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IOM International Organization for Migration

# RESOURCE BOOK

## for Law Enforcement Officers on Good Practices in Combating Child Trafficking



AGIS 2005

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RESOURCE BOOK  
for Law Enforcement Officers on  
Good Practices in Combating Child Trafficking

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March 2006

**“Restricted”  
To Law Enforcement Only**

Prepared within the Framework of the AGIS 2005 Project  
“Comprehensive Training for Law Enforcement Authorities Responsible for  
Trafficking in Children/Minors“

Compiled by IOM Vienna



AGIS 2005

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## FOREWORD BY THE AUSTRIAN FEDERAL MINISTRY OF THE INTERIOR

During the first half of 2006, Austria holds the Presidency of the Council of the European Union (EU) for the second time since its accession to the EU in 1995. Increasing cooperation and understanding between the member states of the European Union as well as with third countries is a key challenge of the Austrian Presidency. One of the Presidency contributions of the Austrian Federal Ministry of the Interior is the project "Comprehensive Training for Law Enforcement Authorities Responsible for Trafficking in Children/Minors", which is financially supported by the European Commission under AGIS 2005.

The Austrian Ministry of the Interior strongly focuses on the area of human trafficking in general and trafficking in children and minors in particular, as it has been becoming an increasing challenge for all of us in the course of the last years. Children and young persons are often sold for labour and sexual exploitation, and they often do not have the chance to escape their torturers. Thus children lose their childhood; they often do not have the possibility to go to school or to grow up in their familiar milieu.

The Council of the European Union therefore mentioned human trafficking in the Hague Programme and required the Commission as well as the Council to develop an EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings. During the development of the plan in 2005, Austria – as then incoming Council Presidency – strongly supported as well as contributed to this EU plan.

Already in 2004, the Federal Ministry of the Interior (Viennese Police) together with IOM organized a workshop for law enforcement on the exchange of information, best practices and lessons learnt on trafficking in minors. This workshop was part of the IOM Vienna AGIS 2003 project "Victim assistance for minors in the EU, candidate and third countries" and the forerunner of the current project.

The fight against trafficking in human beings is a priority of the Austrian EU Presidency. Therefore, we are very much promoting this topic and are pleased to have IOM, the OSCE, the Swedish Foreign Ministry, the Belgium Federal Police as well as EUROPOL as partners in this project.

It is important for us to turn people's attention to these challenges and to promote comprehensive training for law enforcement authorities responsible for trafficking in children and minors.

In accordance with the EU plan, the Austrian EU Presidency focuses on improving the collective understanding of the issues and joining efforts to maximize effectiveness. Furthermore, the Austrian EU Presidency supports the plan of a human rights and victim-centred approach, and that the European Union should strengthen its operational response to trafficking in human beings.

The current project contributes to an increase in cooperation with other member states as well as with other partner countries. It is important for all of us to build cross-border alliances and networks, to define common interests and goals for today's police work, and to standardize operational methods in the fight against trafficking in human beings.

In this regard, the Austrian Federal Ministry of the Interior would like to thank all experts who contributed to this Resource Book. We invite all participants of the international training seminar to use this book and to promote standardized methods and rules mentioned in the book in the global fight against trafficking in children and minors.

The Austrian Presidency will make use of the findings of the project and the recommendations in its efforts to implement the EU Plan on Best Practices and Procedures for Combating and Preventing Trafficking in Human Beings.



Brigadier General Kurt Hager  
Head of Bi- and Multilateral Affairs

## FOREWORD BY THE INTERNATIONAL ORGANIZATION FOR MIGRATION

Children are particularly vulnerable to abuse and exploitation and therefore need specific protection and assistance. Children's rights are reflected worldwide through national legislation and international conventions. Trafficking in children remains one of the most severe violations of human rights. Traffickers do not only exploit children in many different ways but also deprive them of an adequate childhood, family life, access to education and health. The accumulation of denied rights can lead to lasting traumatization.

Sharing information, experience, good practice and knowledge is essential for cooperation among all actors involved in the fight against trafficking in children. This publication aims to be a practical and effective tool for law enforcement officers in order to combat child trafficking, effectively investigate and prosecute child traffickers and adequately protect and assist child victims of trafficking.

This Resource Book is the result of the project "Comprehensive Training for Law Enforcement Authorities Responsible for Trafficking in Children/Minors" implemented by the International Organization for Migration (IOM) in Vienna on behalf of the Austrian Federal Ministry of the Interior. Under Austria's EU Presidency, the Ministry has made the topic of child trafficking a priority in the context of fighting organized crime, which ranks high on the agenda for creating an area of freedom, security and justice throughout the EU and its neighbouring countries.

Particular thanks goes to the European Commission for its financial support under the AGIS 2005 Programme, to the Austrian Federal Ministry of the Interior for co-funding, and the Swedish Ministry for Foreign Affairs for their additional financial support.

IOM Vienna would like to gratefully acknowledge the contributions from a large number of committed experts from various organizations and institutions who drafted parts of this Resource Book or provided feedback as members of the Advisory Board.<sup>1</sup> In particular, we would like to thank the experts of the partner organizations: Anelise Gomes de Araujo, OSCE Anti-Trafficking Assistance Unit; Maria Lennartson, Swedish Migration Board; Bruno Mens, Europol; Wim Bontinck, Belgian Federal Police, who was also lead writer for the chapter on Investigative Methods; and to Debbie Townsend and Ian Knight, Metropolitan Police, United Kingdom (UK), lead writers for the chapters on Interviewing Techniques.

In IOM's project team, Claire Potaux coordinated the entire project, facilitated the process of compiling all data and resources and also drafted parts of the Resource Book. Hannes Goegele assisted with drafting, coordinated the communication with members of the Advisory Board and was responsible for the overall coherence as well as presentation of the Resource Book. Ginette Baerten edited the first draft and significantly enhanced its readability. Lydia Wazir edited the final version. Lora Ujkaj assisted in the finalization of the Resource Book. As project managers, Erika Laubacher-Kubat and Volker Frey oversaw and guided the entire project.

We would like to express our great appreciation to all others involved in the production of this Resource Book. Thanks to their commitment, professional work, expertise as well as readiness to draft parts of and share comments, often under deadline pressure, IOM Vienna succeeded in publishing the Resource Book in time for the International Training Seminar for Law Enforcement Officers, held in Vienna from 14 to 17 March 2006.



Andreas Halbach  
Head of Special Liaison Mission

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<sup>1</sup> Please see the List of Experts and List of Members of the Advisory Board at the end of the Resource Book.



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## LIST OF ABBREVIATIONS

AG	Analysis Group
AJE	Association Jeunes Errants (Association of Young Wanderers)
AKH	Allgemeines Krankenhaus (General Hospital)
AVR	Assisted Voluntary Return
AWF	Analysis Working File
B2B	Business to Business
BKTF	Bashkë Kundër Trafik Fëmijët (All Together Against Child Trafficking)
BPD	Bundespolizeidirektion (Federal Police Direction)
CCTV	Close Circuit Television
CETS	Council of Europe Treaty Series
CIS	Criminal Intelligence Service
CoE	Council of Europe
CT	Computed Tomography
CTM	Counter Trafficking Module
CUHT	Central Unit Human Trafficking of the Belgian Federal Police
EC	European Commission
ECPAT	End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes
ELO	Europol Liaison Officers
EU	European Union
FCCU	Federal Crime Control Unit (Belgian Federal Police)
IB	Interpol Intelligence Bulletin
ICAID	Interpol Image Database
ICD	International Classification of Diseases
ICMPD	International Centre for Migration Policy Development
IEOS	Investigation and Educational Orientation Service
ILO	International Labour Organization
IO	International Organization
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour
IPGS	International Police General Secretariat
IRCP	International Research on Criminal Policy
ISS	International Social Service
JAT	Joint Analysis Team
JGG	Jugendgerichtsgesetz (Juvenile Court Law)
JHA	Justice and Home Affairs
MA	Magistratsabteilung (Municipality Department)
MedStrSchV	Medizinische Strahlenschutzverordnung (Radiation Protection Ordinance)
Mol	Ministry of Interior
MPU	Missing Persons Unit
MRI	Magnetic Resonance Imaging
NAAC	National Albanian American Council

NCB	Interpol National Central Bureau
NGO	Non Governmental Organization
NPF	Ndihmë Për Fëmijët (Help for Children)
NRM	National Referral Mechanism
OCG	Organized Crime Group
ODIHR	Office for Democratic Institution and Human Rights
OJL	Official Journal Law
OPG	Orthopantomogram
ORA	Office for Repatriation and Aliens
OSCE	Organization for Security and Cooperation in Europe
PGO	Prosecutor General Office
PPC	Penal Procedure Code
PTSD	Post-Traumatic Stress Disorder
SACP	State Agency for Child Protection
SCEP	Separated Children in Europe Programme
SIDA	Swedish International Development Agency
SIS	Schengen Information System
SMB	Swedish Migration Board
StGB	Strafgesetzbuch (Criminal Code)
TACT	Transnational Action against Child Trafficking
Tdh	Terres des hommes
TECS	The Europol Computer System
THB	Trafficking in Human Beings
UAM	Unaccompanied Minor
UHT	Unit of Human Trafficking
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
URL	Uniform Resource Locator
US	United States
USAID	United States Agency for International Development
VIS	Visa Information System
VPN	Virtual Private Network
WCO	World Customs Organization

---

## GLOSSARY

**Asylum seekers:** Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments.

**Child:** A child is an individual below the age of 18 years (definition of Article 3d of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime).

**Closed alternative question:** This type of question invites one answer out of a given choice, e.g.: *“What colour was the car, silver, grey or another colour?”*

**Closed specific question:** This type of question usually invites a single, specific answer, e.g.: Q - *“At what time of day did this happen?”*; A - *“In the morning”*.

**Conviction:** A finding by a judge that the defendant is guilty of a crime.

**Cross-examination:** At trial, the opportunity to question any witness, including the opponent, who testifies against the defendant in direct examination.

**Dentin:** One of the two mineralized structures of the teeth. It consists of active cells or odontoblasts that are captured within a calcified matrix of hydroxyapatite and collagen.

**Disruptive investigation:** This option is used in cases where the level of risk to the victim of trafficking demands an immediate response and/or where the proactive investigation is either not an option or precluded by national legislation. However, it must be mentioned that the disruptive investigative option is not a long term solution and may only displace or drive the problem to another location or “underground”.

**Emotional debonding:** Loss of attachment to an emotional connection with another person.

**Enamel:** One of the two mineralized structures teeth consist of. It constitutes the outer clinical part of the tooth as seen in the mouth. It is virtually dead material consisting of hydroxyapatite crystals covering and protecting the tooth crown.

**Evidential interview:** The child is interviewed with the purpose of gathering evidences for use in legal proceedings, immigration matters, child protection issues and/or the prosecution of offenders. The evidential interview aims to obtain a truthful and accurate account of what the child has been victim of or witness to. It consists of four following phases: (1) Introduction/Rapport: introduction of each person and of the engagement of the conversation with the child; (2) Free narrative; (3) Clarification/Questioning; (4) Closing: recapitulation of the story in exactly the same order of events as the child has recounted it; comments and questions from the child.

**Expulsion:** An act by a State’s authority with the intention and effect of securing the removal of a person or persons (aliens or stateless persons) against their will from the territory of that State.

**Flagging:** Labelling the intelligence into categories that can be easily apprehended and retrieved by electronic means. The word “flag” relates to a computerized marker that is electronically attached to pieces of data so that they can be filed and retrieved from within the specifications imposed by the flag. On a paper system, the “flag” is simply the marker made against the written entry that shows what the intelligence relates to in the system.

