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THE RESPONSE OF THE EU AND
ITS MEMBER STATES TO CHILD
TRAFFICKING AND ABDUCTION

BRIEFING PAPER



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DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

Civil Liberties, Justice and Home Affairs

THE RESPONSE OF THE EU AND ITS MEMBER STATES TO CHILD TRAFFICKING AND ABDUCTION: IMPROVING PROTECTION AND PROMOTING CHILDREN'S RIGHTS

BRIEFING PAPER

Summary:

This briefing paper aims to provide information in relation to the phenomenon of child trafficking and abduction into, out of and within member states for the purpose of their abuse and exploitation. In particular the paper is directed towards child-specific considerations in relation to measures against trafficking, with particular regard to the Council of Europe Convention on Action Against Trafficking and the Treaty of Lisbon. It looks at such matters as statistical prevalence and data gathering, provisions in European member states for the identification and protection of child victims of trafficking and abduction; identifies examples of good practice in law, policy and practice; makes recommendations to further combat child trafficking and abduction and from a children's rights perspective looks at the improvement of protection and rehabilitation measures for child victims, children's access to justice and safeguarding measures as witnesses in legal proceedings connected to these abuses.

This study was requested by: The European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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Due to the scale of this subject and the depth of materials available to consider and summarise, this paper cannot by any means cover in detail the wide range of issues arising from and relating to the phenomenon of child trafficking and as such it does not pretend in any way to be a comprehensive overview. Many other experts and organisations have already provided such specialist commentaries and guidance in much more detail and their work is referred to throughout this paper. What is presented is a brief snapshot of some of the major issues and pointers to many of those sources.

Introduction

Human bondage and its concomitants, trafficking and abduction, are not new phenomena; indeed they may be one of the very oldest and most persistent. Since ancient times and throughout history to the present day, men, women and children have been reduced to commercially valuable but at the same time highly expendable commodities, a seemingly ever-renewable source of exploitation and profit, whether as the spoils of war and conquest, or the human cargo of slave traders for cheap labour or the entertainment and gratification of the wealthy and powerful.

In the late 20th and early 21st centuries, rapid advances in information technologies, communications and transportation networks, growing global disparities in economic opportunities and high volumes of international migration provide a ready environment to traffic, exploit and abuse children in a wide variety of ways: in sex work, online pornography, drugs trade (e.g. in cannabis-growing factories and dealing¹), unpaid and unprotected industrial labour, agricultural and domestic labour, for begging and petty theft, human organ and body parts dealing for a growing transplant tourism market,² illegal adoption and forced marriage arrangements.

Using sophisticated practices and elaborate networks, traffickers ensure that their victims are hidden from public view, through coercion and threats, deliberate concealment, falsification of identities and narratives and by reliance on the public's lack of awareness. It is the responsibility of us all as citizens to become much more aware of these very abusive, damaging and criminal trades and the consequences for the victims. This can only be achieved through the long-term best efforts of legislators, policy-makers, law enforcement practitioners, judges, child welfare and children's rights experts and the whole of civil society working together to turn this tide of human abuse.

Through existing European Council Framework Decisions on child sexual exploitation (2004/68/JHA) and trafficking (2002/629/JHA), the European Convention on Action against Trafficking, the Charter of Fundamental Rights of the European Union, the Lisbon Treaty and the European Commission's Strategy on the Rights of the Child,³ big steps forward have already been made. Two proposed Council Framework Decisions on combating the sexual abuse, sexual exploitation of children and child pornography,⁴ and on preventing and combating trafficking in human beings, and protecting victims,⁵ suggested recognising and filling gaps in victim protection and looking to prosecute perpetrators with more strength and ambition. This was a most welcome development, particularly in the recognition of the need for further legislative measures to prevent the prosecution of victims, to provide improved protection for child witnesses in criminal proceedings against traffickers and abusers, to enable child victims to have better access to legal remedies and support. The Proposed Framework Decisions also importantly reflected the provisions of the Convention on the Rights of the Child that entitle any child who has been harmed to benefit from psychological recovery and reintegration provisions.⁶

¹ See for example "Slavery discovered on Britain's Cannabis Farms", *Anti-Slavery International*, Winter 2009 News (http://www.antislavery.org/english/resources/reporter_in_brief/reporter_in_brief_winter_2009/news_winter_2009.aspx).

² See The Vienna Forum to Fight Human Trafficking, 13-15 February 2008, Austria Center Vienna Background Paper 011, Workshop: Human Trafficking for the Removal of Organs and Body Parts (<http://docs.google.com/viewer?a=v&q=cache:hjUUIBnWWHYJ:www.unodc.org/documents/humantrafficking/MarikaMisc/BP011HumanTraffickingfortheRemovalofOrgans.pdf+children+trafficked+for+human+body+parts&hl=en&gl=uk&sig=AHIEtbTOinKxtm633uNvHlaEKkeNHfwjAg>) and the Arabic International Daily, Asharq Al-Awsat news report of 20.1.07, "The Deadly Trade of Child Organ Trafficking" (<http://www.aawsat.com/english/news.asp?section=3&id=7723>) regarding 'transplant tourists', from Europe, the US and the Middle East.

³ COM(2006) 367 Final Brussels 4.7.2006.

⁴ 2009/0049 (CNS), repealing and incorporating Framework Decision 2004/68/JHA (Brussels, 25.3.2009 COM(2009)135 final).

⁵ 2009/0050 (CNS), repealing and incorporating Framework Decision 2002/629/JHA (Brussels, 25.3.2009 COM(2009) 136 final).

⁶ UN Convention on the Rights of the Child, Article 39.

