

Rights here, rights now:

Recommendations for protecting trafficked children



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In the UK, UNICEF works to champion children's rights and to win support and raise money for our work with children worldwide.

ECPAT UK

ECPAT UK is a children's rights organisation and the UK representative of the global ECPAT movement (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes). ECPAT UK is a coalition of eight children's charities and was established in 1993 to campaign against the commercial sexual exploitation of children.

ECPAT UK uses its knowledge and networks to engage politicians and parliamentarians in the fight against child trafficking in order to achieve the highest standards of care for child victims of trafficking in the UK.

To increase support for children, ECPAT UK provides training and policy advice to government, non-government organisations and the private sector in addition to undertaking research to evidence our lobbying and awareness raising campaigns.

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EXECUTIVE SUMMARY

The trafficking of children is a global problem. Every year, 1.2 million children are victims of trafficking. Children are secretly transported across borders and sold like commodities or trafficked within countries for the sole purpose of exploitation. Child trafficking is a crime that violates the basic rights of children, a crime which can – and does – destroy young lives.

The UK is a significant transit and destination country for trafficked children. The majority of children trafficked into the UK begin their journey in East Asia (China, Viet Nam) or Africa. In 2007, the UK Government announced that 330 child victims of trafficking had been identified over an 18-month period; of these 183 went missing from social services care

Child trafficking is largely a hidden crime, so the true number of children trafficked into the UK is likely to be much larger. No one knows the actual number of children who have been trafficked into the UK, some destined to work in the sex industry, as domestic servants and in sweatshops. Even if trafficked children are identified, their care and protection is inconsistent, *ad hoc* and, in some regions, completely absent.

The development of counter-trafficking policy and procedures is largely in its infancy in the UK. However, in recent years, the UK Government has taken significant steps to improve its response to tackling human trafficking. We welcome these steps, in particular the commitment to develop “a victim-centred, human rights-based approach to tackling human trafficking”. While progress has been made, much more remains to be done.

This report identifies the gaps and inconsistencies in current legislation and Government guidance, and proposes solutions that place children’s rights at the centre of the UK approach to safeguarding child victims of trafficking.

UK Government Reservation to the UN Convention on the Rights of the Child

The UK Reservation to the UN Convention on the Rights of the Child (CRC) states that the UK will not be bound by the Convention in matters concerning children under immigration control, and therefore accepts no responsibility for upholding their rights. This is in contradiction to the CRC’s principles of non-discrimination and regard for the best interests of the child. It also throws into doubt whether actions by the UK Government to tackle child trafficking will be in the best interests of the victims themselves, ensuring their care and protection.

We strongly believe that only by putting children's rights at the centre of any "victim care" approach for children will the UK fulfil its obligations as a State Party to the CRC. This report recommends that the UK Government should lift its Reservation to the CRC on immigration and nationality matters.

Best interests of the child

The best interests of the child should form the cornerstone of the Government's approach to child trafficking. This report recommends that the Government should set up a system of guardianship for child victims of trafficking to ensure that the best interests of the child is the guiding principle for the UK response to the care and protection for child victims of trafficking.

Immigration status of trafficked children

The Government's approach to human trafficking is still fundamentally anchored within an immigration and border control approach to protection and prevention. The first priority must be to protect trafficked children from abuse and exploitation. With no system of residence permits for child victims of trafficking in the UK, there is no alternative legal status for trafficked children to guarantee them the necessary time in the UK to recover from trauma, take legal action against traffickers, or access education and employment if they cannot go home.

This report recommends that the Government should introduce a system of renewable residence permits to secure a legal status for trafficked children and provide the necessary environment in which the child victims of trafficking can begin to make a physical and mental recovery.

Data collection, monitoring and analysis

Without proper national data collection, monitoring and analysis, we will continue to be largely ignorant of the scale and scope of child trafficking in the UK. The UK, with its devolved government structures and more than 50 police forces each responsible for their own information control, will continue to have problems establishing a national picture of trafficking until one single agency becomes responsible for analysing data provided by victim care agencies, information on prosecutions, and immigration statistics.

This report recommends that the Government should establish a mechanism to collect, monitor and analyse information on trafficked children. The mechanism should perform the functions of a National Rapporteur on Trafficking, with a specific focus on children. It should have statutory powers to request information from police, immigration authorities and child protection agencies, and should report annually to Parliament.

Child victims of trafficking remain a highly vulnerable group within our society, even after they are identified and placed in care. Our responsibility to them as children is not diminished simply because they come from abroad; indeed our responsibility to them is made substantially greater because most trafficked children have no family within the UK.

* Home Office, UK Action Plan on Tackling Human Trafficking, Home Office and Scottish Executive, March 2007

INTRODUCTION

In this report, we call on the UK Government to ensure there is a comprehensive and coherent national child-rights-based system for children who are victims of trafficking.

The report is based on the standards for good practice with respect to the protection of and assistance to trafficked children set out in the UNICEF *Guidelines on the Protection of the Child Victims of Trafficking*. These *Guidelines* are based on international human rights instruments and look at the protection of trafficked children from their identification up to their recovery and integration. The aim of these *Guidelines* is to assist governments and state actors, international organisations and NGOs or other service providers.

The UNICEF *Guidelines* are the result of an extensive process started and developed at the local and regional levels by UNICEF and its partners in 2003, and, since that time, have been used to inform policy and practice against trafficking in children across Europe and more widely. Minimum standards endorsed in the *Guidelines* informed the Council of Europe Convention on Action against Trafficking in Human Beings, and the Addendum to the Organization for Security and Co-operation in Europe (OSCE) Action Plan to Combat Trafficking in Human Beings: addressing the special needs of child victims of trafficking for protection and assistance.

When the Home Secretary signed the Council of Europe Convention on Action against Trafficking in March 2007, the Government gave a commitment that it will provide minimum standards for the protection of victims of human trafficking. To be held accountable, the Government will have to ratify the Council of Europe Convention and amend national laws where needed. The Government has already set a timetable for measures to assist with implementing the Council of Europe Convention but no firm date has been set for ratification.

This report is intended to measure current UK policy and practice to protect child victims of trafficking against the UNICEF *Guidelines* and the Council of Europe Convention. The objective of the report is to identify any gaps and inconsistencies in child protection standards and propose solutions that place children's rights at the centre of the UK approach to safeguarding child victims of trafficking.

UNICEF

In 2003 UNICEF UK published *Stop the traffic!*, a report expressing concern that the trafficking of children had become a global phenomenon and advocating for both national and international laws and policies to tackle it, based on the principle of the best interests of the child as defined in the United Nations Convention on the Rights of the Child (CRC). It asked the UK Government to take a number of concrete steps, for example to criminalise human trafficking for all purposes.

Since then the situation in the UK has changed significantly and the response to human trafficking has improved. The Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 cover trafficking for any form of sexual and non-sexual exploitation; the Government established the UK Human Trafficking Centre in October 2006; signed the Council of Europe Convention on Action against Trafficking in Human Beings in March 2007; and adopted the UK Action Plan on Tackling Human Trafficking.

We welcome these developments and urge the Government to build on them. In particular, we were heartened by the commitment to "... the development of a victim-centred, human rights based approach to tackling human trafficking" in the *UK Action Plan on Tackling Human Trafficking*.

ECPAT UK

ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) is the only UK-based organisation with a specific mandate to campaign against trafficking in children. ECPAT UK is part of the global ECPAT network represented in over 70 countries on every continent.

In 2004, ECPAT UK published *Cause for Concern*, a research report based on interviews with London social services teams on the issue of child trafficking. This report found that 26 out of 32 London boroughs had concerns about child trafficking. It also highlighted significant problems in tackling child trafficking, including little or no training of social workers in this area, poor communication between agencies, inconsistent standards of care and accommodation for child victims, and *ad hoc* methods of victim identification. In January 2007 ECPAT UK launched *Missing Out*, a summary of research about the nature and extent of child trafficking in the north-west and north-east of England and the West Midlands. Once again, the research highlighted major gaps in policy and protection for child victims of trafficking in the UK. It also exposed a major crisis in care with almost 60 per cent of trafficked children in the study going missing from Local Authority accommodation facilities. ECPAT UK continues to campaign and lobby for the highest possible standards of protection for child victims of trafficking, and undertakes research, and provides training programmes and community awareness-raising to ensure that no one turns a blind eye to child trafficking.

1. INTERNATIONAL FRAMEWORK

Human trafficking

The internationally accepted definition of human trafficking comes from the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2000, "Palermo Protocol"), which the UK ratified in February 2006.¹ Article 3 states:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

(...)

(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."

People smuggling

Human trafficking should be distinguished from people smuggling:

"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident."² One person can pay another to be smuggled abroad, often involving an illegal entry or false documents. The conditions of this transaction and the method of travel may well be exploitative, but the main difference between smuggling and trafficking is that trafficking involves *inter alia* the intent to exploit for financial gain after arrival in the country of destination. Smuggling, on the other hand, could result in the person obtaining illegal entry but being free upon arrival to pursue another life. In reality, there is often a blurring of the lines between smuggling and trafficking: a person may start off being smuggled but various circumstances along the way, including contact with different criminal networks, can see this transform into trafficking and exploitation to pay back debts.

Child trafficking

Under the 1989 United Nations Convention on the Rights of the Child (CRC), States are under an obligation to take positive action to protect the child from all forms of exploitation and sexual abuse prejudicial to any aspects of the child's welfare.³ Under this Convention, a child is considered to be anyone under the age of 18. The UK became a State Party to the CRC in December 1991.⁴ As a result, the Government is obliged to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children

1. Available at www.unodc.org accessed on 23 August 2007

2. Under the terms of Article 3 (a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations, 2000. Available at www.ohchr.org

3. Under the terms of Article 34 of the CRC. All the countries in the world have ratified the CRC except two – Somalia and the United States of America. A list of signatories and ratifications is available at www.ohchr.org accessed on 23 August 2007.

4. List of signatories and ratifications to the CRC available at www.ohchr.org accessed on 23 August 2007.

for any purpose or in any form.⁵ The 2000 *Optional Protocol to the CRC on the sale of children, child prostitution and child pornography* was developed to provide more detailed obligations regarding the protection of child victims of trafficking.⁶ The UK signed the *Optional Protocol* in September 2000 but has yet to ratify it.

All international treaties and agreements to combat trafficking in persons recognise a child to be anyone under 18 years. The trafficking of children can be readily defined as the movement of children for the purpose of exploitation. This can be either into, within, or out of a country. Child trafficking does not have to involve crossing international borders. Whether a child has consented or not to their transportation is irrelevant under the UN definition (“Palermo Protocol”).

Children can be trafficked for various reasons including sexual exploitation, forced labour, domestic servitude, criminal activities, benefit fraud, organ harvesting or illegal adoption. The type of exploitation does not change whether a child was or was not trafficked. For example, if a child committed a crime such as stealing as a result of being forced to do so by traffickers, then the child is still a victim of trafficking and accordingly deserves special protection measures.

Effective prevention of child trafficking means that all governments should ensure that all forms of protection to which children are entitled are available in practice, without affecting the human rights and dignity of the trafficked child.⁷ In all actions concerning children, the best interests of the child shall be a primary consideration.⁸

Sheila was a victim of child trafficking.

Orphaned at the age of 15, she was taken from Uganda by a family friend and sold to a man in the UK for sex. Sheila escaped, but not knowing where or to whom to turn, was forced to sell her body to survive. Pregnant and desperate, she was directed to the Home Office.

“It was only from then I started getting some help. The Home Office gave me details of the Refugee Council and they got me a solicitor and I was referred to the NSPCC. They have helped me so much. I had no friends or family. Now I feel like I have a family. My daughter is four now and I am pregnant again. If I have a problem or if I want to kill myself or something or if I am depressed I know I can go to my key worker. It has made me feel like a human again. Before, I used to feel like a monster; now I am a human.”

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5. Under the terms of Article 35 of the CRC.

6. List of signatories and ratifications to the *Optional Protocol to the CRC* available at www.ohchr.org accessed on 23 August 2007.

7. Dottridge, M., Action to prevent child trafficking in South Eastern Europe: A Preliminary Assessment, *Terre des Hommes and UNICEF Regional Office for CEE/CIS*, 2006, p.14. See also: *United Nations Office of the High Commissioner For Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, p.3, available at www.ohchr.org accessed on 23 August 2007.

8. Under the terms of Article 3 (1) of the CRC.



UNICEF GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING

The UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006) were developed in order to set out standards for good practice in the protection of and assistance to child victims of trafficking, for which international and regional human rights principles formed the basis. The Guidelines give an overview of measures for implementing the right policy and practice to protect and assist child victims of trafficking. The Guidelines form an important tool for governments, other state actors, international organisations and non-governmental organisations (NGOs) to fulfil their responsibility to protect and assist a victim of child trafficking. The complete Guidelines can be found at UNICEF's Innocenti Research Centre's website.⁹ Summarised right are the relevant Guidelines for the identification, care and support of child victims of trafficking.

9. www.childtrafficking.org/eng/publication.html

Guideline 3:

The identification of someone as a “child victim of trafficking” and the provisions of assistance to the child should be carried out by the State through pro-active identification measures and the presumption of age, which:

- Shall not depend on the identification, prosecution or detection of traffickers or criminals.
- Shall not depend on his or her willingness or ability to provide the police with information or to testify against his or her traffickers.
- Shall not reduce or restrict his or her entitlement to seek asylum, to be recognised as a refugee or as a legal migrant.

