because a durable solution is arrived at and suitable accommodation is found. Ensuring that young people are not re-trafficked is important as a form of both prevention and protection. This can be achieved most easily by involving social workers who monitor the situation of the individual child and their family (in case of return) or household and assess what support or other measures are needed to make re-trafficking less likely.

11.2.2 Return to country of origin

Return to the country of origin should be conducted in alignment with agreements and procedures for the safe return and reception of trafficked children to a country of origin. This means that prior to each individual return, the authorities in the country to which a child has been trafficked are responsible for arranging for a representative of the social services or child welfare agency, or parent/guardian, in the child's country of origin to be ready to receive the child.

The trafficked child's guardian or a social worker should also accompany a child who is to be returned and pass responsibility for the child to an official of the Ministry of the Interior, the IOM or other organization designated as responsible for receiving the child. Children who are awaiting return to their country of origin are not to be held in detention centres, but appropriate temporary accommodation must be ensured.

The organization responsible for the child's return should ensure the child is accompanied on the return journey, whatever the means of transport. The adult who accompanies a child during her or his return must physically meet the person appointed to receive the child and pass responsibility for the child to them: they should not leave the child under any other circumstances. At each stage of the return home, an adult who has formal responsibility for the returning child must sign or receive a formal notification of transfer: the guardian when passing responsibility to the Ministry of the Interior, IOM or another designated organization; and likewise the person accompanying the child during her or his return.

⁹¹ "Recommendation concerning the Application to Refugee Children and Other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption", October 1994. Among South Eastern Europe countries, as of October 2004, Albania, Bulgaria and Romania had ratified and Republic of Moldova had acceded to the Convention. The Hague Convention can be accessed at: <http://www.hcch.net>

Children arriving back in their country of origin are nominally the responsibility of their parents or guardian. Unless the child's parent or permanent guardian is immediately available to take responsibility for the child, the national authority responsible for social services must appoint someone as a temporary guardian (or ensure that any temporary transit centre where the child stays is legally entitled to look after the child). If it is not in the child's best interests for the child's parent or permanent guardian to take responsibility for the child, the first responsibility of the national authority for social services is to ensure that a guardian is appointed for the child.

The next step is to ensure that the returning child's needs are assessed and that an individual integration plan is developed for the child by the relevant social services. Social services are responsible for ensuring that the child herself or himself is involved in decisions about their future as much as possible and encouraged to take responsibility for her or his choices. This means encouraging the children themselves to design the plan for their own social reintegration in school, their home community and elsewhere, and giving them the professional support necessary to identify their options and make these become a reality.

Returning children are also entitled on their arrival back in their country of origin to long-term care and protection including:

- security;
- food;
- accommodation in a safe place;
- access to health care;
- psycho-social support;
- legal assistance;
- social services; and
- education;

with a view to their social reintegration and development.

An important part of the decision-making process on a durable solution is the determination of a suitable care option for a child returning to their country of origin. Returning the child to their family is the preferred option whenever possible. However, once the child returns, the process of family reunification requires careful managing and monitoring by social services and/or an appropriately qualified organization.

Responsibility for ensuring that care and assistance are provided to returning children lies with the national authority responsible for social services or child welfare. Actual services can be provided by government agencies or NGOs, and both intergovernmental organizations and NGOs can be called upon to play a role. Whether they are in residential care, living at home or residing independently, children who have been trafficked should be cared for by adequately trained professionals who are aware of the special needs and rights of children who have been trafficked and sensitive to the gender issues which affect girls in particular.

Special educational and vocational training programmes should be established that are suitable for children who have missed out on their education, either because they were withdrawn from school before finishing their basic education or for other reasons connected with their experience of being trafficked. The type of support with education and training should also be specified in the individual integration plan for each child.

The national social services authority, in consultation with specialist governmental agencies and NGOs, is responsible for finding out if and how returning children are stigmatized and whether the risks of harm to the child are sufficient to make both family reunification and return to the child's home community unfeasible. As in the case of integration, they are also responsible for monitoring and following individual children that were assisted.

11.2.3 Resettlement and integration in a third country

The procedures involved for resettlement of a child in a third country should also follow up agreements for the safe transfer and receipt of the child. These procedures should be specified between the two states in question (country of origin or destination country and the third country). This means that all arrangements for the child's transfer, receipt and integration to the third country should be completed beforehand.

Social services in the country where the child has received initial care are responsible for making all the arrangements necessary for her or his reception, guardianship, care and subsequent integration in the third country and for ensuring that all relevant information is made available to their counterpart in the third country. Adequate arrangements should also be made to ensure that the child is accompanied throughout the journey and handed over to an officially responsible person. This requires respecting the similar procedures outlined in the case of return to a country of origin.

Since resettlement in a third country is sometimes necessary because of security considerations (threats to the child or the child's relatives), it is particularly important that precautions be taken to maintain the confidentiality of any information about the move. Finally, the same principles outlined above are relevant for the facilitation of the child's integration in the third country (suitable care options, access to health, education and social services, development of individual integration plan, etc). Children who are resettled in a third country have the same rights to education, vocational training and employment as national children in that country.

11.3 Who has responsibility to take action?

The responsibilities vary according to the three options.

11.3.1 Local integration

In case of local integration in the country or area in the country of origin where the child does not have legal residency, the *Ministry of the Interior Liaison Officer* and the authority responsible for social services or child welfare are responsible for ensuring permanent residency status is granted to the child, informing and consulting the child's (temporary) guardian in the process.

If a child is still waiting to give evidence in legal proceedings – even after a durable solution decision has been reached – the *Ministry of the Interior Liaison Officer* should inform the child (and the child's guardian) that her or his status in the country is not conditional or dependent on any involvement in legal proceedings.

Relevant *Ministries (health, education and social welfare)* are responsible for ensuring that the trafficked child has access to special education programmes, health and social services.

Responsibility for the financial support of trafficked children who are being integrated in the country to which they have been trafficked lies with the *national authority responsible for social services or child welfare*.

11.3.2 Return to country of origin

Ministries of the Interior or other relevant state authorities are responsible for establishing agreements and procedures for the safe return and reception of trafficked children to their country of origin.

The *national authority responsible for social services or children's welfare* also has responsibility for the child, particularly at first, and has some essential tasks to perform. Firstly it has a responsibility to ensure that a guardian is appointed for the child who is being returned if his or her parents are not immediately available, that individual assistance and a protection plan is elaborated for each child and that implementation of that plan and the situation of the child are regularly monitored. This authority can delegate a local branch of social services or an NGO to provide specific services to the returning child but nevertheless it retains responsibility for ensuring that these services are provided.

The *Ministry of Education or Education Service, in cooperation with social services*, is responsible for devising educational programmes and vocational training programmes which are suitable for children who have been trafficked, particularly children who have missed out on their education, either because they were withdrawn from school before finishing their basic education or for other reasons connected with their experience of being trafficked.

11.3.3 Resettlement and integration in a third country

The authorities of both countries – the country of origin or destination and the country where the child will be resettled – have a responsibility to ensure the safe transfer and receipt of the child in the third country. *Ministries of the Interior, Exterior and Social Services* in both countries have a special responsibility to put procedures in place for the child's resettlement and integration. The relevant national authority in the country where the child was trafficked to is also responsible for facilitating a security and needs assessment of the child and preparation of the child's transfer to the third country. The relevant social services authority in the third country is responsible for ensuring the integration of the child.

11.4 Who else may take action?

In recent years, the IOM has played a growing role in facilitating the return of victims of trafficking, including children, to their countries of origin.

Both the IOM and NGOs (both international NGOs and locally based ones) have acquired the expertise necessary to provide a wide range of services to children who have been trafficked during the implementation phase of a durable solution – providing temporary residential care, services such as medical and psychosocial attention, and monitoring how the child manages after returning to her/his family or otherwise resuming 'ordinary' life.

In the absence of specialized services in government ministries to organize or provide education and training to children who have been trafficked, NGOs have acquired experience of devising educational and training programmes for children returning to their country of origin, whether they have been trafficked or are returning home after other forms of exploitation.

11.5 Key challenges and examples of good/bad practices

11.5.1 Protection needs while a durable solution is implemented

Many of the threats which trafficked children face in the country or area to which they have been trafficked remain much the same when they return to their own country or move to a third country. Indeed, the list may now be longer and include:

- the child's original trafficker and people associated with this trafficker (whether or not the trafficker has been accused of an offence or spent time in prison);
- other traffickers who are ready to take advantage of the child;
- journalists or others who may violate a child's right to privacy by revealing their name or other personal details publicly;
- people in the shelter or residential facility where the child stays on a short- or long-term basis, both staff and other residents, whether adults or children;
- members of the public who attack, criticize or discriminate against them on account of the stigma attached to the activities which they or other trafficked children have engaged in, such as prostitution or theft; and
- members of the child's own family who criticize or stigmatize them, sometimes deliberately, but also unconsciously.

In reality, the right of returnees to privacy has frequently been violated, not just by journalists but also by government and law enforcement officials. On some occasions this is because they think

publicity around a child's return may have a preventive or deterrent effect; sometimes it is out of ineptness or even corruption. Whatever the motives, such publicity contravenes the returning child's rights and cannot be said to be in her or his best interests.

Because of such violations, some returnees, both children and adults, insist that the authorities in their country of origin should not be informed of their arrival. It is necessary to give careful consideration to such requests, bearing in mind that if the police or others are not informed, they cannot be expected to monitor what happens to the child, let alone to ensure that she or he is given specialist care or attention. However, children may make incorrect assumptions about the risks they face on return home (i.e., they may believe the risks, if the authorities are informed of their arrival, are much greater than they, in fact, are). They may also be ignorant about the benefits of the services which they will potentially receive. In such cases, it is the responsibility of the child's guardian to provide the child with accurate information. Such a request and the possible risks which a child faces upon return should be the subject of a security and risk assessment before a decision about a durable solution is made. The child's best interests are the primary consideration to take into account in assessing whether to agree with such a request.

In principle an organization in a returning child's country of origin which has relevant expertise in supporting the reintegration of trafficked children should monitor what happens to the child for at least some months after their return – preferably for at least a year. This organization should contact law enforcement officials if there are any indications that threats have been made against the child or her or his relatives.

The level of protection offered to a child upon their return should be proportional to the perceived threat from the child's traffickers or others.

While in some cases the child's greatest need for protection occurs upon arrival back in her or his country of origin and home community, in other cases the protection needs increase subsequently because of the evolution of court cases concerning the child's trafficker, e.g., when a trafficker is released from prison. For this reason it is important that the child and her or his family be kept informed of any developments in a court case concerning a trafficker and informed in advance of such a person being released from prison.

11.5.2 Facilitating family reunification

Returning to the home of parents or a legal guardian is generally regarded as an ideal durable solution for trafficked children, but it is not automatically in a child's best interests.

Even when return to a child's country of origin seems likely to be the best option for a trafficked child, it is still necessary for a social worker to investigate the specific circumstances of each trafficked child's family to make a risk assessment and collect evidence to indicate whether family reunification is in the best interests of the child.

Whenever the child has been separated from their parents or close relatives, experience shows that working closely with parents, families and the community is vital in enabling the child to return home successfully.⁹² This means that an agency such as social services or an NGO must facilitate the child's return, rather than simply hoping that the child will be able to return home without running into problems.

For example, preparation for family reunification may consist of family visits where it is explained to the family the importance of integrating the child into the home. It is questionable, however, whether a couple of awareness-raising sessions with the family is enough to provide a comfortable environment for a girl who, in many cases, had previously run away from home because of family problems. Apart from the problematic fact that some girls may be reunified with families in which

⁹² See Celia Petty, Mary Tamplin and Sarah Uppard, "Working with Separated Children: Field guide, training manual and training exercises," Save the Children, 1999.

they may have been abused, there is also a problem understanding to what degree the family and community will be willing to accept the child because of prejudices deriving from trafficking and exploitation. This shows the great need for creating alternatives to family reunification in the cases that this option is not in the best interest of the child.⁹³

The reintegration process does not come to an end when children return home. Individual children must be monitored for several months and their families may need material assistance if the children are to avoid being trafficked once again.

11.5.3 Ensuring children are not stigmatized after their return home

Girls who have been subjected to commercial sexual exploitation face specific obstacles when returning home or to live in a community in which they are known or might be recognized. In part, this is because of the social stigma associated with prostitution. In addition, in many societies the very fact that an unmarried girl is reputed to have had sexual intercourse is a cause of stigma. Child rights activists and others are working to change such popular prejudices as well as gender-based stereotypes and ignorance of the coercion and violence to which trafficked children are subjected. However, it may take decades to make a lasting difference. In the meantime practical ways have to be found for coping with stigma and prejudice and protecting children from its harmful effects.

Box 15

Stigmatizing children returning to the Republic of Moldova

The reaction of the community towards children released from trafficking is influenced by many factors, including the child's age, level of information on the trafficking phenomenon, the child's lifestyle before trafficking. If before being trafficked the children were badly behaved, abused alcohol or were wanderers, then when they returned home they were blamed by the community for what had happened to them, as if being trafficked was just a consequence of their lifestyle. Twenty-three of the trafficked children [out of 60 surveyed] said that they were blamed for what had happened to them.

Conversely, children who were compelled to leave because of poverty or alcoholic parents were usually shown compassion. In general, however, Moldovan society is very sceptical and intolerant, especially of girls trafficked for prostitution. They are marginalized and are not offered any chance of re-entering society. As a consequence, rehabilitation of these children is a real challenge.

From: Institute for Public Policy (Republic of Moldova). Trafficking in Children for Labour and Sexual Exploitation in the Republic of Moldova. Results of a Rapid Assessment Survey. ILO-IPEC. 2003.

11.5.4 Meeting the needs for education and training of children who have been trafficked

Children's needs vary a great deal according to the age at which they have been trafficked and the age at which they are recovered. At any age or stage, trafficked children need to build or restore self-confidence and they need the basic knowledge and skills to survive.

This is particularly the case for older children who will soon have to manage on their own. In some cases this means reintegrating the child into formal schooling, which may also mean persuading reluctant schools to accept a child who is older than other pupils studying at the same level. In other cases it means providing non-formal education, enabling the child to manage money and to make decisions for himself or herself. A wider set of life skills is considered to be valuable both in helping children avoid being trafficked and in equipping children who have already been trafficked. In the

⁹³ UNICEF (the UN Administered Province of Kosovo). "Trafficking in Children in the UN Administered Province of Kosovo: A study on protection and assistance provided to children victims of trafficking," June 2004.

case of children who have been regimented by traffickers and controllers and required to follow orders, virtually without thinking, this can be a slow process.⁹⁴

Catch-up education is provided by many residential centres, as are various forms of vocational training. Involving children in work in a residential centre is regarded as a useful form of therapy in many parts of the world. However, in such cases, it is important to distinguish between therapy and training which is expected to actually help a young person generate an income after they move on.

Box 16

Providing catch-up education in Albania and confronting obstacles to the reintegration of trafficked children into school

With the assistance of the Swiss Agency for Development and Co-operation (SDC), special alternative education and training classes have been set up by NPF [Ndihmë për Fëmijët, Help for Children, an NGO]. These classes are integrated into the State schools. The children must thus respect the same work schedules as the ordinary classes. They work according to a programme approved by the Ministry of Education. The classes are collective, i.e. they include various classes and thus pupils who have different levels and ages (in general 12 to 15, but they can be older). The first and third classes work together as do the second and fourth. What is special about these classes is that there are two teachers for a score of children on average. The first stage is to start by finding out what knowledge the pupils have already acquired since, in this system, the important thing is to adapt to the level of the children. Then each teacher will deal with children of the same level. While one teacher will give a general education, another will be able to help those which have learning difficulties. They are given adapted work to do so that they can make up for lost time. The treatment will be different according to characteristics of the children in each subject. It is also possible, in these classes, to let the children have their say so that they can talk about any problems they may possibly have in their families or the experiences they have had. Their psychological situation is sometimes fragile and calls for special attention, understanding and sympathy.

...Often, a school principal refuses to admit children during the course of the school year (those repatriated from abroad or those who gave up school but ended up in the street in Albania) because he thinks that these children will, in a few months, increase the number of school dropouts. School dropout is the subject of an official report to the Education Authority of each city... We do not know of a successful case of integration in a school in which the NPF does not intervene.

Source: Terre des hommes and Ndihmë për Fëmijët, "Child trafficking in South-Eastern Europe: The Development of Good Practices to Protect Albanian Children", 2004.

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The various terms used in relation to education each has a specific meaning.

Basic education is education focused on essential learning tools, including literacy, numeracy, problem solving and learning how to learn (and for children and adolescents, recreation and physical education).

Formal education is education that takes place within an established school system.

Non-formal education is education that takes place outside the formal school system and may cover basic skills such as reading, writing and counting, or include practical skills and vocational training.

Vocational training or vocational skills training is the process of learning associated with the world of work - producing goods or services for remuneration.

Life skills refers to a set of skills considered important for young people to relate to others and get on in life: learning to negotiate, coping with decision making, problem solving, critical thinking, communicating effectively, managing interpersonal relationships, resolving conflicts, being self-aware and empathetic towards others, and coping with emotions and with stress.

Catch-up education involves education in life skills and other basic education learning tools which children have missed out on (either through leaving school prematurely or for other reasons) and which is provided at a later date, sometimes within the formal school system, but more usually in the form of non-formal education provided by an NGO or specialized service.

Since many adolescents who have been trafficked have already left school by the time they have been trafficked, vocational training may be more appropriate for them than further basic formal schooling. In the Republic of Moldova, for example, adolescent trafficking victims are routinely invited to attend a professional training course after spending time at the IOM Centre for Rehabilitation of the Victims of Trafficking in Human Beings. Although most trainees are reported to be girls, training is available in a variety of occupations (not only those which are conventionally regarded as appropriate for women and girls).

Relatively few countries are reported to have semi-independent living projects available for adolescents who have been trafficked. These are schemes that allow an adolescent to undertake schooling or training and to get initial experience of the world of work while still living in sheltered accommodation, supervised, for example, by an NGO. In the UN Administered Province of Kosovo, for example, an NGO provides a staff member who sleeps overnight in the sheltered accommodation, checks out potential employers and monitors the adolescent's initial period in employment to ensure that all goes well. Semi-independent living arrangements are appropriate in particular for adolescents who are unwilling or unable, for a variety of reasons including their own best interests, to return to their family home.

Chapter 12 Access to Justice

12.1 General principles

Criminal proceedings

- Child victims have the right to be fully informed about security issues and criminal procedures prior to deciding whether or not to testify in criminal proceedings against persons who are suspected of involvement in the exploitation and/or trafficking in children.
- Child victims of trafficking have the “right to recovery time” before deciding whether or not to pursue criminal proceedings against the trafficker.
- Assistance to the child victim of trafficking should not, under any circumstances, be conditional on the child’s willingness to act as a witness.
- The taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay family reunification or the return of child victim to the country of origin if it is in the best interest of the child.
- Direct contact should be avoided between the child victim and the suspected offender during the process of investigation and prosecution as well as during trial hearings as much as possible.
- Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation, as well as interpretation into the native language of the child, if necessary.
- States should consider, if necessary, amendments to their penal procedural codes to allow for, inter alia, videotaping of the child’s testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should employ child-friendly practices.

Civil proceedings

- Child victims should be provided with information regarding their right to initiate civil proceedings against traffickers and other persons involved in their exploitation.
- Law enforcement authorities should adopt measures necessary to protect the rights and interests of child victims at all stages of judicial proceedings against alleged offenders and during procedures for obtaining compensation.
- Law enforcement authorities should undertake to ensure that child victims are provided with appropriate access to justice and fair treatment, restitution and compensation including prompt redress.
- Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary.

12.2 Implications of the principles

Like adults whose rights have been abused by someone else, children who have been trafficked have a right to justice. Their right to a remedy for the abuses they have suffered means firstly that the police or others must help them get away from the control of traffickers or exploiters. Beyond that it means the children are entitled to see the people who have abused them prosecuted and punished, and to receive either compensation or some other token of recognition for the material harm and loss which they have suffered.

In some cases trafficked children can secure these remedies (punishment of abusers and compensation) in the course of the prosecution and trial of the individual or individuals involved in trafficking, exploiting or abusing them. However in some countries criminal trials of traffickers leave the victims’ right to restitution and compensation unresolved, in which case civil legal proceedings may be the only way for victims of traffickers to make a claim against their abusers.

When they first stop being under the direct control of their trafficker or exploiters, both children and adults are often traumatized by their experience, unsure what is going to happen next and unable to make a decision if law enforcement officials ask them to make up their minds swiftly if they are willing to testify against someone who has abused or exploited them. It is consequently sensible to allow trafficking victims (children and adults) to recover before asking them to consider whether they want to see charges laid or whether they are willing to cooperate with the authorities by giving a formal testimony which can be used as prosecution evidence at a trial. Under the terms of a 2004 EU Council Directive, most EU States now give suspected victims of trafficking a 'reflection period' to recover from their experience.

The "Recommended Principles and Guidelines on Human Rights and Human Trafficking" of the UN High Commissioner for Human Rights point out, in Guideline 9, that:

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.⁹⁵

In theory securing a remedy for the abuse which they have suffered should automatically be in a child's best interests. In practice subjecting a child to court proceedings can cause more harm than good. This is particularly the case if a court case reveals the child's whereabouts to a trafficker or his or her accomplices, if it involves subjecting the child to hostile questioning by a trafficker on trial or by the trafficker's legal representative, and so on. In some cases, the very procedures observed in criminal cases can cause so much harm to children that it is clearly not in their best interests to become involved.

Individual trials and other legal proceedings should not cause harm to children and effective, child-sensitive procedures available to children and their representatives should be put in place to enable them to seek both the prosecution of their abusers and some form of compensation. Such procedures should include the provision of child-friendly information, advice, advocacy (including support for self-advocacy) and access to independent complaints procedures and to the courts with necessary legal and other assistance.⁹⁶ When it comes to children that do not speak the language of the country to which they were trafficked, they are entitled to the services of an interpreter at all stages in the legal proceedings.

Furthermore, child-friendly court procedures can also include provisions to allow for, inter alia, videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. This would keep children from having to be physically present in court where they might be overwhelmed by the formality of proceedings or intimidated by the presence of someone who has abused them. In many countries, such provisions require amendments of the code of penal (criminal) procedure. However, amendments of this sort would potentially benefit a much wider group of children than just those who have been trafficked, including a range of children who have been abused.

⁹⁵ UN document E/2002/68/Add.1, 20 May 2002.

⁹⁶ See Paragraph 24 ('Justiciability of Rights') in: Committee on the Rights of the Child, General Comment No. 5 (2003), "General measures of implementation for the Convention on the Rights of the Child," UN document CRC/GC/2003/5.

Children that have been trafficked should be provided with information about remedies they are entitled to and how to exercise these rights. Some of the damages and losses which entitle trafficked children to monetary compensation have already been mentioned.⁹⁷ In summary, they include:

- abuse and offences committed against the child, i.e., physical or mental harm including pain, suffering and emotional distress;
- money taken from the child which the child earned legitimately;
- money taken from the child which was acquired in the course of activities that the child was instructed to carry out and worked to earn, even if the activities were not legal (e.g. prostitution);
- unpaid or underpaid wages or their equivalent in terms of the time which the child was obliged to spend earning money for a trafficker or exploiter;
- earnings or other property to which the child was entitled but that were held by the traffickers or exploiters and not given back when the child left their control;
- lost opportunities, including education and loss of earnings potential;
- harm to the reputation or dignity of the child (including harm that is likely to continue in the future, e.g., as a result of stigmatization);
- medical and related professional services relating to physical, psychiatric or psychological care, including psycho-social counselling;
- physical and occupational therapy or rehabilitation;
- costs of transportation and residential care or temporary housing;
- fees and other costs for a legal representative and expenses incurred in relation to legal proceedings by the legal representative, the child and her or his guardian;
- other costs incurred by the child's guardian; and
- costs incurred by the child and members of her or his family in the course of finding out what has happened to the child or in making suitable arrangements for the child.

This list is not complete. In addition to compensation to which the child is entitled, other people who have incurred costs for legal or expert assistance, including medical services and medicines, are also entitled to compensation. The police and other relevant authorities, including NGOs, should make available to the child's lawyers all documents and other information in their possession that are relevant to a trafficked child's claim for monetary damages, including compensation, restitution and recovery. A reason cited by the authorities in several countries for not providing victims of trafficking with information about how to make claims for damages or compensation is that orders for payment are frequently not complied with – i.e., no payment is ever made. This reflects a need for better laws on the seizure of the assets of suspected criminals (and their implementation) and on better ways of tracing their assets.

⁹⁷ Various legal terms apply the right to a remedy and to compensation:

- "The right to a remedy against violations of human rights and humanitarian norms includes the right to access to national and any available international procedures for their protection."
- "Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."
- "Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights or international humanitarian law."
- "Compensation shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as:
 - (a) physical or mental harm, including pain, suffering and emotional distress;
 - (b) lost opportunities including education;
 - (c) material damages and loss of earnings, including loss of earning potential;
 - (d) harm to reputation or dignity;
 - (e) costs required for legal or expert assistance, medicines and medical services."

Source: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Commission on Human Rights resolution 2005/35, UN Document E/CN.4/2005/L.10/Add.11, 19 April 2005.

Information on available remedies might be channelled to children (in an appropriate form and language) through lawyers who are likely to represent trafficked children, but should also be provided directly to trafficked children and their guardians. The sort of information to present to children varies according to the age and maturity of the children involved. The content and form needed for a 9-year-old who has been trafficked is different to the information required by a 17-year-old.

Furthermore every trafficked child is entitled to the services of a legal representative without cost to the child. However, the appointment of a legal representative for the child does not mean that the police or courts can transfer responsibility to the lawyer for presenting information in a way the child understands.

The child's guardian is responsible for appointing a legal representative for the child. The guardian is also responsible for considering, with the child and following advice from a legal representative as appropriate, whether participation in criminal or civil proceedings is in the child's best interests and for deciding, again with the child, whether she or he should provide information to the authorities. In considering whether a child should provide information which might be used in a trial (and consequently might result in the child's identity being revealed or guessed by traffickers or their accomplices), both the child's guardian and her or his legal representative have a responsibility to consider what is in the child's best interests. Might the criminals blame their child victims for passing information to the police, even when they have not done so? Is it clear that the trafficker's influence is not sufficient to pose a threat to the child or her/his relatives, even in their home country? Do the police and courts have a good record for keeping the identity of child victims or witnesses confidential?