In identifying and preventing child victims of trafficking and abduction, in breaking down criminal networks and their markets and in prosecuting their abusers, the United Nations Convention on the Rights of the Child must always be the guiding set of principles so that the best interests of children and the promotion and restoration of their dignity and development are always central to that purpose. The 20th anniversary of the 1989 United Nations Convention on the Rights of the Child (CRC) was rightly marked and celebrated in November 2009. It is an almost universally ratified set of comprehensive child rights and standards. The CRC also has two Optional Protocols, the second being the *Optional Protocol on the sale of children, child prostitution and child pornography*, which contains a range of additional child trafficking specific obligations,⁷ for example, that “the best interests of the child should be a primary consideration in all actions and decisions affecting victims of trafficking, including their treatment by the criminal justice system”.⁸

All anti-trafficking measures should specifically incorporate these key obligations. Trafficking measures cannot be understood or implemented in isolation from these wider children's rights. There is an urgent need for child trafficking to be understood from the perspective of the child as a holder of rights rather than simply as an object of welfare and protection (or indeed as with many child trafficking victims, lacking any such state protection). Research for the European Agency for Fundamental Rights supports this child rights-focused approach.⁹

The Lisbon Treaty

The Treaty of Lisbon (The Lisbon Treaty) amending the Treaty on European Union and the Treaty establishing the European Community,¹⁰ came into force on 1 December 2009.

Article 2 of The Lisbon Treaty makes “Horizontal Amendments” to existing treaties under the newly named ‘Treaty on the Functioning of the European Union¹¹’. Chapter 2, Policies on Border Checks, Asylum and Immigration requires the European Union and its Member States to develop “enhanced *measures to combat ...trafficking in human beings*”¹² and provides for “*the European Parliament [...] to adopt measures [...] combating trafficking in persons, in particular women and children.*”¹³ Under Chapter 4 Judicial Cooperation in Criminal Matters¹⁴ “*the European Parliament ...may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension.*” These include “*trafficking in human beings and sexual exploitation of women and children.*” In so doing, minimum rules may be established concerning “*... the rights of victims of crime.*”¹⁵ Under Chapter 5 Police Cooperation¹⁶, measures may be established for the purpose of “*...the collection...analysis and exchange of relevant information research into crime-detection...common investigative techniques in relation to the detection of serious forms of organised crime.*”

The Lisbon Treaty amends the EU Treaty to enable the European Union to become a party to the European Convention on Human Rights. In doing so, in tandem with the binding

⁷ The Protocol has been ratified by twenty, but signed by only seven EU Member States (http://www2.ohchr.org/english/bodies/ratification/11_c.htm).

⁸ Optional Protocol Article 8.

⁹ See EU Agency for Fundamental Rights (FRA), *Child Trafficking in the European Union: Challenges, perspectives and practices*, July 2009, at p. 38, footnote 75, citing H. Sax and I. Golden, Study on indicators measuring the implementation, protection, respect and promotion of the rights of the child in the European Union, mapping and assessment of available relevant data resources, Preliminary Work Package 3: Child trafficking (Child protection), 2008, pp. 5-6.

¹⁰ 2007/C 306/01 Official Journal of the European Union Volume 50 17.12.2007

¹¹ 2007/ C306/42 Official Journal of the European Union 17.12.2007

¹² Article 63a *ibid*

¹³ Article 63a (2) (d) *ibid*

¹⁴ Article 69 B (1) *ibid*

¹⁵ Article 69 A (2) (c) *ibid*

¹⁶ Article 69 F (2)(a-c)

provisions of the Charter of Fundamental Rights of the European Union¹⁷, it establishes a mechanism for a more consistent interpretation of human rights between the European Union and the European Court of Human Rights.

Beyond these specific provisions, the Treaty on the Functioning of the European Union re-states the fundamental obligation of all European Union policies and activities to aim *“to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”*¹⁸ and amends Article 6 of The Treaty on European Union to recognise the Charter of Fundamental Rights which contains the widest range of civil and political rights drawn from the European Convention on Human Rights and also covers social and economic rights, including the right to pursue a freely chosen occupation¹⁹. Most importantly in this context, the Charter prohibits inhuman and degrading treatment, slavery, forced labour and trafficking²⁰ and incorporates the UN Convention on the Rights of the Child obligations to protect and promote the best interests of the child, to take into account their wishes and feelings, enable them to participate effectively in any decision affecting them and to facilitate family unity.²¹

The binding nature of the Charter is fundamental to the development of all measures under the Lisbon Treaty and in particular, where child trafficking is concerned, that these are considered and implemented fully in the light of the Charter's Article 24 children's rights and the wider understanding of these rights from the expert bodies referred to throughout this briefing paper.

However, Poland and the United Kingdom agreed a Protocol to the Lisbon Treaty that does not permit the Court of Justice of the European Union or any domestic court of those countries to find that their laws or practices are incompatible with the Charter rights. Arguably this does not stop the Charter rights from being applicable in those states but does deprive individuals of a legal avenue to challenge any such inconsistencies. This paper recommends that such a Protocol is reconsidered by those countries as it may serve to reduce the avenues of legal redress available to challenge individual decisions, measures or policies in these member states by child victims of trafficking contending that they are not in accordance with their fundamental rights.

Under the Lisbon Treaty, EU legislation in the area of judicial cooperation in criminal matters moves from the present third pillar procedure which requires unanimity in the Council and simple consultation of the European Parliament, to the ordinary legislative procedure formerly known as the co-decision procedure with qualified majority voting in the Council and full co-legislative powers of the European Parliament. The (now withdrawn) Proposed Council Framework Decisions²², *on preventing and combating trafficking in human beings, and protecting victims* and *on combating the sexual abuse, sexual exploitation of children and child pornography* referred to in this report nonetheless remain a very useful starting point for further discussions of possible directives and measures that may be introduced under the Lisbon Treaty provisions. All reference to the proposed framework decisions in this report are to be read in that context.

