



CHILD TRAFFICKING AND CHILD PROTECTION:

Ensuring that Child Protection Mechanisms
Protect the Rights and Meet the Needs
of Child Victims of Human Trafficking

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Office of the Special Representative and Co-ordinator
for Combating Trafficking in Human Beings

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List of acronyms

BIA	Best interests assessment
BID	Best interests determination
CIS	Commonwealth of Independent States
CPU	Child protection unit
CRC	UN Convention on the Rights of the Child (1989)
EU	European Union
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings (treaty-monitoring body)
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization (and International Labour Office)
IOM	International Organization for Migration
Lanzarote Convention	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
NGO	Non-governmental organization
NRM	National Referral Mechanism
ODIHR	OSCE's Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
OSR/CTHB	Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
RCM	Regional Conference on Migration
SR/CTHB	OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
THB	Trafficking in human beings
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
US	United States of America
Warsaw Convention	Council of Europe Convention on Action against Trafficking in Human Beings

Glossary

Abuse (of a child)	Any act or omission, which may be deliberate or accidental, that results in or is likely to result in significant harm to a child's well-being and development. There are four main categories of abuse: physical, sexual, emotional (sometimes called psychological) and neglect. See United Nations Alliance of Civilizations (UNAOC) and Panos Europe, Media-Friendly Glossary on Migration (2014).
Adolescent	A person between the ages of 10 and 19. See UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (2006).
Assessment	The process of collecting information and making sense of it (notably in order to develop a plan to ensure that a child's needs are met).
Case management	A system for managing assistance to individuals (such as children who have been trafficked) which systematically arranges such assistance to them (whether adults or children) from the beginning to the end of the assistance being provisioned, including monitoring the individual concerned. "Case management" is a generic term, with no single definition. The Case Management Society of America (CMSA) defines it as "a collaborative process of assessment, planning, facilitation, care co-ordination, evaluation, and advocacy for options and services to meet an individual's and family's comprehensive health needs through communication and available resources to promote quality cost-effective outcomes" (CMSA website). See Ross et al., Case management. What it is and how it can best be implemented, King's Fund (2011). A needs assessment is the starting point for case management and for referring a victim to the range of services which he or she might need or be entitled to access.
Child	Any person under 18 years of age (UN Convention on the Rights of the Child, 1989). The word "children" therefore refers to boys, girls, adolescents and young people under the age of 18.
Children without parental care	All children not in the overnight care of at least one of their parents or a legal guardian, for whatever reason and under whatever circumstances. Children without parental care who are outside their country of habitual residence or are victims of emergency situations are generally referred to as "unaccompanied" or "separated". See UN Guidelines for the Alternative Care of Children (2010).
Child protection	The protection of children either suffering or at risk of suffering from any form of abuse, exploitation or neglect. The CRC requires States (governments) to take action to protect children 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" (article 19).
Child protection concerns	Reasonable cause to suspect a child is suffering, or likely to suffer, significant harm.
Child protection system	Child protection systems comprise the set of laws, policies, regulations and services needed across all social sectors—especially social welfare, education, health, security and justice—to support prevention and response to protection-related risks. These systems are part of social protection and also extend beyond it. At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation. Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making co-ordination between sectors and levels, including routine referral systems, a necessary component of effective child protection systems. See UNICEF, Child Protection Strategy, UN doc. E/ICEF/2008/5/Rev. 1 (20 May 2008).

Durable solution	Long-term arrangements made for a child who has been trafficked. See “Solution” below and also UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (2006).
Duty of care	Humanitarian agencies have a duty of care to beneficiaries and the responsibility to ensure that beneficiaries are treated with dignity and respect, and that certain minimum standards of behaviour are observed. See Report of the Inter-Agency Standing Committee Task Force on Protection of Sexual Exploitation and Abuse in Humanitarian Crises (2002). The goal is to create an environment free of sexual exploitation and abuse in humanitarian crises, through integrating the prevention of and response to sexual exploitation and abuse into the protection and assistance functions of all humanitarian workers.
Internal trafficking	When all stages of trafficking in human beings (possibly including exploitation) occur within the same country.
International protection	Actions taken by the international community that, on the basis of international law, aim to protect the fundamental rights of a specific category of persons located outside their countries of origin who lack the national protection of their own countries. See ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014).
National Referral Mechanism (NRM)	A National Referral Mechanism (NRM) is a co-operative framework through which State actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aims of an 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. See ODIHR, National Referral Mechanisms Handbook (2004).
Presumed victim of trafficking	A person for whom there are reasonable grounds to believe that he or she is likely to have been trafficked, but who has not (yet) been formally identified as such by the authorities, or who has declined to be formally identified as such. Because victims of trafficking are often reluctant to identify themselves as victims and formal identification takes time, the term “presumed trafficked persons” is used to describe persons who are likely to be victims of trafficking and who should therefore come under the general scope of anti-trafficking programmes and services. See ODIHR, National Referral Mechanisms Handbook (2004).
Protection	All activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. International Human Rights Law, International Humanitarian Law, [and] International Refugee law). See Inter-Agency Standing Committee Policy on Protection in Humanitarian Action (2016). Protecting someone means recognizing that individuals have rights and that the authorities who exercise power over them have duties that are obligations. Also see “child protection”.
Refoulement	The expulsion or return of a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. Under the terms of the non-refoulement principle (originally a concept under international refugee law), it is illegal for States to expel or return (“refouler”) refugees who have a well-founded fear of persecution upon their return. This principle is part of customary international law and is considered to be binding on all States whether or not they are parties to the UN Refugee Convention (1951). See UNHCR, The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994.

Reflection/recovery period

Period of time granted to victims of trafficking in human beings to allow them to recover and escape the influence of the perpetrators of the crime, and to give them the opportunity to make an informed decision as to whether to co-operate with the competent authorities. See ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014).

Refugee

A person outside his or her country of origin who cannot return to this country because he/she has a well-founded fear of persecution or is unable or unwilling to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. The definition of a refugee in international law is found in Article 1, Section A (2) of the UN Refugee Convention (1951).

Repatriation

See “return”.

Return

In the context of trafficking in human beings, this term refers to the process of returning victims of trafficking from the country in which they were identified as trafficked persons to their country of origin. The process can be voluntary, forced and assisted, or even forced and unassisted. See ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014).

Risk assessment

An assessment of the risks facing a particular trafficked child, usually carried out to help decide which course of action would be most appropriate for that child. Risk assessments for trafficked children who are in care explore the circumstances of the home and community to which the child is likely to return, to assess whether it is in the child's best interests to return there. Usually carried out by the social service or child welfare authority where the child is located, it requires information from an agency in the child's country of origin that 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 that is going to do so), as well as the surrounding community. A risk assessment is thus distinct from (and complementary to) a security assessment, which is usually carried out by the police. See Committee on the Rights of the Child, General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin (2005).

Separated child

Separated children are children without parental care who are outside their country of habitual residence or victims of emergency situations who have become separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may include children accompanied by other adult family members. See Committee on the Rights of the Child, General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin (2005).

Social inquiry

Part of a “risk assessment” concerning a trafficked child. This is a report compiled by a child protection or other social worker about the circumstances of a particular family (e.g., a child's parents, guardian or habitual caregiver) or other residential unit (such as a care home) to assess whether it would be appropriate and safe for a child to return or live there.

Solution (for a trafficked child)

A comprehensive, secure and sustainable solution for a child who has been trafficked is one that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should aim to ensure that the child is able to develop into adulthood in an environment that will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child.

Between 2003 and 2017 the term “durable solution” was routinely used to refer to such solutions for trafficked children (see “Implementation of durable solution” in UNICEF, Guidelines on the Protection of Child Victims of Trafficking (2006)). This term was initially developed in the context of solutions for unaccompanied child refugees.

A range of options are available for trafficked children, whether accompanied or unaccompanied. A fundamental principle is that they should be tailored to suit the individual child and that the child, unless too young, should have a say in deciding which option is chosen. For some, the options are limited by international law (which prohibits, for example, refoulement).

Trafficking in human beings (also “trafficking in persons” and “human trafficking”)

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 (also known as the “Palermo Protocol”), States in article 3: “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.”

Transnational referral mechanism

The concept of a co-operative agreement for the cross-border comprehensive assistance and/or transfer of identified or presumed trafficking victims (children or adults), through which State actors of different States fulfil their obligations to promote and protect the human rights of people who have been trafficked. See ICMPD, Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe (2009).

Unaccompanied child

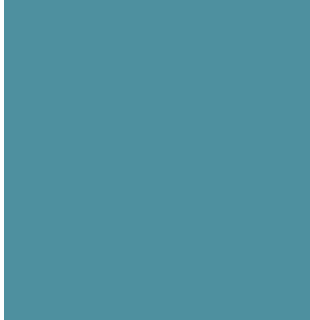
Unaccompanied children (sometimes referred to as unaccompanied minors) are children without parental care who are outside their country of habitual residence or are victims of emergency situations who have been separated from both parents and other relatives, and are not being cared for by an adult who, by law or custom, is responsible for doing so. See Committee on the Rights of the Child, General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin (2005).

Young person

Refers to both children (under 18) and young adults from the age of 18 to 24. See UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (2006).

Youth

Refers to children aged 15, 16 and 17 and also young adults aged 18 to 24. See “Young person” (above) and also UNESCO, What do we mean by “youth”? at <http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/>



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Foreword

In light of the heightened vulnerability of children, combating trafficking in children has been at the forefront of the OSCE's anti-trafficking agenda for many years. Since the adoption of the 2003 OSCE Action Plan to Combat Trafficking in Human Beings and its subsequent Addendum on Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, there has been notable progress in delivering adequate and effective responses to trafficking in children in the OSCE area. However, anti-trafficking stakeholders continue to face substantial challenges to the practical implementation of their national laws and policies. A full alignment with the OSCE anti-trafficking commitments, in particular related to children, remains to be achieved.

The OSCE's 17th Alliance against Trafficking in Persons conference highlighted the need for better co-ordination of governmental efforts in the area of child protection. Effective and functional child protection systems can significantly reduce risks of trafficking and create favourable conditions for identifying and assisting child victims of trafficking. A range of relevant stakeholders have underlined the importance of devoting equal focus to all "four pillars" of prevention, protection, prosecution and partnership, in order to ensure that human trafficking crime is addressed in a comprehensive and viable manner. To improve co-ordination and promote pro-active and child-friendly responses, we need to ensure regular communication and information exchange between all anti-trafficking actors. This should include child protection services and civil society organizations in countries of origin, transit and destination.

This Occasional Paper offers a set of specific recommendations aimed at supporting participating States in fulfilling their commitments to children who have been trafficked. Guaranteeing the best interests of children should always be the primary consideration when taking decisions about their proper care, accommodation, safety, repatriation and reintegration. This publication focuses on the protection of child victims of trafficking by state-run child protection agencies. Summarizing the findings of the 2017 Alliance conference, the paper focuses attention on the decision-making processes within state agencies. It pays attention to how these agencies seek to ensure comprehensive, secure and sustainable solutions, tailored to safeguard the best interests of a child who has been trafficked.

Acknowledging that the implementation of the outlined recommendations will require political will, time and mobilization of resources, adopting a multi-disciplinary and inclusive approach to combat child trafficking will have a direct and positive impact on children's security and welfare in the OSCE region. The OSCE can play an important role in making this happen.

Thomas Greminger
OSCE Secretary General

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First and foremost, the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings would like to express sincere gratitude to the delegations of all OSCE participating States and Partners for Co-operation for the support they provide to the work of the Office and to commend their Governments' commitment to addressing the human trafficking crime in a most effective and comprehensive manner possible, including by paying special attention to the scourge of child trafficking.

In the context of this publication, very special thanks go to Mike Dottridge as the main drafter of the paper, who, together with Alina Brasoveanu, did an impressive job in providing a thorough analysis of current child protection challenges and promising practices against the existing international legal instruments and other relevant mechanisms aimed to uphold the fundamental principle of ensuring the best interests of the child throughout any child protection action.

The Office would also like to thank OSCE colleagues Tetiana Rudenko, Georgina Vaz Cabral and Oleksandr Kyrylenko for managing this publication and ensuring the continuity of our focus on combatting trafficking in children, and Cynthia Peck-Kubaczek for her diligent editing and proof-reading of the text.

Last, but not least, it would be an immense pleasure to acknowledge all the experts and partners who contributed to our 2017 Alliance against Trafficking in Persons conference on trafficking in children and the best interests of the child, without whose expertise and dedication the publication of this paper might not have received sufficient impetus. Finally, this paper is dedicated to the countless children who rely on our care and support.

“ This paper is dedicated to the countless children who rely on our care and support.”

Executive summary

This Occasional Paper concerns the protection of child victims of trafficking by State-run child protection agencies. It does not review all the measures required during all the phases involved in protecting and assisting a trafficked child, but focuses on the following phases of action:

1. The decision-making process to choose a comprehensive, secure and sustainable solution in the child's best interests (i.e., solutions that are sometimes called "durable solutions") concerning:
 - i. Children who are outside their country of origin (whether unaccompanied, separated or accompanied), including regularization of the immigration status of such a child;
 - ii. Children who have not left their own country;
2. Implementation of such solutions;
3. The medium-term and long-term provision of assistance to ensure each child's satisfactory recovery ("re/integration"), whether in the child's country or place of origin or elsewhere.

Chapter 2 sets out the child rights principles that underpin the protection of trafficked children. The first and overriding principle is that in all actions affecting children (covering everything done to protect trafficked children or to tackle child trafficking), the best interests of the child must be a primary consideration.

Chapter 3 explains what decisions generally have to be made concerning trafficked children and at what point in the protection process these occur. It emphasizes that child protection specialists should take a leading role in making decisions whenever feasible, and refers to Sweden's National Referral Mechanism handbook, which highlights the action points required with respect to children and young people. The chapter also examines the "The Child House" (Barnahus) model, which seeks to ensure that child victims are not subjected to repeated interviews about the same topics.

Chapter 4 goes into further detail on the interim care of a trafficked child, the period in which child protection authorities are preparing to make key decisions affecting the child. Considerations on whether a trafficked child should be placed in alternative care are discussed, and the types of assessment recommended by the United Nations (UN) Guidelines for the Alternative Care of Children are described. In the case of children who are (or appear to be) unaccompanied when identified as presumed trafficking victims, the "necessity principle" set out in the UN Guidelines means that the child must be provided with alternative care straight away. In such cases the authority responsible for making the decision must assess the risks facing the child and how these affect his or her placement, keeping a record of the factors taken into consideration in deciding where to accommodate the child and what measures are needed to protect the child from any identified risks. It is emphasized how important it is to avoid placing presumed trafficked children in any sort of prison cell or other kind of detention situation. The risk of a child victim being subjected to further abuse at a shelter or care home is also discussed, along with some of the steps that are essential for preventing this.

Chapter 5 considers the best interests of the child and how an understanding of what this implies can be introduced into the decision-making process, not only in countries where unaccompanied children are identified, but also in children's countries of origin.

Chapter 6 looks at the experience of implementing decisions made about trafficked children, focusing on case management and care plans that promote the satisfactory reintegration of children. It describes some of the benefits of preparing a "life project" with a trafficked child. It also discusses appropriate measures for reducing the likelihood that a trafficked child placed in alternative care will walk out and go "missing".



Alliance against Trafficking in Persons
conference on trafficking in children and
the best interests of the child, 2017

Chapter 7 summarizes the principles surrounding a trafficked child's possible return to their country or place of origin, emphasizing the safeguards that are essential. It describes both bilateral and multilateral frameworks governing the return of unaccompanied children, and discusses cases in which restrictions have been placed upon trafficked children after their return to their country of origin.

Finally, Chapter 8 presents a series of recommendations for the OSCE participating States, noting that these supplement, but are not intended to replace, the measures that have already been recommended to participating States in the past. Central to these recommendations is that child trafficking should be addressed as a child protection issue within a child protection framework, with child protection specialists playing a leading role in all procedures involving decisions that might have a significant impact on a trafficked child.

The Occasional Paper contains two annexes, the first quoting from a Joint General Comment issued in 2017 by two United Nations treaty-monitoring bodies, and the second summarizing points from a UNICEF model bilateral agreement concerning children who have been trafficked.

1



INTRODUCTION

This Occasional Paper focuses on the protection of child¹ victims of trafficking by State-run child protection agencies, particularly in the context of State (or “statutory”) agencies making decisions concerning a comprehensive, secure and sustainable solution² that is in the best interests of a child who has been trafficked.

It elaborates on the role of national child protection systems in enabling children who have been trafficked to recover and restart their lives. Among other things, the Paper reviews what measures have been and can be taken by participating States to implement a recommendation included in the OSCE’s 2016 report on a survey about the implementation of the OSCE Action Plan to Combat Trafficking in Human Beings:

“Ensure that efforts to prevent and respond to child trafficking are located within a broader child protection framework. In particular, countries should ensure that a child’s access to rights guaranteed by the UN Convention on the Rights of the Child (CRC), including with regard to best interest determination, is not contingent on his/her designation as a victim of trafficking.”³

The 17th Alliance Against Trafficking in Person Conference on “Trafficking in Children and Best Interests of the Child”, held in Vienna on 3–4 April 2017, demonstrated the need for the OSCE to continue addressing topics such as threats facing children in crisis situations, factors heightening child vulnerability, the adequacy of existing child protection systems, and policies and measures to ensure that the best interests of the child are a primary consideration in actions affecting children.

This Occasional Paper focuses on specific phases of action to protect and assist children who have been trafficked (as well as young adults who were trafficked as children):

1. The post-identification decision-making process that chooses a comprehensive, secure and sustainable solution in the child’s best interests (i.e., a solution which was formerly called a “durable solution”) for:
 - i. Children who are outside their country of origin (whether unaccompanied, separated or accompanied), including regularization of the immigration status of such children;
 - ii. Children who have not left their own country;
2. Implementation of such solutions;
3. The medium-term and long-term provision of assistance to ensure each child’s satisfactory recovery (“re/integration”), whether in the child’s country or place of origin or elsewhere.

This means that this Occasional Paper does not explicitly address the protection due to trafficked children at earlier stages, such as their identification, their withdrawal from the control of traffickers, and their involvement in the criminal justice system as victims or witnesses of crime, with the latter including their access to justice to obtain a remedy, and their right not to be punished 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 was a direct consequence of being trafficked.⁴

Finally, by specifically looking at ways that State child protection systems can be properly equipped to fully address the needs of child victims of trafficking, this paper may also play a role in creating the grounds for more synergies between national referral mechanisms and child welfare actors. This should ensure the complementarity of protection efforts.⁵

1 As stipulated by the United Nations (UN) Convention on the Rights of the Child (1989), the word “child” refers to anyone aged under 18 (that is, also adolescents below 18), rather than the legal term “minor”, which was commonly used before the Convention was adopted, and is still used in some regions to refer to all children or to children below a certain age.

2 Solutions for individual children who have been trafficked were routinely labelled “durable solutions” by the OSCE, UNICEF and others in the past. In a new General Comment adopted in November 2017, the Committee on the Rights of the Child together with one other UN treaty-monitoring body opted to refer instead to “comprehensive, secure and sustainable solutions” for unaccompanied children and children with families. See Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, UN doc. CMW/C/GC/3-CRC/C/GC/22 (16 November 2017), para. 32.j, quoted in full in Annex 1.

3 Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Survey Report 2016 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings, OSCE, 2016, p. 21 (Recommendations on responses to child trafficking).

4 Notably the following stages concerning the protection of a child who is a presumed trafficking victim:

- a) Identification (including measures to prevent misidentification or the failure to identify trafficked children as such);
- b) Withdrawal from the control of traffickers or exploiters;
- c) Initial (“emergency”) protection and assistance;
- d) Age assessment;
- e) Appointment of a guardian for unaccompanied or separated children;
- f) Law enforcement investigation procedures: interviews and testimony provided to police, prosecutors or a court by the child victim witness, and protection throughout the course of any legal proceedings.

5 At the time of publishing, ODIHR’s NRM Handbook did not “have a special focus on the situation of trafficked children, although this group is often an important beneficiary of the work of an NRM.”

See ODIHR, National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook (2004). Available at: <https://www.osce.org/odihr/13967> (accessed 17 July 2018).

1.1 What is “child protection”?

The notion of protection reflects all the specific measures enabling individuals at risk to enjoy the rights and assistance foreseen for them by international conventions. Protecting someone means recognizing that individuals have rights and that the authorities who exercise power over them have duties which are obligations, as well as ensuring that such obligations are adequately and effectively implemented. The UN Convention on the Rights of the Child (1989) requires States to take action to protect children 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” (article 19). The UN Children’s Fund (UNICEF) uses the term “child protection” to refer to preventing and responding to violence against children as well as their exploitation and abuse—including commercial sexual exploitation, trafficking, child labour and harmful traditional practices, such as child marriage.⁶ UNICEF stresses the importance of understanding the underlying causes and addressing these together, rather than singly, so that national child protection systems can address the full spectrum of risk factors in the lives of children and their families.⁷

The terms “protection” and “child protection” consequently have a much wider meaning than they do in the specific context of efforts to stop trafficking in human beings, where the term “protection” refers primarily to actions taken to benefit someone who is under the control of a trafficker or has been (i.e., has already been trafficked) or is suspected of having being trafficked (the OSCE uses the term “presumed victim” when there are some indications that a child or adult has been trafficked but conclusive evidence is not yet available⁸). In this THB context, protection refers to the processes of protecting adults or children from further harm (starting from withdrawal from the hands of traffickers), providing them with appropriate assistance to recover from whatever harm they have suffered and to restart their lives, and to get access to an appropriate remedy, either through the courts or otherwise.

This Occasional Paper analyses how national child protection systems can enable the full recovery of child victims of trafficking. Most national child protection systems are set up primarily with the aim of protecting children who are nationals of the country concerned. However, they have a duty to protect all children, wherever they come from, including unaccompanied or separated children from other countries, whether they are refugees, irregular migrants or have entered a State following all the required procedures. Some States have dedicated child protection agencies, while others rely on regular law enforcement officials or social workers employed by the government to protect children as well as adults. Whatever the structures in place, governments have a duty to ensure that the agencies coming into contact with children or responsible for making decisions affecting them have appropriate expertise and resources. This paper addresses their role and the procedures they should follow.

1.2 Who are trafficked children? Distinguishing them from other child victims of crime and unaccompanied children who are in difficult circumstances

When the UN adopted a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “UN Trafficking Protocol”), in 2000, supplementing the UN Convention against Transnational Organized Crime (2000), one of its three stated purposes (article 2) was “To protect and assist the victims of such trafficking, with full respect for their human rights.” Its two other purposes were to prevent and combat trafficking in persons, and to promote co-operation among States Parties in order to meet the objectives of the Protocol.