Similarly in deciding whether to go to the courts to seek justice for a child who has been trafficked, either to seek the punishment of the child's trafficker or in pursuit of a different remedy, such as compensation, the lawyer and guardian must also assess what is in the child's best interests. In all these cases, children must be told what is going on and their own views must be taken into account in accordance with their age and maturity.

Victims of trafficking are sometimes prevented from getting access to justice by the criminal justice system in their own country. They themselves may be considered to have committed a crime in their own country, for example by leaving the country illegally or by accepting money in return for sexual services (even if they did so while under the control of a trafficker or exploiter). The Ministry of Justice is responsible for proposing new legislation or amendments to existing legislation to remove such impediments to justice.

12.3 Who has responsibility to take action?

The authorities at the *Ministry of the Interior and immigration service* have a responsibility to grant a trafficked child appropriate immigration or legal status to remain in the country until criminal or civil proceedings have been completed and any compensation payments are paid to the child. They must ensure that a child who has been trafficked in a foreign country is given an opportunity to recover sufficiently before asking the child (together with the child's guardian and legal representative) to take part in any criminal proceedings against individuals involved in trafficking or exploiting the child.

The authority responsible for law enforcement is responsible for making suitable arrangements to enable the child to remain safely in the country for the duration of any criminal or civil proceedings.

Judges, magistrates, prosecutors and others involved in the administration of justice have a responsibility to ensure that individual trials and other legal proceedings do not cause harm to children, in terms of prejudicing their rights, undermining their dignity or harming their physical or psychological well-being. All this may require some amendments to the existing penal (criminal) procedure that should be considered.

The national authority in charge of the administration of justice is responsible for ensuring that children and adults who have been trafficked are provided with information about how to exercise

their right to appropriate remedies. The key individuals at the Ministry of the Interior and the national authority responsible for social services or child welfare who are dealing with the case of an individual trafficked child are responsible for ensuring that children who have been trafficked are given information about their right to initiate civil proceedings against traffickers and others involved in their exploitation. This means doing more than telling guardians and lawyers that this right exists in theory. If the child does not already have a legal representative, they, in cooperation with the child's guardian and others in law enforcement agencies and NGOs, should ensure the child has the necessary legal representation.

The prosecuting authority (i.e., Procuracy or Public Prosecutor's Office) is responsible for warning trafficked children and their legal representative and guardian as clearly as possible about the difficulties inherent in protecting the child's identity in the course of legal proceedings.

In addition to information provided to a child in advance of legal proceedings about what might be entailed, the police, prosecutors or court authorities have a responsibility to provide children and their legal representatives promptly with news about developments in a case, before, during and after any trial.

The Ministry of Justice or others in charge of the administration of justice are responsible for looking at policy questions. These include whether the confiscated assets of traffickers or exploiters should be paid into a revolving fund from which courts can make payments of compensation, without leaving trafficked children and other victims of crime dependent on the successful seizure of assets of the individuals who have abused them.

12.4 Who else may take action?

NGOs which are responsible for providing residential care or other services to trafficked children also have to decide how much to cooperate (or to advise a child in their care to cooperate) with police investigations and prosecutions. They can use their influence to persuade children to cooperate with the police, and thereby risk being perceived by the children themselves as agents of the police, or assert the children's right not to cooperate in police inquiries, in which case they risk being criticised by the authorities for not cooperating properly. It is clear that an NGO which is responsible for a child in any way must, like the child's guardian, place the child's best interests in front of other considerations, even if this means advising a child not to give evidence and thereby allowing a child trafficker to escape with impunity.

12.5 Key challenges and examples of good/bad practices

12.5.1 Short-term residence permits and 'right to recovery time'

When foreign nationals are identified, whether adults or children, the norm in many European countries is still to return them to their countries of origin as quickly as possible. This practice means that victims of traffickers do not remain in the country where they could assist the police in obtaining evidence about crimes which have been committed and, as a result, criminals go unpunished.

In an effort to deter traffickers by prosecuting some successfully, the authorities in several countries have adopted special procedures to allow trafficking victims who have agreed to help police inquiries and to testify in court to remain in the country to which they have been trafficked, usually only on a temporary basis.

However, when offered this opportunity to remain on a temporary basis, victims of traffickers were generally expected to reach a decision within days (sometimes within hours). As it was inevitably not possible for the victims of traffickers to recover and to make an informed decision in these circumstances, some countries have introduced an additional temporary residence permit entitling the victims to remain in the country for a finite period during which the victims can begin to recover and to consider whether they want to cooperate with the authorities (and potentially place themselves at risk). This is generally called 'recovery time' or 'a reflection delay'.

An EU Council Directive issued in 2004 provides for anyone who has been either trafficked or smuggled into an EU country to be issued with a temporary residence permit to allow them "to reflect on their position." It does not, however, specify how long this reflection delay should be and leaves it up to individual countries to decide.⁹⁸ The Directive specifies that this is intended to "help put [victims] in a position to reach a well-informed decision as to whether or not to cooperate with the competent authorities, which may be the police, prosecution and judicial authorities (in view of the risks this may entail), so that they cooperate freely." A group of experts advised that this reflection delay should last for at least three months.⁹⁹ As far as children are concerned, EU states are required to "take due account of the best interests of the child when applying this Directive" and to "ensure that the procedure is appropriate to the age and maturity of the child."

Children who have been trafficked have as much right to 'recovery time' as adult victims. However, public officials (including law enforcement officials and those responsible for the administration of justice) are required to consider what is in the best interests of the child or children involved. This means that at the end of a period of 'recovery time', it would not be acceptable to proceed with the expulsion or deportation of a child without taking into consideration whether this is in the child's best interests. The child's guardian and legal representative also have an obligation to think through the implications for the child and to decide if cooperating in a prosecution is in the trafficked child's best interests.

12.5.2 Children who are charged with committing an offence

Children who have been trafficked to make money in criminal activities are bound to be difficult for law enforcement officials to distinguish from other young criminals. The justice principle is clear: trafficked children may not be prosecuted, detained or punished for the illegality of their entrance into a country or residence there, or for the activities they are involved in as a direct consequence of their situation as a victim of trafficking.¹⁰⁰ However, distinguishing crimes which were 'a direct consequence' of their situation as a victim of trafficking from crimes committed in other circumstances can certainly be difficult. Similarly it is often hard to find out how foreign children who are suspected of having committed an offence have entered a country, let alone to know whether they have been trafficked.

There is certainly evidence that the number of children being used for criminal activities in Europe has increased over the past decade. Concern has grown over evidence that adults are even using children under the age of criminal responsibility to carry out criminal activities precisely because they know the children cannot be prosecuted and will usually be released immediately after arrest. These activities may range from robbery and housebreaking to the transportation or distribution of illicit drugs.

The most disturbing developments in recent years are the fact that such activities are increasingly orchestrated by organized criminal groups and that they have an ever-growing transnational dimension. A 1992 study in Italy noted that Mafia organizations were recruiting 'thousands' of children and young people to carry out front-line criminal activities, including drug distribution and carrying or hiding firearms. In the Russian Federation, the number of adults charged with involving children in criminal activity reportedly tripled between 1989 and 1994 to almost 21,000 cases.¹⁰¹

⁹⁸ Council Directive of 29 April 2004 on the residence permit issued to third-country nationals victims of trafficking in human beings or to third-country nationals who have been subjects of an action to facilitate illegal immigration and who cooperate with the competent authorities, Preliminary paragraph 11 and Article 6. This Council Directive applied to 12 of the Europe Union's 15 member states at the time it was issued; it does not apply to Denmark, Ireland or the United Kingdom.

⁹⁹ "Report of the Experts Group on Trafficking in Human Beings", 22 December 2004, European Commission Directorate-General Justice, Freedom and Security, page 34., http://europa.eu.int/comm/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf

¹⁰⁰ Principle 7 of the UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking establishes the principle that states: "Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons," UN document E/2002/68/Add.1, 20 May 2002.

¹⁰¹ UNICEF, "Juvenile Justice," Innocenti Digest No. 3, 1998.

In a few cases, it may remain unclear whether the children committed offences primarily to benefit someone else or for their own benefit and whether they were operating under duress. It may look as if some offences were committed as "a direct consequence" of their situation as a victim of trafficking, while others were not.

How should law enforcement officials proceed in these ambiguous circumstances? Some basic principles can help guide this decision making. In the first instance, give priority to action that is in the child's best interests and protects the child. For example, this may translate into a decision against deporting them into situations where they would be at risk again.

Principles concerning juvenile justice are also helpful, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules').¹⁰² However, law enforcement officials and others responsible for the administration of justice must bear in mind that traffickers deliberately manipulate standards and rules such as these for their own profit.

The Beijing Rules suggest that the age of criminal responsibility should not be too young. Traffickers are known to have made deliberate use of children who are below the age of criminal responsibility to avoid the children being detained and in the hope that the children concerned will return to their control as quickly as possible. The involvement of young children below the age of criminal responsibility may be an indicator that the children concerned are committing offences on behalf of others. In such circumstances, the question of whether the children concerned are criminal or not is the wrong one to be asking: the priority should be to protect them against further exploitation (as well as to stop further offences being committed).

Traffickers may also manipulate basic procedural safeguards to protect children or adults suspected of committing offences, such as the right to remain silent, the right to counsel, and the right to the presence of a parent or guardian. This is *not* a reason for not respecting these rights in the case of every suspected juvenile offender but it requires law enforcement officials (and others) to be vigilant.

If children are charged and their cases are referred to court when there are some indications that the child concerned was operating under the control of an adult or older youth and had been brought deliberately from one place to another to commit crimes and obtain money for others, it is the responsibility of law enforcement officials and others involved in preparing a prosecution to inform the court of these indications.

¹⁰²

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules') adopted by UN General Assembly resolution 40/33 of 29 November 1985.

Chapter 13 Victim/Witness Security and Protection

13.1 General principles

- Child victims who agree to testify should be accorded special protection measures to ensure their safety and that of their family members in the countries of destination, transit and origin.
- Ministries of the Interior and other relevant law enforcement authorities should adopt all measures necessary to protect the child victim and their family members, including through international cooperation.
- When the victim/witness's protection cannot be ensured in either the country of destination or in the country of origin, measures should be taken to allow resettlement in a third country.

13.2 Implications of the principles

Children who take part in the trial of a trafficker or who participate in bringing a legal case against a trafficker (or anyone else who has committed abuse against them) expose themselves to a risk of intimidation or retaliation. They also expose their relatives to a similar risk.

Assessing this risk and taking action to counter it is more difficult when legal proceedings are occurring in one country while a threat to safety is perceived in a different country. This is common in cases of cross-border trafficking and implies that law enforcement agencies in two (or more) countries should cooperate to meet the threat. In practice, difficulties frequently seem to impede good cooperation.

More information is available about threats which traffickers have made against adult victims of trafficking than about threats against child victims. What is clear is that the transnational nature of much trafficking is exploited by traffickers to make threats against the victim's relatives or loved ones. These are similar to the threats which are on occasion used to make trafficked teenagers and adults follow orders while they are being exploited in the first place. Law enforcement officials sometimes estimate these threats to be insignificant but they are nevertheless terrifying to the victims.

In principle, before the child is asked to play a role in trial proceedings, formal assessment of the risks to the safety of the trafficked child, their family or close associates should be carried out. This is not only necessary to ensure adequate protection of a child but also to ensure that the child's assistance leads to successful prosecution. The assessment should examine whether the threat exists not just during legal proceedings but also afterwards, and in the country of origin, destination or third country.

Police, prosecutors and any others involved in collecting evidence for a prosecution must also bear in mind the potential for harm when children have to repeat the story of their ordeal many times and to many different officials. Such 're-living' can worsen their original trauma.

The child's guardian and legal representative also have to assess what is in the child's best interests and advise the child accordingly. This includes the decision of whether or not to participate in legal proceedings at all, and, if so, on what conditions. It means assessing the possible threat from a trafficker and his or her associates before and during a trial. It means assessing risks created from the procedures observed in the course of a trial or other legal proceedings (which may, for example, result in the child's name or personal details becoming known to others or aggravate any trauma from which the child is suffering). It also means assessing whether there is likely to be a threat to the child's safety after the conclusion of any trial proceedings, especially if the traffickers are *not* successfully prosecuted.

Box 17

The effect of threats made against close relatives: 'Jana' and 'Maria'

Jana was trafficked through the Balkans to Italy. The man who exploited her in Italy bought her in Albania. A relationship developed between them in which he became her 'boyfriend'. He forced her into prostitution in Italy and raped her repeatedly. He kept control of her and another woman from Eastern Europe, Maria.

The women were forced to work every day. Out of the 20 million lire [€10,300] each of them earned every month, they were sometimes allowed to keep two million lire [€1,030] or 10% for themselves. Then in the last few months, Jana was not given any money. Their trafficker controlled them by watching them as they worked, recording the length of time they spent with clients and constantly calling them on their mobile phones.

Maria and Jana were both scared to report their trafficker to the police. Their trafficker threatened to kill Maria's mother and sister since he knew where they lived. A local NGO contacted Maria and Jana, and advised them of their legal rights to a permit to stay, and of the support available to them. They escaped and reported the trafficker to the police.

On the basis of their testimony police arrested and prosecuted the trafficker. He was charged with facilitation, enticement and exploitation of prostitution under aggravated circumstances, aiding and abetting illegal migration and residency, forcing another to undergo sexual acts/sexual abuse and the possession of false documents and weapons. The trafficker pleaded guilty and was sentenced to four years in prison.

From: Elaine Pearson, "Human traffic, human rights: redefining victim protection", Anti-Slavery International, 2002.

Children who are asked to provide information to help secure the conviction of traffickers require protection *before* a trial (either while waiting for a trial to take place or while giving pre-trial testimony), *during* a trial (including special in-court protection and child-friendly procedures) and *after* a trial (e.g., when the trafficker is released from prison). The protection that trafficked children require because of participation in legal proceedings is different from the basic protection that *all* trafficked children need. This is because there is a real risk that the procedures used at trials and other legal proceedings may themselves expose children to harm.

As part of the protection for a victim/witness, authorities should not publicly disclose the identity of children who have been trafficked, even during a trial. The child's privacy should be respected and protected as much as possible while taking into account the right of any accused person to a fair trial.

Conventional witness protection can be very expensive as it involves providing the witness with a new identity, relocating them to a new town or country, and supporting their resettlement. However, there are also many security and safety measures that are relatively cheap, simple and practical. For example, it is relatively cheap to provide secure accommodation and a mobile phone or alarm to ring if they feel threatened. The location of any secure accommodation should be kept confidential and the presence of particular children in shelters or residential accommodation should also be kept confidential.

International development assistance may be needed to finance measures to protect child victims and witnesses might be required. Expertise and experience may also be borrowed from other countries or international organizations.

If it is apparent that it will not be possible to protect a child from threat either in the country of origin or destination, the authorities responsible for finding a durable solution for the child should consider resettlement in a third country. However, if the threats involved are due principally to the child testifying against a trafficker in legal proceedings, both the prosecuting authority and the child's guardian have an obligation to consider whether it is really in the child's best interests for her/him to testify.

13.3 Who has responsibility to take action?

The police, courts or others who wish a trafficked child to remain in their country to take part in legal proceedings must make suitable arrangements to enable the child to remain safely and legally in their country for the duration of any criminal, civil or administrative proceedings. They must also provide both the child and her or his relatives with protection from intimidation and retaliation, wherever they are situated.

The police and prosecuting authority have a responsibility to warn both the trafficked child and her/his legal representative and guardian of the difficulties inherent in protecting the child's identity. The warning should be as clear as possible and the child, legal representative and guardian should not be given false or unrealistic expectations in this regard.

The Ministry of Justice or other authority in charge of the administration of justice is responsible for:

- ensuring that protection for witnesses is provided for in law;
- proposing changes to the law or legal procedures to provide for witness protection (as well as child-friendly procedures in the judicial process);
- giving advice to the courts on both formal and informal protection measures that will help protect child victims and witnesses and indicating the circumstances in which the courts should use these; and
- identifying needs for international development assistance to finance measures to protect child victims and witnesses and cooperating with other ministries as appropriate to request and obtain such assistance.

It is the responsibility of the police and prosecution to assess the risks to the safety of a trafficked child and her/his close relatives or associates. When a security assessment requires checks in the child's country of origin, the Ministry of the Interior and other relevant law enforcement agencies are responsible for contacting their counterparts in that country, assessing the security risks there and making arrangements for protection to be provided to the child's relatives should they be considered to be at risk.

The police and prosecuting authority have a responsibility to provide children and their guardians and legal representatives promptly with news about any developments in a case, before, during and after any trial. This includes notifying children and their guardians and legal representatives about the arrest or release from prison of someone suspected of being involved in trafficking or abusing the child (whether this is a release after a few days of questioning, during pre-trial detention or after serving a prison sentence).

13.4 Who else may take action?

In some countries NGOs have attempted to gauge the effect of legal procedures on adult and child victims and witnesses who have been trafficked. These groups may be contacted by a child's legal representative or guardian seeking information to inform their decision about whether they should encourage or permit a child victim to testify in a prosecution.

13.5 Key challenges and examples of good/bad practices

13.5.1 Balancing the needs of justice and the best interests of the child

A variety of officials involved in law enforcement and the administration of justice seek the cooperation of individuals who have been trafficked, whatever their age, to make statements that can be used as evidence to secure the conviction of suspected traffickers and their accomplices. The officials involved include police, investigating judges (and other procuracy officials), other magistrates and court judges.

Very young children are rarely called upon to give evidence, but adolescents are regularly asked to testify in court or before magistrates at pre-trial hearings. In many cases, the victims of traffickers

do not think it is in their own interest to testify, either publicly or in secret, as this exposes them and others closely connected to them to a risk of retaliation.

Sometimes law enforcement officials offer incentives to adult victims, such as a temporary residence permit in return for their agreement to testify. In the case of children, however, public officials are required to consider what is in the best interests of the child. Consequently, they may not jeopardize the safety of the child in order to secure a conviction. In other words, the types of incentives offered to adults are not acceptable in the case of a child – even a 17-year-old who looks like an adult.

The primacy of the 'best interests of the child' has other implications. For example, when law enforcement officials want to take a statement from a child who has been trafficked, they are not entitled to inhibit or delay the child's return to her or his country of origin, or reunification with her or his family, if these moves are in the best interests of the child.

13.5.2 Benefits of pre-trial measures

The significance of pre-trial statements taken from victims and witnesses varies among legal systems. In some, an investigating magistrate holds pre-trial hearings that are closed to the public and this preliminary deposition of evidence means that most evidence reviewed by trial judges is written not oral. In others, witnesses make statements to the police while the police are collecting evidence against a suspect, but the trial procedures requires all the witnesses to a suspected crime to appear in court to repeat their statements and to be subjected to cross-examination by the defendant's lawyer or legal representative.

In principle it is easier to guarantee the anonymity and safety of witnesses or victims in countries where an investigating magistrate holds pre-trial hearings, precisely because these are closed to the public. In countries where pre-trial hearings offer an opportunity to take formal trial evidence, there should be little or no need for a child to appear in court in person during the public stage of the trial. Furthermore, an investigating magistrate can order all the measures necessary to keep the name and personal details of a child victim or witness from the general public and journalists, and potentially even from the person suspected of offences related to trafficking or their legal representative. However, these measures will not necessarily prevent a defendant accused of trafficking (or his/her legal representative) from guessing the identity of the person testifying for the prosecution.

Nevertheless, in both types of legal system, law enforcement officials need to keep the names and identifiable personal details of children confidential. It is up to the national authority responsible for the administration of justice to instruct law enforcement officials and advise the courts to protect the identity of children involved in legal proceedings against traffickers. Since traffickers and their associates may be charged with a variety of offences, many of which do not mention the words 'traffic' or 'trafficking' explicitly, this instruction should not be limited to prosecutions involving trafficking, but be extended to a range of related offences such as 'facilitating illegal immigration', 'facilitating sex with a minor', 'forced prostitution' or 'exploitation of the prostitution of a minor', 'debt bondage' and 'forced labour'.

In Belgium prosecution witnesses in trafficking cases are guaranteed complete anonymity at all stages of the trial process. However, unless there are a large number of witnesses in a case, this measure will not necessarily guarantee anonymity to witnesses, as traffickers are likely to be able to work out who the witnesses are.

13.5.3 Effective in-court measures

The Ministry of Justice or other authority responsible for the administration of justice may need to consider whether amendments to the code of penal (criminal) procedure are needed to allow for child-friendly in-court procedures. These could include allowing a child's testimony to be videotaped or video-linked in court as formal evidence. Children then could avoid being physically present in court where they might be identified and subject to threat or retaliation.

In some courtrooms screens are used to shield a witness from public view, while in others the evidence of vulnerable witnesses is heard in closed court rather than in public. However, such measures usually neither attempt to nor succeed in preventing the defendant or the defendant's legal representative from seeing witnesses or knowing their identity.

Is it reasonable to refuse to disclose the identity of a trafficked child to a person accused of trafficking or exploiting the child? Very few jurisdictions consider that a fair trial can occur while withholding such information. From the prosecution's point of view, it may seem sufficient to keep a witness' identity secret until such time as the witness appears in court; this is because the prosecution's priority is usually to secure a conviction. However, those responsible for deciding what is in the best interests of the child have to consider a much wider range of factors, including the possibility that retaliation or reprisals might be taken against a child or her or his relatives after a trial, whatever the outcome of the trial.

In addition to modifying in-court procedures for listening to child witnesses, those responsible for organizing trials can take action to ensure that witnesses (and victims) do not encounter either the people accused of trafficking them or any of their relatives or associates outside a courtroom. This means that different categories of witnesses need separate waiting rooms, separate entrances into the court building, and so on.

13.5.4 Protecting children's security after the conclusion of legal proceedings

The focus by authorities on securing successful prosecutions of traffickers has inhibited them from paying attention to the longer-term needs to protect their witnesses. For example, some Western European countries only permit willing witnesses to remain in their country until the trial or appeal process is completed. However, the fact that one or two offenders are in prison does not eliminate any threat posed by their associates who remain at large. Consequently, after a trial or appeal, law enforcement officials retain a responsibility for actively protecting a child witness by assessing the risks to her or him and working with law enforcement partners in the child's country of origin to ensure the risk is contained. If the safety of a trafficked child cannot be guaranteed in either the country of origin or destination, measures should be taken to arrange the child's resettlement in a third country.

Box 18

The risk of reprisals once a trafficker is freed from prison

In a South Eastern European country where adolescent girls have been trafficked into commercial sexual exploitation within their own country, victims have described various forms of retaliation which their former trafficker or exploiter has taken against them after they emerged from prison (sometimes when the victim has turned 18 and is no longer a child). In one case the girl concerned testified against a trafficker who had abducted her when she was 15-years-old. He was sentenced to two and a half years' imprisonment. By the time the trafficker came out from prison, the girl had acquired a new boyfriend. It was her boyfriend who was assaulted by associates of the trafficker. The boyfriend felt intimidated and refused to continue the relationship. Although her parents were supportive, the girl who had previously been trafficked stopped feeling safe at home and felt she had no future living there or even remaining in her own country.

Source: Interviews with trafficked children carried out in September 2005 during the preparation of a report: M. Dortridge, "Action to Prevent Child Trafficking in South Eastern Europe. A Preliminary Assessment", UNICEF and Terre des hommes, forthcoming (2006).

**GUIDELINES AND CHECKLISTS
FOR PROFESSIONALS**

Check list for immigration officers (border officials) to assess whether a child is 'at risk' of being trafficked

Indicators that a child might be at risk of being trafficked

1. The child does not appear to be the age given in the passport (i.e., appears older or younger);
2. The child says she or he has a different name or other personal details to those in the passport;
3. A teenager is travelling on someone else's passport, e.g., parents or relatives;
4. A child arriving in an EU state for the first time is unaccompanied and has a non-EU passport;
5. A child is unaccompanied and is not participating in a group visit organized by a recognized school, church or sporting organization;
6. When asked whether she or he is being met on arrival, the child says she or he has to make a telephone call;
7. A young person is unable to produce their passport.

What to do when such indicators are recognised?

1. Record data on the child

1. Record biological data, including information on family and individual name, names of father and mother (or guardian if relevant), normal place of residence of the child, date and place of birth of the child, etc...;
2. Record data on the child's travel route and destination;
3. If the child is unaccompanied, record data on the person who is to meet the child;
4. Assign a reference number to the child that will enable the authorities to track migrant children once they leave the border point;
5. Take a photo of the child so the child can be identified in future even if their name is changed.

2. Assess the young person's age

Traffickers often provide a trafficked child with a passport or identity document which has been forged or altered to present the child as an adult when they are, in fact, under age 18 and as such entitled to the special protection due to a child. To assess whether a young person might be a child rather than a young adult and may be a victim of trafficking or exploitation, check for the following indicators:

1. physical appearance and his or her psychological maturity;
2. the young person's statements;
3. the documentation she or he is carrying, or lack of a passport or other documentation.

If a border officer is still not sure of the young person's age, the next two checks will be:

4. a medical examination – only with the young person's consent – and the consequent judgement of a professional health worker;
5. contact an embassy or other relevant authorities in the young person's apparent country of origin.

Before proceeding with these checks, **a guardian should be appointed for the young person involved, precisely because she or he may be a child** and, as a child, requires the presence of an adult whose responsibility is to ensure that the best interests of the child are upheld.

Age assessment requires physical, developmental, psychological and cultural factors to be taken into account. It is best carried out by independent professionals with appropriate expertise as well as a familiarity with the child's ethnic or cultural background.

If, after all checks are carried out, there is still some doubt as to whether the young person is under age 18, **the young person must be given the benefit of the doubt and presumed to be under age 18 and consequently entitled to be protected as a child.**

3. Ensure that a child suspected of being a victim of trafficking is questioned in private and is questioned in a language that she or he understands

When there is a suspicion that a child accompanied by an adult may be a victim of trafficking, the child should not be questioned further in the presence of any adult accompanying them who could be a trafficker. A trafficking victim is unlikely to divulge accurate information in the presence of a trafficker. An initial conversation in private can be used both to check on the young person's circumstances and to give her or him information. For example, check if they have a photocopy of their passport in their possession: if not, urge them to make one soon.

It is essential to have an interpreter or person that speaks the same language as the child to verify the information given by the child.

4. What to do when suspicions prove to be substantial

When suspicions of trafficking are shown to be substantial or if the border officer still has doubts, he or she should refer the child for a further assessment. The official should do the following.