Scope of this Briefing Paper

For the purposes of this paper, the terms trafficking and abduction refer to any child brought into the EU or moved across state borders within the European Union, moved within individual states of the EU and children taken out of the EU. The terms also apply to children who are moved multiple times and in any permutations of the above. It does not include children, who are moved wholly outside the EU, but such movements are inevitably

¹⁷ 2000/C364/ 1 Official Journal of the European Union 18.12.2000

¹⁸ Article 5 (c)

¹⁹ Article 15

²⁰ Articles 4 and 5 respectively

²¹ Article 24 of the CFR reflecting for trafficked children particularly UNCRC Articles 3, 6, 9, 10, 12, 19, 20, 32, 35, 36, 37

²² Brussels, 25.3.2009 COM(2009) 136 final 2009/0050 (CNS)# Brussels, 25.3.2009 COM(2009)135 final 2009/0049 (CNS)

part of inter-related global networks of organised trafficking and therefore European responses to such activities cannot be viewed in isolation from the wider global phenomenon.

This briefing paper does not address the question of children whose entry into the EU is facilitated, whether using genuine, false or fraudulently obtained documentation, by relatives or agents for the purpose of seeking protection under international refugee and humanitarian laws, nor the movement of children with or by family members for migration purposes or in the exercise of European free movement and residency rights, whether these movements are to be regular or irregular. However, children who are moved across international borders ostensibly for protection or migration purposes may also be or become trafficked or abducted en route or after arrival.

It does not include children who have been removed without consent from the care of one parent or carer by or on behalf of another where this is in the context solely of family disputes relating to a child's care, parental residence, contact rights and arrangements. Such abductions are dealt with primarily under *The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*²³ and as such are outside the scope of this paper. It is noted, however, that there are a large number of children who are affected by this form of abduction and much can be learned from the expertise of the Hague Conference on Private International Law and its specialist section on Child Abduction.²⁴

The needs and rights of child victims of trafficking and abduction are considered equally to any other child, irrespective of the lawfulness or otherwise of their entry into and presence within the EU.

The Definition of Child Trafficking

For the purpose of this paper, the definitions of trafficking are those set out in Article 4 of the *Council of Europe Convention on Action against Trafficking in Human Beings* (CECT) which came into force in April 2009.²⁵ The Convention adopted and extended the earlier Palermo Protocol²⁶ definition of trafficking with the additional recognition that it can be "national or trans-national, whether or not connected to organized crime". The CECT provides the most comprehensive European protection and prevention framework to date and emphasises the development of a mechanism to identify victims of trafficking. Children are recognised as particularly vulnerable and are to be afforded a high level of protection and support.

Simply put, *"child trafficking is the movement of children within and/or across borders using force, coercion or deception for the purpose of exploitation"*.²⁷

Prevalence and Data Collection on Child Trafficking

It is perhaps shocking to read in a recent and extensive report on child trafficking by the European Union's Agency for Fundamental Rights (FRA): *"Although the urgent need for data concerning child trafficking has been stressed repeatedly, at present no accurate collection, registration and exchange of data at European level takes place. Hence no*

²³ Full text available at http://www.hcch.net/index_en.php?act=conventions.text&cid=24.

²⁴ See http://www.hcch.net/index_en.php?act=text.display&tid=21.

²⁵ 2005 CETS No. 197 – Action against Trafficking in Human Beings, 16.V.2005 (http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF_Conv_197_Trafficking_E.pdf).

²⁶ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations).

²⁷ ECPAT (End Child Pornography and Trafficking) UK (http://www.ecpat.org.uk/downloads/Child_Trafficking_Q&A.pdf).

*reliable statements can be made concerning the prevalence of child trafficking in the EU.*²⁸ Such a comment by one of the key EU agencies concerned with children's rights is also consistent with other respected international bodies such as the International Labour Organisation (ILO)²⁹ in recognising that without consistent and accurate data gathering it is very difficult to identify the extent of the phenomenon, to analyse it, allocate sufficient resources and to take the actions that will most effectively address the diverse elements of the child trafficking problem. These include matters of policing, prevention and prosecution, professional education and public awareness and putting in place the practical mechanisms for the protection and safeguarding of individual children.

The ILO document "ILO action against trafficking in human beings 2008"³⁰ goes on to say:

*ILO estimates on child labour indicate that **as many as 1.2 million victims of trafficking are minors (under 18)**. It is often assumed that people are mainly trafficked for the purpose of commercial sexual exploitation. ILO estimates indicate, however, that 32% of all victims were trafficked into labour exploitation, while 43% were trafficked for sexual exploitation and 25% for a mixture of both. Women and **girls** make up the overwhelming majority of those trafficked for the purpose of sexual exploitation (98%).*

This is a global estimate of numbers at any one time over a ten-year period rather than an annual figure. Other sources, though now quite old, suggest that the European statistics are in the region of 120,000 women and children trafficked annually into Europe.³¹ It does not give a cumulative figure of how many children may be subject to abuse and exploitation from trafficking at any one time.

This is consistent with Europol's³² estimates: According to Europol, *the number of victims trafficked to Europe might be hundred thousand yearly. Out of these, the majority are women and children. Trafficking is considered the second source of illicit profits for organised crime. In 2005 ILO (International Labour Organisation) estimated annual profits from trafficked people in forced economic and sexual exploitation worldwide to be around 31,600 million dollars.*³³

One of the major problems is the failure to keep detailed statistics specifically about children, who are often not disaggregated from other trafficking victims, often being combined with those on trafficked women. Whilst there is undoubtedly some correspondence between the profiles of trafficked girls and women, for example in sexual exploitation, types of exploitation are not gender-exclusive and cannot be neatly classified. Much more detailed work is needed to better understand the trafficking profiles of children, by gender, by age, country of origin, transit and destination and the types of exploitation and abuse experienced.