The UN Trafficking Protocol contains a definition of trafficking in persons (also referred to as “trafficking in human beings” and “human trafficking”) in its Article 3.⁹ Although the UN Trafficking Protocol and the related Convention against Transnational Organized Crime sought to address transnational crime involving two or more countries, the definition of human trafficking also applies to cases of internal (or “domestic”) trafficking, in which a child or adult is trafficked without being taken across a border (e.g., within their own country).

The UN Trafficking Protocol lists the forms of exploitation which are the purposes of trafficking as, “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.” Some of these terms had been defined in UN conventions or international treaties prior to the adoption of the UN Trafficking Protocol, while others had not. The Trafficking Protocol identifies three elements that characterize trafficking in human beings for adults aged 18 and older:

6 UNICEF, What is Child Protection? Child Protection Information Sheet (2006). https://www.unicef.org/protection/files/What_is_Child_Protection.pdf.

7 UNICEF, ‘UNICEF’s approach to child protection’. Child protection from violence, exploitation and abuse. Updated 28 November 2017. https://www.unicef.org/protection/57929_57990.html. UNICEF promotes the strengthening of all components of child protection systems, which include human resources, finances, laws, standards, governance, monitoring and services. Depending on the country context, child protection systems may cut across parts of the sectors of social welfare, education, health and security.

8 OSCE Office for Democratic Institutions and Human Rights (ODIHR), National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook, OSCE ODIHR (Warsaw, 2004), p. 17.

9 See the Glossary for the definition in article 3 of the UN Trafficking Protocol.

- > Recruitment (or “transportation, transfer, harbouring or receipt”) by an intermediary;
- > Abusive means of control by an intermediary—“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”—in the course of a person’s recruitment, transportation, transfer, harbouring or receipt;
- > Subsequent exploitation, or an intention to exploit, in one of the ways listed, 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.¹⁰
- > Decision-making processes leading to sustainable solutions in children’s best interests once the initial identification of a trafficked child has been completed, paying attention to both children who are identified outside their country of origin (whether unaccompanied, separated or accompanied) and children who have not left their own country; and
- > The implementation of sustainable solutions, including medium- and long-term assistance to ensure a child’s satisfactory recovery and (re-) integration, whether in the child’s country of origin or elsewhere.

In the case of children, if a child’s recruitment or transportation involves any of the abusive means used to traffic adults (e.g., threats, violence, abduction or deception), the case is considered to constitute trafficking.¹¹ However, the UN Trafficking Protocol specifies that it is not necessary for a child to have been subjected to abusive means for the case to constitute trafficking. It is sufficient that a young person under 18 has been recruited specifically to be exploited (whether moved to a different location or not) to be regarded as a victim of trafficking. On the other hand, if the purpose of recruiting or transporting a child was not for the child to be subjected to any of the listed forms of exploitation, the child concerned is not considered to have been trafficked. Thus, independent child migrants who travel to seek a living (and seek the services of various intermediaries while travelling or seeking work) are not considered to be trafficked unless or until someone intends to subject them to exploitation.

1.3 Methods used to compile this report

Two consultants assisted the Special Representative in preparing this report. They were asked to focus on activities that promoted child-focused anti-trafficking action, as well as policies and measures to foster the best interests of the child, including actions that strengthen child-protection mechanisms to prevent and respond to child trafficking. In particular, they were asked to compile evidence about:

This Occasional Paper is based largely on a review of information that has been published (in English, French, Moldovan, Romanian, Russian and Spanish) or is available on the Internet about children who have been trafficked. Some information was presented during the 17th OSCE Alliance against Trafficking in Persons Conference entitled “Trafficking in Children and the Best Interests of the Child”, held in Vienna in April 2017. The available published information was supplemented by guidance and information from the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

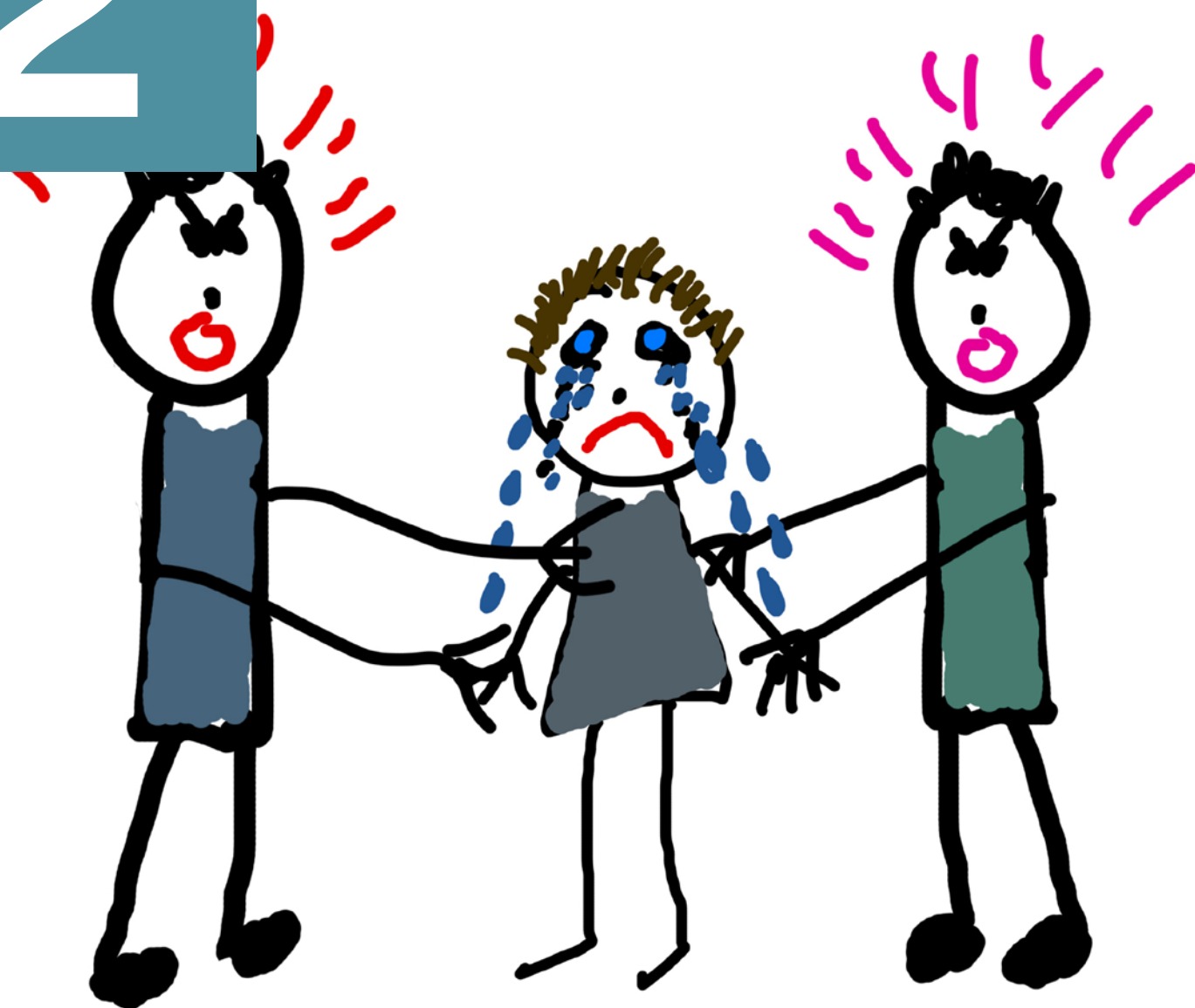
A variety of published sources were consulted in the course of preparing this paper. These include:

- > OSCE publications and papers, notably reports on the country visits by the OSCE Special Representative and the OSCE’s 2016 report on a survey about the implementation of the OSCE Action Plan to Combat Trafficking in Human Beings;
- > Reports of international and regional treaty-monitoring bodies, e.g., the Committee on the Rights of the Child established by the CRC and the Group of Experts on Action against Trafficking in Human Beings (GRETA), established by the Council of Europe’s Convention on Action against Trafficking in Human Beings (2005);
- > Other relevant reports issued by regional intergovernmental organizations, such as the Commonwealth of Independent States;
- > Reports by UN Special Rapporteurs, notably those with mandates concerning trafficking in persons (especially women and children), sale of children, child prostitution and child pornography, contemporary forms of slavery and the human rights of migrants;
- > Reports on the implementation of anti-trafficking measures issued by the European Commission;
- > Regulations published by national or local authorities in OSCE participating States about their referral systems, in particular the ones focusing on children;
- > Reports by non-governmental organizations (NGOs), academics and other specialists involved in monitoring child protection systems or anti-trafficking responses.

¹⁰ Exploitation of the prostitution of others was the subject of a previous UN convention in 1949. Forced labour has been the subject of two International Labour Organization (ILO) conventions. Slavery or practices similar to slavery have been the subject of two UN conventions. The removal of organs for commercial purposes has been the subject of comment by the World Health Assembly (WHO).

¹¹ UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (Geneva, UNICEF CEE/CIS Office, 2006), p. 14, http://www.unicef.org/ceecis/protection_4440.html.

2



PRINCIPLES CONCERNING THE
PROTECTION OF CHILDREN WHO
ARE VICTIMS OF TRAFFICKING

2.1 Child rights principles underpinning action to protect trafficked children

Measures to protect children, including trafficked children, should be based on principles contained in the Convention on the Rights of the Child (CRC), adopted by the UN in 1989 and ratified by all but one OSCE participating State. The first and overriding principle is that in all actions affecting children (covering everything done to protect trafficked children or to tackle child trafficking), the best interests of the child must be a primary consideration (article 3.1 of the Convention). This does not mean that children's best interests are the only factor to be taken into account, but rather that the authorities responsible must make those interests a primary consideration (and not give greater priority to secondary considerations).

Although, in the light of near-universal ratification of the CRC, this principle is not controversial, policies and practices on human trafficking in many States give priority to the repression of the crime involved (trafficking in human beings or trafficking in children), without giving equal priority to upholding the rights and interests of the individuals who are trafficked. In the case of children, their best interests may be taken into consideration by law enforcement officials aiming to detect, prosecute and punish criminals, but unless the best interests of the child are a primary consideration, the decisions and actions of the officials concerned may not comply with the requirements of the CRC.

The second principle is that children have a right to exercise their rights without discrimination of any kind, notably discrimination based on their national, ethnic or social origin. This means 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 third principle concerns the child's right to express his or her views and to have these taken into account, notably in decisions made by statutory agencies and non-governmental organizations (NGOs) either in the child's country of origin or in any other country in or to which a child is trafficked.

The fourth foundational principle of the CRC is that children have a right to life and States have an obligation to ensure children's survival and development (CRC, article 6). Children also have rights to freedom of expression and of association and to participate fully in cultural and artistic life (guaranteed by articles 13, 15 and 31 of the Convention). Taken together with article 12, these rights are interpreted to signify that children have a right to participate in efforts to ensure that their rights are respected, including the development of policies to stop children being trafficked and to protect those who are.

Child rights principles

1. 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).

2. 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).

3. Respect for the views of the child: 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).

2.1.1 Additional child rights to take into account when protecting trafficked children

The CRC requires States Parties to “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), in addition to committing States in the preceding article (34) “to protect the child from all forms of sexual exploitation and sexual abuse” and to take measures to prevent “the exploitative use of children in prostitution or other unlawful sexual practices” and “in pornographic performances and materials”. It stipulates States’ responsibilities when a child is found to have been trafficked, exploited, abused, neglected or tortured:

Trafficked children’s right to State support to recover and restart their lives

“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 CRC’s Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) also specifies that States must take action to ensure “all appropriate assistance to victims” of offences involving the sale of children, “including their full social reintegration and their full physical and psychological recovery” (article 9.3). It lists (in article 8) the forms of protection to which child victims and witnesses of this crime are entitled, “[r]ecognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses.” A similar provision in the CRC’s Optional Protocol on the involvement of children in armed conflicts (2000) applies to providing support to young people recruited as children into armed groups: they are supposed to receive “all appropriate assistance for their physical and psychological recovery and their social reintegration” (article 6.3 of the Optional Protocol).

On top of the right to obtain assistance to recover, several other rights are critical to make recovery possible. First, a trafficked child has a right to be provided with accurate and accessible information about his or her situation and prospects, including protection mechanisms, services that are available for the child, the process for deciding on a comprehensive,

secure and sustainable solution, and the processes of family tracing and reunification and/or repatriation. Information must consequently be provided in a language that the child is able to understand, meaning that suitable, trained interpreters and possibly also cultural mediators should be provided whenever a child victim is questioned or interviewed by law enforcement or other officials, or requests this. Secondly, protecting children who have been trafficked also means paying attention to the child’s right to privacy:

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 16).

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 by traffickers, journalists or members of the general public, particularly personal details about a child who is believed to have been trafficked or who has received any sort of care or treatment, when these are passed onto another agency, either in the same country or in another country, such as the child’s country of origin. This in turn means that the various agencies co-operating in protecting children, which need to share personal data about children, must adopt and respect common minimum standards for the protection of personal data.

2.2 Comments by the Committee on the Rights of the Child

The Committee on the Rights of the Child (established by the CRC) has issued several General Comments about unaccompanied or separated children¹² and children in the context of international migration,¹³ as well as one General Comment dedicated to the child’s right to have his or her best interests taken as a primary consideration (No. 14)¹⁴ and one to the child’s right to be heard (and have their views taken into

12 Committee on the Rights of the Child, General Comment No. 6 (2005) on the “Treatment of unaccompanied and separated children outside their country of origin”, UN doc. CRC/GC/2005/6 (1 September 2005).

13 Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, UN doc. CMW/C/GC/3-CRC/C/GC/22 (16 November 2017); and the same two committees, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN doc. CMW/C/GC/4-CRC/C/GC/23 (16 November 2017).

14 Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), UN doc. CRC/C/GC14 (29 May 2013).

account – No. 12¹⁵). Taken as a whole, the guidance is particularly relevant to the procedures to be followed with respect to children identified as trafficking victims, particularly those identified as unaccompanied in a country other than their own, but also trafficked children identified far away from home in their own country.

In 2017 the Committee on the Rights of the Child issued two Joint General Comments (with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) about children in the context of international migration. The two UN treaty-monitoring bodies commented on measures that States are required to take with respect to presumed child victims of trafficking. For example, concerning identification and assistance, they noted,

“For migrant children for whom there are indications of trafficking, sale or other forms of sexual exploitation or who may be at risk of such acts or of child marriage, States should adopt the following measures: Establish early identification measures to detect victims of sale, trafficking and abuse, as well as referral mechanisms, and in this regard carry out mandatory training for social workers, border police, lawyers, medical professionals and all other staff who come into contact with children ...”¹⁶

They also added that States should, “Ensure comprehensive protection, support services and access to effective redress mechanisms, including psychosocial assistance and information about those remedies, for migrant children and their families reporting cases of violence, abuse or exploitation to police or other relevant authorities, regardless of their migration status; children and parents must be able to safely report to police or other authorities as victims or witnesses without any risk of immigration enforcement as a result.”¹⁷

2.3 Existing OSCE framework concerning the protection of trafficked children

The OSCE Ministerial Council has adopted a series of decisions on human trafficking that contain provisions relevant to the protection of trafficked children.¹⁸ Two years after adopting the OSCE Action Plan to Combat Trafficking in Human Beings (Permanent Council Decision No. 557/Rev.1, 24 July 2003), in 2005 the OSCE adopted a specific addendum to the Action Plan to address “the special needs of child victims of trafficking”.¹⁹ This includes a set of recommendations for action at the national level, in particular the following six regarding the protection of child victims:

1. 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;
2. 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;
3. 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;
4. 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;

¹⁸ These include (in reverse chronological order):

1. Ministerial Council Decision No. 6/17 – Strengthening Efforts to Prevent Trafficking in Human Beings (Vienna, 2017);
2. Ministerial Council Decision No. 7/17 – Strengthening Efforts to Combat All forms of Child Trafficking, Including for Sexual Exploitation, as well as Other Forms of Sexual Exploitation of Children (Vienna, 2017);
3. Brussels Declaration – Resolution on Combating Trafficking and Exploitation of Children in Pornography (2006);
4. Ministerial Council Decision No. 15/06 on combating sexual exploitation of children (Brussels, 2006);
5. Ministerial Council Decision No. 13/04 – The Special Needs for Child Victims of Trafficking for Protection and Assistance (Sofia, 2004);
6. Rotterdam Declaration – Resolution on Combating Trafficking and Exploitation of Children (2003)
7. Berlin Declaration – Resolution on Combating Trafficking in Human Beings, especially Women and Children (2002);
8. OSCE Parliamentary Assembly, St. Petersburg Declaration – Resolution on Trafficking of Women and Children (1999).

¹⁹ OSCE Decision No. 685, 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 (Permanent Council Decision No. 685, 7 July 2005).

¹⁵ Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, UN doc. CRC/C/GC/12 (1 July 2009).

¹⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families & Committee on the Rights of the Child (2017), Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para. 43, UN doc. CMW/C/GC/4-CRC/C/GC/23 (16 November 2017). The Joint General Comment emphasizes in the same paragraph that: “Where different migration statuses are available, the most protective status (i.e., asylum or residence on humanitarian grounds) should be applied and granting such status should be determined on a case-by-case basis in accordance with the best interests of the child” and it be ensured “that the granting of residence status or assistance to migrant child victims of sale, trafficking or other forms of sexual exploitation is not made conditional on the initiation of criminal proceedings or their co-operation with law enforcement authorities.”

¹⁷ Ibid., para. 44.

5. 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;
6. 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.”

At the end of 2013, the OSCE Permanent Council adopted the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later (Permanent Council Decision No. 1107). While this does not focus specifically on children, it includes, for implementation at the national level, one recommendation regarding children under the heading of prevention and four explicitly connected with protection and assistance. These are:

(Prevention) 1.3 Ensuring that all child victims of THB are provided with access to justice and remedies, including the possibility of obtaining compensation, ensuring the protection of children’s rights, promoting access to education and health care for vulnerable children, and developing and implementing the appropriate programmes and measures taking into consideration the best interest of the child.

(Protection) 1.1 Recommending that relevant State authorities identify individuals as trafficked persons, who have suffered human rights abuses, as soon as there are reasonable grounds to believe that they have been trafficked, and, in accordance with national law, ensure that victims of THB are provided with assistance even before the investigation is initiated; ensuring that this assistance is not made conditional on the victim’s willingness to participate in legal proceedings, without prejudice to the national regulations on the conditions of the residence of the victim in the territory of the State;

2.3 Recognizing the need of victims of THB to have adequate time to recover from trauma, and providing, in conformity with domestic law and international obligations, a reflection delay, granting temporary or, where applicable, permanent residence permits to victims of THB ...;

2.5 Ensuring that the necessary assistance is provided in the process of safe return and, through co-operation, where possible, in the reintegration of former victims of trafficking by the authorities, social services or NGOs, as appropriate, of the country of origin;

2.6 Taking adequate measures to ensure that, where appropriate, identified victims of THB are not penalised for their involvement in unlawful activities to the extent that they have been compelled to do so.

2.3.1 ODIHR Guiding Principles on Returns

In 2014, the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) published Guiding Principles on Human Rights in the Return of Trafficked Persons. These set out minimum standards on seven issues relevant for all OSCE participating States concerning the possible return of both adults and children who have been trafficked. Principle 4 is specifically about child victims of trafficking. It notes that “All decisions taken with respect to a child victim, regardless of whether or not they are unaccompanied, must take the child’s best interests as a primary consideration” and “The search for durable solutions must start by analysing the possibility of family reunification.” Concerning children identified in a country other than their own, it specifies that “Destination countries should ensure that child victims who are not nationals or residents of that country are automatically granted a temporary residence permit that entitles them to stay legally in the country until a best interests assessment is conducted and a durable solution is found” and “Destination countries should appoint a legal guardian to a child victim of trafficking, and before referring the child to any procedures or proceedings, should provide the necessary legal aid. A child should be provided with a legal guardian when receiving immediate or long-term assistance, including during the child’s integration in the country of destination or return and reintegration in the country of origin or in a third country.”

2.4 Other legal provisions and recommendations for OSCE participating States to take into account

2.4.1 Provisions of the UN Trafficking Protocol on protection and assistance

Article 6 of the UN Trafficking Protocol concerns the protection of adult and child victims. It contains general provisions affecting the way child victims should be protected. The provision that is binding for States Parties (article 6.6) stipulates that “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.” Other provisions offer guidance without being mandatory (i.e., they require States to “consider implementing measures”). In the case of children, however, the measures mentioned are generally ones that international legal instruments already made mandatory if a child was trafficked or exploited (see references to Article 39 of the CRC above). For example, article 6.3 of the UN Trafficking Protocol requires States Parties to “consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in co-operation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- a. Appropriate housing;
- b. Counselling and information, in particular as regards their legal rights, in
- c. a language that the victims of trafficking in persons can understand;
- d. Medical, psychological and material assistance; and
- e. Employment, educational and training opportunities.”

In applying this article, the Trafficking Protocol requires States Parties to take into account “the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care” (article 6.4, emphasis added). It also requires States Parties to “endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory” (article 6.5).

2.4.2 Steps recommended by UNICEF to protect trafficked children

In 2003 UNICEF developed a set of Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe. The Anti-Trafficking Task Force of the Stability Pact for South Eastern Europe committed signatories to adopting special referral procedures to assist and protect trafficked children, involving all relevant institutions, agencies and authorities and “To develop and adopt minimum standards for the treatment of child victims of trafficking based upon the guidelines developed by UNICEF.”²⁰

In 2006 UNICEF reviewed the Guidelines and issued them as “Technical notes” for use around the world.²¹ The Guidelines provide a definition of what constitutes child trafficking and address nine issues concerning how trafficked children should be protected and assisted. These are:

1. Identification of children as victims of trafficking;
2. Appointment of a guardian for each trafficked child;
3. Registration and documentation (including interviews by law enforcement officials);
4. Regularization of a child’s immigration status in a country other than their own;
5. Interim care and protection;
6. Individual case assessment and identification of a “durable solution”²²;
7. Implementation of a durable solution, including possible return to a child’s country of origin;
8. Access for children to justice (including protection of children as victims and/or witnesses during legal proceedings);
9. Managing the cost of proceedings, financial assistance, reparation and compensation.

20 Stability Pact for South Eastern Europe, Anti-Trafficking Task Force. Statement on Commitments on Victim/Witness Protection and Trafficking in Children. Sofia, 10 December 2003. Available at <http://www.legislationline.org/documents/id/4237>.

21 UNICEF. Guidelines on the Protection of Child Victims of Trafficking. UNICEF Technical Notes (New York: 2006). https://www.unicef.org/protection/Unicef_Victims_Guidelines_en.pdf.