Guideline 4:

Appointment of a Guardian by a competent authority to accompany the child throughout the entire process, either if the child is accompanied or separated until the child reaches majority, ensuring that:

- The child’s views will be heard and the child shall be kept informed.
- A monitoring mechanism will be put in place for acts of the appointed guardian.
- Any action taken by the guardianship service is in the best interests of the child.
- Guardians must have child protection experience and knowledge of child rights.
- Guardians shall be given specific training, support and assistance.

Guideline 5:

Registration and documentation of the child at the time of initial questioning, for which a personal case file will be opened by a competent authority to collect all the actions and information to follow the child throughout the process, ensuring that:

- The best interests of the child will be followed.
- Safeguards will be in place when questioning the child with respect of their dignity and capacity in a place where the child feels secure.
- Questioning will take place only by specially trained law enforcement personnel.

Guideline 6:

Regularisation of status that automatically permits victims of child trafficking who are not nationals/residents of the country in which they find themselves, to remain in the territory temporarily or permanently. They will be granted a reflection period to recover and escape the influence of traffickers and make an informed decision on co-operating with the competent authorities:

- No deportation shall be carried out during the reflection period.
- The temporary residence permit entitles the child to stay on a legal basis until the best interests assessment is conducted and a durable solution is found.
- The guardian shall be responsible for the initiation of application procedures for the temporary residence permits.
- The child victim of trafficking may qualify for a long-term or permanent residence permit on humanitarian grounds or refugee status under the UN Convention relating to the Status of Refugees (1951).

Guideline 7:

Child victims of trafficking have the right to receive immediate interim care and protection including security, food, and accommodation in a safe place, access to social and health services, psychological support, legal assistance and education. Trafficked children are especially vulnerable and therefore:

- Care and assistance shall be appropriate to the child’s cultural identity, origin, gender and age, and provided in a way that does not cause jealousy and stigma.
- Guardians, qualified personnel of social services authorities and NGOs will co-operate to assess the needs of each child victim and make recommendations for immediate actions and long-term solutions.
- Appropriate assistance shall be provided to children with special and specific needs, particularly in cases of disability, psychosocial distress, illness and/or pregnancy.
- Child victims shall be put in safe and suitable accommodation immediately after their identification, with specific child protection rules and minimum standards for the care of child victims. They shall not be kept with adults unrelated to them.

THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

The Council of Europe

Founded in 1949, the Council of Europe seeks to develop common and democratic principles throughout Europe, based on the European Convention on Human Rights. The Council of Europe has 47 member states and aims to find common solutions to the challenges facing European society.

The Council of Europe Convention on Action against Trafficking in Human Beings

In 2003, an *ad hoc* Committee on Action against Trafficking in Human Beings (CAHTEH) was set up to prepare a legally binding instrument that would go beyond the minimum standards laid down in international instruments. The Council of Europe Convention on Action against Trafficking in Human Beings (CoE Convention) was adopted by the Committee of Ministers on 3 May 2005 and opened for signature in Warsaw on 16 May 2005, on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe. The Convention will enter into force when 10 states have ratified the Convention, including eight Member States of the Council of Europe. Only seven countries have done this so far: Albania, Austria, Bulgaria, Georgia, Moldova, Romania and Slovakia. Thirty-six countries have signed the Convention, including the UK in March 2007.¹⁰ The CoE Convention focuses on the protection of victims and the safeguarding of their human rights and dignity, for which the provisions under the Palermo Protocol form the basis together with other international legal instruments. The Convention “aims at a proper balance between matters concerning human rights and prosecution.”¹¹ The Parties’ compliance with the provisions in the Convention are to be ensured by an independent monitoring mechanism, the “Group of experts on action against trafficking in human beings.”¹²

Identification, care and support of child victims of trafficking

Chapter III of the CoE Convention comprises eight articles outlining measures to protect and promote the rights of victims and guaranteeing gender equality. Articles 10, 12, 13 and 14 are of particular importance regarding the identification, care and support of child victims of human trafficking, which are listed below. These articles should be read in conjunction with Article 3 of the Convention that prohibits discrimination of a victim against the enjoyment of measures to protect and promote their rights.

10. The Treaty is open for signature by the Member States, the Non-Member States that have participated in its elaboration, by the European Community, and for accession by other Non-Member States. The Non-Member States are: Canada, Holy See, Japan, Mexico and the United States. Available at: <http://conventions.CoE.int>

11. Explanatory Report on the CoE Convention, Section 32.

12. Under the terms of Article 36 of the CoE Convention.

13. The public authorities who may have contact with trafficking victims, such as the police, the labour inspectorate, customs, the immigration authorities and embassies or consulates; Explanatory Report on the CoE Convention, Section 129.

Article 10:

The identification of the victims will be accomplished (implemented) by competent authorities¹³ with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children. These different authorities co-operate with each other as well as with relevant support organisations such as NGOs, duly taking into account the special situation of women and child victims and, in appropriate cases.

- If there are reasonable grounds to believe that the person is a victim of trafficking, the person will not be removed from the territory of the receiving state until the identification process as victim of an offence has been completed and assistance should be ensured.
- 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.
- When an unaccompanied child is identified as a victim, the child will be represented by a legal guardian, organisation or authority which shall act in the best interests of that child. The State shall take the necessary steps to establish his/her identity and nationality and make every effort to locate his/her family when this is in the best interests of the child.

Article 12:

The State has the obligation to assist victims of trafficking in their physical, psychological and social recovery, they should at least receive appropriate and secure accommodation, psychological and material assistance, access to emergency medical treatment, translation and interpretation services, counselling and information, legal assistance and access to education for children, in co-operation with NGOs and other relevant organisations.

- Victims who are lawfully in the country shall have access to the labour market, to vocational training and education.
- Assistance to a victim is not made conditional on his or her willingness to act as a witness.
- The special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care shall be taken into due account.

Article 13:

A recovery and reflection period of at least 30 days will be provided in internal legislation, when there are reasonable grounds to believe that the person concerned is a victim. This will be granted to the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. During this period, it shall not be possible to enforce any expulsion order against him or her and the victim will be authorised to stay in the territory.

- During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
- An extended reflection period is likely to lead to victims being better able and more willing to co-operate in prosecutions.

Article 14:

A renewable residence permit shall be issued to victims if the competent authority considers that their stay is necessary owing to their personal situation and/or if 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.

- 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.
- The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
- Granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

2. SAFEGUARDS FOR TRAFFICKED CHILDREN IN THE UK

What do we know about child trafficking into the UK?

The scale of child trafficking into the UK is difficult to assess given the hidden nature of the phenomenon and the lack of a national data-collection mechanism. The UK is both a transit and destination country, meaning that it is both a country trafficked people pass through and a potential terminus on trafficking routes. In UNICEF's *Stop the Traffic!* (2003) report on child trafficking in the UK, it was estimated that "at least 250 children have been trafficked into the UK in the last five years."¹⁴ ECPAT UK's report *Cause for Concern* (2004) identified that child trafficking existed beyond sexual exploitation to encompass the exploitation of children in domestic servitude, restaurant/catering labour, building site labour, begging, drug trafficking and benefit fraud.¹⁵ In 2007 ECPAT UK's *Missing Out* report identified 80 known or suspected child victims of trafficking in a small-scale study in Manchester, Newcastle and the West Midlands. Of these, 48 had gone missing from the care of the Local Authority.¹⁶ It revealed "new forms" of child trafficking such as under-age marriage and forced labour in cannabis cultivation.

Until recently, the UK Government could not provide any estimates of the numbers of children who have been trafficked into or within the UK. The first Government study on the extent of child trafficking into and within the UK was published by the Home Office on 11 June 2007: *A Scoping Project on Child Trafficking in the UK*. The report, carried out by the Child Exploitation and Online Protection (CEOP) Centre, provides an estimated figure of the number of trafficked children and those who have gone missing from social services care.¹⁷ The report revealed that 330 child victims of trafficking were identified over an 18-month period; of these 183 have gone missing without trace from social services care. The report has similar findings to ECPAT UK's *Missing Out* report, with the main source countries of trafficked children being China and Nigeria and a similar percentage of children going missing. It also pointed out that many of the suspected or known trafficked children in the UK do not come directly from their countries of origin, but come through transit countries within Europe or the Middle East before arriving in the UK.¹⁸

What is clear from the research undertaken both by CEOP and ECPAT UK is that the care and protection of trafficked children is inconsistent, *ad hoc* and, in some regions, completely undeveloped. There are examples of good practice across the UK, but this is rarely shared outside of individual teams and, as a result, very little case-specific information is analysed at a national level to identify trends or emerging issues.

Children who are trafficked into the UK can be travelling alone or with an unrelated adult. For immigration purposes, the Government classifies children who arrive into the UK as "accompanied" and "unaccompanied" children. This classification can be crucial in determining a child's protection plan. It is essential that the victim identification process starts as early as possible to ensure vulnerable children are not left in the hands of traffickers or criminals. In this report, we prefer to use the term "separated children", a definition that is internationally accepted and is far more appropriate to describe children who either enter the country alone or without an adult who has parental responsibility.

Separated children are children under 18 years of age who are outside their country of origin and separated from parents or their previous legal/customary primary caregiver. Some children are totally alone while others may be living with extended family members or other adults. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. As such, some may appear to be "accompanied" but the accompanying adults are not necessarily able or suitable to assume responsibility for their care. This concept recognises that children suffer physically, socially and psychologically as a result of being without the care and protection of their parents or previous primary care giver(s).¹⁹

14. UNICEF, *Stop the traffic!, End Child Exploitation campaign*, UNICEF UK, London, 2003, p.17.
15. Somerset, C., *Cause for Concern?* London Social Services and Child Trafficking, ECPAT UK, London, 2004, p.10.
16. Beddoe, C., *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands*, ECPAT UK, London, 2007, p.20.
17. Kapoor, A., *A Scoping Project on Child Trafficking in the UK*, *Child Exploitation and Online Protection (CEOP) Centre on behalf of the Home Office and Border and Immigration Agency*, London, June 2007, p.6 and p.8.
18. *Ibid.*, p.34.
19. *United Nations High Commissioner for Refugees (UNHCR)/Save the Children Alliance, Separated Children in Europe Programme, Statement of Good Practice, Third Edition, 2004, p.2. Available at: www.separated-children-europe-programme.org accessed on 23 August 2007.*
20. Beddoe, C., *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands*, ECPAT UK, London, 2007. See also: Somerset, C., *Cause for Concern?* London Social Services and Child Trafficking, ECPAT UK, London, 2004. See also: Somerset, C., *What the Professionals Know: The trafficking of children into, and through, the UK for sexual purposes*, ECPAT UK, London, 2002.
21. *Every Child Matters was published as a Green Paper in 2003. Following the consultation, the Government published Every Child Matters: the Next Steps, and passed the Children Act 2004. Every Child Matters: Change for Children was published in November 2004. Available at: www.everychildmatters.gov.uk accessed on 23 August 2007.*
22. *UK Government, UK Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child, July 2007, p.16. Available at: www.everychildmatters.gov.uk accessed on 23 August 2007.*
23. *Section 22 of the Criminal Justice (Scotland) Act 2003.*

Every Child Matters: England and Wales

The Every Child Matters framework was developed by the Department for Education and Skills (now the Department for Children, Schools and Families) in 2003. It is a framework proposing reforms in policy and legislation in England.²¹ The key aim is that children should be kept safe from maltreatment, neglect, violence and sexual exploitation, and they should be provided with security, stability and be cared for. The Children Act 2004 was a direct result of the Every Child Matters framework and provides the legal framework for children's services authorities and relevant partners to co-operate in achieving the five outcomes for children (stay safe, be healthy, enjoy and achieve, make a positive contribution, achieve economic well-being).

"Child" is defined under the Children Acts 1989 and 2004 as anyone who is under the age of 18, in compliance with the CRC. The Care Matters framework follows on from Every Child Matters, specifically focusing on improving the services for children under local authority care.²²

Working Together to Safeguard Children: A Guide to inter-agency working to safeguard and promote the welfare of children

This is a statutory guidance document published by the Department for Education and Skills (now the Department for Children, Schools and Families) in 2006. It is a national framework within which agencies and professionals at local level – individually and jointly – draw up and agree on their own ways of working together to safeguard and promote the welfare of children in England.

Safeguarding children

One of the challenges to implementing a comprehensive UK framework for the protection of child victims of trafficking is that different legislation and policy exists to underpin welfare and legal support for children across England, Wales, Scotland and Northern Ireland. Service delivery for separated children, including accommodation, health, welfare and protection, is controlled by the Local Authority where the child is identified. ECPAT UK research²⁰ has shown that knowledge of trafficking amongst social care professionals and the provision of support services across the UK can be patchy, and access to specialist support, including foster care, is invariably determined by a child's immigration status. Some legislation relevant to Scotland and Northern Ireland has not been referenced in this report. However, where possible we have tried to ensure the policy principles have been explained.

The Home Office is the lead Government department for co-ordinating counter-trafficking policy and initiatives. As a result, ministerial responsibility lies with the Parliamentary Under-Secretary of State for the Home Office (Crime Reduction).