According to the "Lost Kids, Lost Futures" report,³⁴ it is the lack of standardised methods of data collection for trafficked victims that "makes it very difficult to draw comparisons between States and to be clear about the extent to which child trafficking affects particular regions". In particular they ascribe the lack of information about the phenomenon of child trafficking to the failure by authorities to see trafficked children as victims rather than

²⁸ See *Child Trafficking in the European Union- Challenges, perspectives and good practices*, FRA, op. cit., at p. 19, section 1 and 1.1 (http://fra.europa.eu/fraWebsite/attachments/Pub_Child_Trafficking-09_en.pdf).

²⁹ International Labour Organisation, *Questions and Answers on Child Trafficking*

(http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/WCMS_113318/index.htm) "How many children are victims of trafficking today and what impact do you expect from the global economic crisis?" [Hans van de Glind:] "In the absence of reliable new data on child trafficking, our most recent estimate in a 2005 Global Report was that 980,000 to 1,250,000 children - both boys and girls - are in forced labour as a result of trafficking."

³⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf, p. 3.

³¹ Figure cited in B. Limanowska, *Trafficking in Human Beings in Southeastern Europe*, UNICEF, UNHCHR, OSCE-ODIHR (http://www.unicef.org/ceecis/Trafficking_Report.2005.pdf).

³² See Article 69D of the Treaty on the Functioning of the European Union, 2007/ C306/42 Official Journal for relationship of Europol to these functions.

³³ http://ec.europa.eu/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm.

³⁴ See p. 11 of the Terre des Hommes report (http://www.terredeshommes.nl/upload/dossier/download/200409_LostKidsLostFutures_IFTdH_ChildTrafficking.pdf).

criminals and their failure to distinguish between children and persons over 18 years old. In 2004 the European Commission's Experts Group on Trafficking in Human Beings,³⁵ recommended that Member States should establish a central place where information from different sources and actors is systematically gathered and analysed.

By its very nature, trafficking is clandestine and a strong element of fear is induced and control exerted over its victims. This makes it necessarily very difficult for authorities to obtain reliable information about and from individual children, let alone to gather sufficient information to produce meaningful data.

Whilst police, border officials and prosecution authorities may be well placed to investigate and bring these criminals to justice, they have not necessarily been the best-placed agencies to protect children or to elicit evidence from them in a safe way that does not risk re-traumatisation or endangering the child victim. Specialist knowledge and involvement of professionals in child welfare and safeguarding work at all stages of this process is vital and is often to be found on the front line of social welfare and child health services at the local level. All agencies involved in bringing traffickers to justice need to recruit such specialists and be trained in these skills and given sufficient resources to identify potential and actual child victims of trafficking as early as possible. They must also establish safe ways to collect and share this sensitive information with other agencies.

The Experts Group on Trafficking in Human Beings also recommended that "quantitative and qualitative research focused on children should be implemented, including the different factors influencing the risks for children and the different kinds of exploitation they suffer".³⁶ Such measures still remain largely unimplemented in any consistent way across member states six years after those high-level recommendations.

Provisions Concerning Children in the Convention on Action against Trafficking

Whilst the Convention on Action against Trafficking in Human Beings (CECT) specifically identifies the exploitation of children within its definition clauses, it also contains other important provisions addressing the vulnerability of children, as discussed below.

Age Verification

*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.*³⁷

One of the biggest dangers to undocumented children entering the EU is in being misidentified and categorised as adults. As a consequence their access to special child protection procedures, welfare and child health support services are denied. It also significantly increases the risk of children remaining exposed to the dangers of their traffickers if they are excluded from child-specific protection measures.

Whilst it is most often the case that children moved across international borders will not be in possession of original documents needed for the verification of their age and identity (e.g. passports, birth certificates, etc.) this should never be used as an obstacle to applying special measures as a trafficking victim. The language of the Convention (and indeed Article 14 of proposed Framework Decision 2009/0049) says that the person claiming to be a trafficked child "*shall be presumed to be a child*", unless there is evidence to suggest

³⁵ Report of the Experts Group on Trafficking in Human Beings, Brussels, 22.12.2004 (available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm#Experts%20Group%20on%20Trafficking%20in%20Human%20Beings, pp. 22-23.

³⁶ Ibid, p. 27.

³⁷ CECT Article 10 (3).

otherwise "*pending verification*" of age. This wording suggests that a much stronger evidential test is required other than reliance on current age assessment processes which at best only provide an estimation with a wide margin of error.

Children who are not recognised as children can easily find themselves inappropriately and unlawfully subjected to adult detention and accelerated decision-making procedures, as well as prosecution for migration and other criminal offences. In the asylum process this is a very serious problem. An unknown number³⁸ of trafficked children enter EU state asylum procedures each year and not only fail to be recognised as trafficking victims but also fail to be recognised as children at all. As practical measures are developed and implemented under the Lisbon Treaty, every effort should be made to prevent similar dangers arising in relation to age misattribution of trafficked and exploited children.

The assessment of age where it is disputed in states' asylum determination processes is an already highly contentious area of child asylum law and practice with physical measurement, and socio-medical assessment tests having been found variously unlawful, inappropriately conducted, ethically questionable and methodologically and scientifically unreliable.³⁹ Inappropriate practice such as x-ray testing remain a desired method of some member states like France and the UK, which are known to use or wish to use x-ray without the informed consent of the child, and contrary to Euratom ionising radiation directives that require that "*special attention shall be given to the justification of those medical exposures where there is no direct health benefit for the person undergoing the exposure and especially for those exposures on medico-legal grounds*".⁴⁰

As there are no obvious direct health benefits to children to be gained from such uses of x-ray, as it is arguably not a 'medico-legal' function and the accuracy of these kind of tests has never been satisfactorily established, child victims of trafficking (and indeed any other child) should never be subjected to such methods.