22 I.e. a comprehensive, secure and sustainable solution in the child’s best interests.

2.4.3 Steps required by the UN Global Plan

In 2010 the UN General Assembly adopted a Global Plan of Action to Combat Trafficking in Persons. This requires UN Member States to “Provide appropriate assistance and protection in the best interest of the child to child victims of trafficking in persons”²³ and calls for co-ordination with existing child protection systems in providing services and measures for the well-being of child victims and for their education, rehabilitation and reintegration.

A Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons, coinciding with a review of the Global Plan by the UN General Assembly in September 2017, called on UN Member States “to establish comprehensive policies, programmes and other measures to protect trafficked women and children from revictimization and to provide appropriate assistance and protection in the best interest [sic] of the child” (paragraph 19).

2.4.4 UN Guidelines for the Alternative Care of Children

The UN Guidelines for the Alternative Care of Children²⁴ (2009) are intended to enhance the implementation of the CRC and relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so. They apply to cases of unaccompanied or separated children who are presumed to have been trafficked (since they usually need alternative care as soon as they are withdrawn from the control of a trafficker or exploiter) to ensure that, while efforts are made to return children to the care of their family or to find other suitable long-term solutions for them, the most suitable forms of alternative care are identified and provided under conditions that promote the child’s full and harmonious development (UN Guidelines, article 2).

The Guidelines also apply to trafficked children in cases where the child’s parent is suspected of complicity in their trafficking or exploitation, when continuing to live with this parent is deemed not to be in the child’s best interests.

The Guidelines encourage respect for two basic principles of children’s alternative care: that such care is genuinely needed (the “necessity principle”), and that, when this is the case, care is provided in an appropriate manner (the “suitability principle”). These and other factors should be taken into account when an assessment is made of whether it is necessary for a child to be provided with alternative care (and whether, in the case of a child still living with a parent or family member, the child should be removed from his or her parents). They specify, in particular (article 6), that the child concerned must be consulted in the course of an assessment and his or her views taken into account:

“All decisions, initiatives and approaches falling within the scope of the present Guidelines should be made on a case-by-case basis, with a view, notably, to ensuring the child’s safety and security, and must be grounded in the best interests and rights of the child concerned, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child’s right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child’s preferred language.”

2.4.5 Council of Europe Conventions

Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention of 2005)

The Council of Europe Convention on Action against Trafficking in Human Beings established a treaty monitoring body known as GRETA, which monitors the implementation of the Convention in individual States and publishes annual reports, each of which has a particular theme. Commenting on the assistance that States Parties to the Convention are required to provide to adults and children who have been trafficked, a GRETA 2012 annual report noted that:

23 Article 37, UN Global Plan of Action to Combat Trafficking in Persons. UN General Assembly resolution 64/293, UN doc. A/RES/64/293 (12 August 2010).

24 Guidelines for the Alternative Care of Children. Welcomed by UN General Assembly resolution 64/142. UN doc. A/RES/64/142 (24 February 2010). The General Assembly resolution also encouraged “States to take the Guidelines into account and to bring them to the attention of the relevant executive, legislative and judiciary bodies of government, human rights defenders and lawyers, the media and the public in general.”

“The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim’s safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim’s willingness to act as a witness. The assistance to victims must include appropriate and secure accommodation, psychological and material assistance, emergency medical treatment, translation and interpretation services, counselling and information, and access to education for children.”²⁵

In its annual report for 2015, GRETA emphasized the importance of specific measures to protect trafficked children. It reported that “In 36 out of the 40 countries evaluated as part of the first evaluation round, GRETA has urged the authorities to take measures in order to improve the identification of and assistance to child victims of trafficking, including by setting up a specific identification and referral mechanism which takes into account the special circumstances and needs of child victims, and ensures that the best interests of the child are the primary consideration.”²⁶

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention of 2007)

This Convention focuses on the sexual exploitation of children, including offences concerning child prostitution, child pornography and the participation of a child in pornographic performances (under articles 19 to 23 of the Convention). It also covers offences which may involve sexual exploitation as well as sexual abuse, such as corruption of children²⁷ for sexual purposes and solicitation of children for sexual purposes. It sets out principles concerning the protection of child victims, noting in article 11 that States Parties are to “set up multi-disciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care” and must “take the necessary legislative or

other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age.”

One article (35) focuses on interviews with child victims, setting out a process that States Parties are required to follow. The article is concerned primarily with forensic interviews about possible offences against the child. However, the principle behind the provisions would also apply to interviews for other purposes: the same individuals, if possible and where appropriate, should conduct all interviews with the child; and the child should be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, “unless a reasoned decision has been made to the contrary in respect of that person.” The Convention also addresses the need to train people who are in contact with children with respect to both protection measures and children’s rights.²⁸

25 GRETA, 4th General Report on GRETA’s Activities covering the period from 1 August 2013 to 30 September 2014 (Council of Europe, Strasbourg: 2015), para. 54.

26 GRETA, 5th General Report on GRETA’s Activities (covering the period 1 October 2014 to 31 December 2015) (Council of Europe, Strasbourg: 2016). This drew attention to Article 10(4) of the Council of Europe Convention, which “provides that 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.”

27 The term “corruption” in this context refers to an action or effect of making somebody change from moral to immoral standards of behaviour (for example, by exposing a young child to pornography). See Interagency Working Group on Sexual Exploitation of Children, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, 2016.

28 Article 5 of the Lanzarote Convention, concerning “Recruitment, training and awareness raising of persons working in contact with children”, requires that “Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.”

2.4.6 The Commonwealth of Independent States Programme

In 2013 the Commonwealth of Independent States (CIS) adopted a Programme of Co-operation in Combating Trafficking in Human Beings for the period 2014–2018.²⁹ Parts of the Programme (section 3) focus on “Organizational and practical measures to assist victims of trafficking in human beings” (although these are not specific to children). Concerning victims of trafficking who are identified outside their countries of origin, the Programme foresees that embassies and consulates in CIS Member States will “continue work on maintaining interaction and exchange of experience: to identify and provide timely and appropriate assistance to victims of trafficking in persons abroad, ensure their security, rights, freedoms and legitimate interests, and return to their homeland as soon as possible” (section 3.4). Concerning detention or other restrictions placed on people identified as victims, the Programme envisages the co-operation of numerous bodies in reviewing the practice of detaining victims of trafficking in immigration centres or imposing other restrictions on them (section 3.5.a), or deporting victims who agreed “to co-operate with law enforcement agencies in the prosecution of traffickers” (section 3.5.b).³⁰

The CIS Secretariat has not so far published details on the implementation of these protection activities (concerning adults or children). However, in 2015 the Chairman of the CIS Executive Committee reported that CIS Member States, in 2014 alone, had conducted thirteen preventive measures and two special operations, which he said had included action to counter crimes connected with kidnapping and trafficking in human beings, as well as others involving irregular migration. These reportedly resulted in 1,600 suspected criminals being prosecuted.³¹

2.4.7 European Union Anti-trafficking Directive (2011)

The Directive adopted by the European Union (EU) in 2011³² requires EU Member States to assist and support all trafficking victims (article 11) and to pay special attention to providing them with protection during the course of criminal investigations and legal proceedings (article 12). It dedicates four articles to child victims, once again focusing on the need to protect child victim-witnesses during investigations and trials. It stresses the need for “an individual assessment of the special circumstances of each particular child victim, taking due account of the child’s views, needs and concerns with a view to finding a durable solution for the child” (article 14.1).

It also mentions that:

- > If there are reasons to believe that a trafficking victim might be a child, the officials concerned should make a presumption that the person is indeed a child, so that he or she has “immediate access to assistance, support and protection” (article 13.2);
- > A guardian or a representative for a child victim is to be appointed as soon as a child is identified as a victim of trafficking;³³
- > Child victims (and also children of adult trafficking victims) are to have access to education “within a reasonable time” (article 14.1); and
- > Child victims who are unaccompanied also require assistance, support and protection as a priority (article 16), notably to find “a durable solution based on an individual assessment of the best interests of the child.”

A European Commission report five years later noted various ways in which the implementation of the Directive needed to be enhanced.³⁴ With respect to the provisions of article 14 of the Directive, it mentions that assistance is available but does not comment on the procedures for finding long-term solutions and on the ways in which children’s views are taken into account. The report concludes that “It is difficult to assess whether the approach sufficiently addresses the specific needs of child victims, including access to education for child victims and the children of victims, and the Commission will

29 Программе сотрудничества государств – участников Содружества Независимых Государств в борьбе с торговлей людьми на 2014–2018 годы. <http://www.e-cis.info/page.php?id=23806>.

30 The bodies expected to take part in the review are the CIS Council of Ministries of Internal Affairs (СМВД), the Council of the Heads of Migration Bodies of CIS Member States (СРМО), the Council of Commanders of Border Troops (СКПБ), and the Co-ordinating Council of Prosecutors General of the CIS Member States (КСГП).

31 Statement by Mr. Sergey Lebedev, Chairman of the Executive Committee and Executive Secretary of the Commonwealth of Independent States, at the Opening of the Alliance Against Trafficking in Persons Conference on People at Risk: Combating Human Trafficking Along Migration Routes, OSCE Doc. PC.DEL/960/15 (6 July 2015).

32 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

33 I.e., replicating the same requirement in the Council of Europe Warsaw Convention. Article 14.2 of the EU Directive specifies that “Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child’s best interest and/or from representing the child.”

34 European Commission, Report from the Commission to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1), EU doc. COM(2016) 722 final (2 December 2016).

examine this further.” With respect to the provisions of article 16, it is also silent on whether EU Member States conduct best interests assessments for trafficked children who are found to be unaccompanied or separated. At a general level, this report concluded that “[T]here still remains [in late 2016] significant room for improvement in particular as regards: specific child protection measures, presumption of childhood and child age assessment, the protection before and during criminal proceedings, access to unconditional assistance, compensation, non-punishment, assistance and support to the family member of a child victim as well as prevention.”

In 2012 the European Commission issued the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. This noted that “Comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary co-ordination are key in catering to diverse needs of diverse groups of children, including victims of trafficking” and recommended that “Member States should **strengthen child protection systems** for trafficking situations” (emphasis in original)³⁵. In the follow-up to this Strategy, issued in 2017, the European Commission said it planned to “develop, in co-operation with the European Agency of Fundamental Rights, practical guidance to ... ensure protection of child victims, find durable solutions and safeguard their rights under EU and international law” and also that it would publish, in co-operation with the European Institute for Gender Equality, guidance to Member States on gender-specific measures for helping and supporting victims (i.e., children as well as adults).³⁶

2.4.8 Oslo Conclusions

In June 2018 the Council of Baltic Sea States published the *Oslo Conclusions on Identifying Children at Risk of Exploitation and Trafficking*³⁷, focusing on the initial process of identifying trafficked children, but also emphasizing the importance of strengthening child-sensitive communication and best interests determinations. The Conclusions were the result of “a multi-year process of analysis and consultation in the Baltic Sea Region and broader Europe”, which involved several hundred officials and professionals in child welfare and protection, social and health care, law enforcement and the judiciary, education and immigration, the academia and specialized organizations, as well as children and young people. A significant conclusion from the evidence that was reviewed was that the likelihood of children being identified correctly and receiving appropriate support and care increases when they are given the opportunity to tell their stories, and that they benefit from a best interests determination.

“ The Ministerial Council ... encourages participating States to raise public awareness on the vulnerabilities of children in migration flows to all forms of child trafficking ... to increase the capacity and broaden the scope of first line responders to identify child victims of trafficking ... and provide them with protection ... ”

(MC.DEC/7/17, Strengthening Efforts to Combat All Forms of Child Trafficking, including for Sexual Exploitation, as well as Other Forms of Sexual Exploitation of Children)

³⁵ EU doc. COM(2012) 286 final (19 June 2012).

³⁶ Communication from the Commission to the European Parliament and the Council, Reporting on the Follow-Up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions, EU doc. COM(2017) 728 final (4 December 2017).

³⁷ Accessed at <http://www.childrenatrisk.eu/blog/hearing-the-childs-story-regional-expert-consultation-to-take-place-in-may-in-oslo-norway/>.

3



WHAT DECISIONS HAVE
TO BE MADE CONCERNING
TRAFFICKED CHILDREN

From the moment a child is first identified as a presumed victim of trafficking, the authorities and organizations in direct contact with the child, along with those with more general responsibility for protecting children, make a series of decisions affecting the child in the short, medium and long term. Some of these decisions have relatively trivial consequences and some have a huge impact on the child's life for many years. Short-term decisions, including particularly those related to identification and investigation, while not the focus of this Occasional Paper, include the following:

- > Should the child be withdrawn from the control of an exploiter or parent (i.e., is the child being subjected to illegal exploitation or levels of abuse that warrant removing the child)?
- > Who should look after the child immediately after this?
- > When and where should the child be questioned about possible offences committed against her or him? and
- > Should the child be asked to participate in legal proceedings as a victim of crime or a witness?

After this, however, there are major decisions to be made about what should happen to a child in the longer term. It is questions such as these and how decisions resulting from them are made that are the subject of the next two chapters:

- > Who should take legal responsibility for a child found living away from home (a child without parental care)?
- > Who should provide the child with legal advice?
- > Where should the child be housed, both in the short and long term?
- > Who should check what the child herself or himself wants to happen (and how)?
- > Should the child be reunited with her or his parents or guardian? Would this be safe? If so, when and how?
- > In the case of children identified in a country other than their own, should they be returned to their country of origin and, if so, should they be returned to their parental home or should they live elsewhere?
- > Who should check what the situation is at the child's home or place of origin, and how?

3.1 Who should be involved in the decision-making process?

3.1.1 Underlying principles

The Committee on the Rights of the Child, together with one other UN committee,³⁸ has encouraged States Parties “to ensure that the authorities responsible for children's rights have a leading role, with clear decision-making power, on policies, practices and decisions that affect the rights of children in the context of international migration.”³⁹ This applies to non-national children who have been trafficked to a country other than their own, as well as children who have migrated deliberately and then been trafficked. In their recent (2017) Joint General Comment, the two committees pointed out that best interests assessments should be carried out by actors independent of the migration authorities and should be done in a multidisciplinary way, including the meaningful participation of authorities responsible for child protection and welfare and other relevant actors, such as parents, guardians and legal representatives, as well as the child.⁴⁰

However, even if a country already has appropriate laws and regulations to ensure that child protection authorities make decisions about trafficked children who do not have a legal immigration status, the fact that a child protection system involves numerous actors can pose a challenge. Regretfully, it may happen that a child who has already been traumatized by being trafficked is bombarded with questions by different officials, making them feel powerless in the face of bureaucracy. To help overcome this, some OSCE participating States have developed methods for reducing the number of times a child is questioned, reducing the number of different officials whom s/he encounters to the minimum needed, and for keeping the child in one place. A detailed description of this approach, known as the “Child House” model, can be found in section 3.2 below.

38 The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, established by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

39 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child (2017), Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding The Human Rights Of Children In The Context Of International Migration, UN doc. CMW/C/GC/3-CRC/C/GC/22 (16 November 2017), para. 14.

40 Ibid., para. 32.c.

3.1.2 Example in practice

A National Referral Mechanism was published in Sweden in 2016 after three years of development.⁴¹ Founded on existing legislation, it was developed based on operational experience. Although there is no special referral mechanism for children who are suspected of being trafficked, at each step of referral, Sweden's NRM handbook highlights the action points required with respect to children and young people who may be children. In particular, it stresses repeatedly that the State's social services agency is responsible for the well-being of children in general and presumed child victims of trafficking (referred to as "potential victims") in particular:

"As soon as a potential victim is a child, social services must be informed. Social services must follow the child during the entire process and maintain a close co-operation with law enforcement authorities, the Swedish Migration Agency (if an unaccompanied child seeking asylum is involved), and other actors until a sustainable solution that takes into account what is best for the child has been identified and implemented."⁴²

This does not imply that other agencies, such as the police or immigration agency, have no say in decisions affecting a trafficked child. Rather, it means that social services have a leading role. For example,

"When a child is involved social services is responsible for the evaluation of the child's needs and for recommendations for short-term and long-term support. In addition, social services must carry out regular follow-ups of the child's individual treatment plan."⁴³

3.2 The "one stop" model: making decisions in one place

Several Scandinavian countries have developed a common model for responding to children who have been victims of or witnesses to violence. One step is the avoidance of them having to give multiple accounts of their experiences. The model is generally known as the Barnahus ("Child House") model, since it emphasizes the importance, despite a multi-agency response, of the child in question staying in one place. The various services a child might need come to the child, rather than the child going to them and having, each time, to explain his or her experiences. In summary,

"The Barnahus model embraces a multidisciplinary and interagency approach, ensuring collaboration between different agencies (judicial, social, medical) in one child-friendly premise, which offers comprehensive services for the child and family under one roof. The core of the Barnahus model is the assumption that the child's disclosure is key both to identify and investigate child abuse for criminal and for protective and therapeutic purposes."⁴⁴

As this suggests, the main purpose of the model, after a child has been identified as a possible THB victim, is to produce valid evidence for legal proceedings by enabling the child to provide testimony or forensic evidence. Notably, this is done so the child does not have to appear in court if the case is prosecuted. As the role of child victims or witnesses in the criminal justice system is not the focus of this report, the implications of this are not examined here further. However, for many other reasons it is significant that "the Barnahus offers a one-stop-shop approach, embracing co-operation between relevant authorities and agencies such as police, social services, child protection, physical and mental health services and prosecutor in one child-friendly premise."⁴⁵

The Barnahus model was first set up informally in Iceland, on the basis of an agreement between the participating agencies. Today, Iceland's Government Agency for Child Protection (Barnaverndarstofa) is mandated to "run special service centres with the objective of promoting interdisciplinary collaboration, and strengthening co-ordination of agencies in the handling of cases of child protection."⁴⁶ The Barnahus model was initially set up in Norway without a formal regulatory framework. By 2017, Norway's Criminal Procedure Act

41 County Administrative Board of Stockholm, National Referral Mechanism - Protecting and supporting victims of Trafficking in Human Beings in Sweden (Stockholm: 2016), <https://rm.coe.int/168070acc0>.

42 Ibid., pp. 17–18.

43 Ibid., p. 31.

44 Olivia Lind Haldorsson, Barnahus Quality Standards. Guidance for Multidisciplinary and Interagency Response To Child Victims and Witnesses of Violence, Council of the Baltic Sea States Secretariat and Child Circle, Promise Project Series, 2017.

45 Ibid.

46 Ibid.

and regulations on forensic investigative interviews made it mandatory for police and prosecutors to use the Barnahus model.⁴⁷ Nevertheless, the model is also reported to have its limitations. The model has also been introduced in Sweden, but a 2013 report evaluating the functioning of Child Houses in Sweden noted that few suspected victims of human trafficking had been referred to Child Houses. In part this was thought to be because one third of local government areas in the country did not have such facilities. However, the authors also expressed concern that trafficked children may have been inappropriately excluded. They offered possible explanations for this: trafficking-related offences not being routinely categorized as THB (e.g., suspects being charged with other types of offences, such as “paying for sex with a child”), or most children referred to Child Houses being under the age of 16 and victims of offences involving relatives or others with a close relationship to the child, rather than criminal gangs.⁴⁸

Speaking at the 17th Alliance conference in April 2017, the Director General of the Iceland Government’s Agency for Child Protection, Bragi Guðbrandsson, reported that the Barnahus model was operational at 50 locations in Denmark, Iceland, Norway and Sweden. As a matter of routine in Iceland, he said, the multidisciplinary/multi-agency approach meant that, alongside his child protection agency, six other State-run agencies were involved.⁴⁹ In the case of unaccompanied foreign children who were suspected of having been trafficked, a formal co-operation was agreed in 2016 between the child protection agency and Iceland’s Directorate of Immigration as well; this involves the legal guardian appointed for the child. In principle, information obtained from a child housed in a Child House can be used for multiple purposes—without further interviews being required. Such purposes include the child’s health assessment, decisions about the child’s protection, including where the child should be accommodated, and any application for asylum.



The Alliance against Trafficking in Persons conference on trafficking in children and the best interests of the child, 2017

⁴⁷ Ibid.

⁴⁸ Rädda Barnen (Save the Children Sweden), Inuti ett barnahus – en kvalitetsgranskning av 23 svenska verksamheter (Inside a Child House – a Quality Examination of 23 Swedish Institutions) (Stockholm: 2013), pp. 21–22. <https://www.raddabarnen.se/Documents/vad-vi-gor/sverige/vald-och-overgrepp/Inuti%20ett%20barnahus%202013.pdf>.

⁴⁹ He named these six as follows: the police; the Prosecution Service; the Police Department of Reykjavik, the capital; Reykjavik’s University Hospital (Department of Paediatrics and Department of Child Psychiatry); the Association of the Directors of Local Social Services; and the Child Protection Services in Reykjavik.

4



PRE-REQUISITES FOR
MAKING KEY DECISIONS ABOUT
TRAFFICKED CHILDREN

In order to make decisions with long-term implications (comprehensive, secure and sustainable or “durable” solutions), the authorities and others responsible for a child need information about the child’s past as well as the likely implications in the future of any decisions they make. In addition to collecting vital information, they also need to provide the child with basic care and safe accommodation, and to ensure that a trafficked child is given appropriate legal status.

4.1 Prompt measures to ensure a child is safe, secure and has appropriate legal status

Anyone who has been trafficked can potentially contribute information to the criminal justice system. However, it is a priority to provide both adult and children victims with emergency assistance and care. States also have the obligation to grant victims time and the opportunity to recover from the experience of being trafficked and exploited before requiring them to make difficult decisions (such as whether to testify against criminals, or whether to return to their home country).⁵⁰ Many OSCE participating States have agreed that trafficked adults and children should be allowed such a “reflection period”.

4.1.1 Ensuring an initial identification process is carried out in a sound manner

Although this paper does not focus on the initial identification process, it is clear that much that should happen later to keep a child safe will be undermined if the procedures for identifying a trafficked or exploited child at the outset are not sound or are not followed.⁵¹ This is particularly the case if a child victim of crime is mis-identified as a criminal. Full identification means finding out much more than the details of a THB offence: a child’s identity, where they come from, who (if anyone) has been caring for them, where their parent(s) or the person with parental responsibility for them is located, etc. This includes finding out where the child’s family is located, and possibly contacting the child’s parents (unless the child is a refugee and his or her parents have remained in their country of origin, or there are reasons for suspecting that a parent may have played a role in trafficking the child).

4.1.2 Practical considerations relating to the needs of trafficked children

The needs of a trafficked child evidently vary according to their gender, age and maturity, as well as the duration of the period for which they have been exploited, the nature of the exploitation and the specific harm inflicted on the child.