1. Apply for a guardian to be appointed to represent the child (before going any further);
2. If there is an emergency telephone helpline available for children or adults who are subjected to exploitation or abuse, provide the child or young person with the telephone number;
3. Refer the child to an appropriate temporary or permanent reception facility where the child can receive appropriate care.

Check list for guardians: roles and responsibilities

Role of a Guardian

The role of a guardian is to be an advocate for the child in a wide range of discussions and decisions about what should happen to the child, in particular to ensure that the decision-making process involves giving primary consideration **to the best interests of the child**. The role is also to be a link between the child and the various agencies the child comes into contact with, and to accompany the child concerned in a physical way, in particular when she or he is moved between various places.

A guardian should accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. During that time, the child shall remain a ward of state in *ex officio* guardianship of the appointed guardian.

Responsibilities of a Guardian

The guardian of separated children in general and a trafficked child in particular has the following responsibilities:

1. Ensure that all decisions taken are in the child's best interest;
2. Ensure that the child victim has appropriate care, accommodation, health care provisions, psycho-social support, education and language support;
3. Check that the child has a valid identity document and legal entitlement to be in the country concerned and to request renewals if these expire;
4. Ensure that the child victim has access to legal and other representation where necessary;
5. Consult with, advise and keep the child victim informed of his/her rights; this will require that they are up-to-date on all relevant laws and procedures;
6. Contribute to identification of a durable solution in the child's best interests;
7. Provide a link between the child victim and various organizations who may provide services to the child;
8. Assist the child victim in family tracing and in establishing contact with his or her family (if the child so wishes);
9. Ensure that if repatriation or family reunification is carried out, this is done in the best interests of the child concerned.

In the specific case of trafficked children, the guardian has additional responsibilities:

10. Attend all police interviews conducted with the child when investigating abuse committed against the child or seeking information about traffickers or others who have abused the child, with a view to possible prosecution. This presence is mandatory. If the guardian feels at any time during these interviews that the child should have the benefit of legal counsel, he/she has the right and responsibility to inform the police of the need to terminate the interview until legal counsel may be present.
11. Accompany the child to appropriate accommodation or shelter, both following initial questioning by law enforcement officials and whenever the child moves subsequently.

If the **durable solution** involves either return to the child's country of origin or transfer to a third country, the guardian is responsible for:

12. Safeguarding and upholding the best interests of the child victim until the child is ready to leave the country. At this point the child is transferred to the custody of either an international organization, such as the International Organization for Migration (IOM) or to the custody of the Ministry of the Interior or another competent organization responsible for the repatriation process.

13. Safeguarding and upholding the best interests of the child victim until the child is returned to her or his parents or legal guardian.
14. Ensuring that the relevant paperwork is completed that temporarily places the child in the custody of the Ministry of Interior when repatriation is about to occur.

Things to remember

- The guardian has the right to refuse to allow a child to give testimony in criminal and civil (judicial) proceedings (and also the right to refuse to give testimony himself or herself, if called to do so), if this is in the best interests of the child.
- Guardians should be guided by the principle that they must 'do no harm' to the child for whom they are responsible, either by their actions or by any decisions they are involved in taking on the child's behalf.
- The role of a guardian is not the same as that of a legal representative.
- The guardian is accountable to the guardianship service (or other child welfare service) for his/her performance in upholding the child's best interests, as well as in carrying out each of the responsibilities listed above. The guardian *cannot* be made accountable directly to other government ministries or law enforcement agencies that have different priorities and policies to implement.

Guidelines for professionals conducting interviews with child victims of trafficking about possible crimes committed against them (forensic interviews)¹⁰³

A variety of professionals may be involved in forensic interviews with children who are believed to have been trafficked: police officers, social workers and health professionals. These guidelines are intended for all those who are involved in such interviews.

The different reasons for interviewing children who may have been trafficked and registering information about them

The different people who may interview children believed to have been trafficked have different goals and thus seek different types of information. It is, however, prudent to be aware of the main types of information needed to address a suspected case of trafficking, as outlined below. It is, therefore, important for interviewers to listen not just for the information they seek but for other types of crucial information. It is just as important to listen carefully to the child's views or expressed needs on any aspect of their life or circumstances. In each and every interview, the best interests of the child must be a primary consideration.

The five main goals of interviewing are to:

1. find out who the child is – basic biodata;
2. find out what the child's legal status is in the country where she or he is located in order to inform others (police, immigration service, social workers) about how they should assist the child;
3. find out what has happened to the child in order to refer the child to appropriate services for care and possible treatment and assistance, including whether the child is in need of international protection as a refugee;
4. find out what has happened to the child in order to assess whether a crime has been committed and to gather evidence about the crime – i.e., a *forensic* interview; and
5. help the child come to terms with her or his experience – therapeutic interviews.

These information-gathering goals are described below in more detail.

Basic personal information (biodata)

This key personal information includes:

- family and individual name;
- names of father and mother (or, if relevant, guardian);
- normal place of residence of the child;
- date and place of birth of the child;
- marital status of older children.

¹⁰³

Many of the comments in this appendix come from a UNICEF handbook which focuses specifically on how to cope with the challenges of communicating with children who have been trafficked or subjected to sexual abuse. The handbook, prepared by Barbara Mitchels, is entitled *Let's Talk. Developing effective communication with child victims of abuse and human trafficking. Practical handbook for social workers, police and other professionals* (UNICEF and UNMIK/Government of the UN Administered Province of Kosovo Ministry of Labour and Social Welfare, 66 pages, September 2004). The handbook was prepared in the UN Administered Province of Kosovo, but the methods suggested are universally applicable. The handbook is found at: <http://www.childtrafficking.org/eng/publication.html>

Information about the child's legal status

This is information to seek if a child is not accompanied by a parent or guardian and not near to home:

- Is the child in possession of a passport or identity card?
- Is the child's identity verified by appropriate and correct papers or documents?
- Does the child have an identifiable family who is responsible for their care?
- If the child has no identified family, is he or she in the care of an organization?

In the case of children who are questioned once in a foreign country, rather than at a border:

- What is the child's nationality?
- Given the child's age and ability, can she or he speak, at an age-appropriate level, the language of the country they are in?
- If of school age, is the child attending school?
- Is the child known to the local social services?

The answers should indicate whether the child's legal status is irregular in any way and whether the child is an 'unaccompanied child'. However, they will not necessarily provide conclusive evidence about whether the child has been trafficked.

Information needed in order to refer the child to others for services and assistance

Once a child is identified as a possible victim of trafficking or a young person suspected of being trafficked is considered to be possibly under 18, law enforcement officials or others talking to the child are responsible for referring the child to other agencies for services and assistance, including accommodation and the appointment of a guardian. At this point specific information concerning the child's well-being and social history is needed in order to work out which services the child needs and the priority which should be given to each of these.

Information about a crime

There are key differences between interviewing children to get information about a possible crime (i.e. for forensic purposes) and interviewing them to find out if they need assistance or therapy.

Interviews that seek information about a crime do not automatically or even necessarily have the child's welfare or best interests at their heart (particularly if the child is suspected of having committed a crime). Its purpose is to gain information or evidence for legal proceedings, either for the prosecution of offenders or for immigration purposes. A forensic interview might have the child's welfare at its heart if one result is to provide protection to the child, but this is often an indirect result. Nevertheless, officials investigating an offence which may have been committed by a child still have an obligation to take the child's best interests into consideration.

As a matter of principle, children who have been trafficked should not be prosecuted, detained or punished for the illegality of their entrance into a country or residence there, or for the activities they are involved in as a direct consequence of their situation as a victim of trafficking.¹⁰⁴ In practice the circumstances in which a child has committed a crime (or is suspected of committing a crime) may result in the child being interviewed about an alleged offence without the interviewer being aware that the child has been trafficked or that the child committed a crime while under the control of another person. An important purpose of such interviews, particularly with young children who appear

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The UN High Commissioner for Human Rights has emphasised that: "Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons" (Principle 7 in the High Commissioner's 'Recommended Principles and Guidelines on Human Rights and Human Trafficking', Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, UN document E/2002/68/Add.1, 20 May 2002).

to be unaccompanied non-nationals, is to find out if they *have* been trafficked. If there are indications that they may have been trafficked, they should not be treated as offenders but as presumed victims of crime.

When a child has been trafficked and is the victim of or witness to a crime, the courts require the best evidence possible (if they are to be able to convict anyone of trafficking or other offences). These means the accuracy of the child's memory and recall is important. In forensic interviews, information must be gathered in a way that enables it to be used as evidence in legal proceedings or in court. In particular, the child's account must:

- be given freely;
- be clear and recorded accurately; and
- what the child says must not be influenced in any way by the interviewer.

A child who agrees to become a witness in a court case needs particular attention. The child should, if possible, be jointly interviewed by a specially trained police officer and social worker. The interview should ideally be audio-recorded or video-recorded. This ensures that the court knows that the procedures for the protection of the child have been followed. Work can also be done to prepare a child for a legal statement or for trial. The child may require emotional support or professional counselling before, during and after any legal proceedings (see Chapter 12, "Access to Justice").

Therapeutic interviews

If a child is suffering from post-traumatic stress or other psychological illness following experiences of trafficking and/or exploitation, they need to be referred for therapy. Several forms of treatment are described in Chapter 8, "Interim Care and Protection." They may also need therapy if they participate in legal proceedings, whether by being present in court or recounting their experience in a more confidential environment.

General principles about communicating with children, including trafficked children

General guidelines for interviewing children who have been trafficked

These general guidelines apply to *all* interviews with children who may have been trafficked:

- Interviews should take place as soon as possible after the allegation or suspicion of abuse emerges.
- The child should feel safe and supported during the interview.
- Girls and younger boys should be interviewed by female interviewers. Older boys can be interviewed by male interviewers.
- An adult that the child trusts should generally be present during the interview. This person's responsibility is to look after the child's best interests. It could be a guardian, a legal representative or, if neither has been appointed, a teacher or social worker.
- Interviews should take place in an informal setting and be conducted by interviewers trained to talk with children.
- Interviews should be in the child's own language. If this is impossible to organize, considerable care must be taken in arranging interpretation (see page 125, "Communicating with children via an interpreter").
- If possible, interviews should not be too long to avoid tiring the child.
- The child's developmental stage and needs should be considered in planning the interview.
- The characteristics of the child, the child's family background and the interviewer should be considered in planning the interview.

- The children should be given an opportunity to tell their story in their own way, before they are asked explicit questions.
- The questions should begin with open questions and direct or leading questions should be reserved for the later part of the interview.
- Props and cues may be used, but only with caution.

In practice, many circumstantial factors affect the content of an interview. For example, a police interview with a child who has been trafficked abroad and has just been rescued may be quite different to a police interview after the child has returned to their country of origin.

Factors to take into account when interviewing children who are traumatised or who have been abused

There are many different factors that will affect the interview of a child and influence the responses that a child gives.¹⁰⁵ Some concern the child herself or himself; others concern their experiences, particularly any experience of abuse; and others concern the circumstances of the interview and the interviewer.

An interviewer can modify some factors but others will remain outside of her or his control. The following lists identify factors that a competent interviewer should be aware of and consider in the interview.

Basic facts about the individual child:

- developmental stage, i.e., age and maturity;
- level of understanding;
- memory and the way the child responds to suggestions, i.e., 'suggestibility';
- knowledge and use of language;
- social, cultural and religious background;
- educational level;
- capacity to see the events that happened to her/him in the context of wider events;
- psychological state;
- personality and behaviour;
- level of resources and support available for the child.

Key aspects of the child's recent and current experience:

- life experiences, especially since leaving home and while being trafficked and exploited;
- state of physical and mental health, especially where there is physical or psychological trauma associated with being trafficked or exploited (which may result in difficulties recounting painful incidents or disclosing sensitive information, i.e., about sexual abuse);
- being taught a story to tell investigators or police or being influenced by fear or coercion;
- his or her expectations of the interview and awareness of his or her options;
- feelings of insecurity due to fear of repatriation or return to the control of traffickers;
- current care arrangements, living conditions, and the general atmosphere in the shelter or accommodation.

¹⁰⁵

The factors mentioned here are taken from: (1) Sources: Barbara Mitchels, "Let's Talk.: Developing effective communication with child victims of abuse and human trafficking. Practical: a practical handbook for social workers, police and other professionals," 2004; (2). UNHCR, "Working with Unaccompanied Children: A Community Based Approach," 1996; and (3). Save the Children and UNHCR, "Separated Children in Europe Programme Training Guide," 2002.

So, if a child does not reveal any information in initial interviews about abuse or coercion, this does not necessarily mean no abuse has occurred. Similarly children may not be forthcoming if they are asked to talk in the presence of individuals with whom they do not feel at ease (e.g., persons in uniform or, in the case of sexual exploitation, adult men) or in a setting with which they do not feel comfortable. For these reasons, children should generally be interviewed by persons of the same sex, except in the case of pre-pubescent boys who are believed to have been abused by men.

The circumstances of the interview:

- presence and use of an interpreter;
- location;
- timing;
- place where the interview is conducted;
- privacy (i.e., a space where others do not incidentally overhear or enter);
- previous interviews.

Characteristics of the interviewer:

- sex, including whether the same sex as the child;
- dress, especially if the interviewer is wearing a uniform;
- language/s spoken;
- professional experience;
- interviewing and listening skills;
- objectivity and sensitivity;
- rapport with the child and with the interpreter;
- knowledge of the child's options;
- familiarity with or knowledge of the child being interviewed;
- knowledge of the child's country of origin;
- personal life experience;
- social and cultural background, including religious beliefs.

Practical considerations

a) Choosing an appropriate venue for an interview

- Allow the child to have some control over when and where the interview takes place.
- Make sure that the child is fully at ease with the venue of the interview. Make sure that the child knows and feels comfortable in the premises and the interview room, and that they feel at ease.
- Provide, as a minimum, at least comfortable seating, toilet facilities nearby, and water to drink. Paper, with writing and drawing materials may be provided. Refreshments may be available for the end of the interview.
- The interview room should be as private as possible. Others who are not involved in the interview process, should not be able to stare in through windows, or to overhear the conversation in the interview.
- There should not be interruptions during the interview, and others should not be coming and going in and out of the interview room whilst the interview is taking place.

b) Providing child-specific materials (toys, drawing materials, etc)

The materials provided to the child depend on their age and maturity. Generally, toys and play facilities are more appropriate for therapy than for interviews. However, some children find it easier to

communicate by drawing and others may have formed an emotional attachment to a toy and speak more freely while holding it.

In interviews, writing or drawing materials may help the child express a relevant part of their experience in an alternative way if they wish to do so. Adolescents may prefer to write an account in their own words if it is for a specific purpose, e.g., a letter to the court. Others may prefer to tell their account orally.

Children can usually find a way to explain to a good interviewer what has happened to them, provided that the child is allowed to take their time and to explain things in their own way.

c) Who should interview a child who may have been trafficked?

In general, children who have been trafficked should be questioned by people who are the same gender (sex) as themselves. One exception is the case of pre-pubescent boys who are believed to have been abused by men; in such cases it may be appropriate for the boys to be interviewed by women.

If the child has strong feelings about not wishing any specific person to be present at an interview, explore the reasons why, and respect the child's wishes and feelings.

d) Who else should be present?

The child's guardian should be present during interviews. When a child is interviewed early on, before a guardian is appointed, the interview should be limited to bare essentials, rather than going in depth.

Conduct of interviews

a) Getting the pace right

To keep the interview at a suitably slow pace, it is advisable to:

- slow down the rate of speaking;
- allow time for the child to understand what has been said;
- leave enough time for the child to consider their response;
- be patient if the child replies slowly or remains silent for periods;
- avoid following up with another question too soon;
- refrain from interrupting if the child hesitates – he or she may be taking time to think.

Remember that the child may have been traumatized and that psychological reactions to the trauma may influence responses to questioning. Recalling traumatic events may also have a psychological impact on the child. The interviewer should be aware of this and empathic and responsive to the needs of the child.

If the interview becomes too emotionally painful for the child, it should stop. Following any interview, appropriate psychological and social support and/or therapy should be offered by a suitably trained person.

b) Providing age-appropriate information at the beginning of an interview

Know in advance the age and level of understanding of the child to be interviewed. Make sure that the interview will be conducted in words that they will understand. Pre-interview information should also be age-appropriate and include:

- purpose of the interview;
- anticipated outcome of the interview, i.e., what is likely to happen next;
- explanation of issues of confidentiality.

Never falsely encourage or mislead the child. Specifically, never promise something that you or others involved may not be able to deliver, e.g., a guarantee of total confidentiality, provision of scarce resources, location of family members.

c) Checking the child understands terms being used

This sounds obvious but it is surprising how many interviewers do not think to make sure that the child understands fully the language or terminology used in the interview.

Children have their own way of describing things and they may use a word that means something specifically to them. For example, they may use a word or a phrase in a way that does not quite make sense to the interviewer – the expression ‘going for a walk’ may not refer to a casual stroll but, in the trafficked or exploited experience, means going unwillingly with someone to do something that was abusive or unpleasant.

Children typically want to please and they may give the appearance of understanding when they, in fact, do not.

Ask a few general test questions to see if the child fully understands what is being asked. Try to get the child to speak a little early on about a pleasant and non-threatening topic. Simple ‘yes’ and ‘no’ answers from a child might suggest to the interviewer that the child is not understanding properly.

d) Communicating with children via an interpreter

Children who do not speak fluently the language in which they are to be questioned must be provided with suitable interpreters who speak their mother tongue or preferred language whenever they are interviewed, as well as when they require access to services.

Interviewers must take into account that the child will be affected by the presence of an interpreter. They must also be aware that an interpreter may translate something incorrectly due to their own preconceptions, particularly if the interpreter is not a professional. If the interpreter is from the same country or culture as a child who has been trafficked across borders, the child may fear their complicity with traffickers or may be more reserved about revealing intimate details to them than to someone whom the child regards as an independent outsider.

If interpreters are used, make sure that certain basic safeguards are in place:

- Try to use independent interpreters who are already known to the law enforcement agency or other service, are specifically trained and who are trusted.
- If there is no agency interpreter, make sure that anyone else offering to interpret is not perceived by the child to be a threat.
- Check the background of anyone else who offers to interpret to make sure that they are not associated with traffickers or others making money out of children, who might be trying to silence the child.
- Make sure that the interpreter has no control or influence over the child.
- Interpreters should be asked (and required) to work in the following ways:
 - They must translate what the child actually says, adding nothing, and leaving nothing out;
 - They should not change the child’s answer when interpreting, for example to improve grammar or to add detail;
 - They should not be allowed to take over the interview and to ask questions themselves; their role should be neutral;
 - They should not show shock, fear, or other strong emotional reactions, which may influence the child;
 - They should remain calm and professional and also be warm, non-judgmental and open in their attitude to the child.

Key points for interviewers to remember

a) The ability of abused children to remember events

The amount and accuracy of children's memories of events ('free recall') increases as they reach adulthood. Younger children aged 3 to 6 appear to remember less than adults and forget more rapidly, but what they do remember is usually just as accurate. Sometimes young children may introduce fantastical elements into their accounts, but this is exceptional and does not invalidate the rest of their account.

With questioning, most witnesses find that they know more than they were able to spontaneously recall. However, questioning can also make memories less accurate. Leading questions are answered less accurately than specific questions. Open-ended questions generate the most accurate answers.

b) The risk of introducing false memories – 'suggestibility'

A 'false memory' occurs when the memory of a witness or subject is influenced by the ideas, attitude or wishes of another person. It is particularly relevant for young children under six years old. Children and vulnerable witnesses may be influenced by the questions they are asked or by the circumstances of the interview. Examples are:

- When the child perceives that the interviewer or others judge an action negatively, e.g., as suspicious or wrong, the child feels less inclined to talk about it.
- Repeated interviews with leading questions that imply a misleading account of events or other forms of suggestion or prompting may induce a young child to comply with the questioner, thus affecting their free recall of the event.
- Misleading information provided after the event may affect free and prompt recall of the event, especially in children aged 4 to 6 years;
- People may try to implant false memories in children by repeatedly telling the child that a certain event happened. This may affect a child's recall, but only if it is compatible with the child's previous experience and beliefs. This is particularly relevant for children under six who have been given a new (and false) identity by traffickers.

c) Risks of deception

As a general rule, it can be difficult to tell if a child – or any person – is telling the truth. Even trained police officers find it hard to tell when someone is lying. Remember that:

- Body language and behaviour *cannot* be interpreted as an accurate indicator of either deceptive or truthful statements. For example, some people believe that eye contact means that the speaker is telling the truth, but a good liar can take advantage of this popular belief. Furthermore, in some cultures children may look down or avoid eye contact as a sign of respect for someone older.
- There are *no* particular behaviours or words that identify deception. For example, covering the mouth, touching the face, blinking or looking at the ground while speaking are not always indicators of lying.
- Some behaviour linked to stress may be confused with behaviour associated with deception, such as sweating, wringing hands, or fiddling with hair or a pen.
- Remember that even if a child sets out to deceive an interviewer, this is not necessarily an indicator that the child has committed an offence or feels guilt; it may be a sign that the child is acting under duress (and still feels that she or he is under the control of her or his trafficker or at risk of being returned to them).

d) Never interview a child in the presence of someone who may have trafficked or abused her or him

e) Once a guardian has been appointed, refer to the guardian for basic information

Children suffer if asked repeatedly to describe incidents which have caused them distress. Once a guardian has been appointed to accompany a child victim, the interviewer should try to get basic information from this adult and avoid unnecessary questioning of the subject child. This may not be relevant the first time the child is interviewed, but may be relevant if she or he has already spoken to others about her or his experiences.

The interviewer should also defer to the guardian for information that does not legally require the first-person testimony of the child.

At the same time, the interviewer should check that the child's guardian has understood correctly what has happened to the child and is not misinterpreting events in the light of his or her own pre-conceptions.

Initial interviews and priority actions

The first priority is to discover whether the child has suffered any physical or psychological harm that requires urgent treatment and to assess the child's other immediate needs.

In addition to basic personal information, immigration or law enforcement officials should ask the child about her or his:

- current physical and mental condition – particularly any pain, discomfort or stress – as well as general health and past medical history;
- special needs of any type;
- account of events since they have been away from their family;
- knowledge of details that may help to establish links with other abused children.

In addition, interviewers should be looking out for the following:

- Does the child have bruises or other evidence of abuse?
- Does the child have any unexplained or untreated illness?
- Does the child have unexplained fear, depression, or anxiety?
- Is the child kept away from children of the same age in the area that they live in?
- Are adults with the child unwilling to allow social workers to see the child alone?

Interviewers should also record details of the individual's social history, not just in cases of children believed to have been trafficked but of *all* unaccompanied children.¹⁰⁶ Those details should include:

- assessment of the child's age;
- preliminary assessment of the child's mental and emotional development;
- current care arrangements;
- educational background (formal and informal);
- ethnicity as well as nationality;
- circumstances around when and where the child was found or identified;
- circumstances of the child's departure from home or separation from family;
- experiences and quality of life before and since leaving home;

¹⁰⁶ United Nations High Commissioner for Refugees (UNHCR), "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum," 1997.

- data about parents, siblings and wider family in the country of origin and elsewhere;
- status and quality of the child's relationships with other members of her or his family;
- information on non-family members who are important to the child; and
- the child's aspirations and plans for the future.

Once some or all of the child's needs have been identified, the child should be referred to other services or agencies for care (see Chapter 7). The process for appointing someone to act as the child's guardian should be started without delay (see Chapter 5).

Forensic interviews with trafficked children about their experience

Once basic personal information and other details required for referrals have been collected, it is appropriate to arrange an interview to find out more about the child's experiences. In addition to looking for evidence that a crime has been committed, the aims of more detailed interviews are to:

- find out whether an individual child has been trafficked or subjected to any other abuse which requires that she or he be given special protection;
- collect specific information that may be used to prosecute criminals; and
- collect general information about patterns of trafficking and exploitation for intelligence use and to inform other efforts to prevent trafficking and to protect potential victims.

The circumstances in which immigration or law enforcement officials come into contact with a child usually make it clear what line of questioning is most likely to produce useful information.

Interviews seeking evidence about crime

a) Things to remember

- »» As the consent of the child (to be trafficked or exploited) should not be relevant for legal purposes, law enforcement authorities should use such information for general investigative purposes only.
- »» The apparent consent of a child victim to the intended exploitation must not be used:
 - as evidence of the child's possible guilt in committing an offence related to the child's status as a victim of trafficking or situation as a child;
 - as the *sole* basis for retaining the child in police custody for further questioning – whether related or unrelated to this exploitation.
- »» The child should be accompanied by a legal representative if being questioned about possible offences which the child herself or himself may have committed.

b) Factors relating to the child's age and type of exploitation experienced

Teenagers aged 16 or 17, who are old enough to have left school and to be working, may well have been deceived about the nature and conditions of work for which they were recruited. In these cases, as in the cases of young adults, it is appropriate to focus on the occupation, working conditions and forms of coercion to which a young person has been subjected (see sample questions page 130 below).

In contrast, children under age 14 are likely to have been dependent on an older person who was trafficking or exploiting them: the younger they are, the less coercion is required to make children remain with the person they depend on, even if that person is abusing them. Children under 14 are not old enough to be in full-time employment in European countries (although those aged 13 or 14 may be considered old enough in countries of origin outside Europe to have left school and to be working there). Consequently, it may be sufficient to establish that the child has been working full time or has been required to work regularly, even if still attending school, to reach the conclusion that the child has been exploited.

Development of the interview

a) Introductions

To put the child at ease make sure that the child knows in advance who will be present at the interview and why they are there. If the child has strong feelings about not wishing a specific person to be present, explore the reasons why and respect the child's wishes and feelings. At the interview introduce yourself, the interpreter if there is one, and any other person present.

b) Establishing trust and rapport

After introducing everyone explain to the child what will happen in the interview. Tell the child why you are interviewing her or him and make sure that the child understands in a way that is appropriate for their age and ability. Clearly state how the information the child provides will be used. Never lie to the child or avoid the truth. If the information from the interview might result in legal action against an offender, then the child concerned has the right to know this is a possibility.

Confirm that the child consents to being interviewed. Children should never be forced into giving an interview for the purposes of collecting evidence about crime. They should be given an explanation, which is appropriate to their age and understanding, and allowed to make a choice about whether they will give an interview. Evidence should never be gained by duress or by coercion. If a child who has a clear understanding of the situation refuses to participate in the interview, their decision must be respected. No child should be forced to answer questions. There should be breaks for comfort or refreshments, but refreshments should not be used as a reward for disclosure or cooperation or withheld in the absence of cooperation. Emotional safety is established through trust, honesty, clarity and openness.