Criminalisation of trafficking

In 2003, specific legislation was introduced to criminalise "trafficking in prostitution" under Sections 57–60 of the Sexual Offences Act 2003. These sections do not apply to Scotland, where another similar offence exists.²³ Trafficking for labour and organ harvesting is covered by Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Both offences cover trafficking into, within or out of the UK and have a maximum penalty of 14 years' imprisonment. The effectiveness of these laws remains to be tested. Less than a handful of cases have been prosecuted in relation to the trafficking of children. No one has been convicted for trafficking for forced labour, including domestic servitude, and there have been no convictions related to the trafficking of any African child – although we know African children make up a significant proportion of victims of trafficking in the UK.

Although numerous other trafficking-related offences can be punished by a raft of laws (for example: unlawful immigration, money laundering, rape, abuse of children, abuse of vulnerable persons, kidnapping, grievous bodily harm, common assault, false imprisonment, false passport), there remain several gaps related to children. For instance, there is no specific legislation to cover the trafficking of babies, infants and younger children for illegal adoption or benefit fraud. There also remains a lacuna in British law which means that neither the trafficking provisions in the Sexual Offences Act 2003 nor the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 can be used when exploitation in the UK cannot be proven. In other words, if a child arrives at the airport and there is evidence of intent to exploit but the child has not yet been exploited in the UK then the UK trafficking legislation cannot be used even if a child has been moved across borders and been physically or sexually assaulted along the way. Proposals are underway through amendments to the UK Borders Bill currently before Parliament to address some of these issues.

The Future

In 2007, the Home Office and the Department for Children, Schools and Families released several consultation documents related to safeguarding separated and trafficked children. At the time of publication, the final reports from these consultations were not yet available.

Working Together to Safeguard Children: Safeguarding children who may have been trafficked

This is a practice guidance document produced by the Department for Children, Schools and Families in conjunction with the Home Office. It will be the most comprehensive guidance that the Government has made available to care professionals, police, immigration officers and the voluntary sector on how to respond to child victims of trafficking. It is a huge step forward and will hopefully strengthen multi-agency working across England and Wales. However, it will still only be supplementary guidance, and there is no legal obligation for any agency to follow it or to report on its use.

Staying Safe

Staying Safe is a major consultation document from the Department for Children, Schools and Families on safeguarding children and how the Government can work together with parents, children and young people on keeping children safe. There is a separate section on safeguarding children from abroad, including child victims of trafficking.

Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children

This consultation document, published by the Home Office, contains proposals for reforming both the immigration and care arrangements for unaccompanied asylum seeking children in the UK. The outcome of this consultation will have a direct impact on trafficked children.

Section 11 of the Children Act 2004

Section 11 of the Children Act 2004 lays a statutory duty upon a number of agencies to "have regard to the need to safeguard and promote the welfare of children." Government agencies covered by Section 11 of the Act include local authorities, district councils, police, probation services, NHS bodies, Connexions, youth offending teams and the prison service. According to the Government, the nationality or immigration status of the child does not affect agencies' statutory responsibilities under the Children Act 1989.²⁴ However, the Home Office Border and Immigration Agency (BIA) are not covered by this statutory duty, leaving inconsistencies in policy and practice between the Government agencies that come into contact with trafficked children. The Government has claimed that as Section 11 of the Children Act 2004 only covers England and Wales then there is no reason to include Home Office personnel under its statutory responsibilities, as BIA policy is covered under separate UK-wide legislative powers.

A National Action Plan

The first call for a National Action Plan to address child trafficking stemmed from the First World Congress against Commercial Sexual Exploitation, held in Stockholm, Sweden, in 1996.²⁵ The Congress resulted in a commitment to a global Declaration and Agenda for Action, which was formally adopted by governments of 122 countries including the UK. This Declaration called upon governments to formulate a National Action Plan. This was followed up by a Second World Congress in Yokohama, Japan, in 2001, to review the developments made by governments. The UK's first attempt to develop a National Action Plan inclusive of child trafficking resulted in the publication of a Department of Health document entitled "National Plan for Safeguarding Children from Commercial Sexual Exploitation" in 2001.²⁶ This has subsequently been abandoned.

UK Action Plan on Tackling Human Trafficking (2007)

In March 2007, after a national consultation on proposals for a UK Action Plan, the *UK Action Plan on Tackling Human Trafficking* (hereafter referred to as the *UK Action Plan*) was published by the Home Office and the Scottish Executive. It gives an overview of measures and initiatives that the Government has taken so far to tackle trafficking, as well as their action points and plans for the future. In the *UK Action Plan*, the Government acknowledges "the need to do more in response to the trafficking of children into and within the UK for a variety of purposes".²⁷ The main proposals for action are worked out in three chapters: prevention; investigation, law enforcement and prosecution; and protection and assistance to adult victims. This reflects the objectives in the Council of Europe Convention.²⁸ Specific measures to safeguard and protect child victims of trafficking are set out in Chapter 4, recognising that children have different and specific needs to that of adult victims of trafficking.

24. *Department for Children, Schools and Families and the Home Office, Working Together to Safeguard Children: Safeguarding children who may have been trafficked, draft document, July 2007, p.21.*
25. *This was the first Congress where representatives from governments, intergovernmental organisations, non-governmental organisations like ECPAT and UNICEF, and international agencies gathered together to strengthen their commitment to protect children from sexual exploitation and sexual abuse. Available at www.csecworldcongress.org accessed on 23 August 2007.*
26. *Available at www.dh.gov.uk accessed on 23 August 2007.*
27. *Home Office, UK Action Plan on Tackling Human Trafficking, Home Office and Scottish Executive, March 2007, p.6.*
28. *Under the terms of Article 1 of the CoE Convention:
 "1) The purposes of this Convention are:
 a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;
 b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
 c) to promote international co-operation on action against trafficking in human beings.
 2) In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism."*
29. *House of Commons (HC) Deb (2006–07) 461, oral answers column 397. See also: House of Lords (HL) Deb (2006–07) 692, written answers column WA188.*
30. *List of Departments and Ministers in the IDMG: Parliamentary Under-Secretary of State for the Home Office (Vernon Coaker) (Chair); Parliamentary Under-Secretary of State for the Department for Children, Schools and Families (Kevin Brennan); Solicitor General, Law Officers' Department (Vera Baird); Parliamentary Under-Secretary of State (Minister for Equality) (Barbara Follett); Minister of State (Public Health), Department of Health (Dawn Primarolo); Parliamentary Under-Secretary of State in the Department for International Development (Baroness Shriti Vadera); Minister of State, Foreign & Commonwealth Office (Kim Howells); Parliamentary Under-Secretary, Department for Communities and Local Government (Baroness Andrews); Cabinet Secretary for Justice, Scotland Office (Kenny Macaskill).
 Email communication from Home Office, 21 August 2007.*
31. *HC Deb (2006–07) 459, written answers column 1141W.*
32. *UK Action Plan, p.48.*

Inter-Departmental Ministerial Group on Human Trafficking

To monitor the implementation of the *UK Action Plan* as well as the ratification of the CoE Convention, an Inter-Departmental Ministerial Group on Human Trafficking (IDMG) was established at the beginning of 2005, to have oversight of Government policy on human trafficking.²⁹ The IDMG is chaired by the Under-Secretary of State for the Home Office and the current participants are: the Department for Children, Schools and Families; the Department for International Development; the Department for Work and Pensions (Minister for Equality); the Solicitor General; the Foreign and Commonwealth Office; the Department of Health; the Department for Communities and Local Government; and the Scotland Office.³⁰ The IDMG will meet four times a year.³¹ The Group is supported by the Human Trafficking NGO Advisory Group focusing on victim support."³²

3. COMPARISONS

The identification of child trafficking

The key elements of child protection during the identification process of child victims of trafficking are elaborated in both the UNICEF *Guidelines* and the articles in the CoE Convention (see Chapter 1). The table below shows the measures, initiatives and action points in the *UK Action Plan* assessed against these international standards, followed by a narrative explanation of the key elements of the *UK Action Plan*. If the recommended action is not mentioned in the *UK Action Plan*, it is described as “not explicitly mentioned”.

| KEY ELEMENTS OF CHILD PROTECTION: recommended action | UNICEF <i>Guidelines</i> | CoE Convention | UK <i>Action Plan</i> |
|--|--------------------------|----------------|--------------------------|
| <i>Identification – general</i> | YES | YES | YES |
| <i>Registration and collection of data</i> | YES | YES | Yes, in part |
| <i>Research of scale and nature of human trafficking</i> | YES | YES | YES |
| <i>Co-operation between authorities, statutory agencies and NGOs</i> | YES | YES | YES |
| <i>Training of officials</i> | YES | YES | YES |
| <i>Appointment of a guardian</i> | YES | YES | Not explicitly mentioned |
| <i>Age determination</i> | YES | YES | Not explicitly mentioned |
| <i>Principle of the best interests of the child</i> | YES | YES | Not explicitly mentioned |
| <i>Principle of the right to participation</i> | YES | YES | Not explicitly mentioned |

Identification – general

The Government underlines in the *UK Action Plan* that early identification of victims is essential to prevent the victim from further exploitation or re-trafficking and acknowledges that, although improvements have been made, more needs to be done.³³ Chapter 1 of the *UK Action Plan* states “there is a current lack of knowledge and understanding about the nature and extent of human trafficking in the UK.”³⁴ *Working Together to Safeguard Children* describes that any statutory agency that suspects that a child is a victim of trafficking should inform the police or social services.³⁵

Registration and collection of data and research on child trafficking

Chapter 4 of the *UK Action Plan* on child victims of trafficking states “there are no reliable estimates for the numbers of children who have been trafficked into, or within, the UK.”³⁶ The Home Office acknowledged in several Parliamentary Questions in the House of Commons in 2006 and 2007 that the Immigration and Nationality

Child Exploitation and Online Protection Centre

The Child Exploitation and Online Protection (CEOP) Centre was established in April 2006. The Centre works across the UK, providing a single point of contact for public, law enforcers and the communications industry to tackle exploitation of children online, and also works with police forces around the world.³⁸ In 2006 the Home Office commissioned the CEOP to undertake a scoping study across the UK to review and analyse intelligence data to identify potential numbers of children who may have been trafficked. The report was published in 2007 and has subsequently led to the creation of a child trafficking desk within CEOP.

United Kingdom Human Trafficking Centre

In October 2006, the Government established the United Kingdom Human Trafficking Centre (UKHTC), based in Sheffield. The key function of the UKHTC is to improve the UK’s law enforcement response to trafficking in human beings for sexual exploitation, labour exploitation and organ harvesting. The UKHTC website states that “the creation of the UK Human Trafficking Centre is directly linked to the introduction of the *UK Action Plan*, to ensure the police and partner agencies maintain a joined-up and strategic approach to tackling human trafficking in all its forms.”³⁹ In the *UK Action Plan*, the Government recommended the UKHTC, in co-operation with the Serious Organised Crime Agency (SOCA), become a central point for the collation of data and information on all forms of trafficking.⁴⁰ UKHTC will work in partnership with the child trafficking unit within the CEOP on the collection of data specifically on child trafficking.⁴¹ The UKHTC is not a law enforcement agency, but supports the police and Crown Prosecution Service by training and awareness-raising.

33. UK Action Plan, p.48.

34. UK Action Plan, p.20.

35. *Department for Education and Skills, Working Together to Safeguard Children: A Guide to inter-agency working to safeguard and promote the welfare of children, April 2006, p.210.*

36. UK Action Plan, p.61.

37. *HC Deb (2006–07) 455 written answers, column 1697W. See also: HC Deb (2005–06) 449 written answers, column 1958W. See also HC Deb (2006–07) 454 written answers, column 1049W.*

38. Available at www.ceop.gov.uk accessed on 23 August 2007.

39. Available at www.ukhtc.org accessed on 23 August 2007.

40. UK Action Plan, p.21.

41. UK Action Plan, p.22.

42. UK Action Plan, p.69.

43. UK Action Plan, p.48.

44. UK Action Plan, p.66.

45. UK Action Plan, p.30.

Directorate (now the Border and Immigration Agency) has no centrally collated data on the numbers of children trafficked into the UK and these data are not centrally recorded.³⁷

Co-operation between authorities, statutory agencies and NGOs

The *UK Action Plan* underlines the importance of a victim centred approach to tackle human trafficking and therefore the “need for multi-agency joint working across all sectors to identify and protect child victims is essential.”⁴² *Guidelines on the Protection of the UK Action Plan* sets out the issues relating to investigation, law enforcement and prosecution. Trafficking and related legislation will be kept under periodic review and, with regard to the enforcement of law on trafficking, the Government underlines that the phenomenon should become “core police business”. The UKHTC and SOCA serve to raise awareness within the law enforcement bodies by gathering intelligence and providing training on human trafficking. They co-operate with police, immigration officials, the Crown Prosecution Service, and foreign law-enforcement agencies. In addition, the UKHTC established the Victim Care sub-group, a multi-agency group to review and develop victim-centred trafficking measures. Subsequently, a Child Protection Working Group has been formed specifically to address child protection aspects of victim care.

The *UK Action Plan* stipulates that the Home Office will co-operate with NGOs to provide support, training and awareness-raising around identification to front-line staff, and explains that a wide range of other sectors will be trained such as health professionals and asylum case-workers.