To find out what these needs are, a conventional procedure is to carry out a “needs assessment” as soon as feasible after a child has been taken out of the control of traffickers or identified as a trafficking victim. This should be done before focusing on the crimes committed against the child or asking the child for information that might help identify and arrest the criminals responsible for trafficking. A needs assessment is the starting point for case management and for referring the child victim to the range of services which he or she might require or be entitled to access. Case management systematically arranges assistance for individuals (whether adults or children) from the beginning to the end of the assistance provisions, and monitors the individual concerned. Good practice dictates that the main organization responsible for a trafficked child should have a case management system in place to enable its staff to identify and track the child, and ensure that his or her needs are met within the context of services provided (and, once again, that the personal data involved is kept confidential and adequately protected).

An integral part of the needs assessment concerning a child who is presumed to have been trafficked concerns the place where the child will be lodged overnight as well as in the medium and longer term. If the child is alone or if one of the child’s parents is suspected of complicity in trafficking or exploitation, the assessment must also review whether the child needs to be provided with alternative care (see 2.4.4 above on the UN Guidelines for the Alternative Care of Children).

At the same time as the needs assessment is being done, it is essential to assess promptly the risks facing a child who is suspected of having been trafficked in order to mitigate these risks. A prominent risk is the child returning to the control of the same trafficker, or their associates. Some threats are quite direct—for example, a telephone call being used to instruct a child to walk out of care and return to a trafficker. However, there are others that are much less tangible, in particular the pressure felt by young migrants due to debt (not just their own debts, but debts incurred by relatives), or pressure that seems to have a spiritual sanction (as for example, the Nigerian practice known as “juju”, in which adolescents as well as adults make ritual promises to work for particular individuals or to repay them for the costs of a journey).

50 The OSCE Action Plan (2003) urged participating States to consider introducing a reflection delay to give a trafficking victim time to decide whether or not to act as a witness in criminal proceedings (part V.8). The Council of Europe’s Warsaw Convention requires State parties to grant presumed victims a “recovery and reflection period” of at least 30 days (article 13).

51 The simplest examples of this concern children who appear to be with their parents or relatives, but who are in fact under the control of a trafficker. Establishing whether an accompanying adult is a genuine relative or is lying when claiming to be a parent or relative, is therefore vital. This applies as much to a child seen begging in a city with a woman who may or may not be the child’s mother, as to an adolescent girl in a car stopped at a border crossing or police check point whose young male driver says he is her boyfriend or brother.

However, a trafficked child also faces numerous other risks, including the risk of abuse or re-traumatization at the hands of the very officials who are responsible for protecting the child, notably if the child is repeatedly questioned about their traumatic experiences. Children who are moved into residential accommodation, either overnight immediately after they are identified, or for a longer period, are also at risk of abuse from other children and even from staff, including sexual abuse. A risk assessment must therefore be carried out each time a trafficked child is moved to a new environment. Records should be kept of each assessment, along with the measures agreed upon to mitigate each risk.

4.1.3 Decisions on placing a child in alternative care

Underlying principles

When a child is suspected of having been trafficked or exploited while still residing with or accompanied by their parents or family members, child protection officials must consider whether it is in the child's best interests to move them out of the family home and into alternative care. In such cases, the standards set by the UN Guidelines for the Alternative Care of Children apply. These stipulate that "Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration" (article 14).

The UN Guidelines also apply if the authorities consider it appropriate for children who have been trafficked while abroad and repatriated be placed in alternative care upon their arrival in their home country (the example of Bulgaria is reviewed in section 7.2 below to illustrate this). When a decision is made to remove a child from his or her parents, the Guidelines stipulate that "decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life" (article 11).

Assessing whether a trafficked child should be placed in alternative care

In the case of trafficked children still residing with one or both parents (or their guardian or a habitual caregiver), the interests of other family members must be taken into account, along with any crimes or abuse committed against the child. It is at this stage that a solution is needed which is in the child's

best interests and, wherever possible, avoids unwarranted moves and keeps the child with his or her own family. The UN Guidelines advise that such an assessment should be

"[C]arried out expeditiously, thoroughly and carefully. It should take into account the child's immediate safety and well-being, as well as his/her longer-term care and development, and should cover the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs" (article 58).

A protocol developed in one local government area in the United States (Los Angeles County, The Law Enforcement First Responder Protocol for Commercially Sexually Exploited Children) notes that in many cases, children who are suspected of having been subjected to sexual exploitation (including those trafficked for this purpose) do not have a "viable home or placement" at the time they are identified. The County consequently concluded a contract with a foster home that is available to provide emergency accommodation at any time of day or night, every day of the week, for up to six girls for an initial placement of 72 hours: "The providers have received specialized training on CSEC [Commercially Sexually Exploited Children] and their needs, and will play an active role in the MDT [multidisciplinary team] while the child is living in the home. The homes will have staff available to provide overnight supervision when a CSEC is present and provide additional supervision as needed."⁵²

Decisions concerning trafficked children who are unaccompanied

In the case of children who appear to be unaccompanied when identified as presumed THB victims, the "necessity principle" set out in the UN Guidelines implies that the child must be provided with alternative care straight away. This means having a place where the child can be accommodated overnight, specifically in the short term, but potentially for longer. In such cases, the authority responsible for making the decision of where to house the child must assess the risks he or she faces and how these affect his or her placement. In effect, this is a "best interests assessment", even if it is regarded in many countries as a "child protection assessment". This implies that a record must be kept of the factors taken into consideration in deciding where to accommodate the child and what specific measures are to be in place to protect the child from the identified risks.

52 Los Angeles County, Law Enforcement First Responder Protocol for Commercially Sexually Exploited Children (California: 2015), section F. Emergency Housing/Shelter Beds, p. 24.

Suitable accommodation for trafficked children in “crisis” centres or alternative care

Suitable accommodation for trafficked children in the medium and long term depends on their age and maturity, as well as the extent to which they have recovered from any harm or trauma incurred while being trafficked.

Referring to trafficked children, the OSCE’s Special Representative and Co-ordinator for Combating Trafficking in Human Beings has noted that:

“Regarding detention, children should not be placed in police cells or other detention facilities connected with law enforcement. It may be necessary to keep children in some appropriate special location for their own safety in the context of the child welfare/protection system. UNICEF maintains that ‘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.’”⁵³

Sweden’s 2016 National Referral Mechanism describes what is needed as follows: “Children who are potential [i.e., presumed] victims of human trafficking should be placed in housing where a high level of care, close personal relations and care which is conscious of trauma are available.”⁵⁴ A different approach taken in neighbouring Norway, where a small proportion of trafficked children are placed in detention to prevent them from leaving care and returning to the control or influence of a trafficker. The questions this raises are reviewed in section 6.4 below.

In Bulgaria, many trafficked children subject to child protection measures have been identified elsewhere in Europe before being repatriated. Upon arrival back in Bulgaria, authorities generally refer them to a residential centre (known as a “crisis centre”). Crisis centres are defined by Bulgarian legislation as a set of social services, including social and psychological support, crisis intervention and legal counselling. The State Agency for Child Protection has issued Methodological Guidelines for Operating Crisis Centres as a Social Service, which set out in detail the requirements for running such centres and minimum quality standards.

4.2 Responsibility for safeguarding children while they are in alternative care or under the supervision of State-run services

Many trafficked children have experienced trauma as a result of varied forms of abuse—sexual, physical and emotional. They may be physically ill or have psychological problems as a result of their experiences. It is important to understand their needs and to respond to them appropriately. It is also a priority to ensure that such children are not subjected to further abuse after having been identified. Although unintentional, shelters and long-term residential institutions, as well as repatriation and reintegration programmes, often offer further opportunities for children to be subjected to abuse, precisely at a time when it is essential that they are protected. Due to the fact that they are, in theory, “being protected” or “being safeguarded”, government officials tend to not take the risk of further abuse seriously enough and consequently, not to take adequate preventive action to meet their duty of care.

A key threat is from the criminals who have trafficked or exploited a child; if they are still free, they sometimes try to reassert control over a child. However, there are various other people who might abuse the child, such as staff members at shelters or care homes (whether run by a State child protection agency or a civil society organization), other children, or an adult who is receiving care in the same place (such as sometimes happens when older adolescent girls are placed in accommodation for adult women). Further, some procedures used by the authorities themselves are intrinsically harmful: this is especially the case when a child victim or witness is subjected to coercion (for example, to obtain their fingerprints), or repeated interviews about traumatic experiences. This obliges the child to relive these experiences not just once, but numerous times. Such repetition is a result of the inefficiency of officials who have not simplified procedures of criminal investigation or immigration.

Many agencies that come into direct contact with children already have appropriate procedures in place to protect these children from further harm, particularly organizations providing accommodation for children. The UN Guidelines for the Alternative Care of Children outline the role of statutory organizations in ensuring the supervision, safety, well-being and development of children placed in alternative care, and highlight the need for regular reviews into the appropriateness of all care placements. It is certainly essential for every statutory agency or other organization in direct contact with

53 OSCE Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team), Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking (Vienna: 2013), referring to UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (Geneva: 2006), p. 65.

54 County Administrative Board of Stockholm, National Referral Mechanism – Protecting and supporting victims of Trafficking in Human Beings in Sweden (Stockholm: 2016), p. 29.

children to have a policy in place specifying what behaviour is expected of their staff and (in the case of statutory agencies) what minimum standards are expected to be enforced in every organization caring for children. The Keeping Children Safe Coalition has published general advice on appropriate procedures and methods.⁵⁵ This sets 11 minimum standards, starting with a written policy about keeping children safe. It includes a self-audit tool to allow each organization to assess the adequacy of its child protection policies and its progress towards meeting required standards.

A general study in 2013 on recognized practices of safe accommodation and alternative care for children affected by sexual exploitation and trafficking summarized a series of conclusions from more detailed studies:⁵⁶

- > “Young people involved in sexual exploitation across Europe have...reported that having a safe and secure place to stay was important for them in breaking free from their abusers⁵⁷ and rebuilding relationships with their parents.”
- > “A central consideration relates to where the family is located. If children are unable to return home, for whatever reason, children have the right—and it may still be in the child’s best interests—to be close to family members. Such contact with parents and family members should be encouraged and facilitated.”⁵⁸
- > “Although hard to measure, research points to the importance of the relationship between the young person and their carer...A trusting, consistent relationship between the carer and child is likely to be the most important protective measure that can be put in place—this relationship may be with a guardian, social worker, carer or other adult.”
- > “Individual safety plans for every child should be in place, reviewed and updated...Security and safety measures should be constantly reviewed, based on the risk at the time.”
- > “Where children have experienced extreme control and power by exploiters, carers should be careful not to replicate those power and control structures; they should ensure children are given choices and are involved in decision-making in order that they develop independence for the future. Any restrictions that are made should be fully explained to every child—guided by a clear rationale and with clear guidelines for use—to ensure that such rules are appropriate for each individual and do not violate other rights.”

55 Keeping Children Safe, Standards for Child Protection, Keeping Children Safe Coalition (2006), available at: <https://www.keepingchildrensafe.org.uk>. Tool 1 on standards describes what agencies need to do to keep children safe. Tool 2 (The How to Implement the Standards guide) describes how agencies can go about putting these child protection measures in place. Tools 3, 4 and 5 involve a training pack, DVD and CD Rom, providing exercises and suggested workshops that support agencies in raising the level of awareness, skills and knowledge of staff and other representatives, so they can better meet their protection responsibilities.

56 C. Cody, What do we know about... safe accommodation and alternative care for children affected by sexual exploitation and related trafficking? (The Child Recovery and Reintegration Network: 2013), available at: <https://riselearningnetwork.org/wp-content/uploads/2016/11/What-do-we-know-about...safe-accommodation-and-alternative-care-for-children-affected-by-sexual-exploitation-and-related-trafficking-.pdf>.

4.3 Access to appropriate services and assistance

The one-stop model described above in chapter 3 is one way of ensuring that a trafficked child is given access, in one place, to all the services they need. Some OSCE participating States which run residential centres dedicated to children suspected of being trafficked also ensure that children have direct access to relevant specialists. This is done by basing such specialists in the places where children reside. For example, in Belgium, the Esperanto Centre, established in 2002, was reported by GRETA in 2017 to have space for 15 child victims. It also reported that the centre employed “21 permanent staff, including 13 educators, a criminologist, a child psychologist and a psycho-motor therapist,⁵⁹ as well as five trainees. The shelter consists of apartments adapted to the children’s age, needs and degree of autonomy: those for older and more autonomous children are equipped with a kitchenette, while the area for younger children has bedrooms and a common kitchen with a dining area. The shelter also has a classroom and a gym.”⁶⁰ Children who were lodged at the centre were reported to be able to stay as long as it took them to recover, although in some years, budgetary constraints were reported to have obliged the centre to turn away children who were in need of care.

57 Quoting H. Beckett, ‘Not a world away’ – The sexual exploitation of children and young people in Northern Ireland, Barnardo’s (Belfast: 2011).

58 Quoting P. Skidmore, What works in child sexual exploitation: sharing and learning, Barnardo’s (Barkingside: 2004).

59 Psychomotor therapy, also known as Pesso Boyden System Psychomotor (PBSP), “is a body-mind interactive model that analyzes the present-day effect of traumatic memories and helps people work to create new memories in order to offset emotional deficiencies experienced in the past.” See: <https://www.goodtherapy.org/learn-about-therapy/types/pesso-boyden-system-psychomotor>.

60 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium. Second Evaluation Round, 2017. Council of Europe doc. GRETA(2017)26, para. 125.

4.3.1 Regularizing the immigration status of children who are not nationals

Underlying principles

The OSCE's 2003 Action Plan pointed to "Ensuring provision of documents, if necessary, as a first step to clarifying the [trafficking] victim's identity and status in countries of destination, thus making it possible to proceed with options of assistance in appropriate cases, such as repatriation, preferably voluntary, provision of a temporary or permanent residence permit, and/or legalization of employment."⁶¹

The Guiding Principles on Human Rights in the Return of Trafficked Persons state that "Destination countries should ensure that child victims who are not nationals or residents of that country are automatically granted a temporary residence permit that entitles them to stay legally in the country until a best interests assessment is conducted and a durable solution is found."⁶² The Warsaw Convention stipulates (article 14.1) that "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."

With specific reference to children, it states (article 14.2) "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."

Decisions on immigration status or residence permits are clearly required at two distinct times: first, as soon as a child is identified whose residence status is irregular and who is suspected of having been trafficked; secondly, later, once the authorities have concluded that a particular child has indeed been trafficked (whether the child takes part in the prosecution of the trafficker or not) and a best interests assessment concludes that the child should remain in a country other than his/her own.

Example in practice

Like adult trafficking victims identified in Sweden, presumed child victims who have no right of residence in Sweden are entitled to a 30-day temporary residence permit for the purpose of reflection and recovery.⁶³ Beyond this time, residence permits for both adult and child victims are reported to be conditional on their co-operating with law enforcement officials investigating their trafficking case. In 2015 there were reported to be 66 cases of suspected child trafficking in Sweden. In 2016 the corresponding figure was 91.⁶⁴ In 2017 the Swedish authorities told GRETA that in 2015, temporary residence permits had been granted to only two children in cases where the official in charge of a criminal investigation had specified THB as the cause of the application. In 2016, three children were granted temporary permits in such circumstances.⁶⁵ One possible explanation for this discrepancy in figures could be that most children identified as trafficked originated from other EU member States and could remain in Sweden legally without additional authorization.

61 OSCE Action Plan to Combat Trafficking in Human Beings (Permanent Council Decision No. 557/Rev.1, 24 July 2003), section V.5.1.

62 ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014), Principle 4 (Special protection measures in returning child victims).

63 Sweden, Aliens Act, [2005:716], https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf, Chapter 5 section 15.

64 Swedish Migration Agency, Increasing number of suspected human trafficking cases, 12 September 2017, <https://www.migrationsverket.se/English/About-the-Migration-Agency/News-archive/News-archive-2017/2017-09-12-Increasing-number-of-suspected-human-trafficking-cases.html>.

65 Reply from Sweden to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Council of Europe doc. GRETA(2017)19 (19 April 2017), p. 21, <https://rm.coe.int/168070acc5>.

4.3.2 Appointing temporary legal guardians

Underlying principles

The Council of Europe Trafficking Convention requires that as soon as an unaccompanied child is identified as a possible trafficked victim, a legal guardian, organization or authority must be appointed to act in the best interests of that child.⁶⁶ In 2006 UNICEF issued a Check list for guardians: roles and responsibilities as part of a reference guide on how to protect trafficked children.⁶⁷ More recently, the EU's Fundamental Rights Agency (FRA) has also issued a handbook on guardianship for trafficked children.⁶⁸

Although the principle that unaccompanied children should have a temporary legal guardian is widely acknowledged, how guardianship is organized in many countries appears to undermine its purpose: social workers or administrative officials (such as local mayors) are made nominal guardians for dozens of children at the same time, and thus are not in a position to develop any sort of relationship of trust with the children for whom they are responsible. In such circumstances they are unable to accompany a trafficked child through the decision-making process in a way that allows them to be a genuine advocate for the individual child's best interests. While it is important for someone to be able to exercise legal responsibility ("in loco parentis") on behalf of a child, it is also vital that a single nominated adult be available to accompany a trafficked child through the maze of legal and other procedures that confront most unaccompanied or separated children. These become all the more complex if the child is asked to act as a witness in a criminal investigation or prosecution, or if the child requires treatment for health-related problems.

In some situations, temporary foster families are reported to exercise guardianship responsibilities. In such cases it is important that the role of foster carer should not be confused with the roles of exercising legal responsibility or acting as the child's advocate.

In some cases, an effective advocate for a trafficked child may be the lawyer appointed to act on behalf of that child in the context of immigration or criminal proceedings (including claims for damages or compensation). However, even in such cases, an independent adult should also be appointed who has the responsibility to get to know the child and take part in all decision-making processes affecting him or her. This is to uphold the child's interests and to see that the child's best interests are indeed a primary consideration in all actions affecting him or her. Such a person requires training and should be sufficiently independent of State-run institutions to be able, if needed, to express views that run contrary to those preferred by State officials or government policy.

Example in practice

In Sicily, where a large proportion of the unaccompanied or separated children arriving in Italy have landed or been accommodated in transit centres, an NGO, AccoglieRete, has made efforts from 2013 onwards to ensure that temporary legal guardians are genuine advocates for children. The first step was to set up a database of people available to act as guardians and to provide them with training.⁶⁹ This NGO describes the role of a guardian in the following terms:

"The guardian is first and foremost a volunteer who declares his or her willingness to become the legal representative of a minor, an essential spokesperson in front of official institutions to take care of the interests of the child who has arrived [in Italy] without parents, an orphan or otherwise a child with no-one exercising parental authority over him or her."⁷⁰

In 2017 Italy adopted a new law on the protection of unaccompanied children, generally referred to as the "Zampa Law". The intention of this law is to shift practice throughout the country in the direction of the model advocated by AccoglieRete. It specifies that anyone who wants to act as a temporary legal guardian for a child must first attend a training course organized by the Regional Ombudsperson for Children and Adolescents, following which their personal details will be transmitted to their local court in charge of children's issues and appointing temporary guardians.⁷¹

66 Article 10 of the Council of Europe Trafficking Convention focuses on "Identification of the victims". It concerns the procedures necessary to ensure 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..." With specific reference to young people whose age is uncertain, it stipulates that "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" (article 10.3). It also sets out the minimum measures to be taken when an unaccompanied child is identified as a victim, requiring States Parties (article 10.4) to:

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." The Explanatory Report accompanying the Convention notes with respect to article 10.4.c that "The family of the child should be found only when this is in the best interests of the child given that sometimes it is his/her family who is at the source of his/her trafficking."

67 UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF Regional Office for the CEE/CIS (Geneva: 2006).

68 European Union Agency for Fundamental Rights, Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking (Vienna: 2014).

69 GRETA Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe doc. GRETA(2016)29 (30 January 2017).

70 AccoglieRete website: <http://www.accoglierete.org/it/>. The original text in Italian states: "Il tutore è prima di tutto un volontario che dichiara la propria disponibilità nel diventare il rappresentante legale di un minore, portavoce necessario davanti alle istituzioni per curare gli interessi del ragazzo arrivato senza genitori, orfano o vittima della sospensione della patria potestà nei propri confronti."

71 Article 11, Law No. 47 of 7 April 2017, Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati.

4.4 Listening to children

Creating opportunities for trafficked children to express their own thoughts about what threats they face and what they want to happen to them in the future should be easy, but once again this requires putting appropriate procedures in place and making practitioners with suitable expertise available.

The Committee on the Rights of the Child has dedicated an entire General Comment to “the right of the child to be heard” and have their views taken into account (No. 12⁷²), but it remains hard to identify examples of good practice in the context of decisions concerning trafficked children, since few details about such processes are made public. However, lessons have been learned about what inhibits children from expressing their views in the first place, as well as how officials can encourage them to talk. A report reviewing the experiences of trafficked and exploited children in France and Greece noted that officials interviewing children appeared adept at making opportunities for children to talk openly, and the children concerned seemed to express their views freely. An exception to this was when the child being interviewed was accompanied by a parent or other adult; this appeared to have the effect of making children much more reticent about expressing their own views.⁷³ In conclusion, it is important to create a scenario in which a child can talk without being in the presence of anyone who intimidates the child or has an overbearing influence. In some cases, such persons might be interpreters from the child’s home community or relatives.

4.5 Risk and security assessments (including social inquiries)

The authority responsible for deciding on a comprehensive, secure and sustainable solution for a trafficked child has a responsibility to assess the pros and cons of the options available for that child. States have a responsibility to investigate the implications of the options under consideration. The Committee on the Rights of the Child has pointed out that these should focus on “safety, security and conditions” and the “availability of care arrangements.”⁷⁴ This means obtaining enough information to assess the risks associated with each option, such as the risks associated with a child returning to a family that may have been abusive or too poor to look after the child, or to a country where insecurity is rife or where traffickers frequently go unpunished. More routinely, those responsible for the care of trafficked children also have a responsibility to assess the immediate risks facing a child at every stage of her or his recovery.

The authorities in a country where an unaccompanied trafficked child has been identified must obtain details about the child’s home background if they are considering repatriation and/or family reunification as an option. Even requesting such details can be challenging when the two States concerned are in different parts of the world and have widely different languages and procedures (e.g., the United Kingdom and Vietnam, or Italy and Nigeria). In theory, countries belonging to the same political entity, such as the EU or CIS, should be better placed, on one side, to request such social information, and on the other, to carry them out and communicate the results. Nevertheless, the little data that has been published about transnational social inquiries (requested by one State and carried out in another) indicates that the process is surprisingly slow and over-bureaucratic.⁷⁵

4.5.1 Underlying principles

The Council of Europe Trafficking Convention is clear in stating that “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” (article 16.7). The Explanatory Report accompanying the Convention refers to article 3 of the CRC, which points out that “According to this provision, the authorities must undertake an assessment of the risks which could be generated by the return of the child to a State as well as on its security, before implementing any repatriation measure.”⁷⁶ Before a possible return, risk and security assessments are therefore mandatory and not an optional extra.