**Good practice:** The term good practice is used to describe a practice in the field of combating child trafficking that has proved to be efficient in one country or more and to indicate that this system might be applicable and adaptable in a different setting. A model of good practice can also be derived from a model of bad practice. No model can be entirely duplicated due to different national settings. Each model of good practice also has disadvantages and might not work in a different setting, but it is still valuable as an effective method in the respective country.

**Hand wrist radiograph:** X-ray (radiography) of bones of hand wrist. It is an instrument in order to reveal indications of skeletal age.

**Identification:** There are two different types of identifications: the identification of the child or determination of the identity of a child (searching for information that would be contained in birth certificate, or identity documents/passport: name, nationality, date and place of birth); and the identification of the child as a potential or actual victim of trafficking (important in order to assist in providing protective measures for the child and in the investigation and prosecution of traffickers).

**Intelligence-led investigations:** Police-led investigation, arrest and successful prosecution of traffickers without relying on the cooperation and testimony of the victim. In other words, it is a combination of intelligence-gathering, human and technical surveillance, the work of undercover agents and standard investigative techniques to identify the traffickers and instigate proceedings against them.

**Investigation:** Process of collecting data, information and declarations made by a probation officer in preparing allegations against the defendant.

**Investigative methods:** The main investigative methods are the following: proactive/intelligence-led investigation, reactive/victim-led investigation, disruptive investigation.

**Joint investigation teams:** Competent authorities of two or more states setting up a team for a specific purpose and a limited period, to carry out criminal investigations in one or more of the states setting up the team. (European Union Council Framework Decision of 20 June 2002 on Joint Investigation Teams)

**Leading Questions:** Questions misleading the person and planting false memory. It is imperative that the interviewer avoids using leading questions. Ex: *Was the car grey?*

**Minor:** In the context of this Resource Book, a minor is to be considered as a child, meaning every person below the age of 18 years.

**Monitoring room:** Side-room where the video-recorded interview can be watched (e.g. behind a mirror).

**Open questions:** Questions beginning with words such as "Tell me", "Explain to me", "Describe to me", with the purpose of enabling the child to recount as much detail as possible.

**Orthopantomogram (OPG):** Radiological panoramic overview of the dentition. It reveals the teeth that are completely formed and calcified and those that are still in the process of being formed.

**Post-Traumatic Stress Disorder (PTSD):** The condition that occurs when a victim lives through an experience or series of experiences so extreme that he/she is unable to comprehend its nature or accept that this has happened to him/her. The symptoms can be various: intrusive images, visual or sensory hallucinations, vivid flashbacks and memory impairment. The victims may be unable to produce a description of what happened to them.

**Proactive investigations:** See Intelligence-led Investigations.

**Prosecution:** The institution and conduct of legal proceedings against a defendant for criminal behaviour.

**Reactive investigations or victim-led investigation:** The investigative teams rely on the cooperation and testimony of the victim to find available additional corroborative material to be used as evidence in judicial proceedings.

**Risk assessment:** Risk assessment is an operational risk evaluation in relation to existing and potential child victims of trafficking. Risk assessment is a continuing process during the preparatory phase of an investigation and intelligence gathering, the pre-arrest and post-arrest phase of a criminal investigation as well as in the pre-trial and post-trial phase. The operational

risk assessment also focuses on the ideal investigative and multi-agency team and the joint action of police services and public service providers.

Rogatory Letter: Procedural act by which a court calls upon another court for a civil process or investigation which it cannot undertake.

Shelter: Accommodation in a safe environment.

Smuggling: The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the entry of a person into a State of which the person is not a national or a permanent resident (definition from the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention on Transnational Organised Crime, entered into force on 28 January 2004).

Statement: An official or formal report or declaration by public authorities or by a judge/jury.

Sternal epiphyseal: The radiological assessment of the degree of ossification of the sternal epiphyseal cartilage of the clavicle is a diagnostic instrument in forensic age diagnosis of young adults, which reveals the stages of ossification.

Stockholm Syndrome: Describes the behaviour of kidnapped victims who, over time, become sympathetic to their captors. The name derives from a 1973 hostage incident in Stockholm (Sweden) at the end of which several kidnapped victims resisted rescue attempts and refused to testify against their captors.

Temporary residence permit: A written warrant or license for a temporary stay in a foreign country issued or granted by a legally qualified government authority.

Testimony: Oral evidence provided at a trial through an oral deposition.

Threat assessment (strategic analysis): This analysis contains activities and methods of collecting, processing and analyzing data on potential exploitation situations of children. It collects and uses statistical data as well as qualitative data on the selected cases.

Trafficking: *“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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”*, Art. 3 (a) UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. For this Resource Book the definition of trafficking in children used is given under 1.2.3- Chapter I- Background Information.

Trauma: Trafficked children can be affected by two kinds of traumas: Trauma type I involves a single traumatic event, while trauma type II consists of multiple, chronic experiences. Traumatic events such as physical abuse, sexual exploitation, and psychological humiliation can cause the following consequences: narrowing of attention, dissociation, repression and Post-Traumatic Stress Disorder (PTSD).

Unaccompanied Minors: *“The nationals of third countries who are under 18 years old who enter the territory of Member States and are not accompanied by an adult who is responsible for them, by law or by custom, and as long as they are not effectively cared for by such a person. The present resolution could also be applied to minors who are nationals of third countries and who have been left alone after entering the territory of the Member States”*. (Article 1 (1) of the Council Resolution of 26 June 1997 on unaccompanied minors (UAMs) who are nationals of third countries defines UAMs).

Victim-led Investigation: See reactive investigations.

Voluntary Return: The assisted or independent return to the country of origin, transit or another third country based on the free will of the returnee.



## INTRODUCTION

This Resource Book targets law enforcement authorities in their effort to combat child trafficking. It was elaborated within the framework of the project of the Austrian Federal Ministry of the Interior, “Comprehensive Training for Law Enforcement Authorities Responsible for Trafficking in Children/Minors”, with the financial support of the AGIS 2005 Programme of the European Commission, whose implementation was delegated to the International Organization for Migration (IOM) Vienna.

This Resource Book was specifically designed to support law enforcement officers working in the area of combating child trafficking, who already have practical experience in this field. Therefore, it will only briefly describe the definition and general overview of child trafficking, and rather focus on specific topics and present identified good practices.

The Resource Book aims to:

- increase awareness and knowledge of the problems and complexities of cases of trafficking in children, especially in relation to the specific vulnerability of children;
- provide information on existing international and European standards on child rights;
- disseminate identified good practice and recommendations from different countries and increase their exchange;
- increase the practical skills of law enforcement officers specializing in combating child trafficking especially in identifying, adequately addressing and investigating child victims of trafficking;
- improve the capacity of law enforcement officers to combat trafficking in children;
- enhance synergies and further international and bilateral cooperation and
- strengthen cooperation between law enforcement authorities and NGOs/social service providers.

### Particularity and originality of the Resource Book

This Resource Book is an especially important and useful tool for law enforcement officers because it is the only Resource Book targeting law enforcers, which specifically focuses on child trafficking and explores the main relevant aspects for law enforcement officers to such an extent. Moreover, the Resource Book presents current good practices and recommendations, recognized by an international team of experts with extensive knowledge on the topic. The Resource Book also includes innovative techniques and practical information based on inputs from national and international experts from law enforcement, medical science and civil society.

This Resource Book can be used as a basis for the content of training sessions, but has not been designed as a training manual as such and thus does not indicate the format of these sessions. Further, if used at the national level, it needs to be adapted to country-specific legislations and situations of child trafficking.

### Methodology

The main topics and focus of this Resource Book resulted from recommendations from the workshop for law enforcement on trafficking in children held on 7 May 2004<sup>2</sup> and the results of the rapid assessment questionnaire.<sup>3</sup> This Resource Book contains chapters on the following topics:

<sup>2</sup> This workshop was organized by IOM Vienna within the scope of the AGIS 2003 Project “Victim Assistance for Minors: Capacity Building via Training and Exchange of information/best practices between EU, candidate and third countries”.

<sup>3</sup> Conducted during the preparatory phase of the AGIS 2005 Project “Comprehensive Training for Law Enforcement Authorities Responsible for Trafficking in Children/Minors”. This questionnaire was sent to all the participating countries in view of assessing the situation of trafficking in children and the special needs in each country.

- Age assessment
- Investigative methods
- Interviewing techniques and
- Cooperation between law enforcement authorities and NGOs/social service providers.

Experts were requested to draft contributions on identified good practices based on experience and lessons learnt in their home country on each specific topic. For the topics “Interviewing Techniques” and “Investigative Methods”, working groups were created and the members of these groups met to discuss the content of these two chapters, which were then compiled by a lead writer. For the two other chapters on “Age Assessment” and “Cooperation between Law Enforcement Authorities and NGOs/Social Service Providers”, IOM Vienna compiled the contributions submitted by independent experts.

The draft chapters of the Resource Book were shared with members of the working groups and experts, as well as with the Project Team<sup>4</sup> in order to receive further inputs.

A selected Advisory Board also provided comments to further improve the quality as well as to increase the involvement of experts. The Advisory Board was composed of individuals particularly committed to the topic, who were from different countries than the experts who drafted the chapters and from a range of organizations.

#### Contents of the Resource Book

The chapter on background information on child trafficking introduces the definitions of “child” and “trafficking” which will be used in this Resource Book, as well as international and European standards on trafficking in human beings and children’s rights. Furthermore, this chapter briefly describes some trends in child trafficking (scale, forms of exploitation, profiles, recruitment and border crossing), as well as the consequences of trafficking for child victims and the role of law enforcement authorities in combating this crime.

The chapter on age assessment/identification presents advantages and disadvantages of different methods of age assessment: psychosocial assessment, dental examination, bone X-ray, combination of methods, illustrated by case studies. Moreover, the chapter contains practical examples of methods on how to check the identity of children without identification documentation.

The chapter on investigative methods presents practical guidelines and good practices on combating child trafficking. The chapter mainly focuses on risk assessment (strategic and operational), investigative methods (proactive/intelligence-led investigation, reactive/victim-led investigation, disruptive investigation), bilateral and international cooperation.

The chapter on interviewing techniques was drafted by experts both from law enforcement and child psychiatry/psychology and presents the good practices they agreed on. This chapter describes the first contact, first intake and indicators for the identification of children as victims of trafficking, the conditions and preparation of the evidential interview, the phases of the evidential interview, witness protection and training of all actors involved.

After a general introduction on general standards and incentives for cooperation, the chapter on cooperation between law enforcement authorities and NGOs/social service providers presents practical examples of cooperation in countries of destination and of origin regarding: identification and referrals of child victims, direct assistance to child victims, model protocols of cooperation, assistance in countries of origin in preparation of return and upon return.

Finally, all the recommendations of the Resource Book are summarized in the overall conclusion of the Resource Book.

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<sup>4</sup> The Project Team is composed of the leading organizations (Austrian Federal Ministry of the Interior, IOM) the partners of the project, as well as the lead writers of the two topics Investigative Methods and Interviewing Techniques.

This Resource Book complies with the “Recommendations of the Expert Group on Trafficking in Human Beings”, in particular with the following specific recommendations:

- Recognized as an identified need: *“Special training programmes on child trafficking for law enforcement personnel and other concerned agencies dealing with trafficked children. Such training should focus on the specific rights and needs of child victims.*
- *The specialist level training should target specialized counter-trafficking investigators that hold specific responsibility for the crime (including prosecutors, as appropriate) and aim to:*
  - *develop the capacity and investigative skills of specialist anti-trafficking investigators;*
  - *enhance cooperation of specialized investigators in the region according to a regional investigative standard”.*<sup>5</sup>

For easy reference, the following symbols have been introduced throughout the text:



Important!