To support the Inter-Departmental Ministerial Group on Human Trafficking (IDMG), the *UK Action Plan* explains that a Human Trafficking NGO Advisory Group has been set up, which is chaired by Ministers.⁴³

Training of officials

In Chapter 3 of the *UK Action Plan*, the Government gives an overview of programmes already undertaken, such as a Home Office trafficking toolkit. The *UK Action Plan* addresses the need for increased training across a wide range of agencies and makes recommendations for the development of new tools and multi-agency training. One example of this is the aim to train “all border staff in being alert to issues around unaccompanied minors”.⁴⁴ Entry clearance officers will be trained in order to identify victims of trafficking, as well as front-line immigration, police officers and other professionals who may come into contact with potential victims.⁴⁵

Appointment of a guardian

Both the UNICEF *Guidelines* and the CoE Convention call for the appointment of a guardian to effectively represent the interests of the child who is identified as a victim of trafficking or when there are reasonable grounds to believe the person is a child and a victim of trafficking. Although there is a separate chapter on “Child Trafficking” in the *UK Action Plan*, it doesn’t mention the appointment of a guardian for child victims of trafficking.

Age determination

The *UK Action Plan* does not mention how the age of children, especially separated children, is currently being assessed and the procedures for managing child protection concerns when the age is uncertain around 18 years, the cut-off threshold for social welfare support. Victims of trafficking, or separated children in general, are not always able to provide a passport or other identity documents to prove their age, because these are taken away by the trafficker, or the documents are falsified.

Principles of the best interests of the child and the right to participation

The “best interests of the child” principle is not explicitly mentioned in the *UK Action Plan*.

According to the UNICEF *Guidelines* and the CoE Convention, the key principle of the best interests of the child should be applied to each step of the identification process of child victims of trafficking. The right to participation that is laid down in the UNICEF *Guidelines* is not explicitly mentioned in the *UK Action Plan* either.

Care and support of child victims of trafficking after identification

The key elements of child protection during the process of care and support of child victims of trafficking are elaborated in both the UNICEF *Guidelines* and the articles in the CoE Convention. The table below shows the measures, initiatives and action points in the *UK Action Plan* assessed against these international standards, followed by a narrative explanation of the key elements of the *UK Action Plan*. If the recommended action is not mentioned in the *UK Action Plan*, it is described as “not explicitly mentioned.”

| KEY ELEMENTS OF CHILD PROTECTION: after identification | UNICEF Guidelines | CoE Convention | UK Action Plan |
|--|-------------------|----------------|--------------------------|
| <i>Care & support – general</i> | YES | YES | YES |
| <i>National Referral Mechanism</i> | YES | YES | YES |
| <i>Residence permit</i> | YES | YES | Not explicitly mentioned |
| <i>Right to apply for asylum</i> | YES | YES | YES |
| <i>Accommodation in a safe place</i> | YES | YES | YES |
| <i>Psychological assistance, material assistance, right to health care, right to education</i> | YES | YES | YES |
| <i>Right to legal assistance: legal guardian</i> | YES | YES | Not explicitly mentioned |
| <i>Principle of the best interests of the child</i> | YES | YES | Not explicitly mentioned |
| <i>Principle of the right to participation</i> | YES | YES | Not explicitly mentioned |

Albania and the Republic of Moldova – identification

In Albania and Moldova, where a disproportionately high number of children from a narrow geographical area or a particular social group have been found among trafficking victims, special efforts have been made to identify the children who are at particularly high risk of being trafficked and to intervene on their behalf. In the case of children at boarding schools in the Republic of Moldova, this involved organising classes about trafficking and life skills training. In the case of children belonging to a minority group in Albania, it has involved child protection measures that have been tried and proved in other parts of the world, such as income support for their families and intensive efforts to keep minority children from dropping out of school before finishing basic education. These have been accompanied by efforts to reduce the discrimination experienced by children belonging to a minority group, both at school and in the community.⁴⁶

46. Dottridge, M., Action to prevent child trafficking in South Eastern Europe, A Preliminary Assessment, *Terre des Hommes and UNICEF Regional Office for CEE/CIS*, 2006, p.12.

47. Under the terms of Article 20 (1) of the CRC: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

48. UK Action Plan, p.68.

49. Department for Children, Schools and Families and the Home Office, Working Together to Safeguard Children: Safeguarding children who may have been trafficked, *draft consultation document*, July 2007, p.21.

50. UK Action Plan, p.50 and p.51.

51. UK Action Plan, p.50.

52. Department for Children, Schools and Families and the Home Office, Working Together to Safeguard Children: Safeguarding children who may have been trafficked, *draft consultation document*, July 2007, p.23 and p.27.

53. UK Action Plan, p.56.

54. Feral Tribune, 18 April 2007.

55. Helsingin Sanomat (International Edition), “Finland grants residence permit to victim of human trafficking”, 12 April 2007, available at www.hs.fi

OSCE Action Plan to Combat Trafficking in Human Beings 2003 (Recommendation 3):

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 a 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.

Participating States should establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multi-disciplinary teams to develop and monitor anti-trafficking policies.

Croatia – Residence permit

According to the Executive Order issued by the Minister of Internal Affairs, a victim of trafficking is granted a residence permit for 12 months, which can be renewed. The Croatian criminal code envisages prison sentences for human traffickers from 1 to 10 years. If a victim is a child, the prison sentence is a minimum of 5 years. If three or more people were acting together in human trafficking, the prison sentence can be higher than 10 years.⁵⁴

Finland – Residence permit

Finland's Directorate of Immigration has announced that a suspected victim of human trafficking can be granted a residence permit, even if nobody has been convicted of the activity. "We can grant a residence permit already, if it is quite obvious that charges of human trafficking will be filed."⁵⁵

56. Home Office, Border and Immigration Agency, "Processing asylum applications from children", *Special Cases Guidance*, 7 March 2007, available at www.ind.homeoffice.gov.uk accessed on 23 August 2007.

57. *Ibid.*, "Accompanied and Unaccompanied Children: definitions", available at: www.ind.homeoffice.gov.uk

58. *Refugee Council briefing*, The New Asylum Model, March 2007, available at www.refugeecouncil.org.uk accessed on 23 August 2007.

Care and support – general

Under the terms of the CRC, the UK Government is obliged to provide special protection and assistance to victims of child trafficking once they have been identified, as trafficked children are especially vulnerable.⁴⁷ This is reflected in the *UK Action Plan* in which the Government commits to providing "safe and secure accommodation or other security measures that ensure young people don't fall in the hands of traffickers again."⁴⁸

According to the Government's consultation document *Working Together to Safeguard Children: Safeguarding children who may have been trafficked*, the nationality or immigration status of the child does not affect agencies' statutory responsibilities under the Children Act 1989.⁴⁹

National Referral Mechanism (NRM)

Throughout the *UK Action Plan*, the Government acknowledges that the current system requires improvement, especially regarding the tasks and responsibilities for the different bodies involved. As such, the Government is currently working towards a National Referral Mechanism for initial and formal identification of victims, which will form part of the implementation of the CoE Convention to be submitted to the IDMG. According to the *UK Action Plan*, the model will include three components: early identification guidance and protocols for front-line staff, one point of contact for referrals, and formal identification procedures for referral onto support services.⁵⁰

The *UK Action Plan* stipulates that currently, "victims are identified and referred onto support services through various avenues," such as police, voluntary organisations, immigration officials (Border and Immigration Agency, BIA), health services or schools and referred to other service providers for identification and an initial needs assessment.⁵¹ They should also contact the local police force for the area in which the child currently resides.⁵²

Residence permit

The Government acknowledges in the *UK Action Plan* that changes in legislation are necessary to implement fully the CoE Convention, which obliges States to provide a reflection period of at least 30 days to victims of trafficking as well as granting them a residence permit.⁵³ Under the current UK system, victims of trafficking are not provided with a residence permit.

Right to apply for asylum

Every child has the right to lodge an asylum application in their own right, whether accompanied or unaccompanied. An "accompanied asylum-seeking child" is a child who is part of a family group or is separated from both parents and is being cared for by an adult who by law or custom has responsibility over the child.⁵⁶ The application for asylum can be lodged in the UK at a port of entry, or after entry in the UK at a Local Enforcement Office or an Asylum Screening Unit.⁵⁷ Separated children may require an assessment by social services to confirm their age. If they are accepted as a minor, they are accommodated by social services.⁵⁸ The Government acknowledges that situations of private fostering can be used by traffickers to hide children from the authorities and the Government "believes that many

trafficked children claim asylum under instruction of their trafficker or agent".⁵⁹ Others will claim asylum after they escaped their traffickers.

Accommodation in a safe place

The UK Action Plan underlines that "all child victims are entitled to the same level of care and protection regardless of their immigration status."⁶⁰ There is currently no "safe house" for trafficked children in the UK, nor is there any model of safe accommodation provided by Government specifically for trafficked children.

Section 23 of the Children Act 1989 lays a statutory duty on Local Authorities to look after a child. When the child is in their care, Local Authorities should provide the child with accommodation and maintain the child in other respects.

Under the *Framework for the assessment of children in need and their families* (Department of Health, England, 2000), separated children should be provided with the same quality of individual assessment and services as any other child presenting as "being in need."⁶¹ The social worker should determine whether the child or young person is a child in need or could be suffering from significant harm.⁶² If the child becomes the responsibility of the local authority, it acts as the corporate parent through the appointed social worker.

Psychological assistance, material assistance, right to health care, right to education

Although the *UK Action Plan* outlines how adult victims of trafficking for sexual exploitation are provided with services such as counselling, emergency medical treatment, living expenses, access to English language classes,⁶³ no reference is made to the services provided to child victims. However, the draft consultation document *Working Together to Safeguard Children: Safeguarding children who may have been trafficked* states that "it is the responsibility of all agency workers to work together to safeguard and promote the welfare of children trafficked into England and Wales."⁶⁴

Right to legal assistance

The *UK Action Plan* does not mention the right to legal assistance specifically for child victims. The Home Office, in an answer to a parliamentary question in the House of Lords, said that the Home Office Border and Immigration Agency does not currently appoint a legal representative for the child.⁶⁵

The Co-operation Agreement between Mali and Côte d'Ivoire

On 1 September 2000, the governments of Côte d'Ivoire and Mali signed a Co-operation Agreement on Combating Transborder Trafficking of Children. This groundbreaking agreement, signed under the aegis of UNICEF and in the presence of NGOs combating trafficking, is the first in West and Central Africa to establish formal procedures for co-operation against child trafficking between two States. It is built on two principles: the best interests of the child in all circumstances, in line with the provisions of the United Nations Convention on the Rights of the Child (CRC); and the definition of minimum standards, with each State free to go beyond the obligations listed to combat child trafficking. The Agreement is based on complementary responsibility. The country of destination has to protect child-trafficking victims, without discrimination, by ensuring that they receive the care they need and that they are repatriated; victims will be ensured full rehabilitation and their right to compensation will be recognized.⁶⁶

59. UK Action Plan, p.63 and p.66.

60. *Ibid.*, p.69.

61. Department of Health, Department for Education and Employment, Home Office, *Framework for the assessment of children in need and their families*, London, April 2000, p.48. Available at www.dh.gov.uk accessed on 23 August 2007. Department for Education and Skills, *Working Together to Safeguard Children: A Guide to inter-agency working to safeguard and promote the welfare of children*, April 2006, p.211.

62. *Ibid.*, p.210.

63. *Ibid.*, p.51.

64. Department for Children, Schools and Families and the Home Office, *Working Together to Safeguard Children: Safeguarding children who may have been trafficked, draft consultation document*, July 2007, p.16.

65. *HL Deb (2006-07) 694*, written answers column WA3.

66. UNICEF Innocenti Research Centre, *Child Trafficking in West Africa: Policy Responses, UNICEF Innocenti Insight, UNICEF Innocenti Research Centre and UNICEF Regional Office for West and Central Africa*, April 2002, p.11.

4. UK GENERAL RESERVATION TO THE UN CONVENTION ON THE RIGHTS OF THE CHILD

When the Government ratified the 1989 United Nations Convention on the Rights of the Child (CRC) in 1991, it entered a reservation to the CRC concerning immigration and nationality.⁶⁷

The CRC is ratified by 193 countries and 3 of them have entered declarations relating to the treatment of non-nationals (Indonesia, Mauritius and Thailand) but only the UK and Singapore have entered a General Reservation to the application of the CRC to children who are subject to immigration control.⁶⁸

The Government's response

The Government has argued that the Reservation is necessary to preserve the integrity of the UK's immigration laws:

*"... that nothing in the CRC is to be interpreted as creating further legal obligations in respect of those subject to immigration control or to allow entry to be gained to the United Kingdom simply in order to make use of rights under the CRC."*⁶⁹

Concerns

The Committee on the Rights of the Child, the monitoring body for the implementation of the CRC, expressed its concern about the UK Reservation from the first moment of considering the UK Government's response in 1995. It described the Reservation as being incompatible with the object and the purpose of the Convention to protect all children.⁷⁰ Since then, the Committee on the Rights of the Child has encouraged the UK Government to reconsider its reservation with a view to withdrawing it in each of their Concluding Observations, given that this Reservation is not necessary because the UK's law is in accordance with Article 22 of the CRC.⁷¹

The Joint Committee on Human Rights (JCHR), a Parliamentary Committee of the House of Lords and House of Commons, has criticised the Government in several reports. It stresses their doubts about the necessity of the Reservation. It shares the view of the Committee on the Rights of the Child on incompatibility with the object and purpose of the Convention, and goes even further by saying that the Reservation does not "constitute a valid reservation".⁷² It underlines the fact that obligations under the CRC are owed to everyone below the age of 18 who is within the jurisdiction of the State. It points out that the Reservation means that children subject to immigration control would be treated less favourably than other children⁷³ and with a lower level of protection by excluding the best interests of the child principle.