Assessments are carried out to help determine decisions about a trafficked child’s future. For example, the Regional Conference on Migration (RCM)⁷⁷ Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking specify that “In those cases where the State providing protection has reasonable grounds to conclude that the repatriation carries a serious risk for the victim or his or her family” a decision should be taken not to repatriate the child who has been trafficked.⁷⁸

72 Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, UN doc. CRC/C/GC/12 (1 July 2009).

73 P. Cazenave, Protecting Migrant Children in a Freedom of Movement Area. Transnational monitoring of return procedures involving Romanian and Bulgarian migrant children in Greece and France, Terre des hommes (Budapest: 2012), p. 40.

74 Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied children and separated children outside their country of origin, op. cit., para. 84.

75 P. Cazenave, Protecting Migrant Children in a Freedom of Movement Area. Transnational monitoring of return procedures involving Romanian and Bulgarian migrant children in Greece and France, Terre des hommes (Budapest: 2012), p. 35.

76 Council of Europe Convention on action against trafficking in human beings. Explanatory report. Council of Europe doc. CM(2005)32 Addendum 2 final (3 May 2005), para. 207.

77 The countries in the RCM, or “Puebla Process,” are Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua, Panama and the United States.

78 Article 14 of the RCM Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking, April 2007 (approved in New Orleans, United States, during the 12th RCM), available at: http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_11457/lang--en/index.htm.

4.5.2 Communicating with relevant officials in the child's place of origin in order to collect essential information

Child protection officials who encounter a child in difficult circumstances routinely try to find out where the child's parents are located and to establish contact with them. When the child concerned speaks a different language or refuses to co-operate, however, elementary communication becomes challenging. When the child comes from a different country, a plethora of procedural issues arise: who should contact whom and how does a local level child protection official go about contacting someone at the national level in their own country, let alone someone at the national level in another country or a local level official in that country who could find out about the child's family living there?

In theory these and related challenges can be resolved by developing a Transnational Referral System and appointing a national focal point in each of the States involved. This national focal point should be kept informed about exactly whom to contact in all other countries involved.⁷⁹ In North and Central America, an attempt was made in 2007 to standardize procedures for this by the countries participating in the RCM. They agreed that "States should determine and share with other member countries a list of designated appropriate institutions and/or organizations working with child protection that also have relevant experience" (i.e., focal points in all countries involved), and that communication between these be through conventional diplomatic or consular channels.⁸⁰

However, establishing direct communication between local level institutions or national ones remains a challenge, both within Europe and beyond. For example, a study issued in 2012 observed that "The lack of transnational co-operation is often the consequence of the diversity and lack of understanding of national regulations and procedures. A kind of disbelief or mistrust between authorities in different Member States also contributes to the inefficiency of the procedures in place."⁸¹ When local level officials have met each other and established a relationship of trust, communication is reportedly better, but this may bypass the national level focal points, who in some countries object to direct communication between local level professionals.

The interaction between relevant authorities in separate States, both child protection agencies and others, appears in practice often to have been a cause of frustration, with the result that social inquiries take an unacceptable amount of time to complete, trust is not established (between the relevant authorities in the two countries), and as a result children who have already suffered at the hands of traffickers suffer even more.

Example in practice: improving communication between officials in different countries

Officials in France and Romania have been in frequent contact regarding cases of Romanian children in France since 2002.⁸² Communication and social inquiries have been routinely made more difficult when children identified in France did not reveal their true identity. Various initiatives have helped improve communication. On the French side this has involved refining the type and quality of information about Romanian children identified in France. For example, general information and inaccurate stereotypes have been replaced by dependable and detailed information being made available to relevant officials in France (such as child protection or law enforcement officials) about precise locations and social groups in Romania known to have been connected to trafficking children to France for various forms of exploitation. Social researchers have been commissioned to prepare detailed analyses (Fr.: diagnoses) about the situation in both Bulgaria and Romania.⁸³

On the Romanian side, effective communication with French officials is reported to have improved since December 2017 as the result of the appointment of a single Romanian official to act as focal point for communication. Evidently it has helped that the person appointed understands the language of the country (or countries) with which he or she is most likely to liaise (in this case, French). Even so, establishing trust and confidence over the longer term has proven to be the key to successful communication, both when investigating transnational offences and supporting the protection of

79 ICMPD has recommended that "The bodies responsible for NRMs and TRMs should ensure that requests of international co-operation concerning child victims of trafficking are managed by a single national authority." See: ICMPD, *The Way Forward in Establishing Effective Transnational Referral Mechanisms, A Report based on Experiences in Cases of Human Trafficking in South-Eastern Europe* (ICMPD: 2012) p. 111.

80 Articles 10 and 11 of the RCM Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking, April 2007 (approved in New Orleans, United States, during the 12th RCM), available at: http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_11457/lang--en/index.htm.

81 P. Cazenave, *Protecting Migrant Children in a Freedom of Movement Area. Transnational monitoring of return procedures involving Romanian and Bulgarian migrant children in Greece and France*, Terre des hommes (Budapest: 2012), p. 7.

82 The two States came to an initial agreement on repatriating children in 2002. A French Parliamentary report in 2010 explained that "At the end of the 1990s, it was the presence in Paris of young Romanians who were looting parking meters that attracted the attention of the media and public authorities about their situation ... According to estimates made in 2001, the number of unaccompanied Romanian minors on French soil was at least 500" (unofficial translation of original): C. Bourragué, *Rapport fait au nom de la Commission des affaires étrangères sur le projet de loi, adopté par le Sénat, autorisant l'approbation de l'accord entre le Gouvernement de la République française et le Gouvernement de la Roumanie relatif à une coopération en vue de la protection des mineurs roumains isolés sur le territoire de la République française et à leur retour dans leur pays d'origine ainsi qu'à la lutte contre les réseaux d'exploitation concernant les mineurs*. (Enregistré à la Présidence de l'Assemblée nationale le 5 octobre 2010).

83 See, for example, O. Peyroux and R. Icleanu, *Research – Romania. Diagnosis of the minors originating in Braila and Constanta who are victims of human trafficking*, Ministry of Foreign Affairs and International Development (France) and Terre des Hommes (2015).

victims (whether adults or children). Over the last decade, a French official has had the specific responsibility to liaise on the issue of human trafficking with anti-trafficking agencies and organizations throughout South-Eastern Europe (both State-run agencies and NGOs), getting to know official colleagues involved in a variety of organizations. In addition, French Embassies (in Romania and elsewhere) have an official responsible for security-related issues (such as inquiries about crime and the protection of victims of crime). This has helped facilitate good communication with specialists in each country concerned.

It has seldom been enough to simply appoint a focal point to act as a channel for communication. The French–Romanian experience has shown that requests for information did not necessarily produce details that were sufficient or relevant for making decisions in either France or Romania. It was therefore helpful, on the French side, to review the information that had been provided to see what was most helpful. On the Romanian side, officials felt they were not being provided sufficient details concerning human trafficking cases and were not being provided information on the situation of specific children about whom they had been asked to provide data. A meeting was subsequently held between French and Romanian officials to share their experiences and to agree on how to improve the handling of future requests.⁸⁴

Example in practice: risk assessments

The 2012 study cited above reviewed the bilateral relationships between two EU States from which children were being trafficked and two EU destination countries where they were being exploited. It concluded that

“In all but one of the cases that were analysed by the research team the social inquiries did not include any adequate assessment of the risks of re-trafficking within the environment of origin [emphasis in original text] (including the degree of potential involvement of family members) of children that were in situation of prostitution or children that were involved in a criminal network for begging or theft.”⁸⁵

In some OSCE participating States, the requirement for a risk assessment has been made explicit in law or regulations. This represents good practice, for it means that such assessments are more likely to be carried out. For example, the Swedish National Referral Mechanism issued in 2016 specifies how social services must assess a trafficked child’s general situation, including both a needs assessment and a risk assessment:

“The risk assessment for a child which is suspected of being a victim of human trafficking must also contain concrete measures and steps which must be taken immediately in order to guarantee what is best for the child. Social services will make an evaluation of the child’s situation, background and needs and will collaborate with the police if there is an ongoing police investigation, regardless of whether the child seeks asylum or not. When what is involved is a child who is not seeking asylum, contact must be established with the relevant embassy which will contact the responsible governmental authority in the country of origin. An inquiry will be sent to the responsible governmental authority in the country of origin in order to obtain information on prior knowledge of the child, to carry out a social investigation, a risk assessment related to the human trafficking situation, and a proposal on a sustainable future solution for the child. A close co-operation between the responsible authorities in the respective countries is a precondition for assessing what is best for the child and being able to ensure protection from future exploitation.”⁸⁶

84 See C. Charpentier, *Coopération en Europe du sud-est contre la traite des êtres humains et la criminalité connexe*. Programmation 2018, supplemented by personal communication with the author (20 June 2018).

85 P. Cazenave, *Protecting Migrant Children in a Freedom of Movement Area*. Transnational monitoring of return procedures involving Romanian and Bulgarian migrant children in Greece and France, *Terre des hommes* (Budapest: 2012), p. 36.

86 County Administrative Board of Stockholm, *National Referral Mechanism - Protecting and supporting victims of Trafficking in Human Beings in Sweden* (Stockholm: 2016), p. 20.

4.6 A child protection approach in the framework of combating trafficking in children

Protection and prevention of cases involving child trafficking can be complementary and self-reinforcing when a broad child protection approach is adopted. There have been several examples of this concerning children who have been moved from one country to another to earn money by begging or picking pockets (stealing from passers-by or others in street situations). Although some children are accompanied by their own parents and are not necessarily involved in trafficking offences, in other cases children are exploited to make money by non-family members (or, in the case of girls who have married when young, by their husband or members of their husband's family).

However, action by officials and NGOs is not only needed in cases where there is reason to suspect that a child beggar has been trafficked: a child protection response should be broader and address any abuse, neglect or exploitation suffered by such children, including the deployment of children to "work" on the streets during school time, their exposure to extremes of heat or cold, or to hostile reactions by either members of the public or law enforcement officials, who, aware that begging is illegal, feel they are entitled to punish children found begging.

Examples in practice

The example of Albania shows how prevention and protection have been complementary: several initiatives have addressed both at the same time. A particular group of Albanian children have experienced exploitation and inadequate efforts to be protected: children deployed to beg and earn money for others (sometimes their parents or elder siblings, sometimes a beggar master). At the end of the 1990s and early 2000s, it was particularly in Greece that Albanian children were reported to be washing car windscreens, playing musical instruments, selling items on the street, or simply begging. However, substantial numbers of children earn money as beggars in Albania as well.⁸⁷ Over the past 15 years, organizations in Albania that were initially concerned about Albanian children being trafficked out of the country to be exploited in prostitution or begging in Italy, Greece or other parts of Europe have re-oriented much of their energy to focus on children living or working on the streets in Albania itself. They have realized that cases categorized as "trafficking", those involving children earning money in commercial sex or being forced to beg and

hand some or all of their earnings to a pimp or beggar master, were linked to continued abuse and exploitation, much directed against street children and other children in street situations⁸⁸ (in most cases, Albanian children belonging to minority groups who have dropped out of school before finishing elementary education, or who have never attended school).

In 2014 a situation analysis recognized that more needed to be done to identify the children concerned and to give them access to relevant services, whether they were still in Albania or had been taken abroad.⁸⁹

Albania has adopted Standard Operating Procedures that set procedures on how a child (or adult) who is suspected of being trafficked anywhere in Albania is treated and referred for assistance and services by different agencies.⁹⁰ In most cases, it has been reported, child victims of trafficking are referred for assistance to a specialist centre in Elbasan run by the NGO Tjetër Vizion. Over two years (2015–16) a Tjetër Vizion mobile team responsible for checking on children in street situations reportedly identified 33 children (aged 3 to 17) who may have been victims of trafficking.⁹¹

International organizations (including the OSCE), NGOs and donors wanting to prevent human trafficking and protect children who have already been trafficked (especially from being re-trafficked) worked together to establish and strengthen Albania's own State-run child protection systems at both the national and local (municipal) level. An important development was the adoption in 2010 of a *Working Protocol for Child Protection Workers*⁹² that defined the roles and responsibilities of different agencies, including State-run Child Protection Units (CPUs), the police, school staff, health professionals, State social services, local government authorities (municipalities and communes) and NGOs (some of which manage emergency shelters or other residential institutions where children

88 This encompasses three groups of children: children living on the street, children working on the street, and children of families living on the street.

89 Voko/Tahsini, *Children on the Move in Albania*, op. cit.

90 Ministry of Interior and Office of the National Co-ordinator on Combating Trafficking in Persons, *Standard Operating Procedures for Identification and Referral of Potential Victims of Trafficking* (Tirana: 2011).

91 Group of Experts on Action Against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania. Second Evaluation Round*. GRETA doc. GRETA(2016)6 (Strasbourg: June 2016).

92 Ministry of Social Affairs and Equal Opportunities (Albania), UNICEF and Terre des hommes, *Working Protocol for Child Protection Workers* (Tirana: 2010) http://lastradainternational.org/lsidocs/1047_CPW_Protocol_ENG_original.pdf. The intention of the Protocol was to help Child Protection Unit staff to:

- Understand what child protection is;
- Guide the work of child protection workers and encourage them to use standardized approaches;
- introduce the principle of the best interests of the child;
- Establish the practice of multidisciplinary work to protect children;
- Implement case management as a means to identify, work and review protection measures taken with regard to individual children;
- Provide a system of reliable data collection.

87 See Kristina Voko and Izela Tahsini, *Children on the Move in Albania. Response of Child Protection System to Their Needs. Situational Analysis, Save the Children* (Tirana: 2014). (https://albania.savethechildren.net/sites/albania.savethechildren.net/files/library/MARIO%20SITAN%20REPORT%20%28eng%29_1.pdf)

receive alternative care). The Protocol envisages a multidisciplinary team approach in which child protection workers co-operate closely with the staff of other State-run agencies as well as NGOs. In early 2018, it was reported that a series of sector-specific policies were being developed by the government to replace the Working Protocol.

International organizations have supported the Government of Albania reviewing the vulnerability of children in street situations: a 2014 national study counted more than 2,500 street children, with a third considered either presumed or potential victims of trafficking. Based on these findings, the OSCE Presence in Albania decided to broaden its approach from prevention of child trafficking to strengthening the national child protection system. It partnered with the National Agency for the Protection of Children's Rights, the National Anti-Trafficking Co-ordinator and the Tirana regional police to provide technical expertise for improving child trafficking legislation as well as developing targeted policies and action plans. This resulted in 2014 in the publication of a set of Guidelines for the Protection of Children in a Street Situation (specifically concerning their identification, immediate assistance and referral). Implementing these Guidelines involved setting up specialist street children teams in Tirana and five other cities in 2015 and providing training on how to apply the Guidelines.⁹³ These teams reportedly identified 15 child victims of trafficking for the purposes of forced begging and forced labour in 2015.⁹⁴ In 2016, the mayors of the areas concerned drafted plans on how to apply the Guidelines in their municipalities. In early 2018 these were reported to be waiting for funding so they could be put into action.⁹⁵

93 The Guidelines and training were intended for:

- Child protection workers in local government units;
- Police;
- Social Service Workers in local government teams and day care Centres;
- Social Services Workers employed by the State;
- Social Workers in non-public service providers (NGOs);
- Psycho-social specialists in schools and teaching staff in education institutions;
- Health service workers;
- Labour inspectors; and
- Other child protection professionals, according to the particular needs of cases involving children in a street situation.

94 Group of Experts on Action Against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania. Second Evaluation Round. Council of Europe doc. GRETA(2016)6 (Strasbourg: June 2016).

95 In 2017 Albania also enacted a new child protection law (Law no. 18/2017 on the Rights and Protection of the Child; see section 5.1 below) specifying how authorities should react when there is reason to suspect that a child in a street situation is being exploited (article 64). It requires child protection workers to make an initial assessment and, if necessary, to work with others in an inter-sectoral technical group (i.e., a multidisciplinary team) to develop an Individual Protection Plan for the child. A series of options are envisaged, including enrolment of the child in school and/or regular attendance at school; providing learning support through special teachers or classes; prohibiting the child from frequenting specified places; psychological counselling; and medical treatment if considered necessary.

In a separate example, in 2004 and 2005 substantial numbers of Bulgarian children were identified in Austria, many of them suspected of committing street crimes. In 2005 alone, more than 600 Bulgarian children were referred to a residential centre in Vienna (known as the "Drehscheibe", in English, the Turntable) for unaccompanied children⁹⁶ (of a total of 701 children accommodated at the centre that year). These were relatively young children (246 of those referred in 2005 were aged 12, with most of them girls). Many were below the age of criminal responsibility in Austria and could not be prosecuted. Remarkably, in hindsight (in view of the development of the principle of non-punishment for adults and children who have been trafficked), few of the children were formally identified in Austria as trafficking victims. As a result of measures taken in Austria and Bulgaria, by 2007 the number of unaccompanied children referred to the Drehscheibe fell rapidly to 70.⁹⁷

Basic services at the Drehscheibe include providing children with residential care, health care (including mental health) and services linked to repatriation (registration of the child to obtain identity documents, referral to the relevant Consulate or Embassy, social inquiries in the child's country of origin, accompanying the child back to his or her country of origin, and liaison with child protection services in the country of origin to monitor the child's situation every two months for at least six months). The head of the Drehscheibe is the legal guardian for newly-arrived children for the first week. After eight days a child's case must be referred to a court and a different temporary guardian appointed.⁹⁸

The large number of Bulgarian children referred to the Drehscheibe, coupled with the perception of the managers at the Vienna centre that it seemed that children who were repatriated were brought straight back to Austria to continue to earn money, prompted them to take action to initiate projects and co-operation agreements in both Bulgaria and Romania so that children repatriated to these two countries from Austria would receive appropriate care and be reintegrated in their own countries.

The proportion of Bulgarians referred to the Vienna centre dropped sharply from 2006, while the number of children from other countries has increased. For example, in 2013, 63 of the 202 children housed at the Drehscheibe (almost one third) were from Bosnia and Herzegovina.

96 Drehscheibe für unbegleitete minderjährige Fremde (The "Turntable" Centre for Unaccompanied Foreign Minors). It is classified as a socio-pedagogical institution of Vienna's Office for Youth and Family.

97 The numbers at the Drehscheibe were reported in The Vienna Center for victims of child-traffic Zentrum für unbegleitete minderjährige Opfer von Kinderhandel "Drehscheibe" (Vienna: 2009): <http://cor.europa.eu/en/archived/documents/2fe0f4f1-7dd3-4089-931f-1c0b33eb60b0.pdf>.

98 A. Nonchev and M. Mancheva, Assisting and Reintegrating Child Victims of Trafficking – Improving Policy and Practice in the EU Member States, Center for the Study of Democracy (Sofia: 2013). www.csd.bg/fileSrc.php?id=21295

99 S. Koppenberg, Unbegleitete Minderjährige in Österreich. Rechtsrahmen, Praxis und Statistiken, IOM (Vienna: 2014), p. 64: http://www.emn.at/wp-content/uploads/2017/01/EMN_UAM-Study2104_AT_EMN_NCP_de.pdf.

5



THE DECISION-MAKING PROCESS

5.1 Principles on which to base decisions: the best interests of the child

5.1.1 What is meant by “a child’s best interests”?

As pointed out in section 2.1, the CRC requires States to ensure that the best interests of the child are a primary consideration in all actions (and decisions) concerning children, whether undertaken by public or private social welfare institutions or other bodies, such as law enforcement or immigration agencies.

In response, jurisprudence at the national level in many countries has developed the concept of the best interests of the child, although some OSCE participating States have not yet integrated the concept into their legislation. A few have specified in legislation or regulations what factors decision-makers must take into account in assessing a child’s best interests in child protection cases. For example, in 2017 Albania adopted a new child protection law (Law no. 18/2017 on the Rights and Protection of the Child). This confirms (in article 6) that both public and non-public authorities and the courts must make the child’s best interests a primary consideration in action affecting a specific child. Unlike similar laws in many other countries, this explicitly spells out five issues that must be taken into consideration:¹⁰⁰

- a) “[T]he needs of the child for physical and psychological development, education and health, security and sustainability as well as the upbringing/belonging in a family;
- b) the views of the child, depending on the child’s age and maturity;
- c) the background of the child, taking into consideration any particular situations of abuse, neglect, exploitation or other forms of violence against the child and the potential risk of similar situations occurring in the future;
- d) the ability of the child or persons caring for the child to respond to the needs of the child;
- e) the importance of maintaining continuity in personal relations between the child and persons with whom they have kinship, social and/or spiritual relations.”

The Russian Federation refers routinely to the “rights and legitimate interests of the child”, notably in its Family Code. The Russian Federation’s Federal Law on the Basic Guarantees of the Rights of the Child of 24 July 1998¹⁰¹ specifies that “The current Law establishes the fundamental guarantees of the rights and legitimate interests of the child foreseen by the Constitution of the Russian Federation, with the purpose of creating legal and socio-economic conditions for the implementation of the rights and legitimate interests of the child.” These rights have been spelled out in greater detail in some local authority areas. For example, the Moscow City Law on Guardianship, Custody and Foster Care of 4 April 1997¹⁰² refers to these interests as “the set of personal non-property and property rights and legitimate interests of the child that ensure his or her normal livelihood.” However, the concept needs developing further, as for example in legislation or instructions to child protection agencies or the courts that explain how to implement the suggestions of the Committee on the Rights of the Child regarding a child’s right to have his or her best interests taken as a primary consideration (No. 14).¹⁰³

5.1.2 Underlying principles

The Committee on the Rights of the Child has stated and re-confirmed in 2017 that the best interests of an unaccompanied or separated child (including those who have been trafficked) should be assessed and determined whenever a significant decision affecting a child is to be made by government officials. It has stated in particular that “In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.”¹⁰⁴

A “best interests assessment” is an assessment that involves evaluating and balancing all the elements necessary to make a decision in the specific situation for an individual child or group of children. In some countries, such an assessment is known as a “child protection assessment”. When they involve children seeking asylum (as refugees), a best interests assessment is “made by staff taking action with regard to individual children, except when a BID [best interests determination] procedure is required, designed to ensure that such action gives a primary consideration to the child’s best interests. The assessment can be done alone or in consultation with others by staff with the required expertise and requires the participation of the child.”¹⁰⁵

¹⁰¹ See: http://www.consultant.ru/document/cons_doc_LAW_19558.

¹⁰² As amended in 2001 and 2004; see <https://www.lawmix.ru/mskzk/13639>.

¹⁰³ Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), UN doc. CRC/C/GC14 (29 May 2013).

¹⁰⁴ Committee on the Rights of the Child, General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, UN doc. CRC/GC/2005/6 (1 September 2005), para. 19. See also Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), UN doc. CRC/C/GC14 (29 May 2013).