Spend time at the beginning of an interview establishing rapport with the child by discussing some neutral subjects which allow you to assess the child's level of understanding and linguistic competence.

Remember that children are easily intimidated and may start with some assumptions that you need an opportunity to correct. For example, they may assume that every question has a right and wrong answer; that all questions must be answered, even if the child has not understood or does not know the answer; that the interviewer already knows what happened; and that it is not acceptable to say "I don't know."

The initial period of establishing rapport in an interview is also an opportunity to make sure that the child understands the importance of telling the truth.

Second stage of interviews with trafficked children about their experience

a) Open questions

The interviewer should gradually move from the general discussion that establishes rapport to open questioning that moves towards those issues that have given rise to a concern about trafficking and/or exploitation. It is important to move at the child's pace.

The task is to gradually build up a picture of what might have happened to the child.

The following are examples of general questions, gradually moving towards specific events:

- "Tell me what you think has brought you here today?"
- "My job is to talk with children about things that may be troubling them. If there is something troubling you, I would like to understand what it is, so that we can try to help you. Can you tell me about anything that worries you?"
- "I heard that you have just come back from (name location). Will you tell me what happened to you there?"

- “Can you tell me about what happened to you before you came here?”
- “Tell me about what happened to you when...”
- “What happened next?”
- “What did you do?”

Once a child has started to tell their story, listen carefully and demonstrate that you understand and are open to what they say. Do not interrupt but focus instead on gathering the child’s answers into a picture of the child’s experiences. Once the child has come to a natural stop in his or her telling, then specific questions may be asked to elicit more details.

b) Specific questions

There is no standard list of questions to ask children who may have been trafficked. They must be adapted to the age and circumstances of each child. Many of the children trafficked to and from South Eastern Europe are older teenagers (16- and 17-year-olds) who are legally allowed to work. The following sample questions could be used with this age group.¹⁰⁷

Recruitment

- What kind of job was offered to you and by whom?
- How much money was offered to you and how were you told you would be paid?
- Did you sign a contract? Do you have the original contract or a copy of it?
- Were you forced to leave your country? How? By whom?

Migration

- Did you obtain documents for travel? How?
- Which documents were obtained?
- How did you travel to the country of destination?
- Do you still have your documents?
- What happened to your documents when you arrived?
- Were you instructed to give information to immigration officials? What information?

Working conditions

- What happened when you arrived in the country of destination?
- Where did you work?
- Were you able to leave your place of work? If not, why not?
- Where did you live when you were not working?
- How did you obtain food and other items?
- Were you paid for your work? How much? How often? How did you receive the money?
- How many hours a day did you work? Did you have time off?
- Were you able to communicate with your family? Other workers? Make friends?
- Were you able to quit working for your employer and get a job somewhere else? If not, why not?

¹⁰⁷

Based on a set of questions developed by Jennifer Stanger and Sari Yoshioki, members of the Coalition to Abolish Slavery and Trafficking (CAST), and published in: A. Boak, A. Boldosser and O. Biu, “Smooth Flight: A Guide to Preventing Youth Trafficking,” International Organization of Adolescents (IOFA), New York, 2003, <http://www.seerights.org>.

Physical and psychological coercion

- Were you afraid of your employer? Why?
- Were you ever harmed by anyone? How? By whom?
- What happened if you were sick or injured?
- Did you ever try to leave your job? Why? What happened?
- Were you ever threatened? How? By whom?
- Was anyone else ever threatened? How? By whom?
- Are you afraid that your family might be in danger? Why?
- How were you treated by your employer?
- Did you ask your employer if you could leave? Why? Why not?
- What did you think would happen if you left your job? Why?

Closing the Interview

The closing part of the interview is as important as the opening. If the child has been trusting and has spoken of many things, it may be the first time that the child has felt that an adult has listened to them. If the things talked about have been painful and difficult, the child may feel relieved to have told someone about them, perhaps for the first time, but the child may also feel sad and upset by the memories. It is very important to make sure that the child has a person to be with after the interview (a guardian, carer, therapist, or other safe adult) who will offer them appropriate support and help.

Closure is also an important part of the interview process because it provides an opportunity to thank the child for sharing their experience and knowledge – and to acknowledge that it is an important and brave act that can help themselves and other children. The child should be invited to add anything they wish, correct anything they have said, or ask any question they want answered. The interviewer can leave the child with advice on seeking help as well as contact information, e.g., names and telephone numbers.

The interview should not be prolonged so as not to tire the child. However, it also should not feel rushed: a sense of hurry can make the child feel pressured or that the interview is not sincere, thus compromising the information elicited. The ending of the interview should ensure that the child witness leaves the room feeling confident, safe and supported.

Factors which help or hinder listening to children

Skills and qualities of an interviewer

Every person who might interview a child who may have or has been trafficked should have training in interviewing children. There are many training manuals that address how to communicate with children, including interviewing techniques.

UNHCR has identified the following characteristics as helpful for interviewing children:¹⁰⁸

- warmth; sincerity; empathy; understanding; acceptance; concern; respect; tact; sensitivity; flexibility; responsiveness;
- knowledge of human behaviour; clarity of thinking; analytical ability; perceptiveness;
- listening skills; questioning skills; recording skills; a sense of humour;
- control of aggression and other inappropriate behaviour.

Many factors which help or hinder good communication with children are also listed in UNICEF's handbook, 'Let's talk' (Mitchels, 2004).

¹⁰⁸ UNHCR, "Working with Unaccompanied Children: a community-based approach," 1996.

Other factors which inhibit children from talking freely

It is important to bear in mind that cultural, religious or other societal taboos inhibit children from mentioning some subjects. This means that children find it difficult to talk about some things to adults. In some cultures, girls in particular find it difficult to admit that they have been sexually abused. Boys, too, may find it very hard to admit that they have been abused or raped. They may feel that they are not as strong as men are expected to be in their culture.

There are techniques that can be used to reduce the child's inhibitions. The interviewer should be of the same sex as the child if the child may find it easier to talk to someone of their own sex about what happened. The interviewer should express no judgment of the child.

Factors to take into account concerning adolescents

The age of a child being interviewed should make a big difference to the way an interview is conducted. As many children who are trafficked are adolescents, particularly girls, it is important to take into account that adolescents are at a time of life when rapid change is happening. They are making the transition from child to adult. This has numerous influences on *their* behaviour and needs to be taken into account by an interviewer.

a) Seeking approval or disapproval

Younger children seek approval from their parents and good deeds usually win parental favour. However, adolescents seek approval from their peer group. Consequently:

- Adolescents may try to win approval of their peers by anti-social actions of which their parents disapprove.
- Adolescents may be concerned about the perceptions of others, and feel both judged and judgmental. This could sometimes result in arrogance and sometimes in a sense of uncertainty.
- Adolescents are trying to become adults and to find their sense of self. This may be the time when they challenge their parents' authority.
- Adolescents may try to behave as adults and take on too much responsibility. They need to be allowed to develop gradually, and to accept adult duties and responsibilities gradually.

b) Emotions

Emotions in adolescence may be volatile as adolescents experience hormonal changes. This may be compounded by stress and traumatic memories.

c) The effects of sexual abuse

- Sexual abuse may affect an adolescent's self-esteem and perception of self. The violation of their body has a profound effect on self-esteem and also destroys the child's normal belief system, i.e., that the world is a safe place and that adults can usually be trusted.
- Sexually abused boys may find it very hard to admit what has happened to them and feel ashamed, as though somehow they should have been able to prevent it happening. Here, reassurance and support, particularly by those to whom they look for respect, and from their peer group, is helpful.
- Adolescent girls who have been sexually abused may be very afraid of the response of their family and friends to their experiences, and afraid of rejection. If the girl has become pregnant, this may be perceived as shameful. In some cases, the girl and her child may be rejected by her family and community.
- A girl who is pregnant as a result of sexual abuse faces a particularly difficult situation. She may have very mixed feelings and find decisions hard to make, including whether to terminate the pregnancy. She may even feel suicidal, thinking that death is the only way to solve her problems.

- Adolescent girls who have been sexually abused may feel that they should have prevented the abuse somehow and feel that they are to blame. The attitudes of family and society can also be shaming and even punitive rather than supportive.
- Some girls who have been sexually abused may be left vulnerable and unable to protect themselves from further harm and abuse. They may need to learn strategies to protect themselves in future and to develop appropriate boundaries, along with their self-respect, so that they say 'no' to others who perceive and prey upon their vulnerability.
- In responding to these many factors, interviewers need to show an understanding of the impact of gender differences in adolescence – and in the circumstances of being trafficked and/or exploited.

Guidelines on determining whether a return to family and/or country of origin is in the child's best interests

Introduction

The Committee on the Rights of the Child¹⁰⁹ has outlined the factors that decision makers must take into account when considering whether a child should return to their country of origin.

Return to the country of origin is not an option if it would lead to a 'real [reasonable] risk' that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of *non-refoulement* applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child. Such a determination shall *inter alia* take into account the:

- safety, security and conditions, including socio-economic conditions awaiting the child upon return;
- availability of care arrangements for that particular child;
- views of the child expressed in exercise of his or her right to participation and those of the caretakers; and
- child's level of integration in the host country and the duration of absence from the home country.
- The child's right 'to preserve his or her identity, including nationality, name and family relations' (art. 8).
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (art. 20).

In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return in the country of origin.¹¹⁰

In order to assess and uphold these factors, it is necessary to trace a trafficked child's parents or relatives and assess whether there would be unacceptable risks if the child returns to her or his country of origin and/or to the family.

Tracing

The tracing process is intended to discover whether the child has a suitable caregiver (parents, guardians, or other adult carer) or a government agency that is able to provide adequate care and protection for the child. Before starting the tracing process, it is important for the child's assigned guardian and the social services authority to find out, first, whether a trafficked child wants their family alerted to their whereabouts or indeed wants any contact with them and, second, to discover and investigate their reasons. Children of any age may have left home or been vulnerable to trafficking because they were being abused by members of their own family. In such cases it may be in the child's best interests to return to their country of origin, but not to their family.

It is important for the guardian and social services authority to ascertain whether there are sufficient reasons why the authorities of a trafficked child's country of origin should *not* be informed of the child's presence abroad or asked for information on the child's family. For example, there may be evidence that the authorities in a particular country have not respected the confidentiality of inquiries

¹⁰⁹ The UN Committee was formed in 1991 to monitor implementation of the Convention on the Rights of the Child (1989).

¹¹⁰ Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", adopted during the Committee's 39th session, 17 May to 3 June 2005, paragraph 85. General Comment No. 6 can be found at: <http://www.ohchr.org/english/bodies/crc/docs/GC6.pdf>

about victims of trafficking, causing them or their relatives prejudice or difficulties. There may also be evidence of collusion between the authorities and traffickers.

The child's guardian has particular responsibility for keeping the child informed of efforts to trace her or his relatives and of any progress made.

Preventing further harm to the child

The basic principle of information sharing is that the maximum information necessary for tracing should be shared at the minimum risk to the child and the family.

It may, therefore, be necessary to trace the trafficked child's family without letting the family know where the child is or that they have been trafficked, abused or exploited. For example, when girls have been subjected to commercial sexual exploitation, any information about this abuse may prejudice members of her own family and community against her.

In some cases, traffickers or their associates may present a palpable threat to the life or integrity of the child or their relatives. Great care must then be taken to ensure that the collection, processing and circulation of information concerning the child are kept confidential.

Once the family of a trafficked child have been located, the sensitive process of assessing whether return to this family home is in the child's best interests can start.

Risk and security assessments

The UNICEF Guidelines call for a 'risk and security assessment'. In practice, this translates into two separate but connected assessments.

The security assessment focuses primarily on possible threats from the traffickers and their associates to the child or her or his relatives. Such threats may take various forms: trying to regain control of the child; pressuring the child or relatives to pay a 'debt' the trafficker claims is still owed to him; or taking reprisals against the child or his or her relatives.

The assessment must also consider other security threats that are specific to the child in question as well as those which affect any child returning to that particular country of origin.

The security of the trafficked child in question can be threatened simply due to home knowledge of their situation or experience. For example, girls who have been subjected to commercial sexual exploitation are commonly stigmatized. This reproach is often more severe in the child's home community and the child may even be physically attacked after arriving back home.

A more general security threat can also exist in countries that are affected by armed conflict or where the rule of law is not upheld. Threats to children, including a trafficked child who is returning home, can come from law enforcement officials and members of other security forces as well as from members of militias and armed groups that are not run by the State. For example:

- a child may be arrested on return to her or his country on suspicion of leaving the country illegally;
- a child may be arrested on return in relation to other offences committed in the process of being trafficked, e.g., obtaining or possessing false documents;
- a child may be arrested on return due to the activities in which she or he has been involved in order to earn money for a trafficker;
- a child may be arrested on return because of corruption or abuse of power by law enforcement officials; or
- the child, in the case of arrest, may be at risk of prolonged detention without charge or trial, or of torture.

The precise nature and likely incidence of any threat must be evaluated. If a child is likely to be detained for a few hours and then released uncharged, it may be reasonable to proceed with repatriation. At the other extreme, if there is even the slightest possibility that a returning child may be tortured, either by law enforcement officials or by criminals or non-State actors, it is out of the question to proceed.¹¹¹

The risk assessment is more general in nature than the security assessment. It looks at the circumstances of the home and community to which the child is likely to return in order to assess whether it is in the child's best interests to return there.

The socio-economic circumstances of both the family and the wider community need to be assessed. This involves factors such as resources, attitudes and capacities.

In terms of the family, it means finding out the financial position of the child's parents or carers and whether they can provide adequately for the child, including food, clothing and other forms of material need. It also means exploring the relationships among members of the household as well as their attitudes towards child trafficking, child exploitation and child rights. Any evidence of abuse within the family, such as domestic violence, or of specific discrimination against the trafficked child, e.g., related to their status as a stepchild, may be a sufficient reason to oppose family reunification. The status of the family may also vary in relation to their community and it is important to take that into account, e.g., the family may be poor, from an ethnic minority, a single-parent household, well established, with a large kinship network, etc.

In terms of the community itself, it is important to assess whether the child would have adequate access to food, housing, clothing, health care, social security, education, vocational training and employment opportunities. It means assessing whether the child may face discrimination in getting access to any of these goods or services, either related to the fact of being trafficked or exploited or related to the child's original status in their community. However, if the child expresses a wish to return home, the fact that conditions there are difficult is not automatically a barrier to that return.¹¹²

While communities can embrace young people who have suffered mishaps, this is not always the case as far as trafficked children are concerned. Too often child victims of trafficking are blamed by relatives or neighbours for 'bringing it on themselves' and especially stigmatized for the manner in which they have been exploited, e.g., activities such as commercial sexual exploitation and begging are viewed as having low status or being socially unacceptable.

A security assessment requires information from law enforcement officials or an intelligence agency involved in law enforcement in the child's country of origin, or from an international police organization.

A risk assessment requires information from an agency which is familiar with the child's family or the home of the person who is going to take responsibility for the child or the institution which is going to do so, and the surrounding community.

In Romania, for example, the National Authority for Child Rights Protection takes requests for information from child protection agencies in EU countries about Romanian children believed to have been trafficked into EU countries as well as about other unaccompanied Romanian children. To complicate things, however, NGOs that care for Romanian children in EU countries also address informal inquiries to NGOs operating in the region of Romania from where a child originates.

¹¹¹ Repatriating a child who faces a risk of torture would violate the European Convention on Human Rights and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In the case of EU member states, it would also violate the EU Charter of Fundamental Rights.

¹¹² Save the Children and the Separated Children in Europe Programme, "Position Paper on Returns and Separated Children," September 2004.

The risk and security assessments are not in themselves assessments of what is in the child's best interests. They involve collecting evidence about risks or threats. In a risk assessment the fact that the child's parents are poor does not in itself constitute a risk to the child. However, if they are so poor that they cannot afford food for their children and there is evidence that they are likely to send a child of compulsory school age out to work or to beg – this constitutes a risk. On the other hand, if an adequate income supplement is given to the child's family, the risks for the child returning home are also likely to be reduced.

Responding to information requests in the country of origin

In the child's country of origin, the authority receiving an inquiry is responsible for initiating security and risk assessments in that country. This means contacting an appropriate law enforcement agency to assess the risk from traffickers and the national authority responsible for social services or child welfare to assess the family's situation. In the absence of parents or other family members, other options can be investigated depending on the child's age. For children of school age, the suitability of child-care agencies should be investigated. For older teenagers, the feasibility of living in a small group home should be investigated.

Steps to take in the destination country

The Liaison Officer of the Ministry of the Interior in the country of destination is responsible for initiating inquiries in the child's country of origin. There are several authorities who can be contacted in the child's country of origin.

The authorities at national level in a country which is used to receiving such inquiries may respond promptly with accurate information. However, this is by no means certain. If discreet inquiries with a national-level authority responsible for social services or child welfare in the child's country of origin produce no reply, efforts can be made to identify representatives of this authority at the local level. It may eventually be necessary to ask for the assistance of NGOs in obtaining information from NGOs in the child's country of origin. The coordination and cooperation ensured by a functioning National Referral Mechanism (NRM) is intended to facilitate these contacts.

Once a decision on a durable solution for the child is made, this information should be communicated to the authorities who have been contacted in the child's country of origin to obtain information during the determination process. The child protection authorities in one South Eastern European country commented in 2005 that they provided information about hundreds of national children to child protection authorities in EU countries, but were never told what decision had been made or what had happened to the children concerned.

Guidelines for law enforcement and justice officials on involving trafficked children in legal proceedings

Child friendly procedures in the course of legal proceedings

Unless the procedures followed by police, investigating magistrates and prosecutors, and the courts are specially adapted to children, it is unlikely that either teenagers or younger children will be able to make use of legal procedures to remedy the wrongs to which they have been subjected. As the legal procedures – both criminal and civil – in many countries are not child friendly currently, trafficked children are in some ways prevented from having adequate access to the law. As a result such countries are not fulfilling their obligations under the CRC.

It is important that the views, needs and concerns of children who have been trafficked be presented and considered in proceedings where their personal interests are affected. As this must be done in a manner consistent with the procedural rules of national law, amendments to the law may be necessary to ensure this.

Some of the specific ways in which children's rights and interests can be protected are outlined in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see Box 17).

Police, prosecutors, judges and magistrates should seek to employ child-friendly practices and adapt existing procedures to recognize the special needs of children, including their special needs as witnesses. These include, among other things, videotaping the child's testimony and presenting the videotaped testimony in court as official evidence, rather than requiring a child to testify in person.

Whether the child concerned wants to return to her or his country of origin or not, it is important in cases involving children to avoid unnecessary delays in bringing cases to court.

Box 1

Seven measures listed in Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

Arrangements concerning the safety of children

The police, courts or others who want a trafficked child to remain in their country to take part in legal proceedings have a responsibility to make suitable arrangements to enable the child to do so safely. If children are asked to testify in criminal proceedings, the authority bringing the prosecution must warn both the child and her or his legal representative and guardian about the real difficulties in shielding the child's identity. It is important these real risks not be minimized or dismissed. The child, their guardian and legal representative are entitled to know the risks so they can make a fully informed decision about whether to testify or take part in any legal proceedings.

Interpretation and translation

Children involved in legal proceedings are entitled to the services of an interpreter at all stages in the proceedings. They are also entitled to have important documents translated into their own language. It is up to the authority responsible for the administration of justice to make an interpreter and translator available.

The interpreter should be competent and qualified to interpret from the language being used in legal proceedings into the child's own language. The authority employing the interpreter is responsible for ensuring the person is independent and could not be acting directly or indirectly for organized criminals in the country from which both the child and the interpreter may come. It is important that this interpreter should not be the same person as the interpreter who acts in the same or related case for a defendant accused of trafficking.

Respecting the child's privacy

It is important to avoid the inappropriate dissemination of information that could lead to the identification of child victims or witnesses. Judges and court officials should make use of measures available under national law to protect the privacy and identity of children who have been trafficked and to prevent the identity of children from being revealed, giving instructions to journalists and others as appropriate.

Avoiding procedures which cause further harm to a child

The judicial authority responsible for a particular investigation or trial has a responsibility to ensure that these legal proceedings do not cause harm to children. This would include prejudicing their rights, undermining their dignity, or harming their physical or psychological well-being. For example, a child who is confronted in court or at a pre-trial hearing with someone who has abused them or controlled them may well cause further trauma.

Direct contact should, therefore, be avoided as much as possible between the child victim and the defendant during investigation, prosecution and trial proceedings. Similarly, direct contact should also be avoided between the child victim and witnesses appearing for the defence, as people attending the trial who may be associates of the defendant. This may require specific in-court arrangements, e.g., ensure a child victim/witness is not obliged to wait outside a courtroom or judge's chamber in the same waiting area as defence witnesses.

Providing children with up-to-date news of legal proceedings

Police, prosecutors or court authorities should pass information to the child, his or her guardian and legal representative about the following developments:

1. any decision whether or not to refer a trafficker for trial, together with details of the charges against the person;
2. the arrest or imprisonment of a person suspected of trafficking or committing an offence against the child, along with their release on bail;

3. information about whether the child will be or might be called to give evidence during the trial;
4. any information about when a trial may take place;
5. notice of when the trial begins and ends; and
6. the outcome of the trial, including details of the sentence, the likelihood of an appeal and whether the child may be requested to give evidence at the appeal.

Children and their legal representatives should also be provided with information when a person convicted of trafficking them or committing an offence against them is released from prison. This is important even if the child has returned to her or his country of origin, as the released trafficker may pose a threat. The mere sight of the offender may cause a child fear and anxiety, so it is important they be aware of any such possibility.

Therapy

Vulnerable or intimidated witnesses should be provided with the emotional support or professional counselling they may need before, during and after any legal proceedings. Child-care professionals and police must make sure that, wherever possible, professionals who provide therapy for children prior to a criminal trial are aware of the needs of the child as well as the needs of the courts.

Compensation

In some countries, victims of crime are entitled to lodge a formal request for compensation in the course of a criminal trial. In this case, the judge is required to take into account the harm and economic losses experienced by the child. In other countries, child victims may be awarded compensation at the court's discretion. In either case, the authority responsible for executing the court's orders should ensure that any compensation payment is made as promptly as possible to the child concerned.

Of course, awarding compensation is made more complicated by the fact that some or all the activities which a child was undertaking in order to earn money for a trafficker or exploiter were illegal, such as prostitution, begging or stealing. The idea of awarding compensation to someone who has been carrying out illegal activities is alien to most justice systems. However, consideration needs to be given to the child's loss of earnings. Economic disadvantage or deprivation is a key factor in making children and adolescents vulnerable to trafficking and exploitation; without compensation these victims may remain vulnerable to being re-trafficked.

Procedures during civil proceedings

Many of the issues concerning civil proceedings are the same as for criminal proceedings, in particular concerning:

- arrangements for the child's safety;
- interpretation and translation;
- respecting the child's privacy; and
- avoiding procedures which cause further harm to the child.

However, civil proceedings are likely to focus on the child's right to some form of compensation for the abuse or damages suffered. In criminal proceedings the child's legal representative and guardian would give top priority to ensuring the child's best interests are upheld in the face of attendant pressures to secure a trafficker's conviction. In civil proceedings, however, the child's representatives may find that the police and others in authority have no direct – and, therefore, little – interest in the proceedings and consequently they may have to be pressed to cooperate or participate convincingly in the civil case.

Example of professional code of conduct for safeguarding children and young people¹¹³

Do:

- Remember that children and young people have the right to respect (this includes respect for their physical, intellectual, social and emotional welfare).
- Respect the cultural, religious and ethnic background of all the people with whom you work, however different it may be from your own.
- Model good conduct for others to follow.
- Ensure that there is always more than one adult present during activities with children and young people, or the activities should be within the sight and hearing of others.
- Respect the right of children to personal privacy.
- Monitor each other's behaviour with children.
- Feel able to comment on each other's conduct and be prepared to offer and accept positive criticism.
- Challenge **any** inappropriate behaviour with children.
- Report any suspicions or allegations of abuse.
- Be aware that some actions may be misinterpreted, no matter how well intentioned.
- Recognize the need to exercise special care and caution in discussing sensitive issues with children and young people.
- Be aware of and comply with the codes of conduct and rules of the agency or organisation with which you are working.
- Remember that children have the right to decide how much physical contact they have with others (unless for medical attention).
- Remember that physical contact should only be what is necessary for the activity, it should be age-appropriate, and should reflect the child's needs, not those of adults.
- Remember that physical contact should be initiated by the child, not an adult, unless for medical attention.
- Seek advice about **any** concerns about the behaviour of any adult with children.
- Ensure that children and young people know of trusted adults (e.g., the school child-protection coordinator or social services).

Do not:

- Have any inappropriate verbal communication with children or young people.
- Have any inappropriate physical contact with children or young people.
- Allow yourself to be drawn into inappropriate or attention-seeking behaviour.
- Make suggestive or derogatory remarks or gestures to (or in front of) children or young people.
- Jump to conclusions about others without checking the facts.
- Exaggerate or trivialize child abuse issues.
- Show favouritism to any individual.
- Rely on your good name or your job to protect you.
- Think 'it cannot happen to me'.
- Take a chance when common sense, policy or practice suggests a more prudent approach.

¹¹³

Mitchels, Barbara, "Let's Talk. Developing effective communication with child victims of abuse and human trafficking. Practical handbook for social workers, police and other professionals," UNICEF and UNMIK / Government of the UN Administered Province of Kosovo Ministry of Labour and Social Welfare. September 2004. <http://www.childtrafficking.org/eng/publication.html>, p 7

Annexes

Annex 1 Guidelines for Protection of the Rights of Child Victims of Trafficking

The following guidelines set out standards for good practice with respect to protection and assistance of child victims of trafficking from initial identification up until the final integration and recovery of the child. These guidelines have been developed on the basis of relevant international and regional human rights instruments and provide a straightforward account of the policies and practices required to implement and protect the rights of child victims of trafficking. They aim to provide guidance to Governments and State actors, international organizations and NGOs, in developing procedures for special protection measures of child victims of trafficking.

1. DEFINITION

- Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation either within or outside a country.
- Consent of the child victim to the intended exploitation is irrelevant even if none of the following means have been used: "force, coercion, abduction, deception, abuse of power or actions taken while one is in a state of vulnerability or while one is in the control of another person"
- A child victim of trafficking ("child victim") is any person under 18 years of age.

2. GENERAL PRINCIPLES

The following principles underpin the Good Practice Guidelines and should be born in mind at all stages of care and protection of child victims of trafficking in countries of destination, transit and origin.