Nor should children be subjected to any other forms of age-assessment interviews or examination procedures, unless this is absolutely necessary. If there is a strong belief that the person claiming to be a child is not as claimed, this must be based on objective, expert evidence and/or documentary proof, not founded on subjective observations of appearance, demeanour and facial characteristics or stereotypes, which are too often relied upon by border officials. Any assessment should always be carried out with the fully informed consent of the child, accompanied by an adult exercising formal responsibility for the welfare and best interests of the child, who is independent from the state official making the decision. The child should have access to all the information relied upon by the state official in order to understand the basis of the decision and access to legal remedies and representation to challenge such a decision if necessary.⁴¹

Rather than to speculate upon the age range of a child, Article 14 of the Proposed Framework Decision 2009/0049 (CNS) recognised that in the absence of reliable, accurate assessment processes that can verify the age, the strong presumption must be that persons claiming that they are children are immediately protected and treated as such.

³⁸ No separate statistics are compiled across EU states on the number of child asylum-seekers whose claims also include having been trafficked or where the evidence suggests that they may have been trafficked nor on how many trafficked/asylum-seeking children are 'age-disputed'.

³⁹ See, for example, recent UK High Court age dispute cases, *A v London Borough of Croydon and the Secretary of State for the Home Department (SSHD)*, and *WK v SSHD and Kent County Council* [2009] EWHC 939. and also the UK Supreme Court judgment in *R(A) v London Borough of Croydon and R(M) v London Borough of Lambeth* [2009] UKSC 8.

⁴⁰ See Article 3(1) (d) of the Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionizing radiation in relation to medical exposure, and repealing Directive 84/466/Euratom (http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997L0043&model=guichett).

⁴¹ For an example of good practice recommendations in this area, see "When is a Child Not a Child", produced in May 2007 for the Immigration Law Practitioners Association by Dr. Heaven Crawley (www.ILPA.org.uk).

Guardianship

*As soon as an unaccompanied child is identified as a victim, each Party shall: provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child.*⁴²

Effective access to justice and participation in all decisions affecting a child requires that all children are able to make their wishes and feelings known⁴³ for these to be taken into account in accordance with their age and maturity and for the best interests of the child to be upheld not just in respect of major decisions but in all aspects of the processes they are engaged in. The majority of children who are trafficked are unaccompanied by anyone exercising formal legal care and responsibility for them.⁴⁴ Whilst many agencies may have child welfare duties within their wider formal responsibilities, such as police investigations and prosecutions, border control and security, social services and housing, judicial officers, none necessarily hold an independent function specifically to promote the best interests of the child in their engagement with these agencies. It is essential, particularly for trafficked children, to have a dedicated independent guardian to represent their best interests throughout all procedures and to ensure that the child's welfare needs are being met. This is in addition to an independent legal representative free of charge to the child. The UN Committee on the Rights of the Child's General Comment Number 6 on Separated Children strongly advocates guardianship for all unaccompanied children. Contrary to the proposed Council framework decision, future instruments on trafficking should include such an express provision.

Family tracing and contacts with country of origin

*As soon as an unaccompanied child is identified as a victim, each Party shall: take the necessary steps to establish his/her identity and nationality; make every effort to locate his/her family when this is in the best interests of the child.*⁴⁵

The right to maintain family unity is a key provision of the UN Convention on the Rights of the Child⁴⁶ but the establishment of a child's identity and family relationships should be approached very cautiously. Any steps to make enquiries in the country of origin or with consular staff of that country or to re-establish links with family members must always be carried out by specialist staff and only in a way that meets the best interests of the child. Until it is ascertained otherwise, there is always a danger that family members may be a willing or unwilling participant in the trafficking of the child, or they may be exposed to harm themselves if traffickers become aware that contacts, especially through criminal investigators, are being carried out. Premature or unsafe communications with the country of origin may also undermine refugee determination processes or even create a *refugee sur place* situation for the child, preventing efforts to reunite the child and family. If it is shown to be safe to re-establish the child's links with family members, especially parents, then consideration should equally be given to family unity being achieved by joining the child in the receiving country rather than repatriation of the child if it is unsafe for other reasons for the child to be returned home.

Reflection, residence permits and decisions to repatriate

These also apply as equally to children as to adults but must be approached in a way that recognises the need to promote the best interests of the child,⁴⁷ does not discriminate

⁴² Article 10 (4) (a) Council of Europe Convention on Action against Trafficking in Human Beings.

⁴³ UN Convention on the Rights of the Child, Article 12.

⁴⁴ Although a child may present to authority with a purported carer, this person may be their trafficker or abuser. Trafficking indicators and toolkits should be used to query such relationships; see further below under section Indicators of Trafficking.

⁴⁵ Ibid., Article 10 (4) (b) and (c).

⁴⁶ UNCRC, Articles 8 and 9.

⁴⁷ United Nations Convention on the Rights of the Child, Article 3.

against children⁴⁸ and must not be applied in any way that fails to take into account the wishes and feelings of the child and their right to be heard in relation to such a decision.⁴⁹

A reflection period for those identified as victims of trafficking⁵⁰ should be given, in order to allow a victim time in which to obtain assistance without being put under pressure to make an immigration or asylum claim or to cooperate with police.

*A renewable residence permit to be granted to a victim of trafficking if the victim cooperates with the police or if their personal circumstances warrant it.*⁵¹

*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.*⁵²

Strict adherence to minimum periods under these provisions may be problematic in children's cases. In relation to the reflection period, children may often lack the necessary capacity or personal resources to consider their position within a short time period, even with the assistance of a child specialist or guardian to support them. The child may be unable or unwilling or afraid to cooperate or participate in investigations at all or within a time schedule that is convenient or expedient to the authorities because of the traumatic nature of their experiences and their age and maturity and the psychological difficulty of making such disclosures without specialist support. What might be considered a reasonable minimum period for an adult to weight all the relevant issues may put undue pressure on a child and could serve to inhibit disclosure and even put the child at more risk of harm of re-traumatisation through premature disclosure. A lack of capacity or willingness to cooperate should never be used by the responsible state authorities to deny a child access to these protection measures and the provision in Article 13 CETS that *such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers* rather than an over-emphasis placed upon that Article's cooperation provisions should be the relevant determining factor in all children's cases. The best interests of the child and not of the prosecution and investigation authorities must be the primary consideration.