¹⁰⁵ UNHCR and International Rescue Committee, Field Handbook for the Implementation of UNHCR BID Guidelines (Geneva: 2011), p. 112.

¹⁰⁰ Article 6 (Application of the best interest of the child), Law No. 18/2017 on the Rights and Protection of the Child (Tirana: May 2017).

A “best interests determination” concerning an asylum-seeking child is a “formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.”¹⁰⁶ Such determinations are to be undertaken in each individual case and in the light of the specific circumstances of each child or group of children, including age, sex, level of maturity, whether the child or children belong to a minority group and the social and cultural context in which the child or children find themselves.

The Committee on the Rights of the Child recently (2017) made more detailed recommendations in its Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (paragraph 32).¹⁰⁷ The two committees commented on what procedures they consider must be in place to ensure that the principle of the best interests of the child is appropriately integrated, consistently interpreted and applied. The paragraph describing these procedures is quoted in full in Annex I below.

5.2 The aim of decisions: to identify a comprehensive, secure and sustainable solution (i.e., a durable solution) that is in the child’s best interests

The UNHCR and UNICEF have explained what a “durable solution” is for any unaccompanied or separated child, observing that:

“[A] sustainable solution that ensures that the unaccompanied or separated child is able to develop into adulthood, in an environment which will meet his or her needs and fulfil his or her rights as defined by the CRC and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for the unaccompanied or separated child, it will be subject to a BID [best interests determination]. A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state.”¹⁰⁸

The durable solutions mentioned in UNICEF’s 2006 Guidelines on the protection of child victims of trafficking list three basic options: local integration for a trafficked child, return to the place or country of origin, or resettlement in a third country (with the last reportedly rare). In practice, to be sustainable, any solution must meet minimum standards. In particular, it must:

- > Ensure the continuity of care for the child concerned (between organizations caring for a child and between states if a child is moved between countries);
- > Ensure the child is in a safe environment at all times;
- > Enable the child to develop stable social relationships; and
- > Enable the child to develop plans for the future.

These standards are equally applicable to a child who has been trafficked without being taken outside his or her country of origin. Some governments have questioned whether a durable solution has implications for a child after he or she reaches adulthood and have preferred to make temporary decisions that are only valid until a child ceases to be a child upon reaching the age of 18. This approach seems bound to engender a feeling of insecurity which would be particularly inappropriate for trafficked children. An expert in one country, where many decisions concerning the immigration status of unaccompanied children are only valid until they reach the age of 18, has commented that “Permitting any trafficked child to simply remain in a State, with or without a residence permit, until he or she reaches the age of 18 does not equate to a durable solution and is unlikely to lead to his or her physical and psycho-social recovery, as required by Article 14.1 of the EU Anti-Trafficking Directive.”¹⁰⁹

5.3 Changing the way decisions are made and the criteria taken into account

Details on who takes decisions about unaccompanied children who have been trafficked are often kept obscure, in particular the relative influence of a country’s immigration authority versus the national child protection agency.¹¹⁰

¹⁰⁶ Ibid.

¹⁰⁷ Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration, UN doc. CMW/C/GC/3-CRC/C/GC/22 (16 November 2017).

¹⁰⁸ UNHCR and UNICEF, *Safe and Sound. What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe* (2014).

¹⁰⁹ N. Finch, *Better support, better protection: Steps lawyers and guardians can take to better identify and protect trafficked children*, ECPAT UK (London: 2016).

¹¹⁰ Little recent data appears to be available. A 2010 report indicated that only 12 of 27 EU Member States had a standard procedure for determining the best interests of foreign children (including trafficking victims), and that in only 9 was the procedure observed in practice in the period 2008-2009. See E-Notes, *Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective* (2008 and 2009), Associazione On the Road (Martinsicuro [Italy]: 2010), p. 90.

5.3.1 Decisions to remove a child from parental care

Decisions to remove a child from the care of their parent or guardian or habitual caregiver and place them in alternative care when suspected of being trafficked are taken by the courts in many countries, but the assessment leading to such decisions is usually the responsibility of social workers in the national child protection agency. As it is often law enforcement officials, rather than child protection specialists, who are in initial contact with a child victim or witness, it is vital to have formal agreements (protocols) in place between the various agencies that need to be involved. For example, in Los Angeles County, the Department of Children and Family Services (DCFS) runs a child protection hotline. If the hotline receives a credible report that a child has been sexually exploited (whether trafficked or not), the DCFS is responsible for convening a Multi-Agency Response Team which investigates any allegations of child abuse and leads a multidisciplinary team (MDT) meeting. The meeting is responsible for determining a placement for the child, developing an initial safety plan, and scheduling a medical and mental health evaluation for the child.¹¹¹ Options for alternative care include foster care.

5.3.2 Introducing the best interests of the child into relevant regulations

Various policies in Romania emphasize officials' obligation to make the best interests of the child a primary consideration in actions and decisions affecting trafficked children.¹¹² In 2016, Romania's response to the OSCE survey about implementation of OSCE commitments and recommendations to combat human trafficking confirmed that the best interests of the child "take priority over the rights and duties of the child's parents, legal guardians, or other persons legally responsible for him or her."¹¹³

It explained that the relevant criteria are:

1. "Development needs: physical, psychological, education and health, security and stability and belonging to a family;
2. The child's opinion, depending on age and degree of maturity;
3. The child's history, considering, in particular, situations of abuse, neglect, exploitation, or any other form of violence, and the potential risk situations that may arise in the future;
4. The ability of parents or guardians to meet their concrete needs;
5. The maintenance of personal relationships with people with whom the child has developed an attachment."

5.3.3 Example in practice

It seems logical that multilateral and bilateral agreements between States should be the place where governments express their determination to respect particular principles and procedures concerning children who have been trafficked or are otherwise identified as in difficulty in another country. But it is also feasible for a State to take action itself, that is, to opt to introduce consideration of the best interests of the child into its decision-making process when a child from that country is reported to have been identified in another country whose authorities have decided the child should be repatriated. The Republic of Moldova is a case in point. In 2008 it embarked on a period of reform that culminated in a new law in 2013 guaranteeing that Moldovan authorities would respect the fundamental rights of Moldovan children identified abroad when possible repatriation was under consideration—in particular that an individual child's best interests would be made a primary consideration in decisions affecting that child.

In the early 2000s, many trafficked Moldovan children were being returned each year from other countries to Moldova,¹¹⁴ although no formal decision-making process existed that made their best interests an explicit consideration and without the children themselves being consulted about whether they wanted to be returned (despite the fact that some children were already 16 or 17).

¹¹¹ Los Angeles County, Law Enforcement First Responder Protocol for Commercially Sexually Exploited Children (California: 2015), section F. Emergency Housing/Shelter Beds, p. 19.

¹¹² Notably Romania's National Referral Mechanism, Government Decision No. 1443/2004 on the repatriation of unaccompanied children and/or victims of trafficking, Government Decision No. 49/2011 on the approval of the framework methodology for prevention and multidisciplinary team intervention in cases of violence against children and domestic violence, and the Methodology for multidisciplinary and inter-institutional intervention in cases of children exploited or at risk of exploitation through labour, child victims of trafficking and Romanian migrant children who are victims of other forms of violence in other countries (quoted in GRETA, 6th Annual Report [Strasbourg: 2017], para. 123).

¹¹³ OSCE Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Survey Report 2016 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Human Trafficking, OSCE (Vienna: 2016).

¹¹⁴ Data provided by the International Organization for Migration (IOM) in 2005 concerning 100 children who were thought to have been trafficked abroad from the beginning of 2001 until September 2005 and who had received care at a residential centre in Moldova run by the IOM and UNICEF showed that 30 had been in Russia, 20 had been trafficked in Moldova itself, 10 had been in Bosnia and Herzegovina and 9 in Poland. The next largest numbers (5 each) had been in countries such as Serbia, Montenegro and Turkey.

The Moldovan Government's Decision No. 948 of 7 August 2008 approved a Regulation on the procedure for repatriating child and adult victims of human trafficking, and smuggling of migrants, as well as unaccompanied children.¹¹⁵ This set out a new set of standards and procedures for the authorities to follow that were closer to the country's legal obligations under the CRC. GRETA summarized the provisions of the Regulation in its 2011 report on Moldova:

"The above-mentioned Regulation prescribes the procedure to be followed by the authorities responsible for repatriation. It contains general principles applicable to repatriation, provisions regarding co-operation with the authorities of the sending country, special procedures concerning repatriation and rehabilitation of children and procedures for repatriation and rehabilitation of adults. According to this Regulation, once information is received concerning the presence of a Moldovan victim of trafficking, an illegal migrant or an unaccompanied child in a foreign country, the authorities should inform the [Moldovan] Ministry of Labour, Social Protection and Family [MLSPF], which is in charge of the repatriation procedure. Upon completion of a risk assessment the MLSPF proceeds to repatriation in co-operation with the Ministry of the Interior, the Border Guard Service and the Ministry of Health. After the return of the victim to the Republic of Moldova his/her needs are evaluated and the assistance and protection envisaged under the NRS [national referral system] are provided. The Moldovan authorities have underlined the importance of assistance provided by the IOM [International Organization for Migration] and 'Terre des Hommes' [an international NGO managing programmes in Moldova and providing technical advice to the authorities] in carrying out the repatriation of Moldovan victims of trafficking."¹¹⁶

The Regulation made repatriation voluntary "except for children up to 10 years old", that is, for children aged 10 and older it confirmed the obligation to observe article 12 of the CRC by "Taking into account the age and maturity level of the child's opinion in all decisions and actions that could affect him/her...including: the return origin, reunification with the biological family, extended family or placement in other forms of care etc." and ensuring that "Repatriation of children shall be subject to the best interests of the child, presenting this in documents confirming that a durable solution for caring for the child has been found."

Relevant officials in Moldova had to develop their own understanding of what is entailed in "making the child's best interests a primary consideration" and how to take a child's views into account. Developing this understanding was the key to changes in various decisions that had been earlier made. Initially it had been assumed that any Moldovan child identified abroad should be automatically repatriated (as agreed in two regional agreements, the Volgograd and Chişinău Agreements; see section 7.4 below). However, a tipping point reportedly came when Moldovan officials questioned whether it was really in the best interests of a particular Moldovan child to be repatriated from the country where that child was located, since there was evidence that the child had relatives there but none in Moldova. Once this question was raised by Moldovan authorities with their counterparts in certain destination States, bilateral discussions between officials in these countries were begun.

In 2013 the Moldovan Government decided that the Ministry of Labour, Social Protection and Family (MLSPF) was to be the main ministry to deal with all cases of unaccompanied Moldovan children identified outside the country, with the Ministry of the Interior playing a subsidiary role. A Law on Special Protection of Children at Risk and Children Separated from their Parents (Law No. 140¹¹⁷) adopted in 2013 confirmed many of the principles in the 2008 Regulation, applying them to unaccompanied and separated children in general. The following year, the MLSPF, together with the Moldova office of Terre des Hommes, published a handbook on case management concerning unaccompanied or separated Moldovan children identified outside Moldova, entitled *Case management for children identified without legal representatives on the territory of other States. Guidance for Professionals*.¹¹⁸ It was based on the knowledge and experience that had been accumulated while assessing the cases of individual children over the preceding six years. The Ministry adopted the handbook as a way of implementing Government Decision 948 and the Regulation concerning repatriations. The handbook includes a flow diagram ("Case Management for children who are identified without legal representatives on the territories of other states") representing a referral system to be followed by the Moldovan authorities, notably for children who may have been trafficked.

¹¹⁵ The original text in Moldovan: Hotărâre Nr.948 din 07.08.2008 pentru aprobarea Regulamentului privind procedura de repatriere a copiilor și adulților – victime ale traficului de ființe umane, traficului ilegal de migranți, precum și a copiilor neînsotiti; accessed at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=328840>.

¹¹⁶ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Republic of Moldova, Council of Europe doc. GRETA(2011)25 (22 February 2012), para. 136.

¹¹⁷ Lege Nr. 140 din 14.06.2013 privind protecția specială a copiilor aflați în situație de risc și a copiilor separați de părinți, accessed at <http://lex.justice.md/md/348972>.

¹¹⁸ MLSPF and Terre des Hommes (Chisinau: 2014). Also published in Moldovan (Ghidul pentru profesioniști. Managementul Cazului pentru copii identificați fără însoțitori legali pe teritoriile altor state: http://tdh-moldova.md/media/files/files/ghid_profesionishti_ro_8146391.pdf) and Russian (Профессиональное Руководство: http://childhub.org/sites/default/files/library/attachments/ghid_profesionishti_ru.pdf).

The handbook offers practical tips. It includes advice on the contents of the care plans that should be prepared for each child, on a series of action points, on what particular aspects of a child's situation require special monitoring, and the circumstances in which a case can be considered to be resolved and the case file closed.

Meanwhile, Russia's National Foundation for the Prevention of Cruelty to Children, in conjunction with Terre des Hommes, published training materials in Russian in 2012 on how to enable children to express their views and on listening to children (*Как Услышать Ребенка*,¹¹⁹ *How to listen to the child*). These materials help child protection professionals in the Russian Federation to follow the decision-making process used by guardianship authorities. The version of the publication for professionals contains advice on how to talk with older and younger children in ways which will elicit meaningful responses.

“ 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.”

(PC.DEC/685, 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; Recommended actions at the national level)

119 И.А. Алексеева & И.Г. Новосельский, *Как Услышать Ребенка* [How to listen to the child], (vol. 1 for professionals and vol. 2 Illustrated guide [for children]), National Foundation for the Prevention of Cruelty to Children, Terre des Hommes and SDC (Moscow: 2012). <http://docplayer.ru/46931124-I-a-alekseeva-i-g-novoselskiy-kak-uslyshat-rebenka.html>.

6



IMPLEMENTING DECISIONS
TO ENABLE A CHILD TO RECOVER

6.1 Recovery and “reintegration”

The Inter-agency Group on Children’s Reintegration issued a set of *Reintegration Guidelines* in 2016.¹²⁰ They explain that “reintegration” refers to “The process of a separated child making what is anticipated to be a permanent transition back to his or her family and community (usually of origin), in order to receive protection and care and to find a sense of belonging and purpose in all spheres of life.” A separate report compiled specifically on the basis of the experiences of organizations supporting the reintegration of trafficked adults and children from countries in South-Eastern Europe put the emphasis differently (and refers to “reintegration” as “re/integration” on the grounds that it may be desirable to integrate a trafficking victim in an environment that she or he has not lived in before):

“Re/integration refers to the process of recovery and economic and social inclusion following a trafficking experience. It includes settlement in a stable and safe environment, access to a reasonable standard of living, mental and physical well-being, opportunities for personal, social and economic development and access to social and emotional support. It may involve returning to one’s family and/or community of origin; it may also involve integration in a new community and even in a new country.”¹²¹

In the case of children who are of school age, whether or not they have already attended school, the recovery process must give them an opportunity to start or re-start formal education as soon as possible. In the case of older children who have no wish to return to school, other forms of training or preparation for the world of work are likely to be appropriate.

6.2 Case management and care plans

Children who are in care or receiving assistance from a child protection agency need to be the subject of a care plan that is developed specifically for the individual child (on the basis of their particular needs and any decisions taken about their long-term future). The child concerned should not be the object of such a plan, but the subject of it. This means ensuring that they are consulted during the preparation of a plan and are committed to carrying it out. Children who are told by those in authority what to do and where to go without being able to influence these decisions are being deprived of the power to control their own lives, something similar to their experience while under the control of a trafficker.

Developing a care plan for a trafficked child can follow much the same process as for other children in child protection cases. For example, the Swedish NRM specifies that:

“The individual treatment plan must be signed by the person who will receive the services and, if a child is involved, by the respective representative of social services. Just the child’s signature and consent are not enough. When a child is involved the plan must be developed with regard taken to the child’s perspective¹²² and social services’ evaluation of what is best for the child. The communication must include complete information on the available measures and services, including the rights and duties which are linked to them.”¹²³

In States that have not yet developed specific procedures for protecting and assisting trafficked children, existing institutions and procedures may nevertheless allow the preparation of satisfactory care plans. For example, the UN Special Rapporteur on the sale of children, child prostitution and child pornography noted during a visit to Kyrgyzstan in 2013 that there was a lack of resources to finance child protection activities, but that 11,000 individual plans were nevertheless prepared for children in difficulty during 2012.¹²⁴

120 E. Delap and J. Wedge, *Reintegration Guidelines*, Inter-agency group on children’s reintegration (London: 2016).

121 R. Surtees, *Ethical principles in the re/integration of trafficked persons. Experiences from the Balkans*, Nexus Institute and the King Baudouin Foundation (Washington and Brussels: 2013).

122 I.e., implying that the child’s views are sought and taken into account.

123 County Administrative Board of Stockholm, *National Referral Mechanism – Protecting and supporting victims of Trafficking in Human Beings in Sweden* (Stockholm: 2016), p. 32.

124 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid. Addendum. Mission to Kyrgyzstan (15 to 26 April 2013), UN doc. A/HRC/25/48/Add.1 (23 December 2013), para. 78.

6.2.1 Helping a child recover in the longer-term by developing a “life project”

In 2007 the Council of Europe Committee of Ministers recommended that the regional organization’s Member States develop what it called “life projects” for unaccompanied and separated migrant children on their territory (including refugees and trafficking victims).¹²⁵ An appendix to the Recommendation explains that a life project is a tool for an individual child that represents “a joint undertaking” between the unaccompanied child and the competent authorities for a limited duration, setting out both the child’s expectations, wishes and perceptions and the situation in the host country (“the political, legislative and socio-cultural context; availability of opportunities for the minor, including level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country”). Life projects are expected to “define the minor’s future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.” The Appendix explains that the project, once drafted, “should be formalised by a written agreement setting out the respective commitments of both parties and signed by them and/or by the guardian of the unaccompanied migrant minor.”

In general, the intention of the Recommendation is to enable unaccompanied children to develop in a secure environment, knowing what resources are available to them and what are not. NGOs caring for recovering children have observed that such long-term planning is often helpful. For children who have experienced the extreme insecurity of being trafficked, life projects represent a longer-term plan than a treatment or care plan and potentially contribute to their full recovery from trauma and reintegration.

6.3 Medium- and long-term accommodation options for trafficked children

The UN Guidelines on Alternative Care for Children envisage five types of alternative care for children:¹²⁶

- I. Kinship care (i.e., within the child’s extended family or with close friends of the family known to the child);
- II. Foster care;
- III. Other forms of family-based or family-like care placements;
- IV. Residential care: care provided in a non-family-based group setting, in facilities, including group homes, either for emergency care, or short- or long-term residential care;
- V. Supervised independent living arrangements for children.

Decisions concerning alternative care need to be revisited periodically. What might be appropriate for a 17-year-old who is still recovering from trafficking-related trauma may not be appropriate for a child the same age who has largely recovered, has already spent 18 months in care and who wants to find a job and start earning money. Such a child might wish to remain in a supervised living arrangement, but perhaps some sort of semi-independent arrangement (e.g., sharing an apartment with several other young people who are recovering from similar experiences, without a live-in carer, but visited regularly by a supervisor).

This means the State must provide adequate resources to whichever branch of social services is responsible for child protection, or to NGOs helping children to recover, so they can carry out periodic reviews and potentially move young people concerned into a succession of different living arrangements that gradually develop their independence. By contrast, a study in several States found that child victims of trafficking identified in these countries often stay in shelters for long periods of time—in one case, as long as five years.¹²⁷

A great deal has been learned about what sorts of alternative care and support have proved most positive for children recovering from various degrees of trauma caused by being trafficked and exploited.¹²⁸ The lessons learned are important for States to take into account in developing policies to promote children’s recovery, particularly lessons concerning necessary resources.

¹²⁵ Recommendation CM/Rec(2007)9 of the Committee of Ministers to member States on life projects for unaccompanied migrant minors (adopted by the Committee of Ministers on 12 July 2007) and its Appendix.

¹²⁶ Article 29 of the UN Guidelines on Alternative Care for Children describes these five types of care in greater detail.

¹²⁷ See P. Cazenave, “Regional report on the implementation of the UNICEF guidelines for the protection of the rights of child victims of trafficking in South Eastern Europe. Assessment of the situation in Albania, Kosovo and the Former Yugoslav Republic of Macedonia”, Terre des Hommes (Lausanne: 2010).

¹²⁸ See, for example, L. Shuker, Evaluation of Barnardo’s Safe Accommodation Project for Sexually Exploited and Trafficked Young People, Institute of Applied Social Research University of Bedfordshire (Luton: 2013). http://www.barnardos.org.uk/barnardo27s-sa-project-evaluation-full-report__3_.pdf.

6.4 Reducing the likelihood of children reverting to the control of traffickers or going missing

Traffickers know how to manipulate both child protection systems and immigration authorities. Already in the 1990s, evidence was available that traffickers sometimes instructed unaccompanied children to go through formal border points and then seek asylum or assistance from immigration officials, precisely so they are allowed into a country and are given temporary accommodation. In such cases, the children then walk out, either when summoned by the trafficker or according to a pre-arranged plan. National authorities have responded to this risk in different ways. Some have considered it reasonable and appropriate to deprive such children of any means to communicate (by confiscating mobile telephones and only allowing supervised phone calls) and to confine them to a “closed” residential centre (that is, to detain them, albeit ostensibly for the child’s own good). Others have tried a variety of different methods, including placing such children in foster care. Nevertheless, it has been found that children continue to walk out or escape from residential accommodation where they are placed.

There are a range of reasons why unaccompanied children abandon residential care. The proportion subsequently returning to the control of traffickers is unknown. EUROPOL received a great deal of publicity in early 2016 for reporting that “10,000” unaccompanied or separated children are missing in Europe,¹²⁹ but this was only an estimate, indicating that neither child protection nor immigration authorities know what has happened to such children. In Italy alone, the Italian Special Commissioner for Missing People reported, according to UNICEF, that at least 28,000 unaccompanied children absconded from reception centres in Italy during 2016.¹³⁰

6.4.1 Addressing the pressures that lead trafficked children to go “missing” and return to traffickers

The experience of law enforcement and child protection officials in many parts of Europe is that children receive instructions from traffickers on how they should react if they are stopped by an official, arrested or taken into alternative care. This means that after being moved to residential accommodation, some walk out to re-join their controller. If the accommodation concerned and the welcome that children receive are of good enough quality, the combination may encourage children to stay: however, officials who are strangers to children, particularly younger (pre-puberty) children, are unlikely to be able to counteract the strong influence of the child’s controller/trafficker. The same applies to children (mainly adolescent girls) who are in love with a man who is, in reality, a pimp and trafficker. Older children are often aware, as are adults, of the pressure on them and their families to repay debts or fulfil other obligations to traffickers or money-lenders. The authority that has identified them and wants to protect them can potentially take action to counteract such pressure, but this requires a full understanding of the nature of this pressure, as well as how it can be alleviated.