Rights of the Child

- All actions undertaken in relation to child victims shall be guided by and based on the principles of protection and respect for human rights as set out in the United Nations Convention on the Rights of the Child (1989).
- Child victims are entitled to special protection measures, both as victims and as children, in accordance with their special rights and needs.
- The involvement of a child victim in criminal activities should not undermine their status as both a child and a victim, and his/her related rights to special protection.

Best Interests of the Child

- In all actions concerning child victims, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

2.3 Right to Non-Discrimination

- All child victims, non-national as well as national or resident children, are entitled to the same protection and rights. They must be considered as children first and foremost. All considerations of their status, nationality, race, sex, language, religion, ethnic or social origin, birth or other status shall not impact on their rights to protection.

2.4 Respect for the Views of the Child

- A child victim who is capable of forming his or her views enjoys the right to express those views freely in all matters affecting him or her, for example, in decisions concerning his or her possible return to the family or country of origin.

- The views of the child shall be given due weight in accordance with his or her age, maturity and best interests.

2.5 Right to Information

- Child victims must be provided with accessible information about, for example, their situation, their entitlements, services available and the family reunification and/or repatriation process.
- Information shall be provided in a language, which the child victim is able to understand. Suitable interpreters shall be provided whenever child victims are questioned/interviewed or require access to services.

2.6 Right to Confidentiality

- Information about a child victim that could endanger the child or the child's family members must not be disclosed.
- All necessary measures must be taken to protect the privacy and identity of child victims. The name, address or other information that could lead to the identification of the child victim or that of the child's family members, shall not be revealed to the public or media.
- The permission of the child victim must be sought in an age appropriate manner before sensitive information is disclosed.

2.7 Right to be Protected

- The state has a duty to protect and assist child victims and to ensure their safety.
- All decisions regarding child victims must be taken expeditiously.

3. GUIDELINES FOR SPECIFIC MEASURES

3.1 Identification

3.1.1 Pro-active identification measures

- States shall take all necessary measures to establish effective procedures for the rapid identification of child victims.
- Efforts should be made to coordinate information sharing between agencies and individuals (including law enforcement, health, education, social welfare agencies, and NGOs), so as to ensure that child victims are identified and assisted as early as possible.
- Immigration, border and law enforcement authorities shall put in place procedures to identify child victims at ports of entry and in other locations.
- Social service, health or education authorities should contact the relevant law enforcement authority where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.
- NGOs/civil society organizations should contact relevant law enforcement authorities and/or social service authorities where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.

3.1.2 Presumption of age

- Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.
- Pending verification of the victim's age, the victim will be treated as a child and will be accorded all special protection measures stipulated in these guidelines.

3.2 Appointment of a Guardian

3.2.1 Appointment process

- As soon as a child victim is identified, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim throughout the entire process.
- Social service authorities, or other appropriate institutions, shall establish a guardianship service to be implemented directly or through formally accredited organization(s).
- The guardianship service will appoint a guardian as soon as it receives notification that a child victim has been identified.
- The guardianship service will be held responsible/accountable for the acts of the appointed guardian.
- The state shall ensure that this service is fully independent, allowing it to take any action it considers to be in the best interests of the child victim.
- Individuals appointed as guardians must have relevant childcare expertise and knowledge and understanding of the special rights and needs of child victims, and of gender issues.
- Guardians should receive specialized training and professional support.

3.2.2 Responsibilities of the guardian

- Regardless of the legal status of the individual appointed as the guardian (e.g. legal guardian, temporary guardian, adviser/representative, social worker or NGO worker) their responsibilities should be:
 - to ensure that all decisions taken are in the child's best interests,
 - to ensure that the child victim has appropriate care, accommodation, health care provisions, psycho-social support, education and, language support,
 - to ensure that the child victim has access to legal and other representation where necessary,
 - to consult with, advise and keep the child victim informed of his/her rights,
 - to contribute to identification of a durable solution in the child's best interests,
 - to provide a link between the child victim and various organizations who may provide services to the child,
 - to assist the child victim in family tracing,
 - to ensure that if repatriation or family reunification is carried out, it is done in the best interests of the child victim,
- Following initial questioning by law enforcement officials, the guardian shall accompany the child to appropriate accommodation/shelter.
- The guardian shall be responsible for safeguarding the best interests of the child victim until the child is placed in the custody of either IOM, Ministry of the Interior or other competent organization responsible for the repatriation process or is returned his/her parents or legal guardian. The guardian shall ensure the relevant paperwork is completed that temporarily places the child in the custody of the Ministry of Interior. Until a durable solution has been found for the disposition of the child, the child shall remain a ward of state in *ex officio* guardianship of the appointed guardian.
- The guardian should have the right to refuse to give testimony in criminal and civil (judicial) proceedings if this is in the best interests of the child.
- The guardian shall attend all police interviews conducted with the child. If the guardian feels at any time during these interviews that the child should have benefit of legal counsel, he/she shall have the right, and responsibility, to inform the police of the need to terminate the interview until legal counsel may be present.

3.3 Questioning, Interviews and Initial Action

3.3.1 Registration

- Law enforcement authorities (i.e. police) should register child victims through initial questioning.
- Law enforcement authorities should immediately open a case file on the child victim and begin to collect information, which will facilitate judicial proceedings as well as measures to be taken for the disposition of the child.

3.3.2 Initial questioning

- Child victims should be questioned in a child-sensitive manner.
- Only specially trained members of the law enforcement authority should question child victims. Wherever possible, child victims should be questioned by law enforcement officers of the same sex.
- Initial questioning of a child victim should only seek to collect biographical data and social history information (i.e. age, nationality, languages spoken etc.).
- Information regarding the experience of the child whilst trafficked, and any knowledge they may have of illegal activities etc. should not be sought at this point.
- Law enforcement authorities should never question a child victim on their premises or in the location where the child has been exploited and/or in the presence or physical proximity of any suspected trafficker. Initial questioning should be delayed until the child has been relocated to a safe location.

3.3.3 Initial action

- Upon identification of child victim, or when there is presumption that victim is a child, law enforcement authorities shall be responsible for immediately organizing the transfer of the child victim to a shelter/safe location for accommodation.
- Following identification of child victim, police/law enforcement authorities shall contact as soon as possible guardianship services in order to establish appointment of a guardian.
- In the process of appointing a guardian, law enforcement authorities should protect the child's privacy and confidentiality.
- The Ministry of Interior or other relevant law enforcement agencies should make available to every law enforcement station the necessary contact details of the guardianship service.
- Responsibility for contacting the guardianship service and for the formal hand-over of the child into the care of the guardian should rest with the most senior ranking police officer/officer in charge of the investigation.
- Upon presentation of the guardian, the officer responsible will sign the necessary paperwork (which shall be presented by the guardian) confirming that they have handed over the child to *ex officio* guardianship: as such, they must recognize the right of the guardian to request a halt to proceedings, to speak to the child alone, and take all necessary measures that are in the best interests of the child.
- Relevant law enforcement authorities shall ensure that the appointed guardian accompanies the child victim at all points.

3.3.4 Interviewing the child victims about their experience

- Police and other law enforcement authorities should only question child victims about their trafficking experience in the presence of the appropriate guardian.
- Law enforcement authorities should minimize the length and scope of questioning so as to minimize further trauma or psychological distress to the child victim.

- Law enforcement authorities should defer to the guardian for information that does not legally require the first person testimony of the child.
- As consent of the child is not relevant for legal purposes, law enforcement authorities should not ask questions about the consent of the child to the exploitation.
- The apparent consent of a child victim to the intended exploitation must not be used:
 - as evidence in the pursuit of criminal charges against the child related to the child's status as a victim of trafficking or situation as a child,
 - as the *sole* basis for retention of the child in police custody for further – whether related or unrelated – questioning.
- Law enforcement authorities (i.e. prosecutors and judges) should ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
- Law enforcement authorities should ensure that child victims are never detained for reasons related to their status as a victim.

3.3.5 Age assessment

Verification of the victim's age should take into account:

- the physical appearance of the child and his/her psychological maturity,
- the victim's statements,
- documentation,
- checking with embassies and other relevant authorities,
- consensual medical examination and opinion.

3.4 Referral and Coordination/Cooperation

3.4.1 Referral to appropriate services

- Child victims shall be referred expeditiously to appropriate services.
- The state, through relevant ministries, shall assist law enforcement authorities, social service authorities, relevant administrative bodies, international organizations and NGOs/civil society organization in the establishment of an efficient referral mechanism for child victims.

3.4.2 Inter-agency cooperation

- All relevant ministries and government bodies (including police, social service authorities, Ministries of Interior) involved in the referral and assistance to child victims should adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims in order to ensure an effective continuum of care and protection for child victims.
- The Ministry of Interior shall designate "liaison officers" as responsible for liaison with the social services authorities/guardianship service, and in particular, the guardian of the child victim.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, the Ministry of Interior shall assist in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.
- Liaison officers shall also liaise with members of the relevant law enforcement agencies dealing with child victims.

- Liaison officers (along with, where appropriate, legal counsel for the Ministry,) shall be responsible for representing the Ministry of Interior, in meetings in which the final disposition of the child is decided in conjunction with the other relevant administrative and judicial bodies.

3.5 Interim Care and Protection

3.5.1 Care and protection

- Child victims are entitled to receive immediate care and protection including security, food, and accommodation in a safe place, access to health-care, psychosocial support, legal assistance, social services and education.
- Care and assistance shall respect the child's cultural identity/origin, gender and age.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Child victims should be cared for by adequately trained professionals who are aware of the special rights and needs of child victims and of gender issues.
- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through cooperation with relevant international organizations and NGOs.
- Guardians, in cooperation with social service authorities and NGOs, shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.

3.5.2 Accommodation in a safe place

- Child victims should be placed in safe and suitable accommodation (i.e. temporary shelter or location of alternative care arrangement) as soon as possible after their identification.
- Where possible, boys and girls should be in a separate housing appropriate for children.
- Social service authorities, in cooperation with NGOs and international organizations, shall develop standards of care for places where child victims are accommodated.
- Under no circumstances should a child be placed in a law enforcement detention facility. This includes detention in, for example, detention centres, police cells, prisons or any other special detention centres for children.

3.6 Regularization of Status

- Ministries of Interior and/or other relevant state authorities shall establish policies and procedures to ensure that child victims, who are not nationals/residents of the country in which they find themselves, are automatically granted a Temporary Humanitarian Visa and are entitled to stay in the country on a valid legal basis pending identification of a durable solution.
- For children without documentation, Ministries of Interior and/or other relevant state authorities will provide temporary documents.
- In conjunction with the Ministry of Interior, and where relevant, the social service authorities, the guardian shall be responsible for initiating application procedures for the issuance of a Temporary Humanitarian Visa, and the concordant leave of stay, acting on behalf of the child in any administrative presentations or procedures this may require.
- Such status shall be afforded to the child victim until the relevant judicial and administrative bodies have made a decision regarding the disposition of the child.

3.7 Individual Case Assessment and Identification of a Durable Solution

- Child victims should not be returned to their country of origin unless, prior to the return, a suitable care-giver such as parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection.

- The views of the child should be taken into consideration when considering family reunification and/or return to the country of origin and in identifying a durable solution for the child.
- Social service authorities, in cooperation with Ministries of Interior where necessary, should take all necessary steps to trace, identify and locate family members and facilitate the reunion of child victim with his/her family where this is in the best interests of the child.
- The respective Ministries, in conjunction with the relevant social worker authorities and/or guardian, should be responsible for establishing whether or not the repatriation of a child victim is safe, and ensure that the process take places in a dignified manner, and is in the best interests of the child.
- Ministries of Foreign Affairs, Ministries of Interior and other relevant state authorities shall establish agreements and procedures for collaboration with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted in order to determine the best course of action for the child.
- The guardian, acting through and with the assistance of the Ministries of Interior or other relevant state authorities, and the relevant social service authority, shall begin the process of obtaining documentation and information from the child's country of origin in order to conduct risk and security assessment, upon which the decision as to whether or not to reunite the child with his/her family or return the child to their country of origin shall be made.
- Once sufficient documentation and information has been gathered, the relevant social service authority shall decide in conjunction with the guardian, the Ministry of Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin, on the final disposition made in favour of the child.
- If the decision is made against family reunification and/or repatriation, then the guardian shall remain responsible for the child victim, until the appropriate judicial appoint a legal guardian for the child.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, Ministries of Interior shall assist those authorities in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.

3.8 Implementation of a Durable Solution

3.8.1 Local integration

- Child victims, both who are nationals and not nationals/residents of the country in which they find themselves, are entitled to receive long-term care and protection including access to health-care, psychosocial support, social services and education.
- In situations where the safe return of the child to his/her family and/or country of origin is not possible, or where such return would not be in the child's best interests, the social welfare authorities should make adequate long-term care arrangements.
- Such arrangements should favour family- and community-based arrangements rather than residential care.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

3.8.2 Return to country of origin

- Child victims, who are not nationals/residents of the country in which they find themselves, are as a general principle entitled to return to their country of origin.
- Child victims shall not be returned to their country of origin if, following a risk and security assessment, there are reasons to believe that the child's safety or that of their family is in danger.

- Ministries of Interior or other relevant state authorities shall establish agreements and procedures for the safe return of child victims to their country of origin.
- Guardian or a social worker assigned to the case should accompany child victims who are being returned until placed in the custody of Ministry of Interior, IOM or other organization responsible for return.
- States shall establish procedures to ensure that the child is received in the country of origin by an appointed responsible member of the social services of the country of origin and/or child's parents or legal guardian.

3.8.3 Integration in country of origin – reception and reintegration

- Child victims are entitled to receive long-term care and protection including security, food, accommodation in a safe place, access to health-care, psycho-social support, legal assistance, social services and education with a view to their social reintegration.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Child victims should be cared for by adequately trained professionals who are aware of the special needs and rights of child victims, and of gender issues.
- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through cooperation with relevant international and non-governmental organizations.
- Social service authorities shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.
- Social service authorities, in cooperation with relevant international and non-governmental organizations should monitor the life situation of the child following his or her family reunification and or placement in alternative care.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.
- Social service authorities shall ensure that alternative care arrangements for child victims deprived of a family environment favour family- and community-based arrangements rather than residential care.
- Ministries of Education shall establish special inclusive education and vocational programs for child victims.

3.8.4 Resettlement and integration in a third country

- In situations where the safe return of the child to his/her country of origin and the integration in the country of destination are not possible, or where these solutions would not be in the child's best interests, the states in both countries should ensure the child victim's resettlement in a third country.
- States should collaborate to secure resettlement options with third countries.
- Such arrangements should favour family- and community-based arrangements rather than residential care.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child, including for education needs.
- Child victims are entitled to receive long-term care and protection including access to health-care, psychosocial support, social services and education.

3.9 Access to Justice

3.9.1 Criminal proceedings

- Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation, as well as interpretation into the native language of the child, if necessary.
- Child victims have the right to be fully informed about security issues and criminal procedures prior to deciding whether or not to testify in criminal proceedings against persons who are suspected of involvement in the exploitation and/or trafficking in children.
- Child victims of trafficking have the “right to recovery time” before deciding whether or not to pursue criminal proceedings against the trafficker.
- Assistance to the child victim of trafficking should not, under any circumstances, be conditional on the child’s willingness to act as a witness.
- The taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay family reunification or the return of child victim to the country of origin if it is in the best interests of the child.
- Direct contact should be avoided between the child victim and the suspected offender during the process of investigation and prosecution as well as during trial hearings as much as possible.
- States should consider, if necessary, amendments of their penal procedural codes to allow for, *inter alia*, videotaping of the child’s testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply child-friendly practices.

3.9.2 Civil proceedings

- Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary.
- Child victims should be provided with information regarding their right to initiate civil proceedings against traffickers and other persons involved in their exploitation.
- Law enforcement authorities should adopt measures necessary to protect the rights and interests of child victims at all stages of judicial proceedings against alleged offenders and during procedures for obtaining compensation.
- Law enforcement authorities should undertake to ensure that child victims are provided with appropriate access to justice and fair treatment, restitution and compensation including prompt redress.

3.10 Victim/Witness Security and Protection

- Child victims who agree to testify should be accorded special protection measures to ensure their safety and that of their family members in both countries of destination, transit and origin.
- Ministries of Interior and other relevant law enforcement authorities should adopt all measures necessary to protect the child victim and their family members, including through international cooperation.
- When the victim/witness protection cannot be ensured in neither country of destination nor in country of origin, measures should be taken to allow resettlement in a third country.

3.11 Training

- All agencies dealing with child victims should establish special recruitment practices and training programmes so as to ensure that individuals / persons responsible for the care and

protection of child victims understand their rights and needs, are gender-sensitive, and possess the necessary skills to assist children.

4. IMPLEMENTATION AT COUNTRY LEVEL

The guidelines represent only the beginning of establishing a system of protection and assistance appropriate to the rights and needs of child victims of trafficking.

At national level, national working groups within the frameworks of the National Plans of Action to combat trafficking should establish a specialised group with representatives of appropriate ministries, police, administrative and judicial authorities, etc, to begin a thorough examination of the existing mechanisms and legislative structures, including identification of the following:

1. Roles and responsibilities of different government authorities, including, police, social service authorities, Ministries of Interior, etc;
2. Roles and responsibilities of NGOs and international organizations;
3. Mechanisms and modalities of cooperation;
4. Resources necessary to implement the guidelines, including human and financial.

5. ANNEX

5.1 Legal Basis

Applicable International Conventions are:

- Convention on the Rights of the Child (CRC) (1989)
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2000)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- The Hague Convention 28 on the Civil Aspects of International Child Abduction (1980)
- UN Convention Against Transnational Organized Crime (*The Palermo Convention*) (2000)
- Annex II – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United National Convention Against Transnational Organized Crime (*The Palermo Trafficking Protocol*) (2000)
- ILO Convention Concerning the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labour No.C182 (1999)

The ratification status of these Conventions by SEE countries is summarised below in section 5.3. All countries in SEE have ratified CRC, CEDAW and ILO 182 Convention. Most SEE countries are member states of Hague Conference and, to date, have ratified the following conventions relevant to trafficking victims: 1) the Hague Convention 28 on the Civil Aspects of International Child Abduction, and 2) the Hague Convention 29 on International Access to Justice. All countries have signed and many have ratified, the Palermo Convention and the Palermo Trafficking Protocol.

The following is an analysis of the articles, which are most relevant to the issue of trafficking of children. UNICEF takes a human rights approach to child trafficking, which provides greater protection than the Palermo Trafficking Protocol. The foremost obligation on States is to act in the best interests of the child. In essence, the legal provisions contained in these instruments underpin the provisions of the Trafficking Protocol to the Convention on Transnational Organized Crime, but in some instances provide for greater protections. When interpreted together, the Trafficking Protocol and other international instruments, in particular the Convention on the Rights of the Child and the ILO on the Worst Forms of Child Labour 182, provide the strongest protections for child victims of trafficking. The intention of the guidelines is to harmonise the obligations, in effect creating a “Palermo Plus” for States to better understand the approach that they are expected to follow.

5.1.1 Convention on the Rights of the Child¹¹⁴

Article 1

1. For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Whilst the CRC enables the State to recognise an age of majority below that of 18, in order to give effect to the obligation to act in the best interests of the child, States should apply the status determined by the Trafficking Protocol and the ILO Convention 182 which defines a child as anyone under the age of 18.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

This article clearly points out the universality of the obligation to act in the best interests of the child and the absolute prohibition of discrimination whether direct or indirect. The responsibility to provide adequate protection and care to child victims of trafficking at first instance, lying with the State within whose jurisdiction they are found, regardless of their status.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Whilst the provisions in Article 3 are self explanatory, it must be considered in conjunction with Article 4 which provides that: States are responsible for ensuring: "legislative, administrative and other measures" give effect to the obligations contained in the Convention. It is acknowledged that the ability of States to actually provide the requisite level of protection is related to the economic condition of that State. Hence article 4 articulates the principle of the progressive realisation of rights: "States Parties shall undertake such measures to the maximum extent of their available resources. Where needed within the framework of international cooperation". This is particularly pertinent given the transborder nature of trafficking and the regional approach that has to be adopted. Article 4 should be interpreted as an obligation on the international community to provide assistance to those less economically secure, to give effect to their Article 3 obligations.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

¹¹⁴ Convention on the Rights of the Child is found at www.unhcr.ch/html/menu3/b/k2crc.htm

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Measures undertaken by government authorities to ensure compliance with Articles 9 and 10 can also be interpreted as the basis for handling the repatriation applications of trafficked children. The state is clearly mandated to decline repatriation of a child to the direct care of his parents if it has reason to believe this may be detrimental to the child's best interests. Further, the logical expansive interpretation of this obligation is that the returning party must have undertaken necessary steps to establish that repatriation is indeed in the best interests of the child.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia and Montenegro further complied with article 11.2 by signature and ratification of the Convention 28 of the Hague Conference, and Romania and Republic of Moldova complied by acceding to Convention 28 of the Hague Conference.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and in the child's ethnic, religious, cultural and linguistic background.

These articles, whilst self explanatory, provide the State with the legal basis for positive intervention to protect children, both through law enforcement and through the activities of its social services, and clearly places the burden on the state to provide special protection and assistance for children victims of trafficking (including, as made clear in Article 2, any child within its jurisdiction). Reference should also be made to the provisions of Article 39 and the particular measures which must apply to children who have suffered exploitation.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

States should interpret Article 22 in such manner so as to facilitate both the protection of and assistance towards child victims of trafficking, and to issue 'temporary humanitarian person' status – and the concordant leave of stay that is accorded that status – to trafficked children. Such a measure could be permitted by a prima facie consideration that ALL child victims of trafficking are to be considered as eligible for consideration for asylum until an investigation in conjunction with the social services in the child's country of origin establishes that return is viable.

States should have provision for humanitarian entry into the country whether detected at the border or in country. This status must be extended to unaccompanied minors. Any adult who is accused of or complicit in the trafficking of a child cannot be considered a legal guardian. The trafficked child should then be given a temporary residence permit on humanitarian grounds (the temporary humanitarian permit). Given the special protective measures, which must be applied, an unaccompanied minor should not be subject to the standard entry provisions. Therefore, entry criterion for a temporary humanitarian permit, such as the child having valid travel document, having medical clearance or means of subsistence should be waived.

The temporary permit should automatically attract the provisions of Articles 19, 22 and 39 of the CRC. An unaccompanied minor holding a temporary humanitarian permit shall be informed of his or her right to claim asylum under the 51 Convention. The guardian or social worker is responsible for ensuring the child's participation in any proceedings affecting their stay.

As status must be determined as set out above, the State should not detain a child in an immigration facility on the basis of unauthorised entry.

Article 32

- (1) State parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- (2) State parties shall take legislative administrative, social and educational measures to ensure the implementation of this article.

*The language used imposes a **positive obligation on the State to ensure that all children are protected from the exploitation specified.** For example, if a minor is working in a night bar, whether for pay or not, there can be reasonable belief that there is a violation of article 32(1). In such circumstances the State must take action to prevent the continuance through taking protective measures in relation to the minor.*

In accordance with the provisions of Articles 19 and 20, the child should be removed from the premises until a determination of the best interests of the child has been made by the authorities, i.e., the police, the judiciary and Ministry for Social Welfare.

Article 34

State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For this purpose State parties shall in particular take all appropriate national, bilateral and multi-lateral measures to prevent:

- a) the inducement or the coercion of a child to engage in unlawful sexual activity
- b) the exploitative use of children in prostitution or other unlawful sexual practice
- c) the exploitative use of children in pornographic performances and materials

Article 35

State parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale or traffic in children for any purpose whatsoever.

Article 36

State parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

*Articles 34, 35 and 36 use the language of protection, hence the **State is obliged to take positive action to prevent the prohibited acts** from taking place and will be in breach of obligations if it restricts its activities to the prosecution of those so exploiting the child after the exploitation has taken place.*

Article 39

State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

States should take particular care to address the needs of trafficked children with reference to this Article.

The CRC also entitles children to social and economic support, which would assist in the prevention of trafficking if implemented.

5.1.2 Optional Protocol to the CRC on Sale of Children, Child Prostitution and Child Pornography¹¹⁵

Article 2

For the purpose of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

2. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in force labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

The above articles place obligation on the states to ensure that domestic laws do not permit engagement of children, under any circumstances, in prostitution or pornography. In conjunction with the Palermo Protocol

¹¹⁵ Optional Protocol to the Convention on the Rights of the Child is found at www.unhcr.ch/html/menu2/dopchild.htm

and ILO 182 Convention, this would mean that the recruitment, transportation, transfer, harbouring or receipt of a child under 18 for the purpose of prostitution or pornography is to be considered trafficking in persons. Penalising any of the acts covered under the Protocol on an individual basis strengthens the provisions of the Palermo Convention, as it does not demand the involvement of organized exploitation.

5.1.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹⁶

Article 6

State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

As CEDAW applies to girl children and adult women, this reinforces state parties' commitment to prevent and address all forms of trafficking and exploitation of prostitution of girls and should be addressed in the reports to the CEDAW Committee.

5.1.4 Convention 28 of the Hague Conference / Convention on the Civil Aspects of International Child Abduction¹¹⁷

Article 1

- (a) The objectives of the present convention are – To secure the prompt return of children wrongfully removed to or retained in any contracting state.

Article 13

The judicial or administrative authority of the requested state is not bound to order the return of the child if the person, institution or other body that opposes its return establishes that –

- (a) The person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) There is grave risk that his or her return would expose the child to physical or psychological harm or otherwise place that child in an intolerable situation.

The judiciary or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the social background provided by the central authority or other competent authority of the child's habitual residence.

The provisions of convention 28, especially those of Article 13, clearly establish the right – and duty – of the state to perform adequate investigation with the 'competent authorities' of a child's country of origin before return. Whilst the convention refers primarily to children under the age of 16, application of these principles and guidelines in regard to children victims of trafficking under 18 is obligatory in light of the ILO 182 Convention and Palermo Convention definitions of child trafficking, and once the mechanisms for ensuring compliance with the above articles and their implications have been established, there is an obvious incentive for the state – in terms of full compliance with their obligations to CRC, ILO 182 Convention and the Palermo Convention, and the humanitarian imperative – in extending the measures to include all trafficking victims under the age of 18.

¹¹⁶ CEDAW is found at: gopher://gopher.un.org/00/ga/cedaw/convention

¹¹⁷ Convention 28 is found at: www.hcch.net/e/conventions/menu28e.html

5.1.5 United Nations Convention Against Transnational Organized Crime (The Palermo Convention)¹¹⁸

Article 18 – Mutual Legal Assistance

Paragraph 3

Mutual Legal Assistance to be afforded in accordance with this article may be requested for any of the following purposes –

- (i) Any [other] type of assistance that is not contrary to the domestic law of the requested state party.