In response to the JCHR's observations, the Government explained its reason for retaining the Reservation:

*"The Government believes that the UK has child protection procedures in place for the protection of trafficked children and that these children are not treated as perpetrators of crime but as victims of it. Any decision regarding their right to remain in the UK would not be dependent on their willingness to take part in criminal proceedings."*⁷⁴

Article 22 of the CRC:

- (1) States Parties shall take appropriate measures to ensure that a child who is seeking refugee status ... shall, whether unaccompanied or accompanied, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights [set forth in the CRC and other international human rights or humanitarian instruments].
- (2) States Parties shall co-operate with competent intergovernmental or non-governmental organisations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason.

UK Reservation:

The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [UK] law to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.

Article 51 of the CRC:

- (2) A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

67. The UK signed the CRC on 19 April 1990, and ratified it on 16 December 1991. A list of signatories and ratifications is available at www.ohchr.org accessed on 23 August 2007.

68. www.ohchr.org

69. Joint Committee on Human Rights, Nationality, Immigration and Asylum Bill, *Seventeenth Report of Session 2001–02, HL 132-HC 961, Appendices to the Report, No. 1, Memorandum from the Home Office, paragraph 13.*

70. UN Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.34, 15 February 1995, paragraph 7, p.2.

71. *Ibid.*, paragraph 22, p.5. See also: Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, October 2002, paragraphs 6 and 7, p.2-3.

*"The UK has entered other, similar reservations in respect of other human rights instruments. We do not believe that the reservation leads to neglect of children's care and welfare."*⁷⁵

And therefore, the Home Office points out that "nothing in the Reservation prevents the Department from giving effect to the rights set out in the CRC."⁷⁶ In the same report a letter from the Home Office Minister, Lord Filkin, was quoted, which was a response to comments in one of JCHR's reports on the Nationality, Immigration and Asylum Bill, saying that:

*"The CRC is not binding on the UK in so far as a matter falls within the reservation, and there is therefore no requirement to make the best interests of the child a primary consideration or to adhere to any other principles set out in it."*⁷⁷

Numerous NGOs, human rights and immigration lawyers have expressed their concern, claiming that the Reservation is unnecessary and urge the Government to withdraw its Reservation.⁷⁸ The Immigration Law Practitioners Association (ILPA) stated that "the immigration and asylum systems should be brought into line with the CRC's guiding principles "to ensure the key aims of the Children Act 1989, 2004 and the Every Child Matters Framework on protecting children."⁷⁹ And the "current regime militates against protection of children under immigration control at risk of exploitation and abuse."⁸⁰ As stated above, a reservation that is incompatible with the object and purpose of the CRC, makes the reservation invalid in international law under Article 19(c) of the UN Vienna Convention on the Law of Treaties.⁸¹

In 2007, the Government repeated its rebuttal in a report to the Committee on the Rights of the Child:

*"Article 22 needs to be considered within the context of the law and practices of the UK. Removal of the Reservation would allow others an additional opportunity to intervene in immigration processes. The effect of the Reservation does not "extend beyond matters of immigration and nationality, by reasons of the various children acts and orders, the effects of which apply equally to all children within the UK's boundaries, regardless of their immigration status or citizenship."*⁸²

Not only is the Reservation incompatible with the CRC, but also it manifests itself in a number of practical ways and prevents implementation of an effective and rights-based approach to tackling child trafficking.

The *UK Action Plan* approach to providing care to trafficked children is based on the notion that children who are in the Local Authority care system will have access to the range of services required for specialist services such as safe accommodation, physical and mental health treatment, legal support and education. As such, no additional services specifically for trafficked children have been developed, including no "safe house" or safer accommodation facilities.

UNICEF Guideline 3 and Article 10 of the CoE Convention establish that a national mechanism for the identification and care of child victims of trafficking be implemented by governments. Therefore it is essential that there is no impediment to providing care standards to victims of trafficking, including their immigration status up to, and over, the age of 18.

A similar Reservation on immigration matters was entered into the UN Convention on Elimination against all forms of Discrimination against Women (CEDAW), which the UK ratified in 1986:

72. Joint Committee on Human Rights, Nationality, Immigration and Asylum Bill, *Seventeenth Report of Session 2001–02*, HL 132-HC 961, paragraph 17.
73. *Ibid.*, paragraphs 49–50.
74. Joint Committee on Human Rights, Government's Response to the Committee's Tenth Report of Session 2002–03 on the UN Convention on the Rights of the Child, *Eighteenth Report of Session 2002–03*, HL 187/HC 1279, p.25.
75. The Government Reply to the twenty-sixth report from the Joint Committee on Human Rights, *Session 2005–06*, HL Paper 245, HC 1127, *Human Trafficking*, p.17. See also: Department of Constitutional Affairs, International Human Rights Instruments: the UK's position: Report on the outcome of an Inter-Departmental Review conducted by the Department of Constitutional Affairs, July 2004, Appendix 6, p.27. Available at: www.dca.gov.uk accessed on 23 August 2007.
76. Joint Committee on Human Rights, Nationality, Immigration and Asylum Bill, *Seventeenth Report of Session 2001–02*, HL 132-HC 961, *Appendices to the Report*, No. 1, Memorandum from the Home Office, paragraph 28.
77. Joint Committee on Human Rights, The UN Convention on the Rights of the Child, Tenth report of Session 2002–03, HL 117-HC 81, p37-38.
78. Joint Committee on Human Rights, Nationality, Immigration and Asylum Bill, *Seventeenth Report of Session 2001-02*, HL 132-HC 961, *Appendices to the Report*, No. 9, Opinion of Nicholas Blake QC, Matrix Chambers, and Sandhya Drew, *Tooks Court Chambers*, paragraph 4.
79. Crawley, H., Child first, Migrant second: Ensuring that every child matters, *Immigration Law Practitioners' Association*, ILPA policy paper, February 2006, p.9. Available at www.ilpa.org.uk/publications accessed on 23 August 2007.
80. Joint Committee on Human Rights, The Treatment of Asylum Seekers, Tenth Report of Session 2006-07, Volume II – Oral and Written Evidence, HL Paper 81-II HC 60-II, *Memorandum from The Immigration Law Practitioners' Association*, No. 70, paragraph 26, p.418.
81. Under the terms of Article 19 (*Formulation of reservations*) of the 1969 UN Vienna Convention on the Law of Treaties:
"A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
(a) the reservation is prohibited by the treaty;
(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty."
82. UK Government, UK Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child, 15 July 2007, p.7.

“(d) The United Kingdom reserves the right to continue to apply such immigration legislation governing entry into, stay in, and departure from, the United Kingdom as it may deem necessary from time to time and, accordingly, its acceptance of Article 15 (4) and of the other provisions of the Convention is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom.”⁸³

83. www.un.org/womenwatch

84. See *Interdepartmental Review of Human Rights Instruments, Appendix 4* at www.dca.gov.uk and the Government’s press release at www.gnn.gov.uk

On 22 July 2004, during the Review on Human Rights Instruments, the Government decided to change their position on various human rights treaties. One of these changes was the withdrawal of the Reservation to CEDAW because “it puts the UK position in line with domestic equality and immigration legislation – no discrimination against women.”⁸⁴

Despite all the calls to withdraw the Reservation to the CRC, successive UK Governments have refused to do so.

5. GUARDIANSHIP

85. UNICEF Guidelines, Guideline 8, p.25. See also: UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, Section 79.
86. Under the terms of Article 3 of the CRC. See also: UNHCR, UNHCR Guidelines on Formal Determination of the Best Interests of the Child, May 2006, p.9.
87. UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 2005, Section 20.
88. The UNHCR Guidelines make a distinction between “best interests determination” and “formal best interests determination” procedure, where higher procedural safeguards are necessary in case of cumulative presence of three criteria:
- The parents are absent, or do not or are unable to exercise basic parental responsibilities.
 - The decision has a fundamental impact on the future of the child.
 - A complex balancing of factors and rights is required to determine the best interests of the child in the individual case; UNHCR Guidelines on Formal Determination of the Best Interests of the Child, May 2006, p.10.
89. *Ibid.*, p.5.
90. UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, p.9 and p.13.
91. UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Geneva, February 1997, p.7. See also: UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, p.12.
92. The Programme is a joint initiative of the International Save the Children Alliance in Europe and the United Nations High Commissioner for Refugees (UNHCR). It aims to realise the rights and best interests of separated children who have come to or across Europe by establishing a shared policy and commitment to best practice at national and European levels. The Statement of Good Practice (Third Edition, 2004) sets out the policy and practice required to implement and protect the rights of separated children in Europe.
93. UNHCR/Save the Children Alliance, Statement of Good Practice, Separated Children in Europe Programme, Third Edition, 2004, p.16. Available at www.separated-children-europe-programme.org accessed on 23 August 2007.

The best interests of the child should be the key element in any decision or action affecting the child victim of trafficking from the moment of identification until a durable solution is found. It is a continuous process and a primary consideration in the search for short and long-term solutions.⁸⁵ A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including his or her nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs, by the responsible officer, which should be documented in the child’s personal profile.⁸⁶ Allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.⁸⁷

The United Nations High Commissioner for Refugees (UNHCR) published the *UNHCR Guidelines on Formal Determination of the Best Interests of the Child* (2006) outlining the procedures and principles for “Best Interests Determinations” – when to make such a determination, who should make it and how the criteria should be applied. The “Best Interests Determination” is applicable to all children of concern to UNHCR, and special attention should be given to separated and unaccompanied children.⁸⁸ The best interests of the child is described as:

“A formal process with specific procedural safeguards and documentation requirements that is conducted for certain children of concern to UNHCR, whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognised in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children.”⁸⁹

Separated children

The United Nations Convention on the Rights of the Child (CRC) gives general provisions to safeguard and protect children, especially those who are deprived of their family environment such as separated children (see below).

As soon as a separated child is identified, an independent guardian should be appointed. Such a child should only be referred to asylum or other procedures after the appointment of a guardian. The guardian can be a legal guardian, temporary guardian, adviser/representative, social worker or NGO. The role of a guardian is not the same as that of a legal representative. In cases of asylum or other administrative or judicial procedures, the guardian and the legal representative will work alongside each other.⁹⁰ According to the UNHCR, the guardian “will act as a link between the child and specialist agencies or individuals who would provide the continuum of care required by the child.”⁹¹

According to the 2004 Statement of Good Practice by the Separated Children in Europe Programme,⁹² guardians should have “relevant childcare expertise and an understanding of the special and cultural needs of separated children. They should receive training and professional support, and undergo police reference checks.”⁹³

The responsibilities of a guardian:

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

Trafficked children

According to the UNICEF *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, a guardian should be appointed as soon as a child is identified as a probable victim of trafficking or there are reasonable grounds to believe that the person is a child and a victim of trafficking. Trafficked children can enter the country as a separated child, but that is not always the case. Therefore, it is important to make the distinction between separated or unaccompanied children and trafficked children.

Child victims of trafficking should be appointed a guardian who has a statutory duty to support the child in their legal, practical and emotional needs and who can advocate on their behalf. The guardian is an advocate for the child from the moment of identification to ensure actions are taken in the child's best interests. Therefore it is important that a guardian is appointed as soon as the child is identified as a victim, so that the guardian reaches the child within a matter of hours. The child shall remain under the responsibility of the guardian until a durable solution is found.⁹⁴ Agencies or individuals whose interests could conflict with those of the child, or any institution or individual who is accused of or complicit in the trafficking of the child cannot be eligible for guardianship.

The guardian should be appointed by an independent guardianship service, which can act in the best interest of the child and will monitor the guardian.⁹⁵ It is important that guardians are accountable to guardianship services and not directly to government ministries or law enforcement agencies such as a Ministry of the Interior, immigration service or police.

The UNICEF *Guidelines* state that guardians must have relevant child protection experience, knowledge of child rights/human rights, and an understanding of the specific needs of child victims, including those specific to gender.⁹⁶ In appointing a guardian, the competent authority shall give due weight to the child's views and shall keep the child informed.⁹⁷

1989 United Nations Convention on the Rights of the Child

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 18 (2)

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 20 (1)

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

2003 European Union Council Directive laying down minimum standards for the reception of asylum seekers (EU Reception Directive)⁹⁸

Article 19

Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

94. UNICEF, *Guidelines*, p.17.

95. UN Committee on the Rights of the Child, *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 2005, p.13. See also UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF Office for CEE/CIS, Geneva, 2006, p.52. See also: *Article 18 of the CRC*.

96. UNICEF, *Guidelines*, p.16.

97. UN Committee on the Rights of the Child, *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 2005, p.10. See also: *Article 12 of the CRC*.

The Netherlands

An independent guardianship institution for separated children, Nidos, was set up by the government in the beginning of the 1990s. Their role is to “exercise the authority of supervising these young people on their way to adulthood and the promotion of their interests.