To Note!



Legal Documents.



Example.

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<sup>5</sup> European Commission, Directorate General Justice, Freedom and Security, 2004: 164-165.

## CHAPTER I

### BACKGROUND INFORMATION ON CHILD TRAFFICKING

This chapter introduces the **definitions of the terms “child” and “trafficking” used in this Resource Book**, as well as international and European standards on trafficking in human beings and children’s rights. This chapter also briefly describes some trends in child trafficking (scale, forms of exploitation, profiles, recruitment and border crossing), as well as the consequences of trafficking for child victims and the role of law enforcement authorities in combating this crime.

#### 1- DEFINITIONS

##### Definition of “Child”

Throughout this Resource Book, the term **“child” refers to any person under 18 years of age**, in accordance with the definition of Article 3d) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.<sup>6</sup>

##### Definition of “Unaccompanied Child/Minor”

Although “unaccompanied minors” are not the direct topic of this Resource Book, it is important to introduce this definition, as in many cases of international trafficking in children, children may be identified and treated as “unaccompanied minors” before being identified or recognized as victims of trafficking. Unaccompanied minors or separated children, although they might be in a very vulnerable situation, might not be victims of trafficking.

There is no universally agreed upon definition of “unaccompanied minor”, but for the purposes of this Resource Book the following definitions will be taken into account:

According to the United Nations High Commissioner for Refugees (UNHCR),

*“an unaccompanied child is a person who is under eighteen years, unless, under the law applicable to the child, majority is attained earlier and who is separated from both parents and is not being cared for by an adult who by law or by custom has responsibility to do so”.*<sup>7</sup>

Article 1 (1) of the Council Resolution of 26 June 1997 on Unaccompanied Minors (UAMs) who are Nationals of Third Countries defines UAMs as:

*“The nationals of third countries who are under 18 years old who enter the territory of Member States and are not accompanied by an adult who is responsible for them, by law or by custom, and as long as they are not effectively cared for by such a person. The present resolution could also be applied to minors who are nationals of third countries and who have been left alone after entering the territory of the Member States.”*

**In these definitions, priority is given to the absence of parental authority or a legal referee, rather than whether the child appears to be accompanied by an adult or not. The presence of adults with children does not necessarily mean that the children are free from danger** as the adults may not be capable of taking on the responsibility of the child.

##### Definitions of trafficking

Clear definitions are vital to ensure the recognition of victims and the prosecution of traffickers. The lack of harmonized definitions at national and international levels has had a negative impact on the identification of victims and their access to assistance and adequate protection. Despite the introduction of the Palermo Protocol, which sought to provide an internationally

<sup>6</sup> <http://www.ohchr.org/english/law/protocoltrafficking.htm>. According to the definition in the Protocol a “child” is strictly under 18 years old (definition retained for this Resource Book), whereas Article 1 of the UN Convention on the Rights of the Child states that “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

<sup>7</sup> UNHCR, 1997: 4, Art. 3.1.

recognized definition, a range of definitions exist and are applied in different national and international contexts.

### 1.1- International definitions of trafficking in human beings and child trafficking

#### 1.1.1- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

On an international level, a number of Conventions relating to the abolition of slavery as well as forced and child labour exist. However, it was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which strove to provide an internationally recognized definition of trafficking in human beings. The Protocol entered into force on 25 December 2003 and has been signed by 117 parties and ratified by 95.<sup>8</sup>

- (a) *“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. **Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;***
- (b) *The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- (c) ***The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;***
- (d) ***‘Child’ shall mean any person under eighteen years of age”.***<sup>9</sup>



According to the Protocol, **the consent of a child, or the means to achieve such consent, is irrelevant**, as long as the **overall objective of the operation is the exploitation** of the child.<sup>10</sup> As there is no requirement for a victim to cross a border, the terms of the Protocol can be equally applied to **internal and international trafficking**. The Protocol recognizes a range of exploitative purposes and is gender neutral. The Protocol does not specifically define prostitution or *“other forms of sexual exploitation”*, which could include pornography, and other related fields such as striptease or lap dancing. The dispositions of the Protocol should be complemented and interpreted following the main principles of the Convention on the Rights of the Child, guided by the consideration of the best interests of the child.

**It is necessary to stress the difference between trafficking and smuggling, as this will determine appropriate responses to particular cases.**

According to the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention on Trans-national Organized Crime, which entered into force on 28 January 2004, “smuggling of migrants” shall mean:

*“The procurement 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 a permanent resident.”*<sup>11</sup>



<sup>8</sup> As of 3 November 2005; [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html#top](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html#top)

<sup>9</sup> Art. 3, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

<sup>10</sup> ECPAT 2004: 13.

<sup>11</sup> Art. 3 (a), UN Protocol against the Smuggling of Migrants by Land, Sea and Air.

Therefore, in the case of smuggling, it is usually the potential migrant who first contacts the smuggler, who, following payment in advance, helps the migrant to illegally enter the country of his/her choice. Smuggling does not necessarily include exploitation. Smuggling is a crime against the State, as it violates its borders and immigration laws, whereas trafficking is a serious human rights violation and a crime against persons.

### 1.1.2- Convention on the Rights of the Child and Optional Protocol



Article 35 of the Convention on the Rights of the Child, which has been ratified by 192 countries<sup>12</sup> and entered into force in September 1990, provides that all ratifying states should “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form”.<sup>13</sup> The term “traffic” is not defined.

In the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,<sup>14</sup> the term trafficking itself is also not defined but the protocol includes the transfer of organs of the child for profit, as well as illegal adoption.<sup>15</sup>

Article 3 outlines the relevant criminal offences;

1. **Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:**

- a) *In the context of sale of children as defined in Article 2:*

- i) *Offering, delivering or accepting, by whatever means, a child for the purpose of:*

- a. *Sexual exploitation of the child;*

- b. *Transfer of organs of the child for profit;*

- c. *Engagement of the child in forced labour;*

- ii) *Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;*

- b) *Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2;*

- c) *Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.*<sup>16</sup>

The Protocol requires that the offences cited in this article be penalized even if committed on an individual basis and not as organized crime, unlike in the Palermo Protocol.

### 1.1.3- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

The ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour entered into force on 10 November 2000. The worst forms of child labour are listed in its Article 3 and include trafficking of children.

## 1.2- European definitions

### 1.2.1- Europol



Europol defines trafficking in human beings, as described in the Annex of Article 2 in the Europol Convention, as the

*(...) subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with the view to the*

<sup>12</sup> As of 19 October 2005; <http://www.unicef.org/crc/>

<sup>13</sup> Art. 35, Convention on the Rights of the Child.

<sup>14</sup> <http://www.ohchr.org/english/law/crc-sale.htm>

<sup>15</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/54/263 of 25 May 2000 which entered into force on 18 January 2002;

<http://www.unhcr.ch/html/menu2/dopchild.htm>

<sup>16</sup> Art. 3.1, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children.

*exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children.*<sup>17</sup>

In recognition of the significance of pornography, this definition was supplemented by a Council Decision in 1999: *“these forms of exploitation also include the production, sale or distribution of child pornography material”*.<sup>18</sup>

#### 1.2.2- Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings

As in the Europol definition, this Decision also specifically includes pornography as a form of sexual exploitation (Article 1(1)). However, with its focus on labour and sexual exploitation, the removal of organs is not included in this definition of offences concerning trafficking in human beings:

- *the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where(...)*
- *for the purpose of exploitation of that person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or*
- *for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.*<sup>19</sup>

As in the Palermo Protocol, where victims are children (defined as below 18 years of age, Article 1(4)), the conduct is punishable even if none of the means outlined in Article 1(1) has been used (Article 1(3)).

#### 1.2.3- Council Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography of 22 December 2003

The Framework Decision seeks to harmonize laws and was to be implemented by Member States by 20 January 2006. Article 1(b) defines child pornography<sup>20</sup> and Article 2 defines behaviour that is punishable as “offences concerning sexual exploitation of children”.<sup>21</sup>

#### **Definition of trafficking in children:**

**Given the range of existing definitions, this Resource Book uses the widest definition of trafficking in human beings, and thus includes all forms of internal and international trafficking. The Palermo definition, as the internationally recognized definition, serves as basis for this Resource Book. Nevertheless, the definition of trafficking in children in the Resource Book also recognizes forms of exploitation that are not explicitly included in the Palermo definition.**

**Forms of trafficking in children include labour exploitation and slavery-like conditions; domestic servitude; begging; sexual exploitation (including pornography and virtual pornography); theft and petty crime; trafficking in organs; child soldiers and illegal adoption.**<sup>22</sup>



<sup>17</sup> Art. 2, Convention based on Article K.3 of the Treaty on the European Union on the establishment of a European Police Office (Europol Convention), C 316, 27/11/1995, 2-32.

<sup>18</sup> Council Decision of 03.12.1998 (1999/C26/05). This Decision entered into force on 1 January 1999.

<sup>19</sup> Art. 1(1), Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings, (2002/629/JHA) OJ L 203/1.

<sup>20</sup> Among other key terms such as child, computer system and legal person.

<sup>21</sup> Council Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography of 22 December 2003.

<sup>22</sup> Although several of these forms are not specifically mentioned in any of the stated definitions, there are overlaps with the activity and purpose outlined in the definition of the Palermo Protocol. Several forms are also recognized in some national legislation as trafficking in children.

## 2- INTERNATIONAL AND EUROPEAN STANDARDS

More than definitions, international and European instruments define a whole system of protective measures applicable to child trafficking. A few of these main dispositions will be presented in the following section.

### 2.1- International legal instruments

#### 2.1.1- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime



The Protocol is not a stand-alone instrument, but must be read and applied together with its parent Convention, the UN Convention against Transnational Organized Crime. The Protocol recognizes the special needs of children. With its focus on organized crime, Parties agree to criminalize trafficking, to ensure offenders are punished and to share information among law enforcers. The Protocol also emphasizes the importance of victim protection and assistance, as well as efforts to prevent trafficking.

According to Article 5, Parties shall adopt necessary legislation and other measures to establish trafficking as a criminal offence including attempts to commit such offences, to participate as an accomplice and to organize or direct other persons to commit such offences.

Article 6 outlines the assistance and protection that should be available to victims, providing that Parties take into account “*in particular the special needs of children, including appropriate housing, education and care*”.<sup>23</sup> Parties must also endeavour to provide for the **basic safety and security of victims**, and the Protocol requires that victims be afforded “*the possibility of obtaining compensation for damage suffered*”.<sup>24</sup>

According to Article 10, law enforcement agencies of the Parties are required to cooperate in such activities as the identification of offenders and trafficked persons, sharing information on the methods of the offenders, provide and strengthen training for law enforcement, immigration and other relevant officials in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims.

#### 2.1.2- Convention on the Rights of the Child

**The Convention is guided by four principles, which underlie each right enshrined in the Convention: non-discrimination (Article 2), best interests of the child (Article 3), survival and development (Article 6) and participation (Article 12).**

Particular attention should be paid to Article 3§1 of the Convention, which requires that “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child shall be a primary consideration***”.<sup>25</sup>

Some of the other relevant key principles included in the Convention on the Rights of the Child and reiterated in the Separated Children in Europe Programme Statement of Good Practices<sup>26</sup> and/or in the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking<sup>27</sup> include:

- Respect for cultural identity (Art.8)
- Interpretation (Art. 40)
- Right to information (Art. 13)
- Confidentiality (Art. 16)

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<sup>23</sup> Art. 6(4), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

<sup>24</sup> Art. 6(6), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

<sup>25</sup> Art. 3(1), Convention on the Rights of the Child.

<sup>26</sup> UNHCR, Save the Children, 2004: 7-11.