Paragraph 4

Without prejudice to domestic law, the competent authorities of a state party may without prior request, transmit information relating to criminal matters to a competent authority in another state party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or *could result in a request formulated by the latter state party pursuant to this convention.*

Paragraph 13

Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

Paragraph 14

Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

Paragraph 15

A request for mutual legal assistance shall contain:

- a) The identity of the authority making the request;
- b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- e) Where possible, the identity, location and nationality of any person concerned; and
- f) The purpose for which the evidence, information or action is sought.

¹¹⁸

The Palermo Convention is found at www.odccp.org/crime_cicp_convention.htm#final

The structure and means of mutual legal assistance as outlined in the above article provide a clearly applicable model for state parties to utilize in conducting inquiries with a child's country of origin as to whether repatriation is viable. Paragraph 13 provides a definition of the format such communications should take in initial contacts between central authorities of state parties: subsequent communications, whilst channelled by the central authority, can be tailored according to the needs and requirements of social service professionals and judiciary entrusted with handling individual cases.

In countries that are signatories to the Hague Convention 28, the provisions of the above article should be interpreted in conjunction with obligations provided for in the Hague Convention 28 to avoid duplication of structures and procedural protocols. State parties should not find any conflict in applying both provisions of the Hague convention and the Palermo convention concurrently. It should be possible to take an over-broad interpretation of the provisions of article 18 in order to sublimate specific provisions if those are already provided for in structures established or utilized in order to ensure compliance with the requirements of the Hague convention. This would apply in cases where the receiving state and state (country) of origin already maintain a bi-lateral agreement pertaining to mutual legal assistance: In such cases, the provision of paragraphs 6 and 7 of Article 18 make clear the latitude afforded to states in harmonizing differing obligations regarding mutual legal assistance.

UNICEF recommends that the central authority designated by the state party establish a permanent liaison with the ministry responsible for social services, in order that the processing of inquiries made by social services and/or the judiciary regarding trafficked children be regularized and formalized at the first opportunity.

5.1.6 Annex II – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United National Convention Against Transnational Organized Crime (The Palermo Trafficking Protocol)¹¹⁹

I. General Provisions

Article 3 – Use of terms

For the purposes of this Protocol:

- (a) "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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Especially relevant in guiding states in their treatment of child victims of trafficking is Paragraph C. This principle must be instrumental in guiding the actions of, above all, the police involved in the identification and, where relevant, subsequent interviewing of child victims. The priori principle for police officers is that the child under 18 is a trafficking victim. As such, questions regarding a child's consent to, involvement in or understanding of the processes resulting in their being trafficked are to be permitted only as a means of eliciting general information, and should not be allowed in any way to determine the definition whether a child is a victim of trafficking. There should be no detention of a minor by law enforcement.

¹¹⁹ The Palermo Trafficking Protocol is found at www.odccp.org/crime_cicp_convention.htm#final

II. Protection of victims of trafficking in persons.

Article 7 – Status of victims of trafficking in persons in receiving states

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8 – Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Collectively, these articles contain necessary protections for child victims of trafficking in the broader context; however, especially in application of the measures contained in Articles 7 and 8, UNICEF calls upon the states to apply the broadest possible interpretations of these articles necessary to ensure full and adequate protection of child victims.

5.1.7 ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.C182.¹²⁰

Article 2

"Child" shall apply to all persons under the age of 18.

It does not matter whether persons under the age of 18 are defined as children under the national law, as long as all persons under 18 are covered by the measures of protection against the worst forms of child labour. If protection against the worst forms of child labour is available under the national law in a particular situation only up to a lower age, then this will have to be extended to cover everyone under 18.

However, this does not mean that the Convention requires a complete prohibition of work for all persons under 18. Those who are under 18 but have attained the general minimum age for work, which is usually lower than 18, can legitimately be at work, as long as it does not fall within any of the criteria of the worst forms of child labour, and does not contravene article 31 and 32 of the CRC.

¹²⁰ ILO Convention 182 is found at www.ilo.org/ilolex/ilolex.ch:1567/english/convdisp2.htm. Click on C182 in left menu.

Article 3

The term "the worst forms of child labour" is defined as:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d) work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Many types of work are intrinsically hazardous, such as mining, construction, deep-sea fishing, and working with radioactive materials and dangerous chemicals. But other occupations also present hazards to children: exposure to pesticides in agricultural work, carrying heavy weights and scavenging in garbage dumps, for example. Apart from the harm they inflict on the child, some forms of child labour involve egregious violations of human rights and are thus deemed intolerable. Convention 182 prohibits slavery, sale and trafficking of children, debt bondage and forced labour (including the recruitment of children for use in armed conflict), as well as the procurement or use of children for prostitution, pornography and drugs, and work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

ILO Minimum Age Convention No.138: prohibits employment below the age designated for the completion of compulsory schooling, and below the age of 15 years. The minimum age for employment in work that is likely to jeopardise health, safety or morals is set at 18 years. Light work, which does not interfere with schooling, is permitted from age 13 years.

5.2 Other Selected Human Rights Instruments and Guidelines

UN High Commissioner for Human Rights, Report to the Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002 (E/2002/68/Add.1)

<http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/caf3deb2b05d4f35c1256bf30051a003?Opendocument>

Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women, International Human Rights Law Group, *Human Rights Standards for the Treatment of Trafficked Persons*, January 1999.

www.hrlawgroup.org/resources/content/IHRLGtraffickin_tsStandards.pdf

UNHCR/Save the Children Alliance, *Separated Children in Europe Programme, Statement of Good Practice*, Second Edition, October 2000. www.separated-children-europe-programme.org/Global/framed.asp?source=English/GoodPractice/Booklet/StatementGoodPractice.pdf

ECOSOC Resolution 1997/30, *Administration of Juvenile Justice* (contains important guidelines on child victims and witnesses)

<http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/48a9c549d74bf20f802566c500410104?Opendocument>

The Council for European Union, *Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries* (97/C 221/03)

<http://migration.uni-konstanz.de/sourcedown/dokumente/asylrefuglaw/con-e-1997-06-26.PDF>

UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, February 1997, www.asylumsupport.info/publications/unhcr/1997.htm

ECOSOC Resolution 2005/20, *Guidelines Justice in Matters involving Child Victims and Witnesses of Crime*, <http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf>

5.3 Ratification Status of Conventions (2006)

CENTRAL AND EASTERN EUROPE AND COMMONWEALTH OF THE INDEPENDENT STATES

Country	CRC	Optional Protocol to the CRC	The Hague Convention	Palermo Convention	Palermo Trafficking Protocol	ILO Convention No 182	CEDAW
Albania	Ratified: 27 Feb 1992	Not signed. Not ratified.	Not ratified.	Ratified: 21 Aug 2002	Ratified: 21 Aug 2002	Ratified: 02 Aug 2001	Acceded: 11 May 1994
Armenia	Acceded: 23 Dec 1993	Signed: 24 Sept 2003	Not signed or ratified	Ratified: 01 July 2003	Ratified: 01 July 2003	Ratified: 02 Jan 2006	Acceded: 13 Oct 1993
Azerbaijan	Acceded: 13 Aug 1992	Ratified: 03 July 2002	Not signed or ratified	Ratified: 30 Oct 2003	Ratified: 30 Oct 2003	Ratified: 30 Mar 2004	Acceded: 09 Aug 1995
Belarus	Ratified: 01 Oct 1990	Acceded: 23 Jan 2002	Ratified: 17 July 2003	Ratified: 25 June 2003	Ratified: 25 June 2003	Ratified: 31 Oct 2000	Ratified: 03 Sept 1981
Bosnia and Herzegovina	Succeeded: 01 Sept 1993	Ratified: 04 Sept 2002	Ratified: 01 Dec 1991	Ratified: 23 April 2002	Ratified: 24 April 2002	Ratified: 05 Oct 2001	Succeeded: 01 Sept 1993
Bulgaria	Ratified: 03 June 1991	Ratified: 12 Feb 2002	Not ratified.	Ratified: 05 Dec 2001	Ratified: 05 Dec 2001	Ratified: 28 July 2001	Ratified: 08 Feb 1982
Croatia	Succeeded: 12 Oct 1992	Ratified: 13 May 2002	Ratified: 01 Dec 1991	Ratified: 24 Jan 2003	Ratified: 24 Dec 2003	Ratified: 17 July 2001	Succeeded: 09 Sept 1992
Georgia	Acceded: 02 June 1994	Not signed or ratified	Acceded: 09 Apr 1999	Signed: 13 Dec 2000	Signed: 30 Dec 2000	Ratified: 24 July 2002	Acceded: 02 July 1999
Kazakhstan	Ratified: 12 Aug 1994	Ratified: 24 Aug 2001	Not signed or ratified	Signed: 13 Dec 2000	Not signed or ratified	Ratified: 26 Feb 2003	Acceded: 25 Sept 1998
Kyrgyzstan	Acceded: 07 Oct 1994	Acceded: 12 Feb 2002	Not signed or ratified	Ratified: 02 Oct 2003	Ratified: 02 Oct 2003	Ratified: 11 May 2004	Acceded: 05 Oct 1997
FYR Macedonia	Succeeded: 02 Dec 1993	Signed: 17 July 2001 Not ratified.	Ratified: 01 Dec 1991	Ratified: 12 Jan 2005	Ratified: 12 Jan 2005	Ratified: 30 May 2002	Succeeded: 18 Jan 1994
Republic of Moldova	Acceded: 26 Jan 1993	Signed: 08 Feb 2002 Not ratified.	Acceded: 01 July 1998	Ratified: 16 Dec 2005	Ratified: 16 Dec 2005	Ratified: 14 June 2002	Acceded: 01 July 1994
Romania	Ratified: 28 Sep 1990	Ratified: 18 Oct 2001	Acceded: 01 Feb 1993	Ratified: 04 Dec 2002	Ratified: 04 Dec 2002	Ratified: 13 Dec 2000	Ratified: 07 Jan 1982
Russian Federation	Ratified: 16 Aug 1990	Not signed or ratified	Signed: 07 Nov 2000	Ratified: 26 May 2004	Ratified: 26 May 2004	Ratified: 25 Mar 2003	Ratified: 06 Feb 1982
Serbia and Montenegro	Succeeded: 12 Mar 2003	Ratified: 10 Oct 2002	Not signed or ratified	Ratified: 06 Sept 2001	Ratified: 06 Sept 2001	Ratified: 10 July 2003	Acceded: 27 April 1992
Tajikistan	Acceded: 26 Oct 1993	Acceded: 05 Aug 2002	Not signed or ratified	Ratified: 08 July 2002	Ratified: 08 July 2002	Ratified: 08 June 2005	Acceded: 25 Nov 1993
Turkmenistan	Acceded: 20 Sept 1993	Not signed or ratified	Not signed or ratified	Acceded: 28 Mar 2005	Acceded: 28 Mar 2005	Not signed or ratified	Acceded: 31 May 1997
Turkey	Ratified: 04 Apr 1995	Ratified: 19 Aug 2002	Ratified: 01 Aug 2000	Ratified: 25 Mar 2003	Ratified: 25 Mar 2003	Ratified: 16 Aug 2001	Acceded: 20 Dec 1985
Ukraine	Ratified: 28 Aug 1991	Ratified: 03 July 2003	Not signed or ratified	Ratified: 21 May 2004	Ratified: 21 May 2004	Ratified: 14 Dec 2000	Ratified: 03 Sept 1981
Uzbekistan	Ratified: 29 June 1994	Not signed or ratified	Not signed or ratified	Ratified: 09 Dec 2003	Signed: 28 June 2001	Not signed or ratified	Acceded: 18 Aug 1995

EUROPEAN UNION

Country	CRC	Optional Protocol to the CRC	The Hague Convention	Palermo Convention	Palermo Trafficking Protocol	ILO Convention No 182	CEDAW
Austria	Ratified: 06 Aug 1992	Signed: 06 Sep 2000 Not ratified.	Ratified: 01 Oct 1998	Ratified: 23 Dec 2004	Ratified: 15 Dec 2005	Ratified: 04 Dec 2001	Ratified: 31 Mar 1982
Belgium	Ratified: 06 Dec 1991	Signed: 06 Sep 2000 Not ratified.	Ratified: 01 May 1999	Ratified: 11 Aug 2004	Ratified: 11 Aug 2004	Ratified: 08 May 2002	Ratified: 10 Jul 1985
Czech Republic	Succeeded: 22 Feb 2003	Not signed or ratified	Ratified: 11 Feb 2000	Signed: 12 Nov 2000	Signed: 10 Dec 2002	Ratified: 19 June 2001	Succeeded: 22 Mar 1993
Cyprus	Ratified: 07 Sept 1991	Signed: 08 Feb 2001	Ratified: 20 Feb 1995	Ratified: 22 April 2003	Ratified: 06 Aug 2003	Ratified: 27 Dec 2000	Acceded: 23 June 2005
Denmark	Ratified: 19 Jul 1991	Ratified: 24 July 2004	Ratified: 01 Jul 1991	Signed: 12 Dec 2000 Not ratified	Ratified: 30 Sept 2003	Ratified: 14 Aug 2000	Ratified: 21 Apr 1983
Estonia	Acceded: 21 Oct 1991	Signed: 24 Sept 2003	Ratified: 22 Feb 2002	Ratified: 10 Feb 2003	Ratified: 12 May 2004	Ratified: 24 Sept 2001	Acceded: 21 Oct 2001
Finland	Ratified: 20 Jun 1991	Signed: 07 Sep 2000 Not ratified.	Ratified: 01 Aug 1994	Ratified: 10 Feb 2004	Signed: 12 Dec 2000 Not ratified	Ratified: 17 Jan 2000	Ratified: 04 Sep 1986
France	Ratified: 07 Aug 1990	Ratified: 05 Feb 2003	Ratified: 01 Dec 1993	Ratified: 29 Oct 2002	Ratified: 29 Oct 2002	Ratified: 11 Sep 2001	Ratified: 14 Dec 1983
Germany	Ratified: 06 Mar 1992	Signed: 06 Sep 2000 Not ratified.	Ratified: 01 Dec 1990	Signed: 12 Dec 2000 Not ratified	Signed: 12 Dec 2000 Not ratified	Ratified: 18 Apr 2002	Ratified: 10 Jul 1985
Greece	Ratified: 11 May 1993	Signed: 07 Sep 2000 Not ratified.	Ratified: 01 Jun 1993	Signed: 13 Dec 2000 Not ratified	Signed: 13 Dec 2000 Not ratified	Ratified: 06 Nov 2001	Ratified: 07 Jun 1983
Hungary	Ratified: 07 Oct 1991	Signed: 11 Mar 2002 Not ratified.	Acceded: 01 July 1986	Signed: 14 Dec 2000 Not ratified.	Signed: 14 Dec 2000 Not ratified.	Ratified: 20 April 2000	Ratified: 22 Dec 1980
Italy	Ratified: 05 Sep 1991	Ratified: 9 May 2002	Ratified: 01 May 1995	Signed: 12 Dec 2000 Not ratified	Signed: 12 Dec 2000 Not ratified	Ratified: 06 Jun 2000	Ratified: 10 Jun 1985
Ireland	Ratified: 28 Mar 1992	Signed: 07 Sept 2000	Signed: 19 June 1995	Ratified: 13 Dec 2000	Ratified: 13 Dec 2000	Not signed or ratified	Not signed or ratified
Latvia	Acceded: 14 April 1992	Signed: 01 Feb 2002	Ratified: 09 July 2002	Ratified: 07 Dec 2001	Ratified: 25 May 2004	Not signed or ratified	Acceded: 14 April 1992
Lithuania	Acceded: 31 Jan 1992	Not signed or ratified	Ratified: 29 April 1998	Ratified: 09 May 2002	Ratified: 23 June 2003	Ratified: 29 Sept 2002	Acceded: 18 Jan 2004
Luxembourg	Ratified: 07 mar 1994	Signed: 08 Sep 2000 Not ratified.	Ratified: 01 Jan 1987	Signed: 13 Dec 2000 Not ratified	Signed: 13 Dec 2000 Not ratified	Ratified: 21 Mar 2001	Ratified: 02 Feb 1989
Malta	Ratified: 30 Sept 1990	Signed: 07 Sept 2000	Ratified: 13 Oct 2004	Ratified: 24 Sept 2003	Ratified: 24 Sept 2003	Ratified: 15 June 2001	Acceded: 08 Mar 1991

<i>Country</i>	<i>CRC</i>	<i>Optional Protocol to the CRC</i>	<i>The Hague Convention</i>	<i>Palermo Convention</i>	<i>Palermo Trafficking Protocol</i>	<i>ILO Convention No 182</i>	<i>CEDAW</i>
Netherlands	Ratified: 06 Feb 1995	Signed: 07 Sept 2000 Not ratified.	Ratified: 01 Sep 1990	Signed: 12 Dec 2000 Not ratified	Ratified: 27 Jul 2005	Ratified: 12 Apr 2002	Ratified: 23 Jul 1991
Poland	Ratified: 07 June 1991	Ratified: 16 May 2003	Ratified: 14 Sept 1995	Ratified: 12 Nov 2001	Ratified: 26 Sept 2003	Ratified: 09 Aug 2002	Ratified: 30 June 1980
Portugal	Ratified: 21 Sep 1990	Ratified: 16 May 2004	Ratified: 01 Dec 1983	Ratified: 10 May 2004	Ratified: 10 May 2004	Ratified: 15 Jun 2000	Ratified: 30 Jul 1980
Slovenia	Succeeded: 06 July 1992	Signed: 8 Sept 2000 Not ratified.	Acceded: 01 June 1994	Ratified: 21 May 2004	Ratified: 21 Nov 2004	Ratified: 08 May 2001	Succeeded: 06 July 1992
Slovakia	Succeeded: 28 May 1993	Signed: 30 Jan 2001	Ratified: 06 June 2001	Signed: 14 Dec 2000	Ratified: 21 Sept 2004	Ratified: 24 Dec 1999	Ratified: 28 May 1993
Sweden	Ratified: 29 Jun 1990	Signed: 08 Sep 2000 Not ratified.	Ratified: 01 Jun 1989	Ratified: 30 April 2004	Ratified: 01 July 2004	Ratified: 13 Jun 2001	Ratified: 02 Jul 1980
United Kingdom	Ratified: 16 Dec 1991	Signed: 07 Sep 2000 Not ratified.	Ratified: 01 Aug 1986	Ratified: 09 Feb 2005	Ratified: 09 Feb 2005	Ratified: 22 Mar 2000	Ratified: 07 Apr 1986

OTHER EUROPEAN COUNTRIES

<i>Country</i>	<i>CRC</i>	<i>Optional Protocol to the CRC</i>	<i>The Hague Convention</i>	<i>Palermo Convention</i>	<i>Palermo Trafficking Protocol</i>	<i>ILO Convention No 182</i>	<i>CEDAW</i>
Andorra	Ratified: 02 Jan 1996	Ratified: 30 Apr 2001	Not signed or ratified	Signed: 11 Nov 2001	Not signed or ratified	Not signed or ratified	Acceded 15 Jan 2005
Iceland	Ratified: 28 Oct 1992	Ratified: 09 Jul 2001	Ratified: 17 Jan 2000	Signed: 13 Dec 2000	Signed: 13 Dec 2005	Ratified: 29 May 2000	Ratified: 18 Jun 1985
Liechtenstein	Ratified: 22 Dec 1991	Signed: 08 Aug 2000	Not signed or ratified	Signed: 12 Dec 2000	Not signed or ratified	Not signed or ratified	Ratified: 22 Dec 1995
Monaco	Acceded: 21 Jun 1993	Ratified: 27 Jan 2003	Ratified: 29 Jun 1994	Ratified: 19 Sept 2002	Ratified: 05 Jun 2001	Not signed or ratified	Ratified: 18 Mar 2005
Norway	Ratified: 08 Jan 1991	Ratified: 02 Oct 2001	Ratified: 25 Sept 1997	Ratified: 23 Sept 2003	Ratified: 23 Sept 2003	Ratified: 21 Dec 2000	Ratified: 21 May 1981
San Marino	Acceded: 25 Nov 1991	Signed: 05 May 2000	Not signed or ratified	Not signed or ratified	Signed: 14 Dec 2000	Ratified: 15 Mar 2000	Ratified: 10 Dec 2003
Switzerland	Ratified: 24 Feb 1997	Signed: 07 Sep 2000 Not ratified.	Ratified: 01 Jan 1984	Signed: 12 Dec 2000 Not ratified.	Signed: 02 Apr 2002	Ratified: 28 Jun 2000	Acceded: 27 Mar 1997

Annex 2 Selected excerpts from European regional instruments

1. Council of Europe

1.1 The Council of Europe's European Convention on the Exercise of Children's Rights¹²¹

European Treaty Series 160, Adopted 25 January 1996.

Article 6

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a. consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;
- b. in a case where the child is considered by internal law as having sufficient understanding: – ensure that the child has received all relevant information;
 - consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
 - allow the child to express his or her views;
- c. give due weight to the views expressed by the child.

1.2 The Council of Europe's European Convention on Action against Trafficking in Human Beings¹²²

European Treaty Series 197, CM(2005)32 Addendum 1 final

Adopted by the Committee of Ministers on 3 May 2005 at the 925th meeting of the Ministers' Deputies

Preamble

Considering that all actions or initiatives against trafficking in human beings must be nondiscriminatory, take gender equality into account as well as a child-rights approach;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

¹²¹ The text of the European Convention on the Exercise of Children's Rights can be found at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/160.htm>

¹²² The text of the European Convention on Action against Trafficking in Human Beings is found at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>

Chapter I – Purposes, scope, non-discrimination principle and definitions

Article 4 – Definitions

For the purposes of this Convention:

- a. "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d. "Child" shall mean any person under eighteen years of age
- e. "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article. Chapter II – Prevention, co-operation and other measures

Chapter II – Prevention, co-operation and other measures

Article 5 – Prevention of trafficking in human beings

1. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
2. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
5. Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.

Article 6 – Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a. research on best practices, methods and strategies;
- b. raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c. target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d. preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

Chapter III – Measures to protect and promote the rights of victims, guaranteeing gender equality

Article 10 – Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:
 - a. provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
 - b. take the necessary steps to establish his/her identity and nationality;
 - c. make every effort to locate his/her family when this is in the best interests of the child.

Article 11 – Protection of private life

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108).
2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

Article 12 – Assistance to victims

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
 - a. standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - b. access to emergency medical treatment;
 - c. translation and interpretation services, when appropriate;
 - d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
 - e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
 - f. access to education for children.
2. Each Party shall take due account of the victim's safety and protection needs.
3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

Article 13 – Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

Article 14 – Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
 - a. the competent authority considers that their stay is necessary owing to their personal situation;
 - b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

Article 16 – Repatriation and return of victims

2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.
7. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

Chapter IV – Substantive criminal law**Article 24 – Aggravating circumstances**

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- a. the offence deliberately or by gross negligence endangered the life of the victim;
- b. the offence was committed against a child;
- c. the offence was committed by a public official in the performance of her/his duties;
- d. the offence was committed within the framework of a criminal organisation.

Chapter V – Investigation, prosecution and procedural law

Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities

1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
 - a. Victims;
 - b. As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
 - c. witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
 - d. when necessary, members of the family of persons referred to in subparagraphs a and c.
2. Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
3. A child victim shall be afforded special protection measures taking into account the best interests of the child.

Article 30 – Court proceedings

In accordance with the Convention for the Protection of Human Rights and Fundamental

Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- a. the protection of victims' private life and, where appropriate, identity;
- b. victims' safety and protection from intimidation, in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

Article 33 - Measures relating to endangered or missing persons

2. The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

Chapter VIII – Relationship with other international Instruments

Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

This Convention shall not affect the rights and obligations derived from the provisions of the

Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

2. OSCE (*Organization for Security and Co-operation in Europe*)

2.1 OSCE Action Plan to Combat Trafficking in Human Beings

OSCE Document PC.DEC/557

Permanent Council DECISION No. 557

24 July 2003

Section V 'Protection and assistance' on National Referral Mechanisms

Recommended action at the national level

...

3. National Referral Mechanisms (NRM)*
- 3.1 Establishing National Referral Mechanisms by creating a co-operative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of THB [Trafficking in Human Beings] in co-ordination and strategic partnership with civil society and other actors working in this field. (*The ODIHR's Handbook on Guidelines and Principles to Design and Implement National Referral Mechanisms may serve as a useful source of advice and information regarding the role of NRMs in rendering assistance and protection to victims of THB).
- 3.2 Providing guidance to facilitate the accurate identification and appropriate treatment of the victims of THB, in ways which respect the views and dignity of the persons concerned.
- 3.3 Combining the efforts of law-enforcement bodies, including specially established anti-trafficking units and police at local level, officials of migration and border services, social protection units, medical institutions, as well as NGOs and other civil society institutions as the most relevant actors to be involved in NRM activities.
- 3.4 Establishing appropriate mechanisms to harmonize victim assistance with investigative and prosecutorial efforts.
- 3.5 Drawing special attention to the need for enhanced co-operation between the police and NGOs in identifying, informing and protecting victims of THB.
- 3.6 Linking the activities of NRMs with those of inter-ministerial bodies, national co-ordinators, NGOs and other relevant national institutions to form a cross-sectoral and multidisciplinary team capable of developing and monitoring the implementation of anti-trafficking policies.

2.2 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking For Protection and Assistance

OSCE Document PC.DEC/685

Permanent Council DECISION No. 685

7 July 2005

(Preamble)

...

Mindful of the need to identify and support the development of best practices in assisting child victims and to act at all times in the best interests of the child,

Conscious of the particular vulnerability of children in conflict and post-conflict situations and of their need for security and protection for the fulfilment and enjoyment of their rights,

Drawing upon existing regional experiences such as the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe, endorsed in the Statement on Commitments on Victim/Witness Protection and Trafficking in Children by the Fourth Regional Ministerial Forum of the Stability Pact Task Force on Combating Trafficking in Human Beings, Sofia 2003,

Supports the following based on principles of respect for human rights, gender perspective and the best interests of the child to be used by States in addressing the special needs for protection and assistance of trafficked children; and

Decides to attach the Addendum annexed to this Decision to the OSCE Action Plan to Combat Trafficking in Human Beings¹²³ as an integral part and to recommend the endorsement of this decision by the Ministerial Council.