In the case of the Vietnamese children mentioned in Section 6.5 below, this has meant finding ways of stopping the costs of the loans taken to pay for these children’s journeys to the United Kingdom from accruing further (a complicated process, since this requires sufficient co-operation with authorities in Vietnam to cancel such debts or stop further interest being charged). In the case of Nigerian adolescents arriving in Italy, some of whom have sworn a ritual oath (known in Nigeria as “juju”) before leaving home to earn sufficient money to repay the so-called costs of their journey, it means allaying the child’s fear of the supernatural, as well as concerns about physical threats to the child or her or his relatives. In both cases, finding a remedy requires close co-operation in the child’s country of origin, both with government officials and local-level authorities, who can address questions of debt and threats against those supposedly owing debts.

129 Missing Children in Europe, “Europol confirms the disappearance of 10,000 migrant children in Europe” (January 2016), <http://missingchildreneurope.eu/news/Post/1023/Europol-confirms-the-disappearance-of-10-000-migrant-children-in-Europe>. A subsequent conference report by Missing Children in Europe (Lost in Migration: working together in protecting children from disappearance. Conference conclusions. January 2017) noted that “Migrant children are considered missing when they are registered with state authorities and go missing from the reception/accommodation centers provided for them. Children disengage from these services for numerous reasons (including inadequate and ill-adapted reception, inefficient procedures, fear of deportation, desire to join family or friends in another country etc.).” The report also alleged that “an increasing number ends up victim of (re-) trafficking.”

130 UNICEF Refugee and Migrant Crisis in Europe: Regional Humanitarian Situation Report Update 24, 18 July 2017. <https://reliefweb.int/report/greece/unicef-refugee-and-migrant-crisis-europe-regional-humanitarian-situation-report-24-18>.

6.4.2 Placing a trafficked child in detention to prevent re-trafficking?

In Norway the Child Welfare Act 2012 allows for unaccompanied children to be held for up to six months in a closed institution without their consent in cases where the child is considered at risk of being trafficked or re-trafficked, mainly to prevent the child being contacted by traffickers (section 4-29 of the Act). Such children can also have their rights to make telephone calls and use Internet restricted. These provisions are only to be used if it is not considered possible to protect the child by other means. In 2013 GRETA invited the Norwegian authorities to keep the new measures introduced in the Child Welfare Act 2012 under review “with a view to ensuring compliance with international standards on the rights of the child, in particular as regards the deprivation of children’s liberty as a measure of last resort.”¹³¹

It was subsequently reported that 50 children had been placed in what was called protective detention (27 girls, 22 boys, one of unknown sex) between 2012 and early 2015. The time for which children were detained in closed facilities was reported to vary between two weeks and six months, with the average length being about eight weeks. On average girls were detained for longer periods than boys: researchers guessed this was because the girls had been subjected to sexual exploitation and were deemed more likely to abscond with a trafficker with whom they had a sentimental attachment.¹³² In 2017 GRETA stressed to the Norwegian authorities that, in line with Article 12.7 of the Council of Europe Convention,

“[T]he accommodation of presumed child victims of trafficking has to be appropriate in terms of their specific needs. GRETA notes that the placement of a child in an institution pursuant to section 4-29 of the Child Welfare Act in practice amounts to detention and recalls paragraph 155 of the Explanatory Memorandum to the Convention and Article 37(b) of the UN Convention on the Rights of the Child, according to which any detention of children shall be used only as a measure of last resort and for the shortest appropriate period of time. GRETA considers that the principle of the best interest of the child should be fully respected at all times and that the Norwegian authorities should keep under review the application of section 4-29 of the Child Welfare Act.”¹³³

¹³¹ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway, First Evaluation Round, Council of Europe doc. GRETA(2013)5 (7 May 2013), para. 178.

¹³² GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway, Second Evaluation Round, Council of Europe doc. GRETA(2017)18 (2017), para. 109, referring to a report by FAFO, *Ikke våre barn – identifisering og oppfølging av minderårige ofre for menneskehandel i Norge* (Not our children – identification and follow-up of child victims of trafficking in Norway), 2015, p. 121.

¹³³ *Ibid.*, para. 117.

6.5 Reducing the possibility of children going missing

Among the children who have absconded from care in the United Kingdom have been numerous young people from Vietnam.¹³⁴ Some have been placed in residential care after having been found working (illegally) as gardeners in houses known as “cannabis farms” (i.e., buildings whose windows are covered, in which cannabis plants are cultivated using artificial heat and light). Others have been placed in care after having been identified by the police or others as undocumented migrants. The total number of children who have abandoned residential care each year is not known to have been publicized. However, in a single case in December 2017, the police in one county publicized photos of the faces and personal details of 13 young Vietnamese who had walked out of local authority care in two towns in that county.¹³⁵

Various methods have been identified as making it either more or less likely that a presumed child victim of trafficking will walk out of care. A recent report noted that “Failing to undertake an introductory visit to a Vietnamese child’s accommodation was also thought to increase the risk of the child going missing...It was generally agreed that trafficked children were safer and were more likely to thrive if placed in specialist foster care...The Northern Ireland Commissioner for Children and Young People would prefer separated children to be placed in specialist foster care but no such provision is presently available.”¹³⁶

¹³⁴ The number of unaccompanied children who have gone missing in the United Kingdom is not known. Various researchers have contacted local authorities to try and estimate the total. For example, in 2016 researchers learned that of the 2,253 unaccompanied asylum-seeking children in local authority care in England in 2014, at least 71 boys and 4 girls had gone missing (R. Humphris and N. Sigona, *Mapping unaccompanied asylum seeking children in Europe*, 2016). By 2017 the task force of one NGO focusing on trafficked children had worked on 1,518 cases involving children who had been trafficked since its service started in September 2007. Of these 1,518, the number who had gone missing was 74 (N. Finch, *Lighting The Way: Steps that lawyers, legal guardians and child trafficking advocates in the UK can take to better identify and protect children who may have been trafficked*, ECPAT-UK [London: 2017]).

¹³⁵ Northampton Police (UK), “Help is being sought by police to track down 13 Vietnamese teenagers who entered the UK illegally”, 6 December 2017. <http://www.northants.police.uk/news/2017-12-06/appeal-public%E2%80%99s-help-locate-13-missing-teenagers>.

¹³⁶ N. Finch, *Lighting The Way: Steps that lawyers, legal guardians and child trafficking advocates in the UK can take to better identify and protect children who may have been trafficked*, ECPAT-UK (London: 2017), p. 33. More recently, the Court of Appeal of England and Wales issued a judgment in June 2018 criticizing the failure of the British authorities to provide adequate protection to a Vietnamese boy as a violation of Article 4 of the European Convention on Human Rights (*R(TDT) v Secretary of State for the Home Department*; [2018] EWCA Civ 1395). After being detained on the grounds that he was an adult and an irregular migrant, the boy concerned had been released from custody without adequate measures being taken to ensure that he would not be subjected to labour exploitation, despite “credible suspicion” that this would be the case.

The child protection authority of the London borough in which the largest London airport is situated (Hillingdon) adopted a Joint protocol on children and young people who run away or go missing from care or home in 2014. The protocol is designed for all children and young people living in Hillingdon area who go missing (not just unaccompanied children who have arrived at the airport). This included the provision that “Multi-agency assessment procedures, including EHA [early help assessment], should include the risk indicators for running away.”¹³⁷ The Protocol sets out how the various actors should react when a child goes missing: if the child cannot be traced, a child protection strategy meeting must be convened within three days to decide on what further action is appropriate. However, the Protocol also stipulates the preventive measures that should be taken when a child is initially placed in alternative care: essentially, an assessment of the risks that the child may go missing is an integral part of a wider care plan.¹³⁸

The Protocol includes general information about children who go missing, including their profiles and reported patterns of children going missing. It also includes a flow diagram showing who should do what. On key questions about the responsibility of different agencies, the Protocol is clear: “After reporting a child missing, Children’s Services [the child protection authority] remain responsible for the child in their care. This responsibility is not absolved when the child has been reported missing to the Police” and “Once a child is reported missing to the Police, the Police will have primacy in respect of the investigation to trace the child.”

In practice, tracing unaccompanied children who have gone missing remains difficult in the United Kingdom, in part because there is no central register of such children. The Child Trafficking Advice Centre established by one NGO, the National Society for the Prevention of Cruelty to Children (NSPCC), is reported to have played a significant role in locating missing children suspected of having been trafficked (confirming the importance of State-run agencies co-operating closely with specialist NGOs). In one case, an NGO contacted the Child Trafficking Advice Centre after a child had gone missing in Kent, in the extreme southeast of the UK. The Centre was able to liaise with the police, local authorities and other agencies and discovered that the child had been accommodated by a local authority in Glasgow, at the other end of the country.¹³⁹

137 Hillingdon Local Safeguarding Children Board, Joint Protocol. Children and young people who run away or go missing from care or home (London: 2014). http://hillingdonchildcare.proceduresonline.com/pdfs/child_yp_runaway.pdf

138 The assessment is expected to include the following information (ibid.):

- The likelihood of the child going missing.
- The child’s view.
- Consideration of the measures that can be taken to prevent the child going missing.
- The level of supervision/support that care staff propose to provide for the child.
- The views of parents/carers on their child needs and the action that needs to be taken if the child is absent.
- The risk of harm to the child and his/her vulnerability if he/she is absent.
- Consideration of any external influences which may result in a child’s removal without consent.
- The likelihood of the child being harboured.
- Note the prevalence, from current statistical information, of 14-16 year olds going missing.
- A trigger plan (action plan), applicable to that child, should be formulated to cover the event of the child going missing.

139 N. Finch, *Lighting The Way: Steps that lawyers, legal guardians and child trafficking advocates in the UK can take to better identify and protect children who may have been trafficked*, ECPAT-UK (London: 2017), p. 36.

7



IMPLEMENTING DECISIONS TO
RETURN TRAFFICKED CHILDREN
TO THEIR PLACE OF ORIGIN

7.1 Underlying principles

In their recent (2017) Joint General Comment, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child pointed out that if a decision is taken which it is in the best interests of the child to be returned to his or her country of origin, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration.¹⁴⁰ The Committee on the Rights of the Child has also commented on the circumstances in which return to an unaccompanied child's country of origin is not appropriate¹⁴¹ and listed the factors to be taken into account when considering whether returning a child to his or her country of origin would be appropriate.¹⁴²

General international standards have also been agreed upon regarding the transport or transfer of unaccompanied or separated children. A toolkit issued by the Inter-agency Working Group on Unaccompanied and Separated Children notes that "The transfer conditions should respect general child safety principles (consent of legal guardian, escort if children are 15 or under, special considerations of safety and trustworthy companionship for children between 16 and 18, medical escort in case of pregnant girls and special attention for girl mothers and disabled child, etc.)."¹⁴³

Principle 4 of the seven Guiding Principles on Human Rights in the Return of Trafficked Persons (issued by ODIHR)¹⁴⁴ is about child victims of trafficking. It states:

"All decisions taken with respect to a child victim, regardless of whether or not they are unaccompanied, must take the child's best interests as a primary consideration ... the search for durable solutions must start by analysing the possibility of family reunification."

Concerning children identified in a country other than their own, it specifies that:

"Destination countries should ensure that child victims who are not nationals or residents of that country are automatically granted a temporary residence permit that entitles them to stay legally in the country until a best interests assessment is conducted and a durable solution is found ... destination countries should appoint a legal guardian to a child victim of trafficking, and before referring the child to any procedures or proceedings, should provide the necessary legal aid. A child should be provided with a legal guardian when receiving immediate or long-term assistance, including during the child's integration in the country of destination or return and reintegration in the country of origin or in a third country."

In summary, the seven principles are:

Principles	
1	Return must be safe
2	Due process
3	Protection measures when return is not an option
4	Special protection measures in returning child victims
5	Durable solution without further harm
6	Access to effective remedies
7	Co-operation and monitoring

¹⁴⁰ Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration, UN doc. CMW/C/GC/3-CRC/C/GC/22 (16 November 2017), para. 32.k.

¹⁴¹ "Return to the country of origin is not an option if it would lead to a '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" (article 84 of Committee on the Rights of the Child, General Comment No. 6).

¹⁴² Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin (2005), para. 84.

¹⁴³ Inter-agency Working Group on Unaccompanied and Separated Children, Toolkit on Unaccompanied and Separated Children, Alliance for Child Protection in Humanitarian Action, 2016.

¹⁴⁴ ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014).

On the basis of the information the International Centre for Migration Policy Development (ICMPD) has collected about returns, it has suggested the following steps as part of seven measures linked to return. In effect, these are the steps that the ICMPD considers should be taken as good practice (concerning both adults and children who are repatriated):¹⁴⁵

Step	Measure 6 Information sharing between the receiving and referring organisation and with the assisted person
1	Informing the trafficked person of the risk and security and social inclusion assessment outcome
2	Contacting the service provider in the country of origin to exchange information and co-ordinate the return process
3	Informing the trafficked person on identity status; travel/transfer process; available assistance in the country of origin and reintegration plan
4	Obtaining confirmation that the trafficked person will be received and assisted
	Measure 7 Safe transport/transfer and arrival assistance
1	Providing the trafficked person with necessary travel documents/items/information
2	Ensuring the accompanied transfer of the minors
3	Ensuring that the trafficked person is received/met by the service provider at the border/airport/harbour of the country of origin
4	Providing preliminary orientation and assistance to the trafficked person
5	Confirming/obtaining confirmation on the safe arrival of the trafficked person

7.2 Organizing appropriate reception for trafficked children after repatriation

Alongside the responsibilities of the countries where trafficked children are first identified and given initial protection and assistance, the States to which children are returned also have responsibilities to ensure the safety and recovery of repatriated children, to prevent them from being stigmatized or persecuted in any way, to provide them with further assistance so that they can restart their lives and to provide them with appropriate access to justice and to compensation for any damages they have suffered. As some children have left home to escape dire poverty or domestic abuse in the first place, providing adequate resources to meet all of the State's responsibilities can be challenging for the authorities in countries of origin.

Formal agreements, both bilateral and multilateral, have proved helpful in guaranteeing satisfactory conditions of return. However, the first example in this section concerns the steps needed to ensure adequate co-ordination among the numerous distinct agencies in a country of origin.

¹⁴⁵ ICMPD, Guidelines on Standard Operating Procedures for Implementation of the Transnational Referral Mechanism for Victims of Trafficking (Vienna: 2009).

7.2.1 Example in practice

In 2004 and 2005 Bulgaria faced challenges in organizing the reception and reintegration of hundreds of children who were identified as “unaccompanied” and in conflict with the law in Austria (see the example cited in section 4.6 above), many or most of whom had been trafficked to earn money for their adult (or older) controllers by picking pockets and committing other crimes. Bulgaria’s two main policy responses were:

1. To develop and adopt a Co-ordination Mechanism for Referral and Care of Cases of Unaccompanied Children and Child Victims of Trafficking Returning from Abroad, involving the Ministry of Interior, the Ministry of Foreign Affairs, the State Agency for Child Protection and the Agency for Social Assistance, all working with the National Commission for Combating Trafficking in Human Beings and co-ordinated jointly by the Minister of Interior and the Chairperson of the State Agency for Child Protection. The Bulgarian authorities explained that the intention was “to facilitate the combined, fast and efficient tracing of every case related to child trafficking in the country and abroad”;¹⁴⁶
2. To ban the children concerned from leaving Bulgaria again for periods of up to two years (under Article 76a of Bulgaria’s Law on Identity Documents, in force since 2005) if these children (i.e., anyone under 18) are reported to have been subjected to sexual exploitation or neglect or involved in begging or committing petty crimes while abroad (i.e., children repatriated from other EU Member States). These activities and offences were interpreted by the authorities to be signs that the children concerned were at high risk of being trafficked or re-trafficked, so the prohibition was justified as a measure to prevent re-trafficking.

In effect, the Co-ordination Mechanism is a referral system for children returned to Bulgaria from other countries, mainly specifying which agencies in Bulgaria should be informed about a child and what actions are to be taken by each actor.¹⁴⁷ It does not specify the procedures to be followed before a child’s actual return, although the institution in the country returning the child is supposed to provide as much information as possible about the health and emotional status of the child, along with comments from the practitioners who have

worked with the child during his or her stay in this country. The Co-ordination Mechanism was amended in 2010 to enhance co-ordination between national agencies and local agencies based in different parts of Bulgaria, including the managers of “crisis centres” where trafficked children were housed. The crisis centres were reportedly established in 14 places around the country. The authorities reported in 2014 that “Normally, the first measure used in respect of children, who are victims of trafficking, is to place them at a Crisis Centre, where children may stay for a period of up to 3 months. The stay of children at CC [crisis centre] may be extended up to 6 months, if important circumstances require it.”¹⁴⁸

In 2014 the Bulgarian authorities told the Committee on the Rights of the Child that “since 1 January 2007 the Crisis Centres have been regarded as a State delegated activity, i.e. they are financed from the national budget through the municipal budgets. The main services provided at the Crisis Centres involve provision of shelter and food, meeting of health needs, provision of psychological support, training on life and social skills, ensuring participation of the child in a school form of education, preparation for reintegration in the family and, should this be impossible, taking an adequate measure for protection of the child.”¹⁴⁹ The authorities recognize that in some cases, children have been trafficked or exploited abroad with the knowledge and agreement of the child’s parents, in which case the authorities reckon that reunifying the child with his or her family is not in the child’s best interests: “In such a case the child is mandatorily placed outside of the family and other alternative forms of social services are sought: foster families, social services of a residential type, etc. ... After leaving the Crisis Centre, and if necessary, the children may be guided to use other community-based services.”¹⁵⁰

In the years 2012–2014, 142 children identified as trafficked were reportedly returned to Bulgaria from other EU countries and referred to the Co-ordination Mechanism.¹⁵¹ Bulgaria’s State Agency for Child Protection was aware that the number of unaccompanied Bulgarian children reported to Bulgarian Embassies or agencies in other countries (social services or law enforcement) fell from 60 in 2013 to 36 in 2014. Nonetheless, the Agency was concerned that this might be because relevant children were not being identified or protected in destination countries.

¹⁴⁶ Bulgaria, Third, fourth and fifth periodic reports of States parties due in 2013 (Report to the Committee on the Rights of the Child, received in April 2014). Consideration of reports by States parties under article 44 of the Convention. UN doc. CRC/C/BGR/3-5 (4 May 2015), para. 335.

¹⁴⁷ The original Mechanism was adopted in November 2005. An amended version was adopted in December 2010. The text of the 2010 version in Bulgarian (Координационен механизъм за рефериране и обгрижване на случаи на непридружени деца и деца – жертва на трафик, завръщащи се от чужбина) is at <https://www.veliko-tarnovo.bg/media/filer/2014/12/17/koordinacionen-mehanizam.pdf>. An undated English translation of the Co-ordination Mechanism for Referral and Care of Cases of Unaccompanied Children and Child Victims of Trafficking Returning from Abroad is available at: http://www.osservatoriointerventitratta.it/files/normativa/Coordination_mechanism_for_referral_care_and_protection_of_repatriated_Bulgarian_UAM_2.pdf.

¹⁴⁸ Bulgaria, Third, fourth and fifth periodic reports of States parties due in 2013 (Report to the Committee on the Rights of the Child, received in April 2014). Consideration of reports by States parties under article 44 of the Convention. UN doc. CRC/C/BGR/3-5 (4 May 2015), para. 344.

¹⁴⁹ Bulgaria, Third, fourth and fifth periodic reports of States parties due in 2013 (Report to the Committee on the Rights of the Child, received in April 2014). Consideration of reports by States parties under article 44 of the Convention. UN doc. CRC/C/BGR/3-5 (4 May 2015), para. 341.

¹⁵⁰ Ibid.

¹⁵¹ According to a report on the implementation of the National Plan issued by the State Agency for Child Protection.

7.2.2 Protection and assistance for children after their arrival back in their country of origin

In some countries, repatriated children are routinely referred into alternative care upon their arrival back in their country of origin. While it is important that trafficked children should not be automatically reunited with their parents or other family members if a social inquiry has not previously confirmed that this would be appropriate, it is also vital that the “necessity principle” set out in the UN Guidelines on Alternative Care should also be respected, i.e., the need for a child to be in alternative care should be reviewed a few days after their arrival and also every subsequent month. If children are routinely kept in alternative care for six months or longer, it is evidently important to monitor the well-being of each child and, in the longer term, to document the effect of this care on the children and to determine what happens to them next (or what they chose to do after leaving care).

The Bulgarian authorities have told relevant treaty-monitoring bodies¹⁵² that children repatriated from abroad are automatically placed in alternative care upon their arrival (in what are called “crisis centres”, which are used to accommodate victims of various forms of violence). Their cases are referred to a court which is to determine whether the child’s parents should be formally deprived of parental responsibility: in the meantime, social services (the Social Assistance Directorate) has legal responsibility for them. It seems that returning children are initially placed in alternative care for three or six months, while social services are supposed to monitor each returnee child for a full year.¹⁵³

7.3 Bilateral agreements on the return of trafficked or unaccompanied children

In certain circumstances it is appropriate to return children who have been trafficked to their country of origin. This is the case as long as they are not refugees and a best interests assessment has not identified any significant risks or other reasons speaking against return. However, the logistics of returns are a challenge; they require the States involved to reach agreements on numerous details before it is acceptable to proceed. It is therefore in the interest of both parties to adopt formal return agreements, whether these are negotiated bilaterally or multilaterally. Even so, there have been examples of returns being stalled for a multitude of reasons. In one region outside Europe (West and Central Africa), UNICEF tried to resolve some of these obstacles more than a decade ago by proposing a Model Bilateral Agreement on Co-operation and Mutual Legal Assistance in Protecting Children from Trans-Border Trafficking (see annex 2 below).

An agreement between Albania and Greece (the 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) is an example of a bilateral agreement. Its provisions represent a substantial effort by both parties to develop an agreement that respects the rights of the children involved and so it remains a model for others to consult. It was ratified by Albania in 2006 and by Greece in 2008 and entered into force in 2009.¹⁵⁴ Pressure for Albania and Greece to come to an agreement came in the early 2000s, when there were reports of Albanian children living in Greece being brought to the land border between Greece and Albania to be repatriated without officials in Albania having been informed in advance.

“ ... the need for a child to be in alternative care should be reviewed a few days after their arrival and also every subsequent month.”

¹⁵² The Committee on the Rights of the Child and GRETA.

¹⁵³ Bulgaria, Third, fourth and fifth periodic reports of States parties due in 2013 (Report to the Committee on the Rights of the Child, received in April 2014). Consideration of reports by States parties under article 44 of the Convention. UN doc. CRC/C/BGR/3-5 (4 May 2015), para. 342.