<sup>27</sup> UNICEF, 2005: 1-15.

- Right to be protected (Art.3)
- Inter-organizational cooperation (Art.22)
- Staff training (Art.3)
- Timeliness (Art.3).

Article 35 specifically provides that Parties shall **prevent trafficking in children**. Several other relevant articles include that States shall prevent the use of children in drug trafficking (Article 33), protect the child from all forms of sexual exploitation and sexual abuse (Article 34), prevent the abduction of, the sale of or the traffic in children (Article 35) and protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36).

Measures are also provided to promote the recovery and reintegration of child victims, as per Article 39:

*State parties shall take all appropriate **measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse (...)**.*<sup>28</sup>

Child protection and improved resilience of children are essential to their recovery and reintegration.

### 2.1.3- Plan of Action of "A World Fit for Children"

Furthermore, in the Plan of Action of "A World Fit for Children",<sup>29</sup> the following specific actions regarding trafficking in children are recommended:

*(46) **Monitor and share information regionally and internationally on the cross-border trafficking of children; strengthen the capacity of border and law enforcement officials to stop trafficking and provide or strengthen training for them to respect the dignity, human rights and fundamental freedoms of all those, particularly women and children, who are victims of trafficking.***<sup>30</sup>

**The African Charter on the Rights and Welfare of the Child** also contains the main basic principles and rights of non-discrimination, best interests of the child, survival and development, etc.<sup>31</sup>

## 2.2- European legislation and standards

### 2.2.1- Council of Europe Convention on Action Against Trafficking in Human Beings and its Explanatory Report

The Council of Europe Convention (16 May 2005) specifically provides **minimum standards for the protection of victims**. The Convention's definition of trafficking is identical to the definition of the Palermo Protocol. States ratifying the Convention must provide assistance to victims, such as **psychological, medical, housing and material help; counselling and information; access to education for children and support throughout any criminal procedure**.

Article 10 requires that Parties provide their competent authorities with **trained and qualified staff to support the identification of and assistance to victims**, and to ensure that these authorities cooperate with one other, as well as with relevant support organizations. Article 10.4 also disposes that,

*as soon as an unaccompanied child is identified as a victim, each Party shall:*

- a. provide for representation of the child by **a legal guardian**, organisation or authority which shall act in the best interests of that child;*
- b. take the necessary steps to **establish his/her identity and nationality**;*

<sup>28</sup> Art. 39, Convention on the Rights of the Child.

<sup>29</sup> UNICEF, 2002: 45-46.

<sup>30</sup> Art. 46, UN, A World Fit for Children.

<sup>31</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999. <http://www1.umn.edu/humanrts/africa/afchild.htm>



*c. make every effort to locate his/her family when this is in the best interests of the child.*<sup>32</sup>

The Convention also contains sections on substantive criminal law, investigation, prosecution and procedural law, international cooperation and cooperation with civil society, etc. To-date,<sup>33</sup> the Convention has only been signed by 16 Member States, and has thus not yet entered into force.

2.2.2- Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit issued to Third-Country Nationals who are Victims of Trafficking in Human Beings or who have been the subject of an Action to Facilitate Illegal Immigration, who Cooperate with the Competent Authorities<sup>34</sup>

This Council Directive outlines the required **criteria for obtaining residence permits** and stipulates that victims should be informed of this possibility. According to Article 3 (1), “*Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States*”.<sup>35</sup>

Although in general less relevant for children who might be protected under other provisions of national legislation, Article 10 states that, by derogation, Member States may apply this Directive to children under conditions laid down in their national law. In this case, the following provisions shall apply:

- (a) *Member States shall take due account of **the best interests of the child** when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.*
- (b) *Member States shall ensure that minors have **access to the educational system** under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.*
- (c) *In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to **establish their identity, nationality and the fact that they are unaccompanied**. They shall make every effort to **locate their families** as quickly as possible and take the necessary steps **immediately to ensure legal representation, including representation in criminal proceedings**, if necessary, in accordance with national law.*<sup>36</sup>

2.2.3- Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings<sup>37</sup>

This Decision is binding for all EU Member States and its provisions should have been adapted into the legislation of all EU Member States by 1 August 2004.

Article 3 outlines penalties, whereby Member States shall **take necessary measures to ensure that a trafficking offence is punishable** by effective, proportionate and dissuasive criminal penalties, which may include extradition. A maximum penalty of not less than eight years can be applied where it has been committed in aggravating circumstances.<sup>38</sup> Article 5 states that proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, can be applicable to legal persons.

Article 7 provides that **investigations into, or prosecutions of, offences shall not be dependent on the report or accusation made by a person subjected to trafficking**. Further, the Decision considers children to be particularly vulnerable, and thus provides that Member

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<sup>32</sup> Art. 10(4), Council of Europe Convention on Action Against Trafficking in Human Beings.

<sup>33</sup> As of 24 October 2005;

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=24/10/2005&CL=ENG>

<sup>34</sup> OJ L261/19.

<sup>35</sup> Art. 3(1), Council Directive 2004/81/EC.

<sup>36</sup> Art. 10, Council Directive 2004/81/EC.

<sup>37</sup> OJ L203/1.

<sup>38</sup> Art. 3(2), Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L203/1).

States take the measures possible to ensure appropriate assistance for the family members of such children (Article 7(3)).

#### 2.2.4- Brussels Declaration

The Brussels Declaration of September 2002, which resulted from the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21<sup>st</sup> Century, aims to further develop European and international cooperation, concrete measures, standards and mechanisms to prevent and combat trafficking in human beings. The Declaration consists of a variety of recommendations relating to mechanisms for cooperation and coordination, prevention, victim protection and assistance and police and judicial cooperation.

In recognition of the **special vulnerability and needs of children, Point 12 lists specific recommendations to prevent child trafficking, covering action needed in areas** including passport and visa regulations and the development of systems to register children. Another recommendation (Point 2) was the establishment of an expert group to review, consolidate and develop the validity and performance of standards and best practices at national and international levels. The expert group was set up in March 2003 and submitted its first report to the European Commission in December 2004, with concrete proposals on the implementation of the recommendations of the Brussels Declaration.

#### 2.2.5- Communication and EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings

The Communication from the Commission to the European Parliament and the Council, “Trafficking in Human Beings – an integrated approach and proposals for an action plan”,<sup>39</sup> addresses specific groups, especially women and children, promoting cooperation with countries of origin and child specific prevention strategies. Taking a human rights and victims-centred approach, the 2005 EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings encourages Member States:

- to ensure that EU anti-trafficking policy reflects a child rights approach based on globally recognized principles (...). Such approach must consequently apply to any person below the age of 18;<sup>40</sup>
- to ensure that appropriate referral mechanisms are in place in order to enable early identification and referral of trafficked persons, especially children;<sup>41</sup>
- to improve knowledge on the scale and nature of trafficking in human beings;<sup>42</sup>
- to raise awareness of the dangers involved and publicize crime prevention and criminal justice in the EU.<sup>43</sup>

There are many other EU legal instruments addressing trafficking in human beings in general, which are also relevant to children or provide tools which can also be used in child trafficking cases (e.g. the Council Framework Decision on Standing of Victims in Criminal Proceedings,<sup>44</sup> the Council Framework Decision on Joint Investigation Teams<sup>45,46</sup>).

**The aim of this Resource Book is to present good practices and recommendations from a practical point of view in order to improve the skills of law enforcement agencies to better combat this crime, as well as protect and assist the victims. National definitions and legislations vary widely. The good practices and recommendations shall be applied to each country, provided they are not in contradiction with the national legislation.**



<sup>39</sup> 18 October 2005.

<sup>40</sup> EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005/C 311/01, 3.5.

<sup>41</sup> EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005/C 311/01, 3.3.

<sup>42</sup> Ibid, 2.1.

<sup>43</sup> Ibid, 3.2.

<sup>44</sup> 15 March 2001, 2001/220/JHA.

<sup>45</sup> 13 June 2002, 2002/465/JHA.

<sup>46</sup> For further information, please consult Van Reizen Mirjam and Stefanovic Ana, Terre des Hommes: Lost Kids, Lost Futures. The European Union’s Response to Child Trafficking.

### 3- GENERAL TRENDS

#### 3.1- Scale of child trafficking

There are no concrete statistics on the scale of child trafficking, with estimates varying widely. The recently released Second Annual Report on Victims of Trafficking in Southeastern Europe,<sup>47</sup> produced by the Regional Clearing Point located in Belgrade, concludes that, in this region, victims (including children) are increasingly being trafficked for forced labour, begging and delinquency, as well as sexual exploitation. Statistics remain elusive due to the clandestine nature of trafficking in human beings and the lack of comparable data.

There are a variety of reasons for the lack of comparable statistics. Notable with data relating to children is that age is difficult to determine and data is recorded based on the age of the victim upon identification rather than upon recruitment. Of foreign victims assisted in Albania in 2003, 35,3 per cent were under 18 years old on identification, however 58,7 per cent were under 18 years old when recruited.<sup>48</sup> Thus the actual number of trafficked children is likely to be higher than statistics reveal.

#### 3.2- Forms of trafficking

The forms of trafficking explicitly included in the UN Palermo Protocol include: prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, removal of organs.

The most widely recognized form of trafficking is prostitution. Other forms of sexual exploitation include the commercial production of child pornography, forced marriage or sexual servitude.

The forms of labour exploitation, servitude and slavery-like practices include:

- illicit activities and petty offences: street begging and selling in the street; pick-pocketing, burglary, "mule child" for smuggling drugs,
- labour exploitation: catering labour – kitchen hands, waitresses; agricultural or plantation labour; mine labour; fishing fleet labour; sweatshop labour,
- sport – camel jockeys,
- child soldiers and
- illegal adoption.

While distinct forms of trafficking are recognized in international law and most national law, in practice, **child victims of trafficking are often subject to a variety of forms of exploitation.** There are examples of Albanian and Moldovan girls who were trafficked for begging, but were also sexually exploited; and of boys, again notably Albanians, trafficked for forced labour, delinquency and begging.<sup>49</sup> **There is emerging evidence to suggest that the exploitation of trafficked children is often progressive – once they are caught up in the situation, they are vulnerable to repeated and various exploitations.** Notable also is that different forms of child trafficking prevail in different regions.

Child trafficking within the country (internal trafficking) for various forms of exploitation is also alarming. Bosnia and Herzegovina, Croatia, Germany, Poland, Lithuania, the Netherlands, Nigeria, Poland and the United Kingdom **reported internal trafficking in children in their country.**<sup>50</sup>

#### 3.3- Particular vulnerability of children and profiles of child victims of trafficking

As with trafficking of adults, the wider socio-economic situation of child victims can also make them more vulnerable to traffickers, whereby **children are particularly vulnerable** due to their

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<sup>47</sup> Surtees, 2005.

<sup>48</sup> Surtees, 2005: 89.

<sup>49</sup> Surtees, 2005: 2.

<sup>50</sup> IOM Vienna, 2005.

lack of experience, dependence and trust of adults, notably relatives and people in positions of authority, and have fewer possibilities to escape exploitative situations.

Often cited profiles of victims of trafficking include families suffering from **economic restructuring**, social dislocation, conflict, **poverty**, dysfunction, low level of education, discrimination, a culture of migration, lack of opportunity and desperation for a better life.

**Ethnic minorities** seem to be particularly vulnerable to traffickers, as social discrimination and marginalization hinder their access to education, health and employment. **Cultural factors** such as the acceptance of child labour, young marriage age and a nomadic lifestyle, seem to contribute to child vulnerability.