The guardian provides long-term continued care and has the responsibility for the mental and physical health and well-being of the child, and the furtherance of the development of his/her personality.”⁹⁹

Council of Europe Convention on Action against Trafficking in Human Beings

Article 10 (4)

(a) 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.

98. European Union, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

99. Email communication from Nidos, 8 August 2007, “Guardianship of unaccompanied minor asylum seekers in The Netherlands”, 8 August 2007. General information in Dutch available at: www.nidos.nl

100. Under the terms of Article 10 of the CoE Convention.

101. UK Government, UK Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child, 15 July 2007, p.149.

102. Joint Committee on Human Rights, Government Response to the Committee’s Tenth Report of this Session: The Treatment of Asylum Seekers, Seventeenth Report of Session 2006–07, HCL Paper 134 HC 790, Memorandum from Liam Byrne MP, Minister of State, Home. Section 31, p.21

103. HL Deb (2006–07) 694, written answers column WA3.

104. Joint Committee on Human Rights, Government Response to the Committee’s Tenth Report of this Session: The Treatment of Asylum Seekers, Seventeenth Report of Session 2006–07, HCL Paper 134 HC 790, Memorandum from Liam Byrne MP, Minister of State, Home. Section 31, p.21

105. Joint Committee on Human Rights, Government Response to the Committee’s Tenth Report of this Session: The Treatment of Asylum Seekers, Seventeenth Report of Session 2006–07, Volume II – Oral and Written Evidence, HL Paper 81-II HC 60-II, Memorandum from The Immigration Law Practitioners’ Association, No. 70, Section 26.

Article 10 of the CoE Convention obliges States to provide measures when they deal with cases of child victims of trafficking who are unaccompanied children. Hence, States must provide for the representation of the child by a legal guardian, organisation or authority which is responsible to act in the best interest of the child under Section (4)(a).¹⁰⁰

UK Government’s response

The Government do not believe that a formal “guardianship scheme” is necessary in the UK.¹⁰¹ The Minister of State for the Home Office, in written evidence to the Joint Committee on Human Rights on 14 June 2007, stated that the Government does “not accept that all separated children need a “legal guardian” or that the terms of the EU Reception Directive requires us to provide one.”¹⁰² The Government reiterated their point of view in a Written Answer in the House of Lords on 16 July 2007, stating that they do not believe that the “appointment of a guardian specifically for trafficked children is necessary or desirable.”

The Parliamentary Under-Secretary of State for the Home Office points out that unaccompanied asylum seeking children who are in need of support will be referred to local authority care, in the same way as British children. If the child becomes the responsibility of the Local Authority, it acts as the corporate parent through the appointed social worker. The Under-Secretary of State for the Home Office continues by saying that the Border and Immigration Agency (BIA) refer unaccompanied asylum seeking children to the Children’s Panel of the Refugee Council, providing the child with help to find a legal representative for their asylum procedure.¹⁰³

Therefore, the Government is “satisfied that local authorities provide the support that unaccompanied asylum seeking children need and the support provided is underpinned by the appropriate legislation.”¹⁰⁴

The Committee on the Rights of the Child, the Joint Committee on Human Rights, and numerous NGOs and immigration lawyers have called upon the UK Government to appoint a guardian for separated children as well as for trafficked children. The Immigration Law Practitioners Association (ILPA) called the current situation, where no one in the UK has parental responsibility over unaccompanied children in the UK, a “desperate lacuna, affecting support entitlements as well as the child’s ability to pursue the claim to asylum.”¹⁰⁵

UNICEF Guideline 8, which refers to the UNHCR *Guidelines*, gives an overview of the most important decisions and actions that take place from the moment of identification of a child victim until a durable solution is found, where the well-being of the child should be ensured, as discussed in Chapter 2:

- Identification
- Registration
- Most appropriate temporary care arrangement
- Appointment of a guardian
- Monitoring of temporary care arrangements

When a child is first identified, priority should be given to the child's immediate needs. Once these are met, it is time to find out what longer lasting arrangements would be suitable for the child. General Comment No. 6 of the Committee on the Rights of the Child states that "efforts to find a durable solution for child victims should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated."¹⁰⁶ The child's view should be taken into account during the whole process and the child shall be kept informed, particularly when the child is unaccompanied or separated. The search for a durable solution starts with analysing the possibility of locating relatives and family reunification.

106. UN Committee on the Rights of the Child, General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 2005, Section 79.

107. The basic principle of information sharing is that the maximum information necessary for tracing should be shared at the minimum risk to the child and the family, UNICEF Guidelines, Guideline 8, p.25.

108. UN Committee on the Rights of the Child, General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, 2005, Section 79.

Guideline 8:

Individual case assessment on the basis of the child's best interests to determine the appropriate solution.

- **Tracing** or locating family members is an essential component of any search for a durable solution and should be prioritised except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardise fundamental rights of those being traced. The child shall be kept informed of tracing efforts and of any progress made.
 - Information – sharing and co-operation within and between countries is essential.
 - All those engaged and involved in tracing should use the same approach, with standardised forms and mutually compatible systems to facilitate co-operation and information sharing and prevent duplication of activities.¹⁰⁷
 - Where tracing takes place between a number of countries, there should be close co-ordination, co-operation and joint planning between governments, the ICRC, UNHCR, UNICEF and other implementing agencies in all countries concerned. This should include the centralisation of information.
 - Where there is a general feasibility of return to the country or place of origin, the competent authority in co-ordination with the child's guardian and other relevant accredited State authorities (such as the Ministry of Foreign Affairs and representatives of the embassy) shall be in contact with the competent authority in the country or place of origin of the child, to acquire the necessary information and documentation to arrive at an informed decision regarding the child's placement. The country or place of origin shall agree to issue travel documents to enable the child to travel and re-enter its territory.
 - The competent authority in the country or place of origin in charge of tracing shall, without undue or unreasonable delay, verify whether the child is its national, identify and locate family members and promptly inform the requesting State of any circumstances that are likely to significantly delay or render impossible the carrying out of the action sought.
- **Risk assessment** shall verify whether family reunification is in the best interests of the child. When there are serious concerns for the care, protection and well-being of the child, it may be necessary to involve the local authorities, existing welfare systems and other agencies for any further action or future support required.

- Return to the country or place of origin should not take place without advance secure arrangements of care and custodial responsibilities in the absence of suitable care provided by parents or members of the extended family.
- Special measures should be taken in situations where children have been involved in armed violence against their own community, and situations where children have been involved in activities with a high risk of stigma (such as prostitution and sexual exploitation) as a result of trafficking. Preparations for re-unification must take into account the need to shield children from discrimination, targeted attacks and/or further recruitment for re-trafficking.

The competent authority in the country where the child is identified shall, in consultation with the child, determine the best solution and help them to overcome their situation.¹⁰⁸ According to Guideline 9 of the UNICEF *Guidelines*, three options are possible for durable solutions: local integration, return to the country or place of origin, or resettlement and integration in a third country.

Guideline 9:

Implementation of a durable solution

- **Local integration** shall be considered from a durable and long-term perspective and shall not be limited to the time the victim is a child. Full regard should be given to the vulnerable status of child victims and they should be allowed to remain in the country with a secure status, whether for humanitarian or practical reasons, when they reach the age of majority if no other kind of residence permit can be issued under national law.
 - Local integration is the primary option if return to the country or place of origin is not in the best interests of the child on either legal or factual grounds.
 - Child victims have the right to receive long-term care and protection including full access to health care, psychological support, social services.
 - The competent authority shall ensure that child victim has a legal guardian and an individual integration plan.
 - The competent authority in co-operation with social services, in consultation with the child and his or her guardian, shall find a durable arrangement, favouring family- and community based solutions.
 - A formal Best Interests Determination shall be completed by the competent authority, subject to judicial review.

- Long-term placement shall be decided in the best interests of the child and institutional care should only serve as a last resort.
- The child victim should have the same rights as enjoyed by national children and special attention should be paid by the host country to any additional measures required to address the child's needs.
- Child victims who are not nationals/residents of the country in which they find themselves have the right to **return to their country or place of origin**. Return to the country or place of origin shall in principle only be arranged if such return is in the best interests of the child and should only be considered when safe family reunification can be arranged or when immediate protection and care upon arrival is provided by a guardian, the child's parents, an adult care-giver, an appropriate NGO, or by the responsible authorities in the country or place of origin.
 - The competent authority shall establish agreements and procedures for the safe voluntary return of child victims to their country or their region of origin (in case of internal trafficking).
 - The repatriation of a trafficked person should be co-ordinated in advance between the country or place where the child is and the country or place of origin, and may also involve transit countries.
 - States shall promote the conclusion of bilateral or multilateral agreements or accession of existing agreements to regulate the return of trafficked children to their country.
 - The return cannot be overridden by arguments relating to general migration control.
 - The child's view regarding his or her future shall be sought and given due weight, including the willingness and ability to return to the country or place of origin.
 - The child's evolving mental maturity must be determined in light of his or her personal, family and cultural background.
 - A guardian shall accompany the child victim being returned to his or her country of origin until placed in the custody of the competent authority of the country or place concerned and/or the child's parents.

In the country or place of origin, child victims shall have a guardian and will be entitled to long-term care and protection with a view to their social reintegration.¹⁰⁹ Care and assistance shall be provided for by professionals who are appropriately trained in co-operation with international and non-governmental organisations. A further important stipulation is that authorities in the country or place of origin shall not be informed of

the status of the child as a victim of trafficking without the explicit consent of the child or the guardian.

- **Resettlement and integration in a third country** will be facilitated by the relevant authorities when the safe return of the child to his or her country or place of origin or the integration in the country where he or she is currently located is not possible, or where those solutions would not be in the child's best interests.
 - The relevant authorities shall facilitate and guarantee the child's safe and voluntary transfer to a third country and ensure that arrangements for the child's care comply with the spirit of these guidelines.
 - Resettlement is the best option if it serves family reunification in the resettlement country or if it is the only means to effectively and durably protect a child victim from persecution or other serious human rights violations in the country of stay or of origin.
 - Decisions to resettle a child victim of trafficking must be based on an updated, comprehensive and thorough "Best Interests Determination", taking into account ongoing international and other protection needs.

According to Article 25 of the CRC, the "best interests" principle should also be guaranteed after the child victims of trafficking have been returned to their family or have been placed in care. Their situation should be monitored and followed up by visits from the competent authority, such as social services and NGOs.

109. Including security, food and accommodation in a safe place, access to health care, psychosocial support, legal assistance, social services and education; UNICEF Guidelines, Guideline 9, p.30. See also: Articles 20 and 28 of the CRC

110. Explanatory Report on the CoE Convention, sections 202–203, referring to jurisprudence from the European Court on Human Rights regarding Article 3 of the European Convention on Human Rights: "where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment", applying also to cases of deportation.

111. Explanatory Report on the CoE Convention, Section 205.

112. UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF Office for CEE/CIS, Geneva, 2006, Appendix 4, p.191–92.

Council of Europe Convention on Action against Trafficking in Human Beings

Article 16 of the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Convention) describes voluntary as well as non-voluntary return of victims of trafficking. The return should take into account the status of any legal proceedings related to the fact that the person is a victim and should preferably be voluntary. The Explanatory Report states that the return of a trafficking victim may not always be without risk and therefore "shall be with due regard for the rights, safety and dignity of that person". These rights include the right not to be subjected to inhuman or degrading treatment, the right to protection of private and family life and the protection of his or her identity, and should be respected both by the country that returns the victim as well as the country which facilitates and accepts the return of the victim.¹¹⁰

When the authorities take a decision regarding the return of a child, the authorities must undertake a risk assessment and the best interests of the child must be the primary consideration. Repatriation and social reintegration programmes should be established by the country in which the victim is identified to avoid re-victimisation and the victim should be informed about the services and organisations available upon return. Child victims of trafficking should be able to have access to education and measures should be taken to provide adequate care or receipt by the family or care institutions.¹¹¹ There should be international co-operation between the receiving party and the party of which the victim is a national / a third party to facilitate the return of the victim by providing the correct documents to travel. According to Article 34 of the CoE, information about the protection of the victim or criminal matters can be provided upon request without delay, but a party has the right to request to keep sensitive information confidential.

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: Article 10 – Appointment of a provisional guardian.

After the transfer of the child to the care centre, the Responsible Authority is obliged to request that the child be put under guardianship, in accordance with the relevant national legislation of the parties. The provisional guardian shall accompany the child and protect the child's interests until a permanent solution is found (...) The guardianship may be entrusted to the Responsible Authority, the care centre where the child is placed and/or other recognized organizations and establishments undertaking care of children. The number of children put in guardianship shall be within the supervisory limits of the body to which guardianship has been entrusted. The persons to whom guardianship shall be entrusted should be trained and experienced in matters of care of children and child-victims. In addition, they should be able to communicate in a language understood by the child. In the event that the guardianship is not entrusted to the Responsible Authority, such Authority shall issue regulations and constantly monitor the exercise of guardianship.¹¹²

Case study

At age 13, M. was trafficked from the Democratic Republic of Congo (DRC) across the Sahara and through Spain to Turin, Italy. She spent two years in enforced prostitution in Turin until she was trafficked on to London. M. was forced to "work" in a sauna and was subsequently rescued by a man who came to the sauna on a regular basis. He took M. to social services and she claimed asylum. An expert report was obtained, which stated that her account of being trafficked closely reflected what was known of the route and process used by those trafficking young girls from the DRC to Italy. Evidence was also provided by an adult prostitute who had known M. in Italy. The BIA refused to believe M.'s account and said that she had sought to come to the United Kingdom for economic reasons. At the appeal hearing, M.'s account was believed in its entirety but the immigration judge decided that she could return to the DRC and live safely in another part of the country.