As with reflection periods, the length of residence permits should always be based on the personal needs of the child and not cooperation provisions. Residence permits should always be issued for as long as the child's situation requires it, avoiding the need for unduly frequent renewals. In accordance with Article 14 (2) of the Convention on Action Against Trafficking, *the residence permit for child victims [...] shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions*. This decision should be formed on the basis of specialist child welfare and psychological assessment reports and all relevant risk factors. A child who is provided only short periods of renewable temporary permission to reside may not be able to engage effectively with psychological recovery and reintegration treatment programmes if they feel that at a point in the near future they might face disruption of treatment and the sudden removal of protection. This would not be in the child's best interests nor would it provide an *"environment which fosters the dignity and self respect of the child"*, required for such treatment under Article 39 of the Convention on the Rights of the Child.

A durable solution that offers lasting protection to the child as soon as possible after identification is needed to create the best possible conditions for a child's recovery. If reintegration in the child's country of origin is to be considered later to be in the child's best interests, then such arrangements should be explored and made in full consultation with the child and child experts when the conditions in the country of origin have been assessed to meet the best interests of the child including their on-going treatment needs, and no serious risk of re-traumatisation, re-trafficking or exposure to other further harm. No removal actions should ever be commenced where there are other legal barriers to removal, for example if a trafficked child has the benefit of refugee protection or where

⁴⁸ Ibid., Article 2.

⁴⁹ Ibid., Article 12.

⁵⁰ Council of Europe Convention on Action against Trafficking in Human Beings, Article 13.

⁵¹ Ibid., Article 14.

⁵² Ibid., Article 16 (7).

legal proceedings are outstanding on that issue.

This would be consistent with the obligations set out in the Assistance to Victims provisions of Article 12 (1) to (7) of the Convention on Action against Trafficking, and the long-term recovery aims of Article 14 (3) of Proposed Framework Decision 2009/0049 and also with the authoritative guidance issued by the UN Committee on the Rights of the Child in its General Comments, in particular on Separated Children⁵³ and the Right of the Child to Be Heard.⁵⁴

Compensation

Article 15 of CECT provides that *Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims [...]*.

In the United Kingdom, a 'Criminal Injuries Compensation Scheme' and appeal process has long been established to award damages for personal injuries caused to victims of crime generally⁵⁵ and which has recently been successfully held to apply to cases of trafficking for sexual exploitation, including child victims. In July 2007, two sisters, one a young adult one a child, having been granted humanitarian protection after being sexually exploited as trafficking victims, were awarded compensation, between them of £82,500 for sexual abuse and £60,000 for "loss of earnings and loss of opportunity".⁵⁶ This relatively high level of award recognises (at least in the UK) that the injuries, both mental and physical, suffered through sexual exploitation demand significant financial redress to be made available to victims. Such a scheme is consistent with the requirements of Article 15 of the Convention against Trafficking, Proposed Framework Decision 2009/0050 Article 9 (6) and the related Council Directive 2004/80/EC of 29 April 2004⁵⁷ on compensation for crime victims.

Non-application of sanctions to the victim

Following the provisions of Article 26 of the Convention on Action against Trafficking, Proposed Framework Decision 2009/0049 provided⁵⁸ for the non-prosecution of victims for their involvement in unlawful activities as a direct consequence of being subjected to those offences. This includes children. State Prosecutors, Courts and Legal Representatives need to be aware of these provisions and ensure that children who are discovered by law enforcement agencies in illegal activities connected to their exploitation are not criminalised. Children in situations of exploitation should be presumed to be coerced and acting under duress. In order to ensure that children do not enter criminal proceedings and even worse, are then convicted, held in custody and even face deportation, prosecutors and criminal courts should establish clear written policies and practices for reducing the risk of unlawful sanctions against victims. A child is placed at even further risk of harm psychologically when subjected to penal proceedings alongside their traffickers. It may, if the child is also seeking asylum, be contrary to the international law prohibitions against penalty for entry⁵⁹ to seek refugee protection. Compensation should also be available in state laws to any person unlawfully prosecuted or punished by criminal and non-criminal measures (such as removal of welfare support or curtailment of lawful residence status). The UK courts have recently issued judgment⁶⁰ in a case of a 16-year old girl reversing her conviction and sentence for using false documents to help her escape. The court found serious failures by lawyers, prosecutors and the criminal courts to protect her as a child victim. This has led to the revision of UK prosecution practice and its new guidance may be

⁵³ General Comment 6 (<http://www2.ohchr.org/english/bodies/crc/comments.htm>).

⁵⁴ UNCRC General Comment 12, *ibid*.

⁵⁵ By the Criminal Injuries Compensation Act 1995, amended most recently in 2008.

⁵⁶ The case is anonymised to protect the victims and the judgment unreported but cited by Sandhya Drew, counsel of Toops Court Chambers, London, UK in her book, *Human Trafficking, Human Rights Law and Practice*, LAG Publications, 2009, p. 192.

⁵⁷ OJ L 261, 6.8.2004, p. 15.

⁵⁸ At Article 11.

⁵⁹ Article 31, 1951 Convention Relating to the Status of Refugees.