**Exploitation through parents or relatives** (for begging, petty crime, prostitution...) **makes detection and intervention more difficult.**

#### Protection of children exploited by family members in the Netherlands

The **Dutch** child protection system provides a provision to remove a child quickly from an exploitative environment. Cooperation between police and the Child Protection Board can lead to a decision of the Children's Judge within 24 hours to place a child under a Temporary Family Supervision Order and a Deprivation of Parental Control Order in a closed institution.



In addition, children within **dysfunctional families** who may be abusive toward their children and may be unable to provide appropriate care, seem disproportionately at risk. **The lack of or insufficient child protection systems in many countries of origin result in a large number of children in orphanages or on the streets.** Institutionalized and street children are particularly vulnerable and are often targeted by traffickers.

Other factors that are often cited as increasing the vulnerability of children to trafficking include:

- inequality of women and girls,
- low school enrolment,
- lack of birth registration and
- humanitarian disasters and armed conflicts.<sup>51</sup>

The EU Expert Group on Trafficking in Human Beings recognized that "**migrant children represent a particularly vulnerable group among the child population and should be guaranteed the same level of protection and opportunities as national children, regardless of their residence status**".<sup>52</sup>

**Child protection systems should be better applied at the national level in order to protect children more effectively from sexual exploitation and from becoming vulnerable to trafficking and unsafe migration.**<sup>53</sup>



While there are commonalities among child victims of trafficking, **profiles also seem to vary with the type of trafficking experienced.** A study by the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO-IPEC) found that Romanian girls aged 14 to 17 were more likely to be trafficked for sexual exploitation, while boys of the same age were more likely to be trafficked for labour, begging and illegal activities. Similarly in the Ukraine, girls aged between 13 and 18 were more likely to be trafficked for sexual exploitation, while boys of the same age were trafficked for cheap labour or to peddle drugs. The same study found that younger children, perhaps trafficked with their parents or with other children, were more likely to be trafficked for begging. Reports from the Ukraine indicated that children had been trafficked with their parents, often their mother, and then separated; presumably to exert great control as neither mother nor child wanted to desert the other.<sup>54</sup> Data

<sup>51</sup> Inter-parliamentary Union IPU; UNICEF: 2005a: 17-18.

<sup>52</sup> European Commission, 2004: 31.

<sup>53</sup> ECPAT: Joint East-West research on trafficking in children for sexual purposes in Europe: the sending countries, Point 3 "The most important conclusions".

<sup>54</sup> Kane, 2005: 15.

from Southeastern Europe in 2004 reveals that among Albanian, Bulgarian, Moldovan and Romanian victims, there was a higher percentage of children among those exploited for labour, begging and delinquency than the percentage of children among those trafficked for sexual exploitation.<sup>55</sup> Thus the age and sex of victims varies and is often linked with the form of exploitation.

In some countries, certain forms of exploitation are seen as anti-social behaviour (e.g. prostitution) and lead to a lack of assistance and protection. Law enforcement authorities and NGOs/social service providers have to realize that **child victims are entitled to special protection provisions.**<sup>56</sup>

### 3.4- Child-specific recruitment and border crossing

Aside from the general recruitment methods, many of which are also used to recruit children, several methods specifically target children:

- **Parents** in countries of origin may readily accept – often due to socio-economic problems, e.g. debt bondage – or even encourage, the emigration of their children to financially support the family. While a certain percentage of parents are likely to be aware of the impending exploitation, many are not. In some cases, there is evidence of families selling their children, or being otherwise involved with the trafficking networks.
- Known as the “**Lover-Boy**” system, girls fall in love with recruiters who then exploit them in prostitution. Although identified in the Netherlands, this system is also evident in other countries such as Albania, Belarus, Moldova and Morocco.<sup>57</sup>
- Traffickers continue to target **vulnerable children**, such as those **on the street** or **in institutions**, recruiting the children by abduction or promises of a better life. Victims, over time, often become sympathetic to their captors (Stockholm Syndrome).<sup>58</sup>
- The established “**mail-order bride**” system has been further exploited as women with children are recruited to marry foreign men, and the children are later sexually exploited by their new “fathers” and/or others. Some men adopt the children to increase the level of control.
- Children may be recruited **through illegal adoptions or prior to birth**, where expectant mothers are offered payment for their unborn child. In the case of the latter, after birth some women are told that their baby has died, thus receiving no payment. These children are born as victims.

Within the wider smuggling and trafficking mechanisms, it is interesting to note that a lot of children cross borders by land. Several **means used to justify the travel and border crossing are specific to children:**

- Traffickers exploit **educational opportunities**, using actual or fake letters of confirmation to attend school exchanges or trips. Viennese police reported cases of Chinese boys and girls brought to Austria having been issued visas based on “confirmed” school placing. Some children never turn up and are feared to have been trafficked.
- Wittingly or unwittingly of the traffickers intentions, some parents provide **letters of authorization** permitting their children to travel with another adult, thus legalizing the border crossing.

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<sup>55</sup> Surtees, 2005.

<sup>56</sup> ECPAT, 2004: Conclusions.

<sup>57</sup> A loverboy starts a relationship with a girl having the intention to force her into prostitution. He will buy her nice presents first, protect her and will try to keep her away from her family. In the Netherlands, loverboys with Moroccan background often operate alone; loverboys with a Dutch, Turkish or Antillean background are almost always organized and operate in groups. The latter often commit other crimes, such as the use of violence and drug dealing. Loverboys know that they can earn money very quickly forcing girls into prostitution and are aware of the almost invisible character and low risk of arrest for trafficking.

<sup>58</sup> Surtees, 2005: 74. See definition of Stockholm Syndrome in the Glossary.

- Given the recent attention to the issue of accompanied and unaccompanied minors, traffickers **falsify travel documents**, stating the age of the victims as over 18 to reduce suspicion.
- Desperate, expectant mothers are convinced that they will receive payment for their children. Women often travel abroad to have the baby, who is then taken away at birth.

In some European countries, for example in France, the Netherlands and Belgium, it was recognized that the right to asylum was being used by traffickers to abuse national laws on immigration and facilitate the irregular residence of victims, even if only temporarily.<sup>59</sup> Significant numbers of unaccompanied minors (UAMs) applying for asylum have “disappeared” from reception centres, possibly to meet traffickers at pre-arranged meeting points, or are collected by so-called relatives. Some of the “disappearing” unaccompanied minor asylum seekers have later been found trafficked, working in brothels. Italian authorities report that children often seem well versed in Italian protection systems, raising suspicion that this is simply a strategy to get children into a country.

However, not all UAMs apply for asylum; some are already in an irregular situation, such as those smuggled across borders or simply abandoned. When identified by law enforcement authorities, they are often treated as illegal migrants, criminalized, held in detention centres (where some children are abused) and finally deported to their country of origin.<sup>60</sup>

#### Child trafficking specific trends

**Currently, one of the most worrisome aspects of trafficking is the lack of identification of child victims of trafficking.**

**Combating child trafficking:** While there is no evidence to suggest a change in the overall number of children trafficked, NGOs say that the majority of victims are children when they are recruited.

**Reporting on child trafficking:** While there remains a focus on trafficking for sexual exploitation, more attention and recognition is gradually being given to other forms of child trafficking such as begging, forced labour and criminal activities, although under-reporting is still evident as often, children are not identified as trafficked or exploited (but seen as delinquents) and distinction between adult and child victims is still rare.

**Internal trafficking:** In some countries, trafficking laws and/or practice continues to focus on foreign victims, whereas there is indication of internal trafficking in children. More attention should be paid to national child victims of trafficking.

**Trafficking of families:** IOM and other agencies have noted a new trend of children trafficked with their parents or mothers, often for exploitation in street begging. This may be a strategy to foil authorities, an attempt to authenticate asylum claims or simply a method of exerting greater control.



#### 4- CONSEQUENCES OF TRAFFICKING FOR CHILD VICTIMS

Trafficking is a violation of every child’s right to a healthy childhood and a productive, rewarding and dignified life. Child trafficking victims are subjugated and physically abused by the perpetrators: traffickers, employers, pimps, madams, and “customers”. Trafficked children are often beaten and abused, with the violence occurring at all stages of the trafficking cycle.<sup>61</sup>

Other negative experiences suffered by trafficked children include:

- deprivation of opportunities for education,
- deprivation of critical childhood play experience,
- being forced to change names,

<sup>59</sup> IOM, 2003: 28.

<sup>60</sup> European Commission, 2004: .67-68.

<sup>61</sup> Inter-parliamentary Union IPU, UNICEF, 2005a: 16.

- being forced to lie, steal or commit other illegal acts and
- inadequate nutrition and medical care.<sup>62</sup>

#### 4.1- Trauma

Trafficked children are likely to be traumatized. There are basically **two types of trauma**. Trauma type I involves a single traumatic event, while trauma type II consists of multiple, chronic experiences. Those two types do not rule out one another; a child can live under constant stress and also experience single or multiple traumatic events. Generally, traumatic experiences challenge one's basic view of how the world should be. For a child, a traumatic event often goes far beyond the child's capacity to understand.<sup>63</sup>

**Trauma experienced by trafficked children are manifold and include:**

- separation from loved ones/support systems
- physical abuse or threats of abuse
- threats against loved ones for non-compliance
- sexual exploitation
- psychological humiliation
- being restrained, confined to a locked place
- being transported without knowledge of the destination
- witnessing violence and sexual activity.<sup>64</sup>

**Intense traumatic experiences can have the following consequences:**

- **Narrowing of attention:** The most common effect is an intense focus on the most central parts of the traumatic experience, for example a gun or a hitting hand. Narrowing attention improves recollection of core details, with little distortion or loss of important information, but peripheral details are either not encoded at all or only weakly.
- **Dissociation:** The child becomes totally overwhelmed and cannot process any information. Dissociation means a lack of normal integration of perception, thoughts and feelings. What remains is sensory memory, which is vulnerable to distortion (false memory creation). Adults and older children with traumatic histories show large gaps in their autobiographical memories for both trauma and non-trauma, and are more vulnerable to suggestibility.
- **Repression:** While children can originally encode the traumatic episode into their memory in a narrative form, the information is repressed and "forgotten". When repression occurs, the memory of the event can be recovered later on.<sup>65</sup>
- **Post-Traumatic Stress Disorder (PTSD):** The condition occurs when a victim lives through an experience or series of experiences that are so extreme that he/she is unable to comprehend the nature of it or accept that this has happened to him/her. In most cases, the trigger for the condition involves the use of violence that is so extreme that it falls outside of the victim's own system of values of human behaviour to such an extent that he/she cannot rationalize it and may even deny that it ever happened to him/her.<sup>66</sup>

PTSD is known to affect memory in different ways. Individuals suffering from PTSD are characterized by re-experiencing traumatic experiences involving intrusive images, visual or sensory hallucinations and vivid flashbacks. Children might have nightmares and hear voices. They suffer from hyperarousal and are extremely sensitive. Children may avoid stimuli

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<sup>62</sup> World Federation from Mental Health.

<sup>63</sup> Kalland, 2002: 39.

<sup>64</sup> World Federation from Mental Health.

<sup>65</sup> Kalland, 2002: 40.

<sup>66</sup> ICMPD, 2003: 27.

associated with the traumatic event. **They may be unwilling to and, in fact, unable to produce a description of what happened.** PTSD also leads to an irreversible decrease of hippocampal volume (the frontal part of the brain) and to memory impairment, especially short-term memory. Stress among children also leads to hyperactivity and learning difficulties.<sup>67</sup>

**It is important that law enforcement officers recognize and acknowledge the possible impacts of the ordeal on child victims of trafficking.** Lack of cooperation, overt hostility, an impaired ability to recall events in detail, errors in accounts or fabrications concerning specific events are all likely to occur as a consequence of trauma, and should be accepted as such.