¹⁵⁴ The text of the Agreement in English is available at: <http://www.legislationline.org/documents/id/5856>.

For any agreement between two States to be operationalized, it is essential for both parties to specify which government department is going to be their “focal point”, i.e., the department for the other party to contact whenever there is a need. The above-mentioned Agreement calls these a “Responsible Authority” (under article 7.2). In Greece this is the National Emergency Social Solidarity Centre of the General Secretariat of Welfare of the Ministry of Health, Welfare and Social Security, while in Albania it is the Government’s Joint Commission for the Protection of Children Victims of Trafficking.

On the key issue of identification and initial protection and assistance, the Agreement stipulates (article 9.1) that:

“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 co-ordination 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.”

The Agreement provides for the appointment of a “provisional guardian” (article 10), who is required to liaise between the child and the different organizations and services involved in the process and in charge of responding to the needs of the child, and to “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.”

On the issue of “Safe repatriation”, the Agreement stipulates that “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” (article 14.1). Upon return, the Responsible Authority in the child’s country of origin is required to “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” (article 14.2). Further, the same authority is supposed to “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.”

Based in part on the experience of this agreement, a report about transnational referral mechanisms has recommended that “The bodies responsible for NRMs and TRMs should ensure that requests of international co-operation concerning child victims of trafficking are managed by a single national authority.”¹⁵⁵

155 ICMPD, *The Way Forward in Establishing Effective Transnational Referral Mechanisms*, A Report based on Experiences in Cases of Human Trafficking in South-Eastern Europe (ICMPD: 2012), p. 111.

7.4 Multilateral agreements on the return of trafficked and other unaccompanied children

Soon after the breakup of the Soviet Union, most member States of the newly created Commonwealth of Independent States (CIS) reached an agreement in Volgograd in 1993 on how each State should respond to the presence of unaccompanied children believed to come from another CIS State.¹⁵⁶ The numbers of unaccompanied and separated children in several CIS States were reported to have increased during the subsequent two decades, while at the same time there were reports of children without parental care living on the streets of large cities such as Moscow and St. Petersburg. When the OSCE Special Representative visited the Russian Federation in February 2017, she was informed that some children of migrant workers were forced to work in the informal sector to support their families and experienced exploitation by employers. She noted that the children of migrants formed a group that appeared at significant risk of being trafficked and abused.¹⁵⁷ Although the relevant statistics were not disaggregated to indicate what proportion of cases involved children, the St. Petersburg Red Cross Centre for International Co-operation reported that of more than 15,000 calls to its telephone hotline in the years 2009–2016, approximately 5 per cent (i.e., 750 calls) concerned issues linked to human trafficking and the violation of labour laws.¹⁵⁸

The Russian Federation in particular has experienced significant levels of immigration from other CIS States by entire families and also individual migrants, including independent child migrants. The IOM reported in 2015 that just under five million migrants born in Central Asia were living in the Rus-

sian Federation, noting that “Both male and female migrant workers from Central Asia can be vulnerable to exploitation and abuse, particularly within informal employment such as construction, agricultural and domestic work.”¹⁵⁹ Official sources reportedly estimated in 2015 that there were 939,000 migrants from four Central Asian countries alone who had formally registered their residence in the Russian Federation.¹⁶⁰ However, children who enter the Russian Federation by themselves were not included in these statistics.

The procedures that were agreed in Volgograd in 1993 were reconfirmed at a meeting in Chişinău in 2002 for a further five years (i.e., until 2007).¹⁶¹ They involved an administrative procedure for detaining unaccompanied children (referred to in the Agreement as “minors left without guardianship”) from other States which had signed the agreement, placing them in specialized institutions, often in the custody of the Ministry of the Interior (in whichever country a child was identified), and repatriating a child without any hearing or legal procedure via a series of centres administered by relevant government ministries. These were “closed” centres, that is, the children concerned were not free to walk out, but were subject to administrative detention.

Two types of residential centre were listed as accommodating unaccompanied children being returned (in an Annex to the Chişinău Agreement). In most countries these are detention centres supervised by ministries for internal affairs, while others are residential centres (usually supervised by a ministry responsible for health or social affairs) for children found without parental care or who have been subject to abuse. In the Russian Federation (the largest of the countries involved), for example, detention centres run by the Ministry for Internal Affairs (known as “Centres of temporary rehabilitation and isolation of minors in conflict with the law”) were earmarked for use in ten cities, while Centres for Social Rehabilitation for children who are found without parental care (supervised by the authorities responsible for health and social protection) were to be used in four cities and social shelters for children in two others.

¹⁵⁶ The Volgograd Agreement, signed on 24 September 1993 by all CIS states except Turkmenistan, on the collaboration of CIS member states on issues of returning minors to countries where they have permanent residence.

¹⁵⁷ OSCE Special Representative, Report on visit to the Russian Federation, OSCE doc. SEC.GAL/184/17 (Vienna: 2017).

¹⁵⁸ St. Petersburg Red Cross Centre for International Co-operation, Strengthening Measures on Co-operation Trafficking in Human Beings in the St. Petersburg and the Leningrad Region, Appendix 2 (St. Petersburg: 2017), <http://www.spbredcross.org/images/recomendacii.pdf>.

¹⁵⁹ IOM World Migration Report 2018 (Geneva: 2018), p. 66, quoting UN Department of Economic and Social Affairs (DESA), International Migration Report 2015.

¹⁶⁰ A. Seifert, The problems of Central Asian migration to Russia, 12 January 2018 (<https://doc-research.org/the-problems-of-central-asian-migration-to-russia/>), quoting the IOM World Migration Report 2018 as its source. The largest number (616,000) is reported to be from Kyrgyzstan, where the average monthly wage is reported to be US\$155.

¹⁶¹ The Agreement on Co-operation of the Member States of the Commonwealth of Independent States in matters concerning the return of minors to their States of permanent residence (2002), referred to as the “Chisinau Agreement”. Text accessed at: <http://www.cis.minsk.by/page.php?id=1462>.

Under the terms of article 6 of the Chişinău Agreement, an unaccompanied child who is identified and detained should be transferred to the closest “specialized institution” in their home country within 30 days from the time the authorities have established that the child has no parent or legal guardian in the country where he or she has been found. They are supposed to be accompanied by officials of the country that is transferring them.

Although valid for a period of five years, the Chişinău Agreement appears to be the main legal text determining what should happen to unaccompanied children identified in certain CIS States, even when the child concerned has been subject to abuse or exploitation. By 2014, however, the detention centres in some States that signed the Agreement were reported to have closed, suggesting the procedures envisaged by the Agreement were no longer being followed (notably Azerbaijan, Georgia and Moldova¹⁶², all States Parties to the Council of Europe Convention on THB).

“ 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.”

(PC.DEC/685, 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; Recommended actions at the national level)

¹⁶² Child Rights Information Network (CRIN), *In Whose Interests? How the Law Treats Unaccompanied Children in the Countries of the Commonwealth of Independent States* (London: 2014).

8

CONCLUSIONS AND RECOMMENDATIONS

Many of the recommendations adopted by the OSCE in the past (see section 2.3) remain to be implemented (or fully implemented) by the OSCE participating States. Rather than repeat these, the recommendations below focus on the specific issues addressed by this Occasional Paper:



Recommendations concerning decision-making (ensuring the trafficked child's best interests are a primary consideration)

- 1 Ensure that child trafficking is addressed as a child protection issue within a child protection framework, with child protection specialists playing a lead role in all procedures involving decisions that might have a significant impact on the child's well-being, including decisions on immigration status.
- 2 Ensure that the National Referral Mechanism recognizes the specific situation of child victims of THB, including the particular forms of trafficking and exploitation for which children are targeted, along with the needs and rights of trafficked children, and sets out the referral channels that are most appropriate for children, guaranteeing non-nationals access to services on at least the same basis as national children who are trafficked.
- 3 Ensure that a framework or procedures are in place to involve a multidisciplinary approach in assessing and determining the best interests of the individual child and that these are implemented systematically.
- 4 Ensure that children who may have been trafficked are provided with a temporary guardian as soon as possible after they are identified (unless a parent is available and it would be appropriate for the parent to accompany the child during the decision-making phases) and that a child's legal advisors and guardian are involved in decisions concerning a comprehensive solution for the child.
- 5 Once a child is identified by a country's competent authority as having been trafficked, child protection officials should take the lead in exploring which long-lasting solution would be most appropriate for the child. Consider setting up a process to decide on a comprehensive, secure and sustainable solution that can operate using child protection mechanisms and involves a multi-agency Best Interests Assessment (BIA), followed by a Best Interests Determination (BID), within a child protection framework.
- 6 The assessment (BIA) should take into account the child's views, the child's identity, preservation of family environment and maintaining relationships with relatives and friends (unless this is explicitly found to be not in the child's interests), care, protection and safety of the child, situation of vulnerability, right to health and education.

Recommendations concerning accommodation provided and the safety of trafficked children

- 7 Ensure that every statutory (State-run) agency that comes into contact with children (whether trafficked or not) has an appropriate Child Safeguarding Policy and reporting procedures in place.
- 8 Children who may have been trafficked and who are deemed unable to return home, for whatever reason, should be provided with specialized safe accommodation from the moment the child is identified as a presumed victim and should not be placed in an emergency or general reception centre. Unless it is deemed not to be in their best interests, children have the right to be close to other family members.
- 9 From the moment a child is first identified, initiate action to keep the child safe, including action, appropriate to the child's age and gender, to prevent sexual abuse.
- 10 Ensure that child victims of ill-treatment are provided with proper care and rehabilitation programmes and that re-victimization of any kind is avoided.
- 11 Ensure that trafficked children are not detained (i.e., enjoy less freedom of movement than other children of similar age). Restrictions should only be imposed on a child as a last resort, i.e., if no less restrictive measure would deliver the same results. If a trafficked child is detained (whether in a detention centre or a closed "secure" accommodation unit), this should only be done for the shortest possible time and with the approval of a judicial authority. Details of the reasons should be recorded so that they can be assessed subsequently by an independent authority. As soon as more than a few (e.g., six) cases of the detention of individual children have been recorded, the competent authority should commission an independent review to assess if detention was essential and what the impact has been on the children concerned.

Recommendations concerning "returns" (repatriation)

- 12 When the return of a trafficked child to his/her country of origin is contemplated, risk and security assessments must be carried out. The requirement to do so should be made explicit in a referral mechanism or other legally binding procedure.
- 13 Ensure that there is a focal point in a central government agency to whom inquiries can be addressed by officials in other countries about trafficked children (as well as other unaccompanied or separated children) and who can receive and rapidly pass on requests for a social inquiry about an individual child.
- 14 Provide the relevant social service or child protection agency with adequate resources to respond promptly to requests for a social inquiry about a trafficked child and ensure that the procedures in place for transmitting requests and results do not introduce unwarranted delays.



ANNEXES

Annex 1

Article 32 of Joint General Comment (2017) by Two Treaty-Monitoring Bodies on the General Principles Regarding the Human Rights of Children in the Context of International Migration

Commenting on the implementation of the best interests principle in migration-related procedures or decisions that could affect children, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child stress (in article 31 of one of their Joint General Comments¹⁶³) the need to conduct systematic best-interests assessments and determination procedures as part of, or to inform, migration-related and other decisions that affect migrant children.

In Article 32 of the Joint General Comment “The Committees stress that States parties should:

- (a) Give high priority to the child’s best interests in their legislation, policy and practice;
- (b) Ensure that the principle of the best interests of the child is appropriately integrated, consistently interpreted and applied through robust, individualized procedures in all legislative, administrative and judicial proceedings and decisions, and in all migration policies and programmes that are relevant to and have an impact on children, including consular protection policies and services. Adequate resources should be put in place in order to ensure this principle is applied in practice;
- (c) Ensure that all best-interests assessments and determinations developed and conducted give appropriate weight to fulfilling the rights of the child—in the short and long term—in the decision-making processes affecting children; and ensure due process safeguards are established, including the right to free, qualified and independent legal representation. The best-interests assessment should be carried out by actors independent of the migration authorities in a multidisciplinary way, including a meaningful participation of authorities responsible for child protection and welfare and other relevant actors, such as parents, guardians and legal representatives, as well as the child;
- (d) Develop procedures and define criteria to provide guidance to all relevant persons involved with migration procedures on determining the best interests of the child and on giving them due weight as a primary consideration, including in entry, residence, resettlement and return procedures, and develop mechanisms aimed at monitoring its proper implementation in practice;

(e) Assess and determine the best interests of the child at the different stages of migration and asylum procedures that could result in the detention or deportation of the parents due to their migration status. Best-interests determination procedures should be put in place in any decision that would separate children from their family, and the same standards applied in child custody, when the best interests of the child should be a primary consideration. In adoption cases, the best interests of the child shall be the paramount consideration;

(f) Conduct a best-interests assessment on a case-by-case basis in order to decide, if needed, and in accordance with the Guidelines for the Alternative Care of Children, the type of accommodation that would be most appropriate for an unaccompanied or separated child, or children with parents. In that process, community-based care solutions should be prioritized. Any measure that constrains children’s liberty in order to protect them, e.g. placement in secure accommodation, should be implemented within the child protection system with the same standards and safeguards; be strictly necessary, legitimate and proportionate to the aim of protecting the individual child from harming him or herself or others; be part of a holistic care plan; and be disconnected from migration-enforcement policies, practices and authorities;

(g) Conduct a best-interests determination in cases that could lead to the expulsion of migrant families due to their migration status, in order to evaluate the impact of deportation on children’s rights and development, including their mental health;

(h) Ensure that children are identified promptly in border controls and other migration-control procedures within the State’s jurisdiction, and that anyone claiming to be a child is treated as such, promptly referred to child protection authorities and other relevant services, and appointed a guardian, if unaccompanied or separated;

(i) Provide guidance to all relevant authorities on the operationalization of the principle of the best interests of the child for migrant children, including children in transit, and develop mechanisms aimed at monitoring its proper implementation in practice;

¹⁶³ Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, UN doc. CMW/C/GC/3-CRC/C/GC/22 (16 November 2017).

Annex 2

(j) Develop and put into practice, with regard to unaccompanied children and children with families, a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions, including further integration and settlement in the country of current residence, repatriation to the country of origin or resettlement in a third country. Such solutions may include medium-term options and ensuring that there are possibilities for children and families to gain access to secure residence status in the best interests of the child. Best-interest determination procedures should be guided by child protection authorities within child protection systems. Possible solutions and plans should be discussed and developed together with the child, in a child-friendly and sensitive manner, in accordance with Committee on the Rights of the Child general comment No. 12 (2009) on the right of the child to be heard;

(k) If determined that it is in the best interests of the child to be returned, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration. The Committees stress that countries of origin, transit, destination and return should develop comprehensive frameworks with dedicated resources for the implementation of policies and comprehensive inter-institutional co-ordination mechanisms. Such frameworks should ensure, in cases of children returning to their countries of origin or third countries, their effective reintegration through a rights-based approach, including immediate protection measures and long-term solutions, in particular effective access to education, health, psychosocial support, family life, social inclusion, access to justice and protection from all forms of violence. In all such situations, a quality rights-based follow-up by all involved authorities, including independent monitoring and evaluation, should be ensured. The Committees highlight that return and reintegration measures should be sustainable from the perspective of the child's right to life, survival and development."

UNICEF'S Model Bilateral Agreement on Co-operation and Mutual Legal Assistance in Protecting Children from Trans-Border Trafficking

The full text of the model agreement is available at: <http://www.unhcr.org/50aa01009.pdf>. The 27 articles of the Model Bilateral Agreement drafted by UNICEF in 2004 for use in West and Central Africa concern the following issues:

- Article 1 Scope of the Agreement
- Article 2 Definitions
- Article 3 Co-ordinating Authorities
- Article 4 Best Interest of the Child
- Article 5 Non-Discrimination
- Article 6 Identification and Presumption of Age
- Article 7 Assistance to and Protection of Victims
- Article 9 Rehabilitation and Social Reintegration of Victims
- Article 10 Protection of Victims against Incarceration
- Article 11 Family Reunification
- Article 12 Repatriation of Victims
- Article 13 Enabling Victims to Remain In Receiving State
- Article 14 Registration and Documentation of Victims
- Article 15 Tracing
- Article 16 Reception and Transit Centers
- Article 17 Prevention of Child Trafficking
- Article 18 Criminalization and Law Enforcement
- Article 19 Jurisdiction
- Article 20 Extradition
- Article 21 Border Measures
- Article 22 Information Exchange and Training
- Article 23 Security and Control of Travel or Identity Documents
- Article 24 Contents of the Request for Mutual Assistance
- Article 25 Limitations on Use of Information or Evidence
- Article 26 Serving Documents
- Article 27 Testimony in the Requested State

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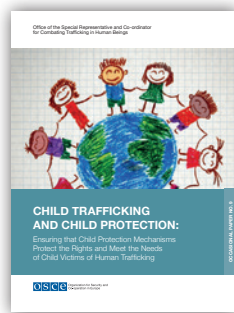
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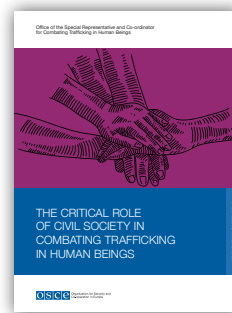
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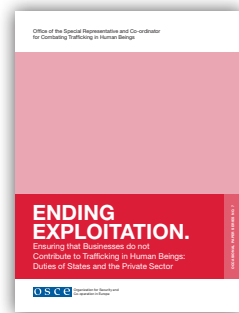
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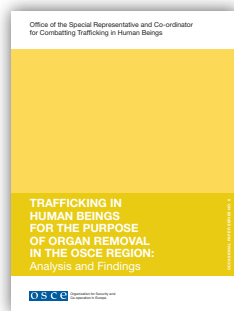
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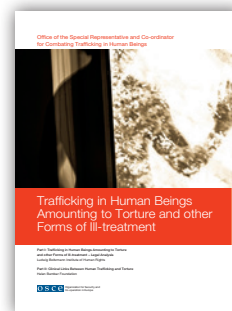
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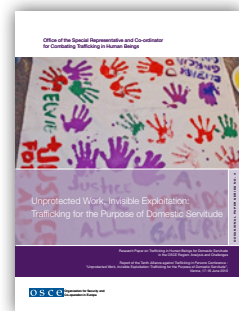
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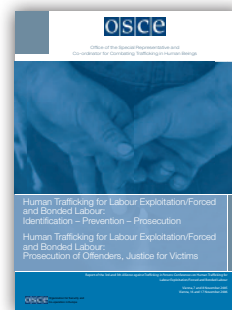
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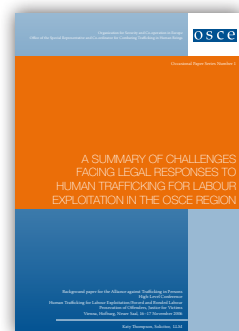
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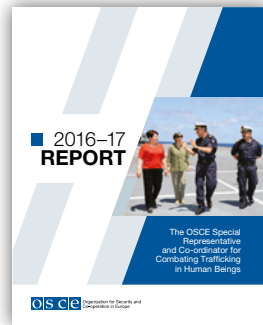


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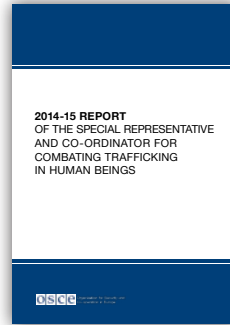


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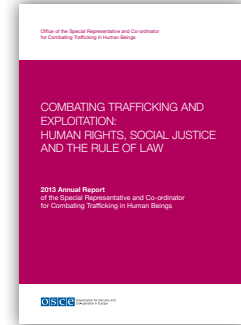
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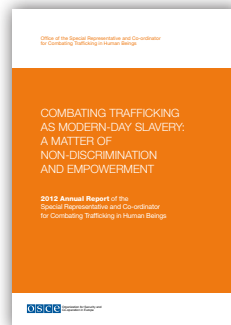
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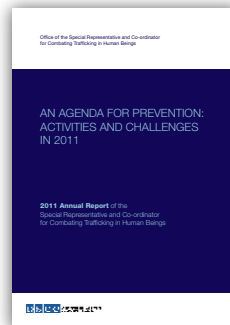
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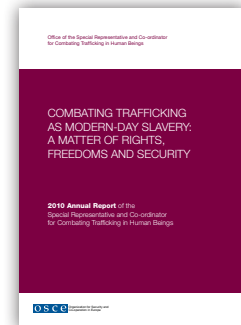
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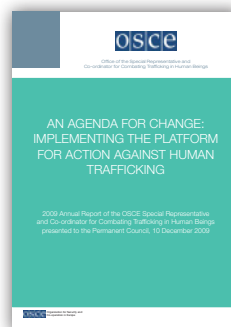
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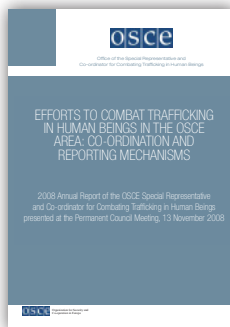
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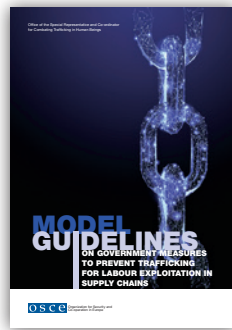


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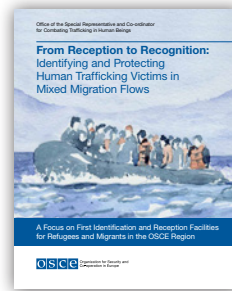
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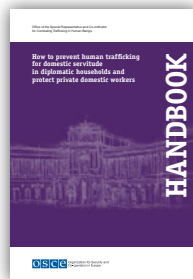
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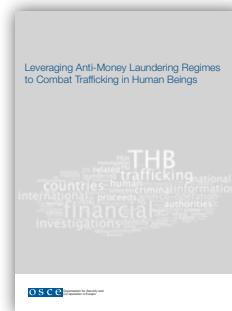
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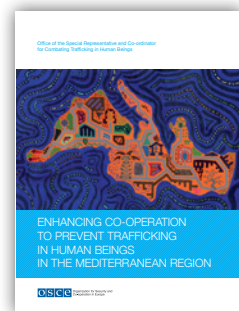
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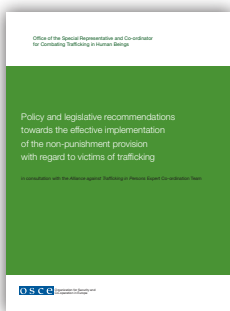
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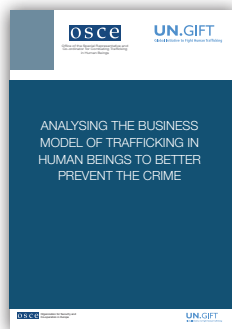
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