⁶⁰ R v O [2008] EWCA Crim 2835.

considered to be an example of good practice.⁶¹

Indicators of Child Trafficking

Early intervention is critical to protecting children. Victims of trafficking, especially children, do not usually come forward on their own for many reasons, not least the coercive nature of their relationship with their exploiters. Therefore indicators of child trafficking need to be used whenever it is suspected that a child may be trafficked and a greater awareness of these indicators needs to be widely disseminated across all agencies dealing with trafficking issues.

The International Labour Organization (ILO) published in 2009 its *Delphi Operational Indicators of Trafficking under its Special Action Programme to combat Forced Labour*.⁶² This comprehensive set of indicators includes children and the methodology was devised jointly with the European Commission. The UN Office on Drugs and Crime Online Toolkit to Combat Trafficking in Persons⁶³ (5.19 *Special considerations relating to the protection of child witnesses*) also reflects much that is highly relevant to implementing legislation⁶⁴ in relation to the prosecution of traffickers, containing as it does, very practical steps for identifying, protecting and assisting child victims in particular, "*understanding that the protection required by children participating in legal proceedings is different from the basic protection needed by all trafficked children, because there is a real risk that the procedures used at trials and in other proceedings may themselves expose children to harm.*"

A child who feels safe and trusts the adults responsible for his or her protection is much more likely to be able to disclose traumatic experiences, give a more detailed and consistent account and provide more effective witness testimony to support successful prosecutions.

The United Nations Children's Fund (UNICEF) has produced detailed guidance for parliamentarians on the subject of trafficked children,⁶⁵ including:

factors that make children vulnerable; establishing 'special trafficking units' made up of such law enforcement agents as police, prosecutors, border patrols, immigration officials and judges, coordinating law enforcement operations related to trafficking, victims' rights and specific needs, and referral procedures to organizations and agencies that can provide appropriate services. When children are involved in criminal proceedings against traffickers, safeguards are to be implemented to protect them from further victimization. Parliamentarians are encouraged to establish measures and protocols to ensure that child trafficking victims are treated with respect, dignity and sensitivity to their special needs. This includes appointing appropriate legal representation for the child and minimizing direct contact between the child and the offender.

UNICEF has also issued its *Guidelines on the Protection of Child Victims of Trafficking*⁶⁶ in 2006 recommending:

access to justice for child victims and witnesses of trafficking requiring special protection, assistance and support in order to prevent additional hardship as a result of their participation in the criminal justice process and in order to ensure that their best interests and dignity are respected. Guardians shall ensure that

⁶¹ See later under section on Examples of Good Practice.

⁶² Available at http://ilo.org/sapl/Informationresources/Factsheetsandbrochures/lang--en/docName-WCMS_105023/index.htm.

⁶³ Available at <http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html>.

⁶⁴ Articles 14 and 15 of proposed Framework Decision 2009/0049 and Articles 10 and 11 of proposed Framework Decision 2009/0050.

⁶⁵ The UNICEF [Handbook for Parliamentarians on Child Trafficking](#) (n°9), 2005.

⁶⁶ http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

the child victim is fully informed about security issues, risks and criminal procedures before he or she decides whether or not to testify in criminal proceedings ... as well as during trial hearing.

UNICEF recommends that law enforcement authorities, in cooperation with social services and non-governmental organisations, shall provide necessary legal assistance in a language that is accessible (understandable) to the child. Measures should be taken to exclude the public and the media from the courtroom when a child is giving testimony. Law enforcement authorities, prosecutors, judges and magistrates should apply child-friendly practices, including interview rooms designed for children, interdisciplinary services for child victims integrated under one roof, modified court environments that take child witnesses into consideration, use of recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, and on-call systems to ensure the child goes to court only when necessary. If necessary, amending their code of penal procedure to take account of the specific needs of a child victim and to allow for facilities such as videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. Much of this very practical guidance was contained in Article 15 of proposed Framework Decision 2009/49.

Trafficking and its Relationship with Refugee Protection

A child may also, by reason of the factual history of his/her case, be eligible for international protection as a refugee or under other subsidiary or complementary protection mechanisms.⁶⁷ A child should not be prevented from claiming asylum where this is appropriate on a proper investigation of their claim, nor provided with a lesser or temporary status if other more durable provisions also apply to their individual situation.

Such a situation where children are not only victims of trafficking but also in need of protection as refugees because either there are additional persecutory risks beyond the issue of trafficking or where the trafficking and continuing exploitation itself may constitute persecution under international refugee law needs careful consideration to ensure that the full extent of child-specific forms of persecution are understood and that refugee protection rights and measures are explored and also made available to trafficked children.

The UNHCR provides helpful guidance on approaching such cases in its Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked.⁶⁸ In determining what is in the best interests of a child in any given situation or decision, UNICEF⁶⁹ and United Nations High Commissioner for Refugees (UNHCR)⁷⁰ have provided extensive practical guidance not only on the meaning of Article 3 (best interests) but its inter-relationship with all other rights and obligations set out in the UNCRC. Both these sets of guidance are commended to this report's readers.

⁶⁷ For example, see European Qualifications Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Preamble para. (12) (best interests of child primary consideration); (20) (child-specific forms of persecution); Arts. 9(f) (child-specific forms of persecution); 20(3) (take into account special considerations for children); 20(5) (best interests of child to be primary consideration); 30 (unaccompanied minors).

⁶⁸ UN Doc. HCR/GIP/06/07, 7 April 2006.

⁶⁹ "Implementation Handbook for the Convention on the Rights of the Child", fully revised 3rd edition, 2008, authors P. Newell and R. Hodgkin (http://unicef.org/publications/index_43110.html).

⁷⁰ UNHCR, "Guidelines on Formal Determination of the Best Interests of the Child" (<http://www.unhcr.org/refworld/docid/48480c342.htm>).