While physical injuries are evident, psychological ones are less obvious. However, it is crucial to the psychosocial health of a traumatized victim for law enforcement officers to try to provide immediate physical safety to the victim, to empathize with him/her and to provide access to specialist support as soon as possible. Law enforcement officers must consider that traumatized persons are in **danger of secondary victimization** occurring through the response of institutions and individuals. A way of avoiding this is to provide the victim with sufficient time to recover and not to blame him/her for anything that happened.<sup>68</sup>

#### 4.2- Other possible consequences of trafficking on children

- Negative perception of self-worth (shame, guilt and stigmatization)
- Sense of vulnerability and helplessness
- Distorted value system/involvement in illegal activities
- Physical illnesses – among others, sexually exploited children are susceptible to contract sexually transmitted diseases, including HIV/AIDS
- Brain changes
- Low educational achievement
- Sexual promiscuity
- Difficulty in establishing or maintaining healthy relationships
- Loss of ability to trust
- Negative expectations about the future
- Hypervigilance, heightened anxiety
- Difficulty concentrating
- Difficulty regulating emotions
- Sleep and eating disorders
- Profound sadness and depression
- Irritability
- Self-destructive behaviour
- Inappropriate attachment behaviours
- Developmental delays or regressions.<sup>69</sup>

<sup>67</sup> Kalland, 2002: 40.

<sup>68</sup> ICMPD, 2003: 29-30.

<sup>69</sup> World Federation from Mental Health.

## 5- THE ROLE OF LAW ENFORCEMENT AUTHORITIES

The main roles of the police in combating child trafficking are to:

- *“Prevent the crime*
- *Protect life and property*
- *Investigate crimes*
- *Collect evidence*
- *Implement diversion option, when necessary*
- *Effect arrest of suspects*
- *Effect search and seizure to collect evidence*
- *File complaint and other recommendations with Prosecutor’s Office*<sup>70</sup>
- Protect the rights of the child
- Cooperate with governmental and non-governmental agencies ensuring assistance to victims
- Take part in ensuring protection of witnesses.

This Resource Book is designed to assist law enforcement officers in fulfilling these roles in their efforts to combat child trafficking.

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<sup>70</sup> Wernham, Geerinckx, Jackson, 2005.

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## CHAPTER II

### AGE ASSESSMENT

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## 1- INTRODUCTION

### 1.1- Importance of age assessment

Age assessment is both a complex and a controversial process. In order to assist children appropriately and meet their requirements, individuals need to be identified and recognized as children by the countries in which they are residing.

In most cases where children have been trafficked, age assessment plays a crucial role in the protection and care provided to the child, as well as in the severity of the penalty incurred by the trafficker. Moreover, identification of the child, including age assessment, are elements of overwhelming importance in case of the voluntary return of the child to his/her country of origin.

For many professionals working with and supporting UAMs, the question of “age disputes” has become a real issue in their work. This point is well illustrated by UK statistics where, in an 18-month period from February 2002 to July 2003, a total of 2,605 or approximately one-third of the asylum applicants claiming to be children had their stated age disputed.<sup>71</sup>

Although this Resource Book focuses on child victims of trafficking, experts conducting age assessment do not only conduct age assessments of victims of trafficking but also of unaccompanied minors (UAMs), asylum seekers as well as foreign children on the territory and without identification documents. Furthermore, the authorities conducting the age assessment are not the same as those identifying the child as a victim of trafficking and might not be aware that the child is such a victim. For language reasons the term “UAM” will be used in its broadest sense in this chapter. The terms “child victim of trafficking” or “asylum seeker” will only be used when specifically relevant.

As there have been increasing numbers of non-nationals unable to provide identity documents, which also provide evidence of their date of birth, age assessment has become an integral part of forensic practice. However, age assessment might be time consuming, costly and difficult for the assessing authority.

There might be various reasons for the lack of documentation or valid proof of age of foreign children:

- Traffickers and smugglers are known to take identity documents from children, and many children who arrive unaccompanied do so without any proof of identity or age.
- Like adults, UAMs might sometimes travel with false documents.
- In some countries (or in some ethnic communities) the absence of birth registrations of children makes the identification of the child nearly impossible, with unregistered children left in an extremely vulnerable situation.

Compounding the problem of the lack of authentic identity documents, in some cases UAMs may not identify themselves correctly. Many UAMs state a different age from their actual age, as in many countries the age impacts stay, residence and expulsion decisions.

Child victims of trafficking may also have been briefed by their trafficker to lie about their age and tell the authorities:

- in countries of transit or destination (where the exploitation takes place), that they are younger than 14 or 18 years old (depending on the national legislation), so that they are not responsible for their acts and cannot be placed in detention if caught in illicit activity;

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<sup>71</sup> Smith, 2003: 18.

- in countries of origin, that they are above 18 years old, as the traffickers risk much higher penalties if their victim is a child.

A person who claims to be a child might not always have the physical appearance of a child. Therefore, it can be difficult to determine whether the person in question is a child or not just by looking at his/her height and facial features, talking to the person and observing the body language. Furthermore, cultural differences, gender and the forms of exploitation suffered by trafficked children have an impact on the appearance and behaviour. Consequently, it is sometimes necessary to carry out an assessment to establish the age of the child and to unburden him/her of the suspicions that he/she had consciously given false information about his/her age.

Age assessment can be important in defining the legal status of an individual, which varies according to national legislation. However, the significance of age assessment in the context of migration can also depend upon political interest. Most immediately, it has considerable practical consequences for the various agencies involved in the care of UAMs, as well as for the child. A person under 18 is placed in the care of the local authority, which is then responsible for undertaking a comprehensive assessment of the child's needs and providing a range of support including sheltered accommodation, a care plan and placement in a school. UAMs are also not normally the subjects of detention.

Depending on the national legislation, there are sometimes age thresholds, which are relevant to child victims of trafficking:

- In some countries, the protection and assistance provided depends on the age of the child (e.g. in Germany children under 16 years old receive a much broader and comprehensive assistance than children above 16 years old), while
- In other countries a child over 14 years old can be accountable for his/her actions and may therefore be placed in detention if involved in illegal activities (which is nearly always the case for child victims of trafficking).

Age assessment should only be carried out in cases of doubt. In such cases, it is important to determine the correct age of a person for the following reasons:

- for the purposes of identification (tracing, interview and determination of status in the country of destination, family reunification, etc.);
- to prevent abuse (in cases where children claim to be older than their actual age as well as in cases where they claim to be younger),<sup>72</sup>
- to provide age-appropriate reception, care and assistance;
- to ensure adequate punishment of traffickers (if the victim of trafficking is a child, this is often an aggravating circumstance resulting in higher penalties for the trafficker);
- to facilitate procedures of voluntary return and ensure appropriate reintegration measures in the country of origin.

#### Principle

One should always bear in mind that “*age assessment is no determination but only just an educated guess*”,<sup>73</sup> as it is impossible to determine a person's age with 100 percent accuracy.

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<sup>72</sup> Halvorsen, 2003: 5.

<sup>73</sup> London Boroughs of Hillingdon and Croydon, 2003: 1.



## 1.2- International standards and guidelines on age assessment

### 1.2.1- UNHCR Guidelines

In 1997, the United Nations High Commission for Refugees (UNHCR) established Guidelines on Policies and Procedures on Dealing with Unaccompanied Children Seeking Asylum:<sup>74</sup>



*“If an age assessment of the child’s age is necessary, the following considerations should be noted:*

*A) Such an assessment should take into account not only the physical appearance of the child but also his/her psychological maturity.*

*B) When scientific procedures are used in order to determine the age of the child, margins of error should be allowed. Such methods must be safe and respect human dignity.*

*C) The child should be given the benefit of the doubt if the exact age is uncertain”.*

These guidelines have been accepted on an international level and are today recognized as pre-conditions for the implementation of the age assessments.

### 1.2.2- Council Resolution on Unaccompanied Minors who are Nationals of Third Countries<sup>75</sup>

Article 4 of the Council Resolution states that:

*“3. (a) In principle, an unaccompanied asylum-seeker claiming to be a minor must produce evidence of his or her age.*

*3. (b) If such evidence is not available or serious doubt persists, Member States may carry out an assessment of the age of an asylum-seeker. Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-estimation carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution”.*

### 1.2.3- SCEP Statement of Good Practices

The Separated Children in Europe Programme (SCEP), stresses in the Statement of Good Practice<sup>76</sup> that:

*“Age assessment includes physical, developmental, psychological and cultural factors. If an assessment is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child’s ethnic/cultural background should carry it out. Examinations should never be forced or culturally inappropriate. Particular care should be taken to ensure that they are gender-appropriate.*

*In cases of doubt there should be a presumption that someone claiming to be under 18 years of age will provisionally be treated as such.*

*It is important to note that age assessment is not an exact science and a considerable margin of error is called for. In making an age determination separated children must be given the benefit of the doubt”.*

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<sup>74</sup> UNHCR, 1997: 5.

<sup>75</sup> Council Resolution on Unaccompanied Minors who are Nationals of Third Countries; 97/C 221/03

<sup>76</sup> Separated Children in Europe Programme, 2004: 18.

#### 1.2.4- UNICEF Guidelines for Protection of the Rights of Child Victims of Trafficking

The UNICEF Guidelines focus on the identification and protection of the rights of the child, and have been endorsed by governments in Southeastern Europe. In terms of age assessment,

*“the verification of the victim’s age should take into account:*

- *the physical appearance of the child and his/her psychological maturity,*
- *the victim’s statements,*
- *documentation,*
- *checking with embassies and other relevant authorities,*
- *consensual medical examination and opinion”.*<sup>77</sup>

Moreover, *“where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child. Pending verification of the victim’s age, the victim shall be treated as a child and will be accorded all special measures stipulated in these guidelines”.*<sup>78</sup>

#### 1.2.5- Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers

In 2003, London Boroughs of Hillingdon and Croydon published the guidelines, “Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers”, presenting an assessment framework and stating that:

*“It is very important to ensure that the young person understands the role of the assessing worker, and comprehends the interpreter. Attention should also be paid to the level of tiredness, trauma, bewilderment and anxiety that may be present for the young person.*

*The ethnicity, culture and customs of the person being assessed must be a key focus throughout the assessment”.*<sup>79</sup>

#### 1.2.6- Study Group on Forensic Age Diagnostics

According to the recommendations of this Group,<sup>80</sup> age estimates carried out for the purpose of criminal proceedings should consist of a physical examination which also record anthropometric data, signs of sexual maturation as well as potential age-relevant developmental disorders, an X-ray of the left hand and a dental examination which records dentition status and evaluates an orthopantomogram. In addition, a radiological or computed tomography (CT) examination of the clavicles can be considered to establish whether the person concerned has attained 21 years of age.

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<sup>77</sup> UNICEF, 2005: 8.

<sup>78</sup> Ibid, p. 5.

<sup>79</sup> The guidelines’ framework will be further described under section A. Psychosocial Age Assessment; 2.1.

<sup>80</sup> Deutsche Gesellschaft für Zahn-, Mund- und Kieferheilkunde, 2001.

### 1.3- Contents of the chapter

The Chapter on Age Assessment will further elaborate on each of the main techniques used in age assessment and illustrate advantages and disadvantages of each of the techniques, also providing good practice on how to check the identity of children without identification documentation. The age assessment techniques include:

- A- Psychosocial assessment
- B- Dental examination
- C- Bone X-ray
- D- Combination of methods
- E- Identification of children without papers.