*Courtesy of Nadine French,
Garden Court Chambers*



A cannabis factory in the UK where children trafficked from Viet Nam worked.

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6. MECHANISM TO COLLECT, ANALYSE, MONITOR, RECORD AND PRESENT DATA ON HUMAN TRAFFICKING

General

One of the major problems in the fight against human trafficking is the lack of reliable and representative data and information available on the scale and nature of human trafficking. Therefore, the collection of sufficient and reliable data on trafficked children, including data disaggregated by age, gender, nationality, and forms of exploitation, is vital.

Such a mechanism is also an essential part of implementation of the CRC: the reporting guidelines for periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention.¹¹⁰ It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children.

In addition, publication and wide dissemination of and debate on such reports, including in parliament, can provide a focus for broad public engagement in implementation.

On the EU level, the importance of data was noted early and it was recognised that a central place is needed at the national level to address this problem and to report to the national government.¹¹³ The concept of a National Rapporteur was developed as one of the tools to combat and strengthen EU action against Human Trafficking in the European Union.

The Hague Ministerial Declaration of 1997 called upon States to appoint a National Rapporteur:¹¹⁴

113. *UN Committee on the Rights of the Child, General Comment No. 5, General measures of implementation for the Convention on the Rights of the Child, CRC/GC/2005/5 2005, paragraphs 48–50. Available at: www.unhcr.org*
114. *European Commission, Directorate-General Justice, Freedom and Security, Report of the Experts Group on Trafficking in Human Beings, 22 December 2004, p.77. Available at: <http://ec.europa.eu> accessed on 23 August 2007.*
115. *European Union, Ministerial Conference under the Presidency of the European Union, The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, The Hague, 24–26 April 1997. Available at: <http://legislationline.org> accessed on 23 August 2007.*

1997 European Union Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation

III.1.4

- Provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women;
- Develop criteria for reporting on the scale, nature and mechanisms of trafficking in women and the effectiveness of policies and measures concerning this phenomena;
- Encourage the cooperation of national rapporteurs on a regular basis.

The Netherlands

The Dutch Rapporteur on Trafficking in Human Beings was set up in April 2000 as a direct result of the Hague Declaration of 1997. It publishes statistical data on (possible) victims of trafficking, which is provided by the Foundation against Trafficking in Women (by region and country of origin, age, sex and reporter), and information from the police's victim registration system.¹¹⁵ The annual report analyses all successfully completed investigations into trafficking that are completed and referred to the Crown Prosecution Service each year.¹¹⁶ This investigation involves underage victims of trafficking by year and type of trafficking (cross-border or domestic trafficking).¹¹⁷ The report also shows the results of analyses of trafficking cases within the public prosecutor's national database and the number of prosecuted suspects.¹¹⁸ It also includes recommendations for improvement of the policy pursued which is then debated in Parliament.¹¹⁹

115. *Bureau NRM*, Trafficking in Human Beings, Supplementary figures, Fourth Report of the Dutch National Rapporteur, *The Hague*, 2005, p.3.

116. *Ibid.*, p.9.

117. *Ibid.*, p.20.

118. *Ibid.*, p.40.

119. *Bureau NRM*, Trafficking in Human Beings, Supplementary figures, Third Report of the Dutch National Rapporteur, *The Hague*, 2005, p.8–9.

120. *European Commission, Directorate-General Justice, Freedom and Security*, Report of the Experts Group on Trafficking in Human Beings, 22 December 2004, *Recommendation 35*, p.78.

121. *Explanatory Report on the CoE Convention*, Section 298.

122. *Ministry of Integration and Gender Equality, Government Offices of Sweden*, Prostitution and trafficking in Human Beings, available at www.sweden.gov.se accessed on 23 August 2007.

123. UK Action Plan, p.13. See also: *HL Deb (2006–07) 693*, written answers column WA116.

124. UK Action Plan, p.22.

In their 2004 report, the Experts Group on Trafficking in Human Beings, a consultative group to the European Commission set up in 2003, called for the establishment of a central place where information from different sources and actors is systematically gathered and analysed. They state that this could be a National Rapporteur or a comparable mechanism:

2004 Recommendation from the European Commission's Experts Group on Trafficking in Human Beings

A National Rapporteur or comparable mechanism should meet the following requirements:

- The main task should be the collection of data on trafficking in the widest possible sense, including monitoring the effects of implementation of national action plans
- An independent status
- A clear mandate and adequate competences to have access to, and actively collect, data from all involved agencies, including law enforcement agencies, and to actively seek information from NGOs
- The mandate to collect data must be clearly distinguished from executive, operational or policy co-ordinating tasks, which should be fulfilled by other bodies
- The competence to directly report to the Government and/or the Parliament and to make recommendations on the development of national policies and action plans, without itself being a policy making agency.¹²⁰

The Council of Europe Convention on Action against Trafficking in Human Beings (CoE Convention) also calls upon States to consider the appointment of a National Rapporteur or other mechanism:

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

Article 29 (4): Specialised authorities and co-ordinating bodies

Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

The Explanatory Report to the CoE Convention refers to the Dutch model of a National Rapporteur, where it is an independent institution to ensure monitoring of anti-trafficking activities.¹²¹ A similar model exists in Sweden, where the National Criminal Investigation Department of the National Police (NCID) is commissioned as National Rapporteur.¹²²

The United Kingdom

The UK Government states in the *UK Action Plan* that the appointment of a Rapporteur is not necessary at this time because there is the existing mechanism of the Inter Departmental Ministerial Group on Human Trafficking (IDMG).¹²³

However, the Government also points out in the *UK Action Plan* that there is a need to improve the knowledge and scale of human trafficking in the UK. One of the action points within the *UK Action Plan* is to establish a central point for the collection of data and information on human trafficking, which will be the United Kingdom Human Trafficking Centre (UKHTC) in conjunction with the Serious Organised Crime Agency (SOCA).¹²⁴

It is important to note that the IDMG's mandate is not the same as that of a National Rapporteur. The IDMG assists in co-ordinating and implementing government policy on human trafficking which means that it is not independent from the Government. For that reason; it cannot ensure oversight and accountability. The task of a National Rapporteur is to collect, monitor and report information from a range of sources including police (investigations), public prosecution (prosecutions and convictions), as well as from NGOs (protection and support for victims) who would all be obliged to share relevant information on a regular basis. The IDMG is not in a position to fulfil this role in the current structure.

Canada

In Canada, discussions are taking place in Parliament about proposals for a National Rapporteur on Human Trafficking to "address the serious deficiency in intelligence on the human trafficking problem in Canada."¹²⁵ The Inter-Departmental Working Group on Trafficking in Persons (IWGTIP) has a similar mandate and similar responsibilities as the IDMG. The Federal Standing Committee on the Status of Women published a report on Human Trafficking in February 2007, recommending an independent National Rapporteur.¹²⁶

125. *Standing Committee on the Status of Women, Study on Human Trafficking*, House of Commons, Ottawa, Canada, 39th Parliament – 1st Session, Brief No. 2 of The Future Group, February 2007, p.2. Available at: <http://tfgwebmaster.web.aplus.net> accessed on 23 August 2007.

126. *Standing Committee on the Status of Women, Turning outrage into action to address trafficking for the purpose of sexual exploitation in Canada*, Recommendation 18, p.24, House of Commons, Ottawa, Canada, 39th Parliament – 1st Session, February 2007. Available at: <http://cmte.parl.gc.ca/cmte> accessed on 23 August 2007.

7. DURABLE SOLUTION

When a child is identified as a victim of trafficking, she/he has the right to be protected both as a victim and as a child. Priority should be given to the child's immediate needs.¹²⁷ The child is entitled to special protection measures because of their vulnerability and the fact that the child is deprived of his or her family environment, being in the country or place of origin, transit or destination.¹²⁸ These special protection measures are articulated in the UNICEF *Guidelines on the Protection of Child Victims of Trafficking*, which are derived from the articles of the United Nations Convention on the Rights of the Child (CRC).

Under the CRC, the State has a general obligation to protect children from abuse, exploitation and neglect, to assist them, and to ensure their safety. Therefore, it should take positive action to combat child trafficking.¹²⁹ Articles 8 and 9 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC) specifically deal with the protection of victims from exploitation. OP-CRC obliges States to adapt procedures to recognise the special needs and vulnerability of child victims.¹³⁰ The State has to ensure all appropriate assistance to victims of trafficking, "including their full social reintegration and their full physical and psychological recovery".¹³¹

The child victim is entitled to have his or her case individually assessed on the basis of his or her best interests.¹³² The individual assessment of the best interests of the child starts from the moment of identification and is a continuous process until a durable or long-term solution is determined.¹³³ The Committee on the Rights of the Child, the monitoring body for the implementation of the CRC by its Parties, raised the issue of the importance of special protection of unaccompanied and separated children who are outside their country of origin in General Comment No. 6 (2005) to "provide clear guidance to States on the obligations deriving from the CRC with regard to this particular group of children."¹³⁴

All State Parties to the CRC are under an obligation to follow the provisions according to the following general principles. The UNICEF *Guidelines* have adopted these general principles to be taken into account during all stages of identification, care and support of child victims of trafficking.

- **The best interests of the child**

In all actions concerning child victims undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
(Article 3, CRC)

- **Right to non-discrimination**

Every child shall have the right to protection as required by his or her status as a minor, whether they are non-nationals, nationals or residents of the country in which they find themselves, without discrimination of any kind as to race, sex, language, religion, ethnic or social origin, birth, or other status, including immigration status.
(Article 2, CRC)

127. Under the terms of Article 2 of the CRC: "Every child shall have, without discrimination of any kind as to race, sex, language, religion, ethnic or social origin, birth, or other status, including immigration status, the right to such measures of protection as are required by his or her status as a minor."
128. Under the terms of Articles 2 and 20 of the CRC. See also: UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, Section 12.
129. Under the terms of Articles 3(2), 32 and 35 of the CRC.
130. Under the terms of Articles 8 (1a) of OP-CRC. Article 9 (1) OP-CRC states: (...) "Particular attention shall be given to protect children who are especially vulnerable to such practices."
131. Under the terms of Article 9 (1) OP-CRC.
132. Under the terms of Article 3 of the CRC.
133. UNICEF, Guidelines on the Protection of Child Victims of Trafficking, UNICEF, New York, September 2006, Guideline 8, p.25.
134. UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, Section 4.

Case study

A boy, age 10, arrived at Heathrow and the man who was accompanying him was subsequently arrested and convicted of facilitating his illegal entry. The boy was found accommodation by a Local Authority and placed in foster care. He originated from Nigeria but his parents had moved to Sierra Leone and sent him to live with an “uncle” in Nigeria. His “uncle” then sent him to the United Kingdom. When contacted by social services, his parents were not willing to have him back. The boy reported that he had been due to live with another “uncle” in London. This man also refused to have anything to do with him. The BIA then set removal directions and told the Local Authority that they were sending him back to a shelter for trafficked people in Lagos, which would offer him temporary care and try and get the “uncle” in Nigeria to accommodate him. The local authority accepted this plan without making its own investigations. At no point did any one in authority provide the boy with legal advice. When his foster carer contacted the local law centre, they made an application for asylum and Humanitarian Protection on his behalf and the removal directions were withdrawn.