Addendum

Recommended actions at the national level:

1. Ensuring that child trafficking, including internal trafficking, is criminalized in accordance with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, in order to better address the need for protection and assistance of child victims of trafficking;
2. Establishing and/or strengthening effective policies and programmes to prevent trafficking in children, and reducing children's vulnerability by promoting a protective environment in general through strengthening relevant institutions and regulations, reducing poverty and preventing violence against children;
3. Developing, where necessary, national co-ordinating and referral mechanisms to specifically address protection and assistance measures which focus on the special needs of child victims of trafficking and ensure that child victims are referred expeditiously to appropriate services. Forming partnerships with civil society to develop a comprehensive approach to protect and assist child victims of trafficking;
4. Facilitating research and gathering data, including for the purpose of strengthening protection and assistance programmes, on the extent of all forms of child trafficking in their countries, and making the data publicly available. Strengthening co-operation and improving exchange of information among States with a view to preventing child trafficking and protecting and assisting child victims, including in conflict and post-conflict situations;
5. Facilitating special training for law enforcement and direct service personnel on proper and effective methods to identify child victims of trafficking. Any child presumed to be a victim of trafficking shall be referred without delay for appropriate assistance;
6. Following identification, providing child victims of trafficking, when necessary, with a guardian and/or legal representative at all stages of the assistance, (re)integration and/or return and to ensure protection of their human rights;
7. Developing child-friendly procedures related to criminal and civil proceedings, from initial questioning to the conclusion of the proceedings which are consistent with the rule of law;
8. Providing in appropriate cases presumed child trafficking victims who are not nationals or residents of the country in which they are identified with appropriate status entitling them to stay, at least temporarily, in the country and be eligible to receive immediate assistance which should include safe shelter, medical and psychological care, legal assistance, social services and education;

¹²³ See Permanent Council Decision No. 557/Rev.1.

9. Processing every child trafficking case individually and making every effort to find a durable solution which will result in one of three options: (a) Return to and reintegration in the country of origin; (b) Local integration into the country in which they are identified; and (c) Relocation to a third country;
10. Making available special assistance and protection when it is in the best interest of the child to return him/her to the country of origin, providing returning children with appropriate care for the return process and supporting the monitoring, by the authorities in the country of origin of their well-being upon return;
11. Strengthening structures to promote social inclusion and (re)integration of child victims of trafficking in countries of origin and destination, taking into account the special needs of children;
12. Encouraging print and broadcast media to develop and promote a professional ethic related to the special treatment of child victims of trafficking in order to avoid the further exploitation and victimization of children, in particular by protecting the identity of children;
13. Addressing the use of the Internet in facilitating the trafficking of children for sexual exploitation and developing measures to combat it, including the exchange of images and other information in accordance with national law, in particular via the international database of child abuse images housed by Interpol with a view to identifying and protecting child victims as well as identifying their abusers.

3. European Union

3.1 EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings

Official Journal of the European Union C 311/1 E, (2005/C 311/01)

3. The EU recognises the importance of taking forward a human rights and victims-centred approach.
 - (i) It is indispensable that EU Member States ensure that the human rights of victims of trafficking are protected fully at all stages in the process.
 - (ii) Member States should ensure that appropriate referral mechanisms are in place, as necessary and in line with national practice and law, to enable the early identification and referral of trafficked persons. Member States should work to develop, in line with national traditions, circumstances and practice, an appropriate governmental coordination structure to coordinate and evaluate national policies and ensure appropriate handling of individuals.
 - (iii) Member States and the Commission should actively pursue policies reinforcing the criminalization of human trafficking including the protection of (...) potential victims at national, regional, EU and at a wider international level. This should include, as appropriate and where relevant, prevention strategies specific to vulnerable groups such as women and children.
 - (v) Member States and the Commission should ensure that EU anti-trafficking policy reflects a child rights approach based on globally recognised principles, respecting in particular the principles laid down in the UN Convention of the Rights of the Child and taking account of the Council of Europe Action Programme on Children and Violence (2006 – 2008). Such approach must consequently apply to any person below the age of 18.
 - (vi) EU institutions and Member States should promote gender specific prevention strategies as a key elements to combat trafficking in women and girls. This includes implementing gender equality principles and eliminating the demand for all forms of exploitation, including sexual exploitation and domestic labour exploitation.
 - (vii) Member States should, as appropriate and in line with national conditions and practice, provide protection and assistance to (...) victims as a part of a balanced, effective prosecution. Member States should further develop pro-active intelligence led investigations, which do not necessarily depend on the testimony of the victims.

Annex 3 Example of a National Referral Mechanism – United Nations Administered Province of Kosovo

DIRECT ASSISTANCE AND SUPPORT TO FOREIGN TRAFFICKED VICTIMS STANDARD OPERATING PROCEDURES

Effective as of 6 December 2004

Co-ordination and basic principles

Undertaking to provide assistance and protection to victims of trafficking in human beings, while acknowledging that trafficking in human beings is a law enforcement and human rights issue,

Direct Assistance and Support (DAS) group consisting of:

- UNMIK Police, Trafficking and Prostitution Investigation Unit (TPIU);
- UNMIK Department of Justice, Victim Advocacy and Support Unit (VAAU);
- International Organization of Migration (IOM) Mission to Kosovo, Counter-Trafficking Unit;
- Organization of Security and Cooperation in Europe (OSCE) Mission to Kosovo, Department of Human Rights and Rule of Law;
- Ministry of Labour and Social Welfare (MLSW), Department of Social Welfare (DSW); and
- Local Non-Governmental Organization (LNGO)

Agree to follow the Standard Operating Procedures (SOPs) for direct assistance to Foreign Victims of Trafficking (VoTs). The purpose of the SOPs is to clearly define the roles and responsibilities of each partner organization and to ensure full cooperation and coordination in the referral system.

The DAS group shall meet to discuss trafficking cases and trafficking trends. Regular meetings are designed to enhance efficient communication and referrals. Any DAS partner can call for an extraordinary meeting on an at need basis.

Each participating organisation will appoint one Trafficking Focal Point and one designate to provide back-up. The name and contact details of the Focal Points and designates will be provided to the other Focal Points and designates. This information and the SOP will be updated and reviewed in three months following the signing of this document and every six months thereafter, or upon request of one of the DAS partners.

All requests for information or assistance or other matters relating to assistance for VoTs will be directed to the Focal Points. All DAS partners agree within the bounds of applicable law to maintain the confidentiality of all records, documents and information that result from participation in the SOP. Information will be shared to ensure the best interest of the VoT in the assistance provided. Interviews will be kept limited in length and frequency by all DAS partners.

TPIU, IOM, VAAU Trafficking Focal Point and MLSW Trafficking Focal Point, aware of the Interim Secure Facility's (ISF) or the LNGO Shelter's location, will respect the strictest confidentiality and will not disclose the location of the shelters. Whenever possible, the above mentioned personnel will advise of visits in advance. Shelter Managers will have the final say regarding all visits. There shall be no media access to the shelters or to the VoTs.

Due to security risks to both victims and staff and the lack of services specifically designed for the VoTs, no VoTs shall be placed in domestic violence shelters. Security for those benefiting from the direct assistance, ISF and LNGO Shelter, and for those providing assistance for VoTs, is paramount.

Agreement by a VoT to be placed in the ISF and/or LNGO Shelter is voluntary, and must be based on full and informed consent in the full knowledge that once in any of the facilities, the VoT's freedom of movement will be restricted for security reasons, unless a pre-arranged TPIU escort or other adequate security can be provided.

The original copy of the Basic Data Form will be transferred together with the VoT and must be completed and signed by all DAS partners who interact with the VoT.

All contacts with victims under the age of 18 require the presence of a social worker appointed by the Center for Social Work.

VoTs with mental health concerns will receive special consideration on a case by case basis.

Primary roles and responsibilities

TPIU

TPIU investigates the trafficking cases and initiates the referral for co-ordinated assistance to the ISF/ LNGO Shelter to admit the presumed VoTs into the programme; concurrently, TPIU provides security and information on security, including risk-threat assessments for victims before they are admitted into the programme; provide transport or escort for presumed VoTs; take statements from VoTs; monitor summonses for VoTs to appear before the Courts; and inform the ISF and the LNGO Shelter accordingly. However, TPIU will not provide transportation, security and a risk-threat assessment without having conducted an initial interview. If a victim refuses to be interviewed by TPIU, they should be referred to VAAU, the Center for Social Work (CSW) or appropriate agency for assistance.

Regional TPIU will call the corresponding Victim Advocates and for children-CSW when they have a presumed victim of trafficking. TPIU will not interview a child without CSW present. Only in life-threatening emergency cases, TPIU officers will conduct interviews and the CSW will be informed as soon as possible.

Regional TPIU will provide transport from the region where the presumed victim was found to TPIU Main Headquarters (MHQ) offices. TPIU MHQ will transport the victim for medical check-ups outside of shelters as needed. The TPIU will take the presumed VoT to the medical examiner for a forensic examination as soon as possible and as necessary. TPIU MHQ will provide the victim transport to the ISF. At the request of IOM, TPIU will also provide transport from the ISF to the LNGO Shelter and from the LNGO Shelter to the point of departure of the victim. TPIU will ensure that security at the interview location is provided, that VAAU, IOM, CSW or OSCE staff is not in the same facilities with the trafficker and that a proper and private room for the case screening is arranged prior to the start of the interview, when possible.

TPIU shall provide the shelters accommodating the victim with a risk-threat assessment before admittance into the assistance programme. During the course of the police or court investigation, if the risk level changes, assistance providers shall be advised as soon as possible.

Wherever possible, travel documents and personal belongings should be carried with the victim. TPIU accompanying the victim should take all reasonable steps to obtain these travel documents and personal belongings on behalf of the victim.

TPIU will inform the ISF and LNGO Shelter if the VoT will be summoned to appear before the prosecutor or pre-trial judge, either as a defendant or as a witness. Where such a summons is issued, TPIU will give at least 12 hours notice to the shelters and VAAU/CSW when possible. TPIU will be responsible for the transportation in these cases.

TPIU will provide security, security advice and respond to requests for security assistance for the shelters and representatives of agencies in the direct assistance support (DAS) partners. They will provide immediately to the appropriate Focal Points any information that may affect the security of the Shelters itself or those associated with the shelters.

In the regions, an initial screening will not be conducted with VoTs who immediately request assistance and repatriation. Such persons will be referred immediately for sheltering and TPIU will report such cases to the OSCE for the purpose of monitoring.

IOM

In Pristina region, IOM conducts initial screening of the presumed VoTs until the time when VAs take on this role as foreseen in the Criminal Procedure Code, explains to the VoT the return and reintegration assistance available; arranges return and reintegration assistance to the VoT's country of origin, upon agreement by the VoT.

IOM will conduct an initial screening in Pristina region of presumed VoTs in the following cases:

- The TPIU requests that IOM speaks to the victim when it is difficult to determine if the person is a VoT.
- A person appears to be a presumed VoT but refuses any assistance by the TPIU.
- A person is identified as a non-trafficked victim by TPIU but is willing to speak to the IOM/VA. IOM will then refer the victim to the appropriate agency for follow-up.

IOM will not conduct initial screening in Pristina with VoTs who immediately request assistance and repatriation. Such VoTs will be immediately referred to the ISF for a reflection period until further met by IOM.

The responsibility for the initial screening will be handed over to the VAAU by mid February 2005.

Upon notification by ISF, IOM will schedule a mutually agreed meeting time to explain to the presumed VoT the return and reintegration assistance programme. The interview will be conducted by IOM and aims at identifying eligible VoTs for the IOM assistance programme and to assess their specific needs before they are transferred to the LNGO.

If the victim decides to be part of the return and reintegration programme, IOM shall inform the ISF.

Once a VoT is transferred to the LNGO, IOM will initiate and complete return and reintegration procedures to the VoT's country of origin. Upon request of the VoT, as well as upon the VoT's needs, IOM will provide the assistance (counselling, cultural mediation and pre-departure activities) in the most convenient time in consultation with the VoT and the LNGO. IOM in co-ordination with the case manager will offer additional assistance to the VoT as necessary.

Once in the LNGO, IOM will participate in the plan placement meeting of the VoT in order to jointly ensure that the needs and the rights of the VoT are fully respected. IOM will also arrange individual and group awareness sessions with the VoTs on the trafficking phenomenon in co-ordination with the LNGO at the most convenient time for the VoT.

IOM will make the appropriate travel arrangements, assist the VoTs in filling the appropriate forms and provide all required travel documentation as needed for the VoT's safe travel.

Further to the VoT's health status, IOM will determine the travel plan and will organize travel arrangements to the final destination, coordinating the full assistance during the entire journey. In the framework of IOM return and reintegration assistance each VoT will be tested by a dedicated IOM medical officer to be Fit-To-Travel.¹²⁴ In case the VoT is not fit to travel, a different movement with IOM escort is arranged.

IOM will provide a minimum 48 hours notice to TPIU, LNGO Shelter, and CSW in the case of minor, as to departure date and time.

¹²⁴ Fit To Travel is the usual procedure performed by IOM in accordance with WHO guidelines as part of the operations movements of IOM.

All the above mentioned assistance to the VoTs will be provided by IOM upon careful consideration of their needs and with their fully informed consent in view of the best interest of the VoT.

VAAU

Upon being notified of the identification of a VoT by TPIU, as required by Section 206 of the Criminal Procedure Code (CPC), VAAU shall act to safeguard the rights of the victim, including:

- Appointing a Victims' Advocate to act as the authorized representative of the alleged victim during all stages of criminal proceedings pursuant to Articles 81 and 82 of CPC;
- Ensuring the provision of translation and interpretation throughout criminal proceedings, including initial screenings/legal information;
- Providing or ensuring the provision of legal assistance throughout criminal proceedings.

Victims' Advocates will conduct initial screening, upon completion of hand-over by OSCE/IOM.

In cases of child VoTs, the VAAU shall perform these functions in close cooperation with CSW.

VAAU will work in coordination with other agencies in developing and implementing a reintegration and repatriation program for VoTs as required by legal proceedings.

Interim Secure Facility (ISF)

The ISF is responsible for the management and daily operation of the ISF by providing safe accommodation and a reflection period to VoTs and presumed VoTs who have been identified through the referral system, and particularly in the case of high risk victims.

Services provided to a trafficked person accommodated at the ISF include: nutritious meals, clothing, psychosocial assistance, medical assistance as necessary, training in a number of basic skills. The ISF identifies and ensures that VoT's needs are met. The ISF has final say on admission to the facility.

Upon admission of VoTs, the ISF will notify IOM as early as possible of the arrival of the VoT in order to arrange an appointment on the second or third day after admission to discuss return and reintegration assistance. If the VoT is transferred to the LNGO shelter, the basic data form and medical documents shall also be transferred.

The ISF has the responsibility to initiate a first meeting in co-ordination with the relevant agencies to discuss the exit and social inclusion strategy of the VoT.

The ISF will have the final say on the continued stay of victims at the ISF. In making such a determination, the ISF will consider, amongst other things, the future prospects for social inclusion of victims into society, the security, health and well-being of the victims and/or her/his dependants, the welfare and security of other victims at the ISF, the welfare and security of the staff at the ISF and the overall security of the shelter.

VoTs residing in the ISF may include their children or other dependents.

If outside medical care is needed, the ISF will make arrangements for an appointment with appropriate medical personnel and request an escort to and from the ISF by TPIU. In case of a medical emergency, the ISF will also make arrangements for TPIU to escort the trafficked person to the closest suitable facility. TPIU will be requested to remain at the medical facility for the duration of the stay to provide security.

MLSW / Centers for Social Work (CSW)

Child¹²⁵ VoTs (CVoT): Upon a reported case of CVoT the Team Leader of Social Services in each CSW will appoint a case manager¹²⁶ (CM). In difficult cases, the Team Leader may appoint an additional social worker. The CSW is responsible for the child throughout the entire process and must be present during all contact with the child. The CSW is responsible for identifying and implementing a durable and long-term solution in the best interest of the child.

The social worker from the municipality where the child was identified continues to be responsible for the case even when the child is sheltered in PR.

The Counter-Trafficking Coordinator in the DSW will be contacted if the corresponding CSW cannot be reached.

CSW

- CSW/CM will conduct a social investigation¹²⁷ for CVoTs, in cooperation with the police;
- Decide about child's immediate needs for safety and shelter.
- The shelter will carry out all work with the child in coordination with CSW/CM as it is directed within the Protection Plan for the child;
- A clear Protection Plan which includes the responsibilities of all other professional services will be developed;
- CM has to work with the family whenever possible. The CM will appoint a legal guardian, for every CVoT. CSW in coordination with VAAU, will arrange legal assistance and legal representation for the CVoT in the course of the criminal procedure and civil procedure. In coordination with VAAU, CSW will arrange for an interpreter with appropriate language skills for all prosecution and court proceedings in the UN Administered Province of Kosovo.

CSW/CM will work in creation of a Protection Plan for developing and implementing a reintegration program for CVoT; which includes work with a repatriation agency and connection with respective social services from the child's place of origin. Before the child is authorized to be repatriated, the CSW/CM must have direct contact with the body responsible for social service in the country of origin and a plan should be provided and evaluated. If the child is to be returned to his/her family, then an assessment of the child's family must be made.

OSCE

Outside Pristina Region, OSCE conducts initial screening of the victim until the time at which the Victim Advocates are able to take on this role as foreseen in the Criminal Procedure Code, explain to the presumed victims the assistance available, and encourage them to meet IOM/CSW/TPIU for further information and assessment¹²⁸;

OSCE regional trafficking focal points will conduct an initial screening in all regions apart from Pristina region of presumed VoTs, in the following cases:

- The TPIU requests that the OSCE speak to the victim when it is difficult to determine if the person is a VoT.

¹²⁵ Child is defined as anyone under age 18.

¹²⁶ Case Manager: CM serves as a fixed point of responsibility for the child. CM is also the focal point for other services providers who may need information about the client's needs and which services are currently being provided. CM has to develop and maintain an ongoing relationship with child during entire process of treatment.

¹²⁷ Social investigation usually implies an assessment of the child, of the child's family and their social and economic circumstances, in coordination with police, as necessary.

¹²⁸ In this context, the OSCE also has the mandate to monitor the victim's treatment by the law enforcement, judiciary and service providers.

- A person appears to be a presumed VoT but refuses any assistance by the TPIU.
- A person is identified as a non-trafficked victim by TPIU but is willing to speak to the OSCE/VA. The OSCE will then refer the victim to the appropriate agency for follow-up.

OSCE regional trafficking focal points will not conduct preliminary interviews in the regions with VoTs who immediately request assistance and repatriation.

OSCE will play an advising role to the Victim Advocates until they have undergone training and mentorship and have the capacity to meet their obligations. The responsibility for the initial screening will be handed over to the VAAU by end of 2004.

When the OSCE is the first point of contact with the victim, the OSCE will call the TPIU (unless the victim refuses to speak to the police) and in the case of a child also notify the CSW.

LNGO

The LNGO is responsible for the day-to-day operation of the LNGO Shelter by providing safe and comfortable accommodation to VoTs who are awaiting return and reintegration. Services provided to VoTs accommodated at the Shelter include: nutritious meals, clothing, psychosocial support, medical care, educational services, and vocational skills trainings. The LNGO Shelter identifies and ensures that VoTs' needs are met. The LNGO has the final say regarding admission of the VoT to the Shelter.

The LNGO is responsible for management and daily operations of the Shelter, in which VoTs are accepted to the Shelter through the referral system. The LNGO Focal Point will regularly provide IOM, TPIU, ISF and the CSW in the case of children, with the current number of the VoTs housed at the Shelter, in order to provide ample time to find alternate accommodation should the LNGO reach its maximum capacity. Upon admission of VoTs, the LNGO Shelter will receive a risk assessment and the Basic Data Form.

The LNGO utilizes a case management system that enables Shelter staff to identify, track, and ensure that the VoT's needs are met within the context of services provided by the LNGO and DAS Partners. Within two to three days after the VoT's arrival at the Shelter a Plan Placement Meeting¹²⁹ is held. The LNGO will invite the DAS Partners and other relevant agencies to attend this meeting. In the case of children, the LNGO Shelter will provide services in accordance with the CSW/CM.

If outside medical care is needed the LNGO will make arrangements for an appointment with appropriate medical personnel and request a TPIU escort to and from the Shelter. In case of a medical emergency, the LNGO will also make arrangements for TPIU to escort the individual to a nearby suitable medical facility. TPIU will be requested to remain at the medical facility for the duration of the stay to provide security.

LNGO Shelter will control access to the shelter. All agencies wishing to visit the LNGO Shelter must request access from the LNGO Shelter providing sufficient justification for the requested visit. The LNGO Shelter will determine access bearing in mind the best interest of the LNGO Shelter and the individual VoTs.

LNGO Shelter will inform DAS Partners if it becomes impossible to continue to accommodate the VoT at the Shelter, the DAS Partners will determine alternative accommodation.

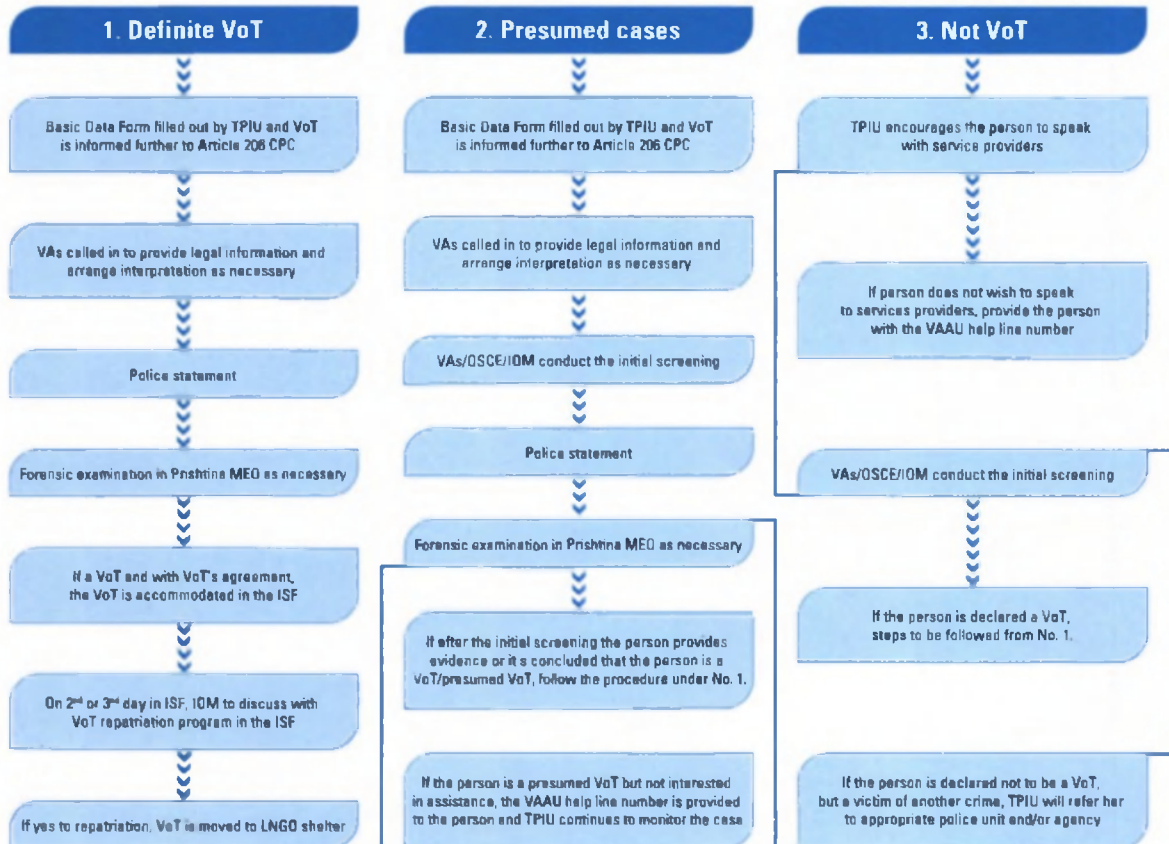
¹²⁹

The purpose of the Plan Placement Meeting is for the participating organizations to present their plans for services provided for each trafficked person accommodated at the Shelter, as well as receive feedback from the VoT and other meeting participants on these services.

Referral Procedure for Presumed VoT

Please note the following:

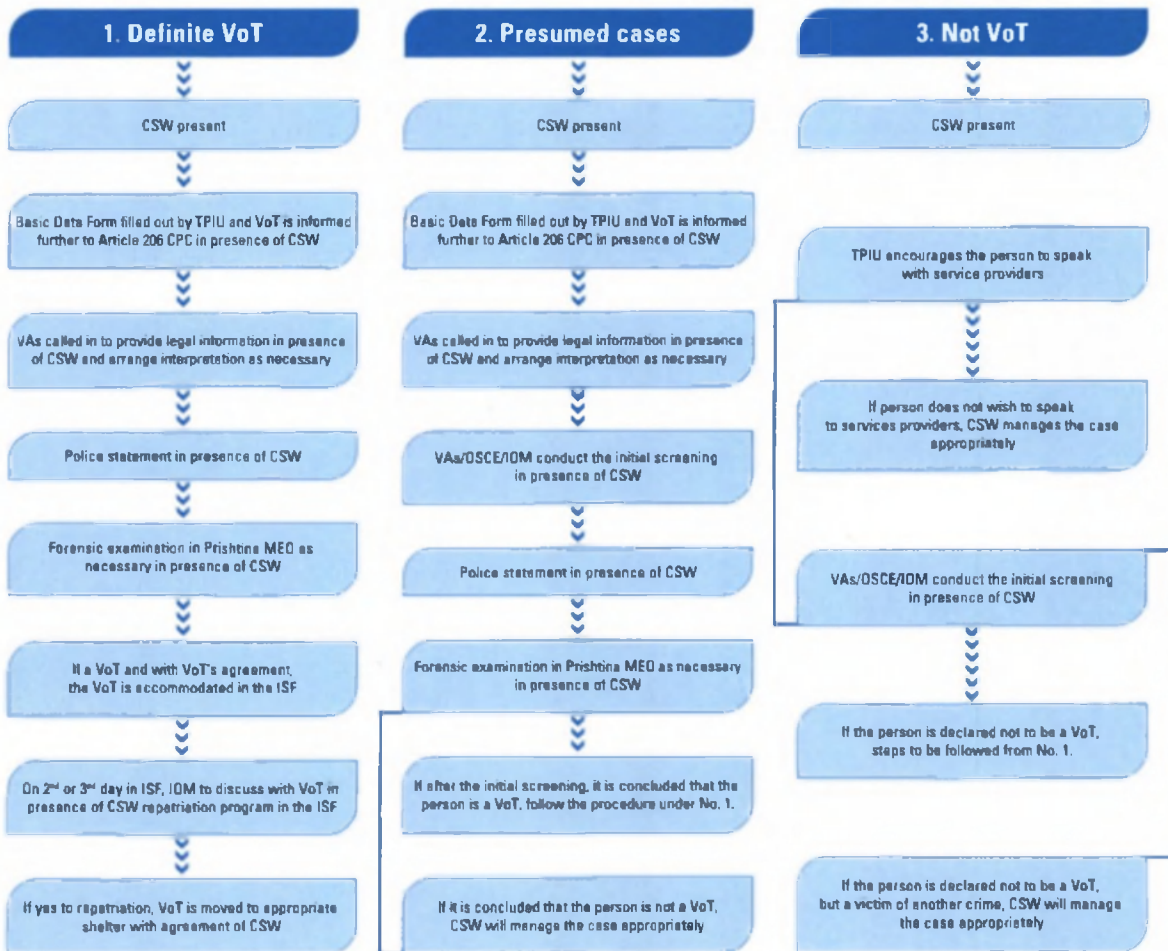
1. All scenarios start from the TPIU identification of a suspected VoT and TPIU classification of the persons (as given at the beginning of each scenario). The applicable definition of a VoT is the definition outlined in the Provisional Criminal Code.
2. The Basic Data Form will be signed by and copied to the following agencies: TPIU, VAs, IOM/OSCE, CSW and shelter provider.