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## A- PSYCHOSOCIAL AGE ASSESSMENT

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### 1- INTRODUCTION

Psychosocial age assessment is one of the aspects of age assessment that is exercised in the case when there is an uncertainty about the age of a person during an administrative decision-making process, mostly in the context of migration. In accordance with the UNHCR Guidelines on Policies and Procedures on Dealing with Unaccompanied Children Seeking Asylum (see 1.2.1), *“age assessment should take into account not only the physical appearance of the child but also his/her psychological maturity”*.<sup>84</sup> These guidelines are the pre-conditions of the implementation of the age assessment, in particular of the psychosocial age assessment.

#### 1.1- Significance of psychosocial aspects in age assessments

The psychosocial age assessment has two aims:

- a) An improvement of accuracy of age determination and
- b) A determination of the actual psychosocial maturity and of the needs, which require support.

##### 1.1.1- Definition of age

The concept of age determination originates from the idea of a homogeneous maturation and development process, which equally affects all dimensions of human development and all individuals. This assumption is basically to be contradicted with:

- a) The development of an individual is a heterogeneous process, which includes biological and psychosocial dimensions;
- b) The parameters of biological development (bones, dental growth and/or sexual characteristics) can be collected with scientific methods, however their assignment to a specific age section is associated with a scientific and practical, relevant, inaccuracy factor,<sup>85</sup>
- c) All of the dimensions of development mentioned above (biological and psychosocial) could be influenced and modified by ethnic and bio-geographical factors, and
- d) The psychosocial dimensions of development are the factors, which suggest a need for support of the affected person.

In the summary of the Consensus Conference for Experts Meeting in Vienna (2000), these aspects were concluded as follows:

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<sup>81</sup> Service of neuropsychiatry for children and youth Foundation Rothschild, Neurological Centre Rosenhügel - Vienna.

<sup>82</sup> General Hospital - Vienna.

<sup>83</sup> Idem.

<sup>84</sup> UNHCR, 1997: 5.

<sup>85</sup> Royal College of Pediatrics: *“The margin of error in the relevant age group from 15 to 18 years old is around 1.5 to 5 years depending on the method.”*

*“The legal issue relates always to the chronological age (the actual age); but there are legal excursions from this rule: in situations where the discrepancies between different dimensions of age make the lower age a basis for decision, i.e. in the area of criminal responsibility when a delayed maturity underlies, furthermore, in child legislation with regard to the compliance of treatment, and also in the civil law. There, where a high need for protection of children is postulated, all above mentioned age dimensions are considered, and a psychosocial maturity is seen in the context of the chronological age. In the practice frequently applied methods assess the biological age whereas, with some possibility (as described above) it is possible to determine the real, chronological age. The psychosocial age is through employment of methods from the developmental psychology only determinable when the language barriers and culture differences are removed”.*<sup>86</sup>

Therefore, the psychosocial age assessment, and all other specific age assessment methods, yield always only estimated values. Should there be doubt, they should be interpreted in favour of the person concerned.

#### 1.1.2- Orientation parameter

The psychosocial age assessment should answer the following issues:

What support the relevant person needs in terms of:

- Organization of his/her daily life
  - Housing
  - Daily structure (work, education, free time)
- Psychological support/coping with trauma
- Legal support (consulting, support, guardianship)
- Shaping of interpersonal relationships, including partnership and sexual relationships with a particular consideration of a danger of sexual and criminal exploitation.

## 2- METHOD

The methods which are to be applied, originate from the inventory of clinical child and adolescent psychiatry as well as from the inventory of developmental psychology that enfolds the interview and observation of behaviour, and, therefore, are to be seen as a “diagnostic process”.



Two, one-and-half-hour-long interviews (in a span of approximately one week) are applicable – if substantial disturbing factors such as traumatic reaction and cultural shock are excluded – for an orientation on the questions posed above as well as to improve the age assessment. This is called a clearing interview.

If the clearing interview yields clues to an increased need for support in the fields given above and are typical for adolescents, then the affected person should be allocated to the clearing centre. This procedure is also to be undertaken when the clearing interview provides no reliable results, i.e. due to an acute trauma.

Observation of behaviour by the qualified personnel of the clearing centre during approximately two weeks could provide further information to the needs diagnostics and contribute to age assessment.

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<sup>86</sup> Consensus Conference for Experts on Age Assessment in the administrative context, 2000.

## 2.1- Screening: the clearing interview

The interview should be conducted:

- by professionally trained staff (juvenile psychiatrics, juvenile psychologists, educationalists, social workers, etc.);
- in a language that the individual is familiar with;
- in a juvenile, age-appropriate atmosphere in the presence of a trusted third party;
- oriented to the “Practice Guidelines for Age Assessments of Young Unaccompanied Asylum Seekers,”<sup>87</sup> to cover the following topics.<sup>88</sup>
  - Interaction during assessment
  - Social history and family composition:

*“Establishing as detailed as possible, a family tree will help the assessing worker to identify the likely age of the person compared with the stated age. Ages of parents, siblings and extended family should be established. Drawing a graphic family tree is useful where names of family members and ages can be included, which may help the person to be more accurate whilst also allowing the person to feel involved. The information gained may indicate discrepancies or impossibilities, which need to be clarified. If it is too painful for the child to talk about his/her family, this must be understood and respected”.*<sup>89</sup>

- Development considerations, especially activities roles:  
*“Cultural considerations need to be taken into account as in some cultures it could be normal for a young teenager to be working full-time. A person may appear to answer questions about alcohol in a shy manner because their religion does not allow for this. Questions related to activities and hobbies during spare time can give an idea of the age appropriate interests and activities”.*<sup>90</sup>

- Educational history:  
*“Listed below are important facts that need to be gained:*
  - Age at which school was started
  - Number of completed years spent in any school
  - Establish if there were any gaps in education and if so, how long was the gap and why
  - Adding the number of school attendance to the age school was started at, including possible disruption in schooling should equate to the stated age.
  - Names and addresses of schools attended
  - Subjects studied.*Gaining knowledge or consulting with experts educated in different countries is useful to validate the authenticity of the information provided”.*<sup>91</sup>

- Independence and self care skills:
  - *“Is there a clear impression that the person has never lived away from home and has been cared for by adults?*
  - *Does the person have experience in managing money, paying bills, arranging appointments, buying food and other supplies?*

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<sup>87</sup> London Boroughs of Hillingdon and Croydon, 2003.

<sup>88</sup> Below, some further details are provided but by no means represent a comprehensive list of questions or topics, as the interview should take place in a free narrative mode and be conducted by trained personnel.

<sup>89</sup> London Boroughs of Hillingdon and Croydon, 2003: 4.

<sup>90</sup> Ibid: 5.

<sup>91</sup> Ibid: 6.

- *Is the person able to cook more than just a basic meal?*
- *It is essential to take account of the local situation from which the person comes from and cultural norms*.<sup>92</sup>

In the evaluation of the interview contents and observations, the following has to be considered:

- Clues to a severe traumatic reaction (F43.0-2 from ICD- 10 or acute or post-traumatic stress disorder from DSM-IV).<sup>93</sup> Psychopathological symptoms in this context could compromise or falsify the results. This could result in a repetition of the interview at a different point in time.
- Culture-specific aspects in the interpersonal relationships (and family relationships) as well as in the process of socialization. If these aspects are not familiar to the interviewer, then the evaluation should be accompanied by a consultation with an expert in this field.

## 2.2- Observation

In the daily life in the clearing centre, supplementary observations could be made in the following areas:

- Behaviour in a peer group
- Behaviour in contact with adults or people with authority
- Accomplishment of requirements of self-care
- Traumatic reaction, as well as culture-specific aspects.

## 2.3- Maturity criteria

Maturity is a process that extends over a longer time period and, in different areas of development, at a variable tempo (inhomogeneous and heterochronic). Therefore there is no defined time point to define *immaturity* and *maturity*. In fact, it is necessary to describe the actual state of maturity and the corresponding needs for support or autonomy in specific areas. For these purposes, the maturity status is evaluated in a four-area scheme: physical, intellectual, emotional and social criteria.

The somatic maturity is not a subject of this sub-chapter. All the following parameters of psychosocial development refer to a global, timely classification solely for the western European cultural area, with the presumption of an *average* development. In real terms, all these developmental steps depend on ethnic and individual-biographic terms.

- The intellectual maturity depends notably on the level of education. The exchange of the thinking patterns offers a maturity parameter for the younger stages of age. (Around the age of eight there is a transition from magical animated thinking to a logical, real, concrete thinking, while around the age of 14, there is a transition from logical, real, concrete thinking to abstract thinking.)
- The emotional maturity describes the gradual change in the attachment and relationship structure, the transition from the relationship of the I. Order (the primary family) to the relationship of the II. Order (non-family structures). This process is gradual, and can only roughly relate to the stages of the chronological age. It starts (in the western European cultural area at the latest) with the start of kindergarden and school, and it enfoldes confessional attachments and relationships in the framework of a professional education. The orientation to the attachments in a peer group plays a major role in the transition period

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<sup>92</sup> Ibid: 7.

<sup>93</sup> International psychiatric classification schemes.

of adolescence. It is age-related to verify the coping with debonding process as well as the abilities for new emotional attachment.

- The social maturity is evaluated by means of two central parameters, the ability of moral judgment and the anticipation ability in a social context; the ability of meaningful thinking for planning and acting by the attained insight. Requirements for these development abilities are the acquisitions of social rules (from the age of six) and the ability of a perspective adoption (to be in the position to try to understand someone, which would be approximately at the age of eight).

For all the criteria, there are two investigations at two different points in time, a mother language communication and consideration of the ethnic cultural area.

The application of the structured test procedures (psychological test) can, if the culture-specific and language aspects are considered, provide complementary information. However, the uncertainties mentioned above should not be discarded during the evaluation.

The presented maturity criteria contain no cornerstone for the age assessment in the relevant time span until the age of 18, but they are components for the assessment of the need for support and care in terms of a needs diagnostic.



An increased degree of support and assistance (for the juvenile) is to be granted by all means if:

- The process of emotional debonding from the Relationship of the I. Order is not accomplished, and new emotional bonding is not given.
- The anticipation ability for social coherences is not given.

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## B- DENTAL AGE ASSESSMENT

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### 1- INTRODUCTION

The natural dentition is the most unique organ of the human body. Teeth are a very durable part of the human skeleton and are resistant to the most extreme conditions such as temperature changes, humidity and physical impact. This is what makes them particularly interesting for use in identification procedures such as in the recent tsunami mass disaster in South-east Asia.<sup>95</sup>

A lot of additional information can be obtained from teeth. Teeth are sometimes very useful in bite mark investigations,<sup>96</sup> or may carry symptoms of neglect in child abuse cases. In addition, teeth are also very useful in estimating or assessing individuals' chronological age.<sup>97</sup> This is not only because of the above reason but also because of the fact that, unlike long bones, the development or formation of teeth is relatively independent of the external or nutritional status of an individual.<sup>98</sup> This is an important finding and often confused with the appearance or eruption of teeth in the mouth. Unlike formation, the eruption of teeth is very likely to be influenced by local and systemic factors.

Teeth continuously undergo morphological and histological changes during life. It is well known that teeth primarily consist of two mineralized structures: enamel and dentin.

Enamel constitutes the outer clinical part of the tooth as seen in the mouth. It is a virtually dead material consisting of hydroxyapatite crystals covering and protecting the tooth crown. The type of age-related changes that are seen at the enamel layer are attrition (actually the wearing off of the enamel surface at those areas that are in contact with the teeth of the opposing jaw or dentition) and external tooth colouration.

Dentin, on the other hand, is a tissue that is very reactive to stimuli from the environment since it consists of active cells or odontoblasts that are captured within a calcified matrix of hydroxyapatite and collagen. An example of a post-formative change occurring in dentin is the formation of secondary dentin by the odontoblasts, especially at the inner side of the tooth crown. The reason for this may be stimulation of the odontoblasts by external sensations as is provoked by warm/cold food and drinks, for example.