*Courtesy of Nadine French,
Garden Court Chambers*

- **Respect for the Views of the Child**
 - A child victim who is capable of forming his or her own views has the right to express those views freely in all matters affecting him or her, in accordance with his or her age and maturity.
 - Respect of the views of the child will be maintained during the legal process, interim care and protection and the identification and implementation of a durable solution, particularly in decisions concerning the child’s possible return to the family, country or region of origin.
 - The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
(Article 12, CRC)

- **Right to information**
 - Child victims shall be provided with accessible information regarding their situation and their rights, including protection mechanisms, other available services, and the processes of family reunification and/or repatriation.
(Article 9 and 13, CRC)
 - Information shall be provided in a language that the child victim is able to understand. Suitable interpreters shall be provided whenever a child victim is questioned or interviewed, or whenever she or he requests it.
(Article 40, CRC)

- **Right to confidentiality**
 - All necessary measures shall be taken to protect the privacy and identity of child victims to ensure the safety and security of the victim and his or her family.
 - The name, address and all other information that could lead to the identification of the child victim or his or her family members shall not be revealed to the public or media.
 - Exceptions may be made in circumstances such as to facilitate the tracing or finding of family members or otherwise secure the well-being and protection of the child, with the informed consent of the child.
 - Information about a child victim that could endanger the child or the child’s family members shall not be disclosed in any case.
(Article 16 of the CRC)

● Right to be protected

- Child victims of trafficking are entitled to special protection measures both as victims and as children, in accordance with their specific rights and needs. (Article 20 of the CRC)
- The State shall protect and assist child victims and ensure their safety.
(Article 3 of the CRC)
- Where there are indications that the child cannot return to their country or place of origin due to a well founded fear of persecution, refugee status determination and the granting of corresponding status will be the most appropriate avenue to pursue. In any event all trafficked children should be properly informed of their right to seek and enjoy asylum.¹³⁵
- All decisions regarding child victims shall be taken expeditiously.¹³⁶

Sweden –
“best interests of the child” principle

In Sweden, the “best interests” principle was part of the Parent and Guardianship Code even before the UN Convention on the Rights of the Child. “The principle of best interests has also been added to the Aliens Act as a result of recommendations from an inter-party committee on the Convention established by Sweden’s Parliament, meaning that children’s welfare must be taken into account when making various decisions, such as those regarding deportation.”¹³⁷

135. Under the terms of Articles 1 and 33, UN Convention relating to the Status of Refugees, 1951.

136. UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, *CRC/GC/2005/6, 2005, Section 21*.

137. Pilnik, L., *Comment: “The United Nations Convention on the Rights of the Child and its implementation in Japan and Sweden”*, *Journal of International Law & Policy (a student-run publication at the University of Pennsylvania)*, Vol. III, 2005–06, p. 5:15. Available at www.law.upenn.edu

CONCLUSION AND RECOMMENDATIONS

The UK Government has significantly improved its response to tackling human trafficking over the past year. The UK Action Plan on Tackling Human Trafficking, published in March 2007, shows the Government's achievements in many areas, such as the establishment of the United Kingdom Human Trafficking Centre (UKHTC), the signing of the Council of Europe Convention on Action against Trafficking in Human Beings, and a commitment to a "victim-centred" approach. At the launch of the UK Action Plan, the Parliamentary Under-Secretary of State for the Home Office said that its publication "demonstrates the Government's commitment to doing more to help identify and protect the victims of this vile crime." Such statements are welcome but need to be backed up by policy commitments and resources. As this report shows, to be truly "victim centred", the Government must address the gaps that still exist rather than offer up lesser alternatives to international best practice. Child victims of trafficking remain a highly vulnerable group within our society, even after they are identified and placed in care. Our responsibility to them as children is not diminished simply because they come from abroad; indeed our responsibility to them is substantially greater because most trafficked children have no family within the UK.

This report has measured the UK Action Plan and newly drafted guidance to safeguard child victims of trafficking against two international standards. The first is the UNICEF Guidelines on the Protection of Child Victims of Trafficking and the second is the Council of Europe Convention on Actions against Trafficking in Human Beings (CoE Convention). By comparing current UK legislation and Government guidance against these international human rights-based standards, we reveal the policy gaps and areas for improvement by central government.

It is accepted by the authors that the development of counter-trafficking policy and procedures is, in the main, still in its infancy in the UK when measured against many other countries that have land borders and who have experienced high levels of cross-border trafficking over many years. This report also recognises that the Government has shown a willingness to implement some of the Council of Europe standards as early as possible, and even before they ratify the CoE Convention.

Meanwhile, UNICEF and ECPAT UK welcome all Government efforts to protect child victims of trafficking but we urge the Government to do much more. There remain four significant gaps to implementing a comprehensive UK-wide "victim-centred" approach to combat child trafficking into the UK.

1. UK Government Reservation to the UN Convention on the Rights of the Child

As argued in the report, the UK Government's determination to maintain strict and effective immigration control informs its approach to human trafficking. This focus is clearly reflected in the UK Reservation to the UN Convention on the Rights of the Child (CRC) on Immigration and Nationality, which states that the UK will not be bound by the CRC in matters concerning children under immigration control, and therefore accepts no responsibility for upholding their rights. This is in contradiction to the CRC's principles of non-discrimination and regard for the best interests of the child. It brings into question whether actions by the UK Government to tackle child trafficking will be in the

best interests of the victims themselves, ensuring their care and protection. The broad nature of the Reservation allows for the principles of the CRC to be disregarded in decisions relating to immigration.

We strongly believe that only by putting children's rights at the centre of any "victim care" approach for children will the UK fulfil its obligations as a State Party to the CRC.

Recommendation 1

The UK Government should lift its Reservation to the UN Convention on the Rights of the Child on immigration and nationality matters.

2. Best interests of the child

Although it is implied throughout UK legislation and guidance on safeguarding children, the UK Action Plan does not articulate how to provide for children according to their best interests. The "best interests of the child" is a guiding principle within the UN Convention on the Rights of the Child (1989) and subsequent guidelines for child victims of trafficking. For many trafficked children, their best interests will be served by enabling a safe return to their home country; for others, family reunification may not be possible or desirable and alternatives must be found. Best interests are determined on a case-by-case basis and should guide every action, whether deciding to prosecute traffickers or in providing support to victims of trafficking. In practice, this means extremely high-level co-ordination between numerous law enforcement agencies, victim care services, accommodation providers, lawyers and others, whilst ensuring the child is made aware of his or her legal rights to protection and participation at every step. To navigate and, at times, challenge these services is impossible for vulnerable children who have little or no English language skills. Social workers carry out some of these functions but a social worker is not the same as a legal guardian. Social workers do not always have the power to challenge different statutory agencies, nor do they have parental (legal) responsibility for the child.

Both UNICEF Guideline 4 and Article 10 (4) of the CoE Convention call for the appointment of a guardian for trafficked children as soon as a child victim is identified or there are reasonable grounds to believe that the child is a victim. At present, the UK Government says that it does not see the need for a statutory role of guardian specifically for trafficked children. However, it is clear that to be able to act in the best interest of the child, a guardian should be independent from the Government agencies that make routine decisions affecting their life such as social services, immigration or police and be able to advocate for the child when needed.

Recommendation 2

The Government should set up a system of guardianship for child victims of trafficking to ensure that the best interests of the child is the guiding principle for the UK response to the care and protection for child victims of trafficking.

3. Regularisation of immigration status for victims of trafficking

The Government's approach to human trafficking is still fundamentally anchored within an immigration and border control approach to protection and prevention. Even after the implementation of the UK Action Plan, there remains confusion across Government between how to protect borders from people smuggling and how to protect trafficked children from abuse and exploitation. Whilst some progress is being made by the Home Office Border and Immigration Agency (BIA) on training and awareness, there continues to be a contradiction at the highest level of policy making between protecting children who arrive into the UK as victims of trafficking, and the Government accepting no obligation to provide these children with the very same rights as all other citizen children.

With no system of residence permits for victims of trafficking in the UK, there is no alternative legal status for child victims of trafficking to guarantee them the necessary time in the UK to recover from trauma, take legal action against traffickers, or access education and employment if they cannot go home. Child victims of trafficking, while staying in the care of the Local Authority, can apply for asylum, but many are unsuccessful and have to face long, drawn out appeal processes whilst living as Unaccompanied Asylum Seekers, often in totally unsuitable accommodation provided according to their immigration status. When children turn 18, they are placed into the adult system with other failed asylum seekers, without recourse to public funds, awaiting removal to their country of origin. It should be kept in mind that not all trafficked children apply for asylum, and there are trafficked children who are legally allowed to stay in the UK because they are European citizens. However, from all available research on child trafficking into the UK, we know that the majority of child victims are likely to be East Asian (Chinese, Vietnamese) or African.

The current policy of the Home Office for failed unaccompanied asylum-seeking children is to grant discretionary leave until 17? years of age. However, this is a short-term solution that does not provide a protective environment and does not allow guardians the opportunity to plan for the child's long-term recovery. Also, children who have been trafficked may still be vulnerable as young adults

A renewable residence permit would secure a legal status for children who had been trafficked and would acknowledge the extent of the human rights abuse and provide the necessary environment in which a child could begin to make a physical and mental recovery. It should meet victim's needs and should not be granted in exchange for cooperation with the law-enforcement authorities. The length of the permit should be compatible with the best interests of the child.

Recommendation 3

The UK Government should introduce a system of renewable residence permits for trafficked children based on the best interests of the child.

4. Data collection, monitoring and analysis

Until 2007, when the Government published A Scoping Project on Child Trafficking in the UK, there were no available estimates on the number of children trafficked into the UK. In the UK Action Plan, the Government acknowledges that more research is needed to tackle the problem. The UK Action Plan announced that the UK Human Trafficking Centre (UKHTC) shall be used as a central point for data collection on human trafficking, and plans are under way to make UKHTC the National Referral Mechanism for the UK. However, what is still lacking within the UK is the vital role fulfilled by a National Rapporteur on trafficking. The UK, with its devolved government structures and more than 50 police forces with responsibility for their own information control, will continue to have problems producing a national picture of trafficking until one single agency becomes responsible for analysing data provided by victim care agencies, alongside information on prosecutions and immigration statistics. Without a national picture, it will be near impossible to evaluate the Government's protection and prevention strategies.

UNICEF Guideline 5 sets out that data collection should start at the moment of identification of a child victim of trafficking. Without a robust mechanism in place to identify child victims, no reliable data or statistics on the scale and nature of child trafficking can be given. Victim identification is a process rather than a precise moment. UNICEF Guideline 12 on Research and Data Collection states that research on child trafficking may be conducted: while the child is still in a trafficking position; when the child is in the care of social services; or once the child has moved beyond the trafficking situation. Numerous Government and non-government agencies that have contact with the child may collect relevant data from different perspectives. To have any national relevance, data collection must be a multi-agency responsibility that feeds into one system in order to monitor and analyse. In this way, a profile of trafficking into the UK can be built and used to design policy change, legislative reform or victim care services. In this respect, a National Rapporteur or comparable mechanism should be established to: collect and store the information; have statutory powers to request information from police, immigration authorities, child protection agencies (both government and non-government); and report annually to Parliament. The additional and vital element of holding Government to account is what is missing in the Government's proposal in the UK Action Plan to use the Inter-Departmental Ministerial Group (IDMG) to replace the role of National Rapporteur.

Recommendation 4

The Government should establish a mechanism that ensures the systematic collection, monitoring and analyses of comprehensive and disaggregated data, and accountability to Parliament. This mechanism should perform the functions of a National Rapporteur on Trafficking, with a specific focus on children.

ABBREVIATIONS AND ACRONYMS

| | |
|-----------------------|---|
| BIA | Border and Immigration Agency |
| BIC | best interests of the child |
| CEOP | Child Exploitation and Online Protection Centre |
| CoE Convention | Council of Europe Convention on Action against Trafficking in Human Beings |
| CRC | United Nations Convention on the Rights of the Child |
| EC | European Commission |
| EU | European Union |
| ECPAT UK | End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes |
| IDMG | Inter-Departmental Ministerial Group |
| NAM | New Asylum Model |
| NGO | non-governmental organisation |
| NRM | National Referral Mechanism |
| NRUC | National Register of Unaccompanied Children |
| OHCHR | United Nations Office of the High Commissioner for Human Rights |
| OP | Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography |
| OSCE | Organization for Security and Co-operation in Europe |
| SOCA | Serious Organised Crime Agency |
| UKHTC | United Kingdom Human Trafficking Centre |
| UK | United Kingdom of Great Britain and Northern Ireland |
| UN | United Nations |
| UNHCR | Office of the United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |

GLOSSARY

| | |
|---------------------------------------|---|
| Child | In accordance with Article 1 of the UN Convention on the Rights of the Child: “For the purpose of this present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” |
| Child prostitution | The use of a child in sexual activities for remuneration or any other form of consideration. |
| Commercial sexual exploitation | The sexual exploitation of a child for remuneration in cash or in kind, usually organised by an intermediary (parent, family member, procurer, pimp), mainly for prostitution and pornography. |
| Durable solution | Long-term arrangements made for a child who has been trafficked. |
| Exploiter | A person who makes money from a child or adult who has been trafficked, as defined by the UN Trafficking Protocol, notably subjecting them to forced labour or servitude, or to prostitution (commercial sexual exploitation). |
| Immigration official | Includes border police and others involved in processing new arrivals at airports, ports and other frontier crossing points. |
| Law enforcement official | Police officer or other officials responsible for enforcing the law. |
| National Referral Mechanism | Procedure designed by ODIHR-OSCE to ensure coordination among government ministries, NGOs and others that are involved in caring for victims of trafficking and making decisions in regards to them. |
| Non-national | Person from another country, a “foreigner”. |
| Separated child | Separated from both parents or from their legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members. |
| Trafficker | A person who engages in trafficking in persons as defined by the UN Trafficking Protocol. |
| Trafficking Protocol | <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)</i> . This Protocol is sometimes referred to as the “Palermo Protocol”. |
| Unaccompanied child | An unaccompanied child or minor is a child who is separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so. |
| Young person | Refers to children under the age of 18 and young adults age 18 to 23. |



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Registered Charity No. 1104948

A photograph showing the profile of a person's head and shoulder in the foreground, looking out a window. The window is out of focus, showing a bright, overcast sky. The person's hair is dark and appears to be tied back. The overall tone is somber and contemplative.

"My life was normal before I was trafficked at the age of 15. My friend was offered a summer job in London, and I decided to go too. At the airport we were met by some men who handed £3,500 to the guy who'd travelled with me. To my horror, I realised I'd been sold. I was taken to Birmingham by the man who bought me. He raped me then took me to a brothel and said I had to have sex with customers. I was too terrified to refuse. One of the other girls working there said, 'Don't think about trying to escape, wherever you run they will find you.' I worked in the brothel for several months before I escaped. Clients could see that I was distressed but none of them ever offered to help.

"I'm trying to rebuild my life. But what they did has changed me forever."

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