Referral Procedure for Presumed Child VoT

Please note the following:

3. All scenarios start from the TPIU identification of a suspected VoT and TPIU classification of the persons (as given at the beginning of each scenario). The applicable definition of a VoT is the definition outlined in the Provisional Criminal Code
4. The Basic Data Form will be signed by and copied to the following agencies: TPIU, VAs, IOM/OSCE, CSW and shelter provider



Terminology

The definitions of terminology of set out in the section will be used when implementing this SOPs.

Case Manager (CM)	Person appointed by DSW for the children victims of trafficking and serving as a fixed point of responsibility for the child. CM is also the focal point for other service providers who may need information about the client's needs and which services are currently being provided (client being considered a child victim of trafficking). CM has to develop and maintain an ongoing relationship with the child during the entire process of treatment. Person appointed by the Shelter for each victim of trafficking placed in Shelter's assistance. CM serves as a point of contact and acts as a liaison between the victim and service providers dealing with the victim's needs.
Child victim of trafficking	A child that was recruited, transported, transferred, harboured or received for the purpose of exploitation even if this does not involve any of the means set forth in the trafficking definition.
Child	shall mean any person under eighteen years of age.
"Exploitation" in trafficking in human beings	Shall include, but not be limited to, 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. The consent of a victim of trafficking to the intended exploitation as per the definition of trafficking in human beings shall be irrelevant where any of the means set forth in the definition of trafficking in human beings have been used.
Fit To Travel examination	the usual procedure performed by IOM in accordance with WHO guidelines as part of the operations movements of IOM.
Institute of Guardianship (legal guardianship)	Purpose of guardianship for children is, by means of care, education and training in the fullest possible way to develop child personality, protect his/her interests (property rights, carefully administer with his/her wealth any contract on behalf of the child).
Plan Placement Meeting	Meeting organised by the LNGO for the participating organizations to present their plans of services for each trafficked person accommodated at the Shelter, as well as to receive feedback from the beneficiary and other participants at the meeting on these services.
Presumed victim of trafficking	Cases in the position of vulnerability in which at least one or more elements that constitute the crime envisaged in art.139 PCCK are not immediately visible, but in light of the particular circumstances of the case, there is reasonable suspicion that the person might be, or might have been, a victim of trafficking.
"Trafficking in human beings" or "trafficking in persons":	Shall mean the recruitment, transportation, transfer, harboring 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.
Victim of trafficking	A person whose testimony or circumstances in which s/he was found, suggest that s/he was recruited, transported, transferred, harbored or received, for the purposes of exploitation. This person is put in the position of vulnerability, by means of "threat or use of force, abduction, fraud, deception or abuse of power.

Abbreviations

CM	Case Manager
CPVPT	Center for Protection of Victims and Prevention of Trafficking in Human Beings
CSW	Center for Social Work, Ministry of Labour and Social Welfare
CVoT	Child Victim of Trafficking
DAS	Direct Assistance and Support
DOJ	Department of Justice, Pillar I, UNMIK
DSW	Department of Social Welfare, Ministry of Labour and Social Welfare
IG	Institute of Guardianship
IOM	International Organization for Migration
ISF	Interim Security Facility
LNGO	Local non-governmental organization
MEO	Medical Examiner's Office, Department of Justice
MLSW	Ministry of Labour and Social Welfare
NGO	Non-governmental organization
OSCE	Organization for Security and Cooperation in Europe
PCCK	Provisional Criminal Code of Kosovo
PCPCK	Provisional Criminal Procedure Code of Kosovo
SOPs	Standard Operating Procedures
SW	Social Worker
TPIU	Trafficking and Prostitution Investigation Unit, UNMIK Police, Pillar I, UNMIK
TPIU MHQ	TPIU Main Headquarters
UNMIK	United Nations Interim Administration Mission in Kosovo
VA	Victims' Advocate
VAAU	Victim Advocacy and Assistance Unit, Department of Justice
VoT	Victim of Trafficking
WPU	Witness Protection Unit, UNMIK Police, Pillar I, UNMIK

Annex 4 Agreement between the Government of the Hellenic Republic and the Council of Ministers of the Republic of Albania for the protection and assistance of children victims of trafficking

The Council of Ministers of the Republic of Albania and the Government of the Hellenic Republic, hereafter referred to as Contracting Parties, guided by the will to cooperate and implement and respect the rights and obligations stemming from the applicable international instruments concerning the protection of the rights of children;

Expressing their solidarity and their commitment to combat trafficking in children and any form of exploitation of children;

Taking into consideration that unaccompanied children are, in principle especially vulnerable to trafficking and need special protection and care;

Seeking, on the basis of reciprocity and in a spirit of cooperation, to deal with child trafficking;

Considering as a priority the protection of children victims of trafficking;

Aiming, based on reciprocity and a spirit of cooperation to establish the required legal framework for implementing specific procedures and structures for the protection and assistance of trafficked children;

Recognizing that the most effective way to prevent trafficking in children is to eliminate its root causes;

Recognizing that the best interest of the child victim of trafficking shall always be the key consideration;

Taking into consideration the relevant conventions ratified by both Contracting Parties and more specifically the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), the Convention on the Rights of the Child (1989), the Convention on the Elimination of all Forms of Discrimination against Women (1979) and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182 (1999);

Taking into consideration the specific international conventions signed by both Contracting Parties, such as the UN Convention against Transnational Organised Crime (2000) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplemented the UN Convention against Transnational Organised Crime (2000);

Taking into consideration the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), the Hague Convention on the Civil Aspects of International Child Abduction of 1980,

Have agreed as follows:

Article 1 Definitions

- 1.1 For the purposes of this cooperation agreement, the parties agree on the following definitions of the terms used herein:

Trafficking in children shall mean the recruitment, transportation, transfer, harbouring, or receipt of a child, including the exchange or transfer of control over such person, for the purpose of exploiting such a child. The consent of the child, implied or real, is immaterial.

Trafficker shall mean the perpetrator of trafficking in children. The concept of perpetrator shall include also legal persons, in accordance with the provisions of article 4 of the EU Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA).

Exploitation shall include the exploitation of the prostitution of children or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal or transfer of organs.

Child victim of trafficking shall mean any person under the age of 18 years old against whom the act of trafficking as defined in this Article has been committed. For the purposes of this agreement, a child shall be considered to become an adult on the date when he/she turns 18 years old. In the event that the exact date of birth is unknown, the child is considered to become an adult on December 31 of the year of its 18th birthday. In the event that the age of the person is not established definitely but there are reasons to presume that the person is a child, the person shall be considered as a child and shall benefit from this agreement, until the persons' age is fully established.

Potential child-victim of trafficking shall refer to the child who is in a present, concrete and serious situation, due to which the child faces the risk of becoming a trafficked child, as described above.

Unaccompanied child shall mean the person under the age of 18, who resides in the territory of one of the contracting parties, separated from the parents and not placed under the guardianship of an adult. Unaccompanied children shall benefit from the protection offered by the relevant Articles of this agreement when qualified as potential child-victims.

The person having custody of the child shall mean the parent or the person who represents the child, by virtue of the applicable laws of the country, where custody was granted

Provisional guardian shall mean the person responsible for the child until the implementation of a permanent solution.

Immigration Regulations shall mean the legal provisions which enable the issuance of residence permits to child victims staying in social centers, having attended a social integration programme.

I. PROSECUTION

Article 2 Effective harmonisation of definition of crimes and procedures – Cooperation on the basis of mutually accepted principles and methods

- 2.1 The Contracting Parties agree that, in the framework of their national legal systems and when required:
- (a) special sanctions shall be imposed for trafficking in children and exploitation of children,
 - (b) in relation to the crime of trafficking in children, attempt, complicity and moral instigation shall be penalized,
 - (c) the liability of legal persons involved in trafficking in children shall be instituted,
 - (d) provisions shall be enacted imposing prohibitions, confiscation and administrative measures against traffickers,
 - (e) provisions shall be adopted prescribing the confiscation of all items in the possession of traffickers, which items were used for trafficking, irrespective of the fact that traffickers were the owners thereof,
 - (f) legislation shall be introduced prohibiting the display of gross negligence by the person having custody of the child or the delivery of the child to another person in exchange for money or for the purpose of wealth, and measures shall be taken against employers who employ children-victims,

- (g) legislation on the protection of child witnesses shall be harmonized in conformity with international standards,
- 2.2 The Contracting Parties agree to adopt immigration regulations for the issuance of residence permits to children-victims in accordance with Article 9.4.

Article 3

Action and cooperation between police authorities

- 3.1 The Contracting Parties undertake to adopt effective measures, if no such measures already exist, for the establishment or operation of anti-trafficking units in the framework of the relevant police authorities, staffed with full-time trained personnel, for the protection of children.
- 3.2 After taking into consideration the relevant bilateral agreements on police cooperation between the Contracting Parties and more specifically the cooperation agreement of the Ministries of Public Order in matters of their competence dated 17 July 1992, it is agreed that this cooperation and the exchange of information shall be updated in order to combat trafficking in children by adopting additional protocols for the implementation of the agreement. Such additional protocols may include:
- (a) the development of common standards for the regular and efficient collection and exchange of statistics relating to trafficking in children and all forms of exploitation, as regards perpetrators and methods and routes used,
 - (b) the creation of reference databases in border passages, under the provision of guarantees for the total safety of personal data to be entered in the database,
 - (c) the establishment of bilateral assessment of the adequacy of border control measures in relation to children,
 - (d) the training and the coordination of common procedures to be applicable in border passages, aiming at improving the ability of the border control personnel to identify possible children-victims and traffickers and regulating the procedure of initial handling of child-victims by the border control personnel,
 - (e) the reinforcement of border controls, to the extent which is necessary for preventing trafficking in children, subject to international commitments in relation to the free movement of persons.
 - (f) the adoption of border control measures, such as prohibition of entry, revocation of visa and possibly temporary detention, for persons involved in trafficking in children".
 - (g) The adoption of agreed regulations concerning repatriation at the border and processing procedures, in accordance with Article 11.
 - (h) the potential training of border control officers, police officers, public prosecutors, judges, immigration officers and all competent officials in all matters of trafficking in children, including identification,
 - (i) the monitoring of the assistance provided to children-victims after their repatriation, including their living conditions and the conditions of reunion of the children with their families.
- 3.3 The Contracting Parties agree to use communication and cooperation channels between the police authorities and the respective embassies and consulates, with the purpose of rapidly ensuring the validity and legality of travel documents, proofs of identity and personal data, when there are reasonable suspicions about the use of such documents in trafficking in children.
- 3.4 For the proper implementation of this Article, both Contracting Parties shall establish specific focal points within their police authorities.

II. PREVENTION

Article 4

Financial and social policies for dealing with the root causes of trafficking in children

- 4.1 The Contracting Parties agree to implement effective economic and social policies in relation to the most vulnerable groups, aiming at eliminating poverty and creating real opportunities, which shall prevent the underlying causes of trafficking in children at their root. Such policies shall aim at:
- (a) improving the access of children to education and vocational training opportunities,
 - (b) increasing the percentages of school and vocational training attendance, especially for girls and foreign children,

- (c) dealing with the problem of unprotected, informal and illegal child labour.
- 4.2 The Contracting Parties undertake to inform each other on the specific measures taken and implemented, which are targeted to the above social groups.
- 4.3 The Contracting Parties shall regularly examine the effectiveness of implementation of such measures and shall agree to proceed to possible further improvements.

Article 5 **Awareness raising**

- 5.1 The Contracting Parties agree that, in order to effectively prevent trafficking in children (if such preventive measures are not available), it is necessary to make the society in general, and the relevant target groups in particular, aware of trafficking in children. In this framework, the Contracting Parties undertake:
- (a) to carry out an information campaign for making the public aware of trafficking in children and the different forms in which it is manifested in the Contracting Parties, in collaboration with civil society, non-governmental organisations and international organizations involved in child protection activities and non-state actors. Each Contracting Party shall incur the cost of the information campaign on its territory,
 - (b) to make other competent groups aware of trafficking in children, such as policy-makers, police personnel and other competent professionals, e.g. medical and social services, employment services and the public sector, in order to increase their readiness to adequately deal with trafficking in children and reinforce their institutional potential to combat trafficking in children,
 - (c) to make the public aware of compulsory education, of the sanctions imposed on persons having custody of a child who do not send this child to school and of the prohibition of child labour,
 - (d) to deal with the need to reduce demand for activities related with trafficked children such as begging, sexual exploitation, forced labour, slavery or similar practices, and to promote the principle of zero tolerance to all forms of trafficking in children,
 - (e) to create and effectively advertise hotlines, through which advice and guidance shall be offered to children-victims and which shall facilitate anonymous complaints for trafficking in children.

Article 6 **Institutional measures for the prevention of trafficking in children**

- 6.1 The Contracting Parties undertake to implement the following institutional measures, depending on the needs, for the more effective prevention of trafficking in children:
- (a) establishment of a central coordination body, aiming at improving the effectiveness of public institutional bodies. For the Greek side, this body shall be the Standing Interministerial Committee of article 9 of presidential decree 233/2003. For the Albanian side, this body shall be the State Committee on Combating Human Trafficking chaired by the Minister of Interior.
 - (b) provision of human and financial resources to combat trafficking in children as a social and financial problem,
 - (c) provision of assistance for the development of an adequate social services network, whose function shall be i.e. to deal with trafficking in children, assisted by the civil society, international organizations and non-state actors,
 - (d) the registration of all newborns shall be ensured, regardless of their place of birth.

III. PROTECTION

Article 7 **General principles of protection of children-victims**

- 7.1 The Contracting Parties acknowledge that all actions made in relation to children -victims shall be guided by the child's best interest, the principle of non-discrimination, respect for the child's views, as well as for his or her rights to information, to privacy and confidentiality and to protection.
- 7.2 The relevant state institutional bodies of both Contracting Parties shall cooperate for the implementation of this agreement. In order to ensure the effective implementation of this agreement through

its constant monitoring and protect the rights and interests of the child, the Contracting Parties shall establish a special state service, hereafter referred to as "Responsible Authority". For the Greek side, it shall be the National Emergency Social Solidarity Centre of the General Secretariat of Welfare of the Ministry of Health, Welfare and Social Security. For the Albanian side, it shall be the Joint Commission for the Protection of Children Victims of Trafficking.

- 7.3 The Responsible Authority shall ensure cooperation between the relevant institutional bodies in accordance with the standards of care of children and shall respect and guarantee general principles of child victim protection, as prescribed in relevant international instruments

Article 8 **Identifying children-victims**

- 8.1 The Contracting Parties shall adopt effective procedures for immediately identifying children-victims on their territory. Police, social services, medical care services, educational establishments, local authorities, international organisations and non-governmental organisations, as soon as they become aware of the presence of a potential child-victim on the territory of one of the Contracting Parties, shall immediately notify the Responsible Authority of their country, which shall coordinate the actions with competent bodies and social services.
- 8.2 When the child is identified, the country's Responsible Authority shall record the child in a special register and shall open the child's personal file.

Article 9 **Referral of the child-victim to competent officials**

- 9.1 The Responsible Authority, in collaboration with the Public Prosecutor for children international organisations and non-governmental organisations involved in child protection activities as well as non-state actors shall proactively seek the identification of the child-victim and, in collaboration with the competent Police Service, shall organise the immediate transfer of the child to a care centre. Care centers shall be protected, safe and suitable for the child's age and needs. In any event, the Parties guarantee that the centers shall offer the child protection, meals, medical assistance, psychological support and opportunities for education and recreational activities. For this purpose, the central coordination body and the Responsible Authority of each Contracting Party may conclude agreements, directives and memoranda of understanding with international organisations and non-governmental organisations involved in child protection activities as well as with non-state actors, with the purpose of providing social services and care centres.
- 9.2 The Contracting Parties guarantee that no criminal proceedings shall be initiated against the located child-victim and that the child shall not be temporarily detained for criminal offences related to trafficking.
- 9.3 Ill children, disabled children and children with psychological problems, underage pregnant girls etc. shall receive special care, depending on their needs. The Parties shall use personnel able to communicate in a language understood by the child.
- 9.4 Any child placed in a care centre shall receive either a residence permit as victim of trafficking in children, if the competent authority has issued a characterization deed, or for humanitarian reasons, as the case may be, according to applicable provisions of national law. The provisional guardian of the child is responsible for applying for the issuance of the relevant permit by the competent state authorities. This residence permit shall be renewed until the child comes under another legal status due to the implementation of a permanent solution.

Article 10 **Appointment of provisional guardian**

- 10.1 After the transfer of the child to the care centre, the Responsible Authority is obliged to request that the child be put under guardianship, in accordance with the relevant national legislation of the parties. The provisional guardian shall accompany the child and protect the child's interests until a permanent solution is found, as set out in article 12-16. The guardianship may be entrusted to the Responsible Authority, the care centre where the child is placed and/or other recognised organisations and establishments undertaking care of children. The number of children put in guardianship shall be within the supervisory limits of the body to which guardianship has been entrusted. The persons to whom guardianship shall be entrusted should be trained and experienced in matters of

care of children and child-victims. In addition, they should be able to communicate in a language understood by the child. In the event that the guardianship is not entrusted to the Responsible Authority, such Authority shall issue regulations and constantly monitor the exercise of guardianship.

- 10.2 In accordance with the national legislation of the Contracting Parties, the provisional guardian shall have inter alia the following duties:
- (a) He/she shall guarantee that all actions shall protect the interests of the child
 - (b) He/she shall inform the child throughout the procedure concerning the child's current condition and his/her options for the future in order to assess the safety risk required in order to make a valid decision about the child's future,
 - (c) He/she shall assist in the process of locating the child's family or the person having custody of the child in the country of origin,
 - (d) He/she shall operate as liaison between the child and the different organisations and services involved in the process and in charge of responding to the needs of the child,
 - (e) He/she shall guarantee, in case of safe repatriation, the proper preparation of the return of the child concerning the preparation of the family and the child, the safe return and the respect for the child's interests,
 - (f) He/she shall guarantee the confidentiality of information received during the exercise of guardianship. In this framework, the provisional guardian is entitled to be exempted from the obligation to testify in court, if that is considered to be for the child's benefit.

Article 11

Individualised assessment of the cases

- 11.1 The cases of trafficking in children shall be investigated by the competent police services of the Ministry of Public Order of the Hellenic Republic and the Ministry of Interior of the Republic of Albania, as set out in article 3.1 hereof. During the investigation, the child shall be interviewed only when this is necessary and efforts shall be made to minimize such interviews. The interview shall take place only with the previous consent of the person having custody of the child, who shall be present during the interview and may interrupt it when they think that the interview shall jeopardise the child's welfare. The interviewer shall try to avoid putting psychological pressure and causing psychological trauma to the child during the interview.

Article 12

Finding a permanent solution

- 12.1 The Contracting Parties should make use of the measure of safe repatriation of the child-victim, when required. The Responsible Authorities of both Parties shall study, in close cooperation, each case of trafficking in children and decide on a permanent solution that shall guarantee the child's interests.
- 12.2 The Responsible Authority, considering family reintegration as a priority and based solely on the best interest of the child, may decide as permanent solution the safe repatriation, the integration of the child in the host country or the transfer of the child to a third country.
- 12.3 In making this decision the Responsible Authorities shall consult the child and take into account the will of the child in accordance with the age and maturity of the child.
- 12.4 In making their decision, the Responsible Authorities of the Contracting Parties shall consider all the circumstances of the case and in particular the results of the risk assessment conducted under joint responsibility of the Contracting Parties.

Article 13

Implementation of permanent solution

- 13.1 The Responsible Authorities of the Contracting Parties shall elaborate common procedures to expedite the exchange of information relating to cases of trafficking in children, which shall include procedures for the participation of competent ministries, embassies and/or consulates.
- 13.2 If the options of family reunion and/or safe repatriation of the child are not selected, the provisional guardian shall remain responsible for the child-victim until the appointment of a legal representative/custodian of the child by the court.

Article 14 **Safe repatriation**

- 14.1 The return of the child shall be carried out through a voluntary, legitimate, assisted, well-prepared and safe procedure, in accordance with the child's best interests. The procedures for the transport of the child shall be described in an Additional Protocol to this agreement. Throughout the safe repatriation of the child, the Responsible Authorities may cooperate with international organisations and non-governmental organisations involved in child protection activities.
- 14.2 The Responsible Authority of the country of origin shall elaborate and implement special projects aiming at the reintegration of the child in the country of origin. Such projects shall cover protection, medical and psychological support, reintegration into the educational system, provision of legal advice and representation, as well as any other form of assistance or provision imposed by the legislation on the protection of children in the country of origin. To this end, they shall cooperate closely with international organisations, non-state establishments and non-governmental organisations.
- 14.3 The Responsible Authority of the country of origin shall assess the welfare of the child-victim and monitor their life after the reunion of the family or the placement of the child under alternative care in the country of origin, and shall submit a biannual report to the Responsible Authority of the host country until the child becomes 18 years old. The Responsible Authority of the host country, in collaboration with non-governmental organisations involved in child protection activities and non-state actors, may ascertain the situation by on-site visits, having notified the Responsible Authority of the country of origin. In the event that it is justifiably ascertained that the living conditions of the child-victim run the risk of re-exploitation, a report shall be drawn up and the two sides shall consult in order to settle the matter immediately.
- 14.4 In the event that the child faces problems with the parent(s) or guardian after his/her return, the Responsible Authority of the country of origin
- (a) shall protect the child's interests until the child becomes 18 years old, the child's rights, as well as the different services available to the child, in accordance with the right to information,
 - (b) shall ensure that the child receives the necessary care that shall include, in any event, accommodation, meals, medical and psychological support, legal representation, as well as education in a language understood by the child. This care cannot be inferior to that provided by the Contracting Parties to children of their nationality, in accordance with the principle of non-discrimination.
 - (c) shall attend interviews of the child with police authorities and guarantee that interviews shall be conducted in accordance with the general principles established by this agreement, as well as the national and international law,
 - (d) shall guarantee the access of the child to adequate legal representation and support, in accordance with the child's best interests,
 - (e) shall consult with the child and shall take the child's views into consideration, depending on their age and degree of maturity, in accordance with the principle of respect to the child's views,
 - (f) shall play an active part in finding the best possible solution that shall guarantee the child's best interests.

Article 15 **Integration**

- 15.1 In the event that the solution of integrating the child in the host country is decided, the Responsible Authority shall seek to guarantee the complete integration of the child in the host country. In this framework, the integration into a family and community environment is preferable over the placement in institutions.
- 15.2 A child who is already subject to the guardianship legislation may be adopted. In the event that the child has problems with the guardian/foster family, the Responsible Authority shall protect the child's best interest until the child becomes 18 years old.
- 15.3 The Contracting Parties agree to adopt, where required, legislation that shall punish the organisation of adoption of children in violation of the national legislation on adoption, with punishments applicable to trafficking in children.

Article 16
Relocation of the child in a third country

- 16.1 The Responsible Authority of the host country may decide to relocate the child to a third country, in the event that legally recognized guardianship and an integration programme for the child may be ensured in such country, in accordance with the child's best interests, the child's right to information and with respect to the child's views on relocating to a third country.
- 16.2 The Responsible Authority of the host country shall organise the escorting of the child until the entrance point to the third country, in accordance with the transport rules to be applied in an Additional Protocol to this agreement.
- 16.3 The Responsible Authority of the host country shall monitor the relocation and integration of the child in the third country and shall cooperate with the relevant authorities of the third country to prepare annual reports on the case until the child becomes 18 years old.

Article 17

- 17.1 The Contracting Parties undertake to consider the implementation of this Agreement by yearly joint meetings of concerned authorities. International organizations and non-governmental organizations involved in child protection activities as well as non-state actors may be invited by the Contracting Parties into these meetings. The meetings (dates, agendas e.t.c.) will be agreed jointly through diplomatic channel.

Article 18

- 18.1 Any dispute that might arise in relation to the interpretation and/or implementation of this Agreement shall be resolved amicably through consultations and/or negotiations.

Article 19
Revision and/or amendment of the Agreement

- 19.1 This Agreement may be revised or amended at any time with the mutual written consent of the Parties. Such revisions or amendments shall enter into force in accordance with the procedure provided for in Article 20.1 and shall form an integral part of this Agreement.

Article 20
Final provisions

- 20.1 This Agreement shall enter into force 30 days following the second written notification by the Contracting Parties, in which they shall announce the completion of the relevant national legal procedures.
- 20.2 This Agreement shall remain in force indefinitely.
- 20.3 The Contracting Parties may denounce the present Agreement by written notification through diplomatic channels. Denunciation shall become effective one month after the date of receipt of the notification.

Done at _____, on _____, in two original copies, each in the Greek, Albanian and English languages, all texts being equally authentic. In the event of any difference in the interpretation of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT
OF THE HELLENIC REPUBLIC

Evrpidis Stylianidis

FOR THE COUNCIL OF MINISTERS
OF THE REPUBLIC OF ALBANIA

Iva Zajmi

Annex 5 Resource List

This is a list of texts which are referred to in this publication that might be useful to consult when seeking further information. A web source is cited whenever known.

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