Examples of Good Practice and Joint Working

The pioneering **Belgian** anti-trafficking NGO, Payoke, is a specialised shelter and counseling centre for victims of the international trade in human beings, which has always prided itself on its pioneering approach and the importance of cooperation between all stakeholders. It is a good illustration of the experience, insight and knowledge needed to tackle trafficking in human beings. It was for example Payoke that originally proposed the subsequently adopted short-term residence provisions of the Convention against Trafficking.⁷¹

In the **United Kingdom**, a number of NGOs, including ECPAT (UK) and the Poppy Project, have been highly active in securing the adoption of measures by the UK government to support and protect trafficking victims. As a result of such work, the UK Home Office has developed its own Trafficking Toolkit,⁷² and as part of its Action Plan on Trafficking, the UK established a national referral mechanism (NRM) to the UK Human Trafficking Centre in April 2009 for identifying and protecting victims of trafficking which acts as the 'competent authority' to determine if there are grounds to accept that a person has been trafficked. An assessment tool⁷³ for identifying child victims of trafficking has also been developed and training and statutory guidance to child safeguarding agencies are now being provided. The Crown Prosecution Service has issued revised detailed guidance to its prosecutors to prevent sanctions against victims and improve joint working.⁷⁴

In the Czech Republic, the non-governmental organisation La Strada offers to trafficked persons: free and anonymous accommodation; free food and clothing; free social assistance and consultations; time- and amount-limited financial support; facilitation of legal assistance; facilitation of health care; facilitation of psychological and psycho-therapeutic help; and accompanying of clientele in communication with other institutions and organization.⁷⁵

In **Romania**, systematic, progressive steps have already been taken to incorporate anti-trafficking measures also in relation to children into its domestic law,⁷⁶ including:

Entitlement to physical, psychological and social recuperation. provision of free psychological counselling and legal assistance, a period of recovery and reflection also for victims of trafficking who are not Romanian citizens [90 days, not conditional on their cooperation with judicial investigation authorities] mechanisms of financial compensation to victims; measures to protect witness identification; exoneration of victims from the commission of offenses connected to their being trafficked; special protection and assistance, according to [...] age...

In the **Council of Baltic Sea States** region a network has been established called the Working Group for Cooperation on Children at Risk.⁷⁷ The WGCC, is a group of senior officials from the ministries responsible for children's issues in the member countries to the CBSS and the European Commission, Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia and Sweden. Its priority is the protection of children from trafficking sexual exploitation and abuse.

In **Finland** legal guardians are appointed for all unaccompanied children identified as

⁷¹ See full published article in Academy of European Law, journal ERA Forum (2007) 8: 481–494 Cases of Child Trafficking Patsy Sørensen Gert Nuyts Published online: 16 November 2007.

⁷² <http://www.crimereduction.homeoffice.gov.uk/toolkits/tp00.htm>

⁷³ <http://police.homeoffice.gov.uk/operational-policing/safeguarding-vulnerable-persons/child-trafficking/>

⁷⁴ CPS guidance (available at http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a32).

⁷⁵ See report at http://www.cimade.org/uploads/File/admin/Rapport_Republique_Tcheque.pdf.

⁷⁶ Anti-trafficking policies in Romania Evaluation Report, 03 April 2007.

⁷⁷ (http://www.antitrafficking.info/images/stories/downloads/antitrafficking_policies_in_romania_evaluation_report.pdf).

⁷⁷ See the Frail Chain report (<http://www.childcentre.info/projects/traffickin/dbaFile15589.pdf>).

victims of trafficking.⁷⁸ It also has a non-criminalisation policy for victims of trafficking.⁷⁹

Recommendations

- 1 All actions on combating child trafficking and exploitation, including those proposed in the Framework Decisions detailed in this report should be guided by the principles contained in the Convention on the Rights of the Child: non-discrimination, best interests and child participation.
- 2 As soon as identified as such, all child victims should be provided with all necessary support and protection independently of their willingness and capacity to cooperate with justice.
- 3 Comprehensive independent expert assessments of risk and best interests of the child should be part of all decisions on the length of residence permits and decisions to return victims to their countries of origin.
- 4 A comprehensive and consistent set of criteria for the gathering, sharing and production of statistical data on trafficked children should be agreed and implemented by all Member States individually and jointly.
- 5 All Member States should sign and ratify without delay the Council of Europe Convention on Action against Trafficking in Human Beings 2005 and also the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007 and give full effect to these obligations by incorporating the provisions into their domestic laws.
- 6 Sufficient resources to produce and implement without delay, National Action Plans, National Referral Mechanisms, Assessment Toolkits, Learning Programmes and Independent Monitoring Arrangements should be made available and these should be shared with each other as a means of informing best practice.
- 7 Future European legislative instruments on trafficking should include express provisions to require child victims of trafficking to be provided with an independently appointed legal guardian from the start of formal identification and assessment processes and throughout all decision-making and judicial proceedings until a durable, safe solution for that child has been agreed, in order to ensure that the child has effective access to justice and that their best interests are fully considered at every stage.
- 8 All Member States should ensure that every child who is suspected of having been trafficked or is at risk of trafficking has access to safe and appropriate accommodation, specialist welfare and child health services to ensure his or her safety, psychological recovery and development for as long as s/he requires it.
- 9 No child suspected of being a victim of trafficking should be subjected to administrative detention and/or any criminal sanctions or detention for any actions connected with their entry into the EU or any activities carried out under coercion, exploitation and abuse.
- 10 No child suspected of having been trafficked should be excluded deliberately or inadvertently by reason of trafficking or asylum procedures, from access to international refugee or other complementary protection rights.
- 11 That the Protocol agreed by Poland and the United Kingdom to the Lisbon Treaty, regarding judicial oversight of compliance with the Charter of Fundamental Rights of the European Union is reconsidered and revoked.

⁷⁸ Thematic Study on child trafficking (Finland), p. 39 (<http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-fi.pdf>).

⁷⁹ Ibid., p. 32.

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