### 2- DENTAL AGE ASSESSMENT

Many techniques and procedures for dental age assessment, both in deceased and in living individuals, have been reported in dental literature through the years. Most of them, and especially those techniques for estimating dental age above 22 years of age, concentrate on the measurement of age-related morphological changes such as the amount of secondary dentin formation, the amount of tooth wear or attrition, the presence of tooth resorption or additional cementum formation and the quality of the periodontium.<sup>99</sup> Many of these techniques require extraction and tooth sectioning of one or more teeth in order to be able to perform the evaluation of the parameters necessary for dental age calculation.

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<sup>94</sup> Catholic University of Leuven, Belgium.

<sup>95</sup> James, 2005: 1-18.

<sup>96</sup> Bowers and Johanson, 2003.

<sup>97</sup> Willems, 2001: 9-17.

<sup>98</sup> Hägg and Matson, 1985: 25-34.

<sup>99</sup> Gustafson, 1950; Dalitz, 1962; Bang and Ramm, 1970; Johanson, 1971; Maples and Rice, 1978; Maples, 1979, Solheim, 1993.



As in many other European countries, being younger or older than 18 years of age contributes towards the determination of the legal status and protection/assistance provided to third-country nationals. In Belgium, UAMs can receive permission to reside in the country. A guardian is appointed for each child individually who takes care of most administrative procedures and guides them through normal daily life. This has officially been the procedure in Belgium since 1 May 2004. At that time the Department of Guardianship was installed at the Federal Public Service of Justice. In contrast, adult illegal migrants are more likely to be expelled from the country and sent back to their country of origin.

Currently, every public service has the duty to report to the Department of Guardianship the presence of UAMs in Belgium. These children will be appointed a guardian if they are unaccompanied and originate from outside the European Economic Area, and are also illegally staying in Belgium or have the status of an asylum seeker. The Department of Guardianship can be reached by telephone 24 hours a day. This Department starts the procedure of identification of UAMs and is also responsible for appointing a legal guardian if necessary. When doubts are expressed about the true chronological age of these UAMs, the Department of Guardianship can also decide to perform a medical examination in order to estimate the actual chronological age of the individual concerned. If necessary, an interpreter assists the UAM, and the child is given all information related to the examination that he/she is about to attend. A legal guardian is immediately appointed to the child if the medical examination result identifies a person below 18 years of age.

## 2.1- Procedure

The current procedure for age assessment of UAMs in Belgium differs entirely from the one applied until recently. The decision was mostly taken based on a radiograph of the hand wrist of the non-dominant side. Since 1 May 2004 however, the newly established Department of Guardianship is in charge of this age assessment procedure. People are referred to a forensic odontologist. The age assessment is based on the clinical impression of an experienced dentist and the radiological examination of the dentition, the hand wrist of the non-dominant hand and the medial ends of both collarbones.

### 2.1.1- Clinical impression

In contrast to the dental age assessment of dead individuals for forensic purposes, extraction of teeth in living individuals is of course out of the question. The number of available techniques in living individuals is more reduced and therefore the forensic odontologist will focus on as many different aspects as possible. It is thus imperative for the process of dental age assessment in living people to obtain a general clinical impression of the maturity of that person just by looking at his/her dentition.

It has been reported that the experienced dentist should be able to make a fairly accurate guess of a person's chronological age based on the general picture of the dentition. Elements such as the number and quality of dental fillings, the presence of plaque and calculus, caries, gingivitis and periodontitis, amount of dental wear, type of teeth present, tooth colour, recessions and other such age-related changes will influence the dentist's opinion.<sup>100</sup> The number and type of teeth present in the mouth may also be decisive, although one must be careful because this aspect might well be influenced by circumstantial elements. The presence of certain deciduous teeth early on in the development of the young child and, later from six years of age, the emerging permanent teeth may give a fairly accurate idea of the chronological age of an individual.<sup>101</sup>

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<sup>100</sup> Solheim and Sudnes, 1980: 7-17.

<sup>101</sup> Schour and Massler, 1931.

Local factors however, such as premature loss of a deciduous molar, may well disturb normal appearance of permanent teeth in the mouth, creating a discrepancy with the published timetables of normally erupting teeth and thereby influencing the chronological age assessment. It is thus essential to have an experienced dentist perform the dental age assessment. This general idea of the age of a certain individual will not be the decisive factor in the end, but may further be confirmed by the dental or skeletal age assessment procedure.

#### 2.1.2- Radiological examination

- Radiological panoramic overview of the dentition

Besides the clinical impression of an individual's chronological age, further specific age assessment will always be based on radiological examination of the dentition. Standard procedure should be to expose the complete dentition in order to provide a radiological panoramic overview of the dentition, called the orthopantomogram (OPG). The OPG will reveal the teeth that are completely formed and calcified and those that are still in the process of being formed. Different techniques of dental age assessment in children up to the age of 18 years are reported in literature, but they are all based on the radiological visualization of the formation stages of the different teeth present in the mouth.<sup>102</sup>

- Clinical pathways for age assessment

The OPG taken of the dentition of the child is carefully examined. All teeth are carefully checked for their presence and stage of formation.<sup>103</sup> Once the specific stage of formation of each wisdom tooth is read from the OPG, this information is inserted in the reported multiple regression formulas in order to calculate a dental age. A few clinical pathways are described below:

1) From the OPG of an UAM it can be seen that the second molars are still in development. At that time, no further examinations have to be performed and the dental age is estimated based on this single radiograph. However, in reality the chance of arriving at such a dental developmental status in UAMs is rather small.

2) The next decisive criterion is the OPG of the dentition that shows fully formed second molars. Based upon international research, the individual might be expected to be approximately 16 years of age. Now decision-making splits into two supplementary clinical pathways, either this OPG of the individual under examination shows third molars or wisdom teeth or not. If not, supplemental radiographs from the non-dominant hand wrist and the collarbones have to be taken. This will be discussed further.

3) The last possible clinical pathway occurs when all teeth, including the wisdom teeth or third molars, are fully formed. Additional radiographic information on the hand wrist and the collarbones are then required to establish the age assessment.

- Combination of results with hand wrist radiograph in the case of clinical pathways 2, 3 and 4 above

Hand wrist radiographs reveal an indication of the skeletal age.<sup>104</sup>

Hand wrist radiographs are good indicators in girls below 15 to 16 years of age and in boys below 16 to 17 years of age.<sup>105</sup> From 16 to 18 years onward respectively, the last indicator of growth still being present, the distal epiphysis of the radius gradually disappears because of the

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<sup>102</sup> Moorrees et al., 1963; Demirjian et al., 1973; Demirjian and Goldstein, 1976; Willems et al., 2001

<sup>103</sup> Gunst et al., 2003.

<sup>104</sup> For a more detailed presentation of this method, please refer to section C. Age Assessment by Bone X-ray, 3.1.

<sup>105</sup> Greulich and Pyle, 1959; Tanner et al., 1975.

complete calcification of this growth centre. This actually means, on average, that if this growth centre is still present, the individual will not have attained his/her eighteenth birthday – certainly not if the child is a girl. But this is still impossible to accurately determine if the child is a boy. In the present age category of UAMs, most being 17 years of age or older, this hand wrist radiograph may be an additional proof that the individual is still a child. If all the growth centres in the hand wrist are completely calcified, the interpretation of the collarbone radiograph will be crucial.

- Combination of the results of dental radiograph and hand wrist radiograph with collarbone radiographs

Not very many studies on two-dimensional collarbone radiographs<sup>106</sup> examine the topic of skeletal maturation. One important study, however, clearly reports on a protocol for age assessment of individuals based on collarbone radiographs.<sup>107</sup> The maturation and calcification of the medial ends of the left and right collarbones are described to evolve according to five stages.<sup>108</sup> These stages are particularly helpful in deciding on the age assessment of individuals. The radiographs of the collarbones are only necessary in those cases where all wisdom teeth are fully formed and the distal epiphysis of the radius is completely calcified. This translates to the vast majority of age assessment cases in living individuals. The reason why collarbones are so important is that their maturation process only stops after 26 years of age or older.

The combination of these three radiographs helps the forensic odontologist to differentiate between an 18-year-old and a 20-year-old, or persons even older than 21 years of age.



#### 2.1.3- Deviations, costs and time frame

The standard deviation of the dental age assessment technique is 1.5 years. This is the same for hand wrists.<sup>109</sup> The clavicular bone study has standard deviations that change with the age category from 1.4 to 2.6 years of age.

The costs would include the actual costs of taking the three X-rays in addition to the fee for the interpretation and report (approximately 115 Euro).<sup>110</sup>

It does not take much time to produce the X-rays. The analysis, interpretation and writing of the report may take approximately 45 minutes.

### 3- ILLUSTRATION OF THE TECHNIQUE WITH CASE STUDIES

Figures 3 to 5 demonstrate how the age assessment procedure is performed in Leuven, Belgium (see below, dental radiograph – OPG of three UAMs).

#### 3.1- Case study of unaccompanied child (1)

Figures 3a to 3c show the radiographical images of an UAM. The comments show the results of the analysis of each radiography.



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<sup>106</sup> For a more detailed presentation of this method, please refer to section C. Age Assessment by Bone X-ray, 3.3-

<sup>107</sup> Schmeling et al., 2004: 5-8.

<sup>108</sup> Please see section C. Age Assessment by Bone X-ray.

<sup>109</sup> Greulich and Pyle, 1959.

<sup>110</sup> Price in Belgium in October 2005.



Fig. 3a OPG of the UAM 1 – dentition completely developed

The dentition is completely developed as seen by the full formation of the third molars.



Fig. 3b Hand wrist radiograph of the UAM 1 – completely developed skeleton.

From the hand wrist radiograph one can conclude that this man shows a completely developed skeleton. Based on this result and on the complete dental development, the dental age assessment could be around 20.6 years of age.



Fig. 3c Collarbone radiograph of the UAM 1 – completely open medial epiphysis (male, 18 years old)

The collarbone radiography (Fig. 3c), however, shows a completely open medial epiphysis, corresponding to Stage II and an age of 18 years.

Final age assessment was set at 18 years based on the results of the collarbone radiograph; thus the impossibility of determining whether this man was below or above 18 years of age was expressed.

### 3.2- Case study of unaccompanied child (2)

Figures 4 and 5 show some exceptions to the general rule.

Figure 4a shows a completely calcified hand wrist skeleton.



Fig. 4a Hand wrist radiograph UAM 2 – completely calcified hand wrist skeleton

However, the collarbone development (Figure 4b) was judged to be in Stage III, corresponding to an age assessment of 20.8 years of age.



Fig. 4b Collarbone radiograph of UAM 2 – Stage III

On the other hand, the orthopantomogram (Fig. 4c) clearly shows a developing dentition.





Fig. 4c Orthopantomogram of UAM 2 – developing dentition

In particular the wisdom teeth are still in development and had a substantial influence on the final age assessment. Based on the dentition, the age assessment tended to be around 16.9 years of age. In cases where there is doubt or conflicting results, the lowest age assessment has to be chosen to the benefit of the UAM.



### 3.3- Case study of unaccompanied child (3)

Figures 5a to c show the radiological images of a third UAM with a still developing dentition and hand wrist, while on the contrary the collarbones show complete ossification corresponding to an age of 26 years old (Stage V).



Fig. 5a OPG UAM 3 – still developing dentition



Fig. 5b Hand wrist radiograph UAM 3 – still developing hand wrist



Fig. 5c Collarbone radiograph UAM 3 – complete ossification

Also in this case it was decided that the UAM was still a child.

#### 4- CONCLUSION

It is clearly very difficult, if not impossible, to decide whether a certain individual is below or above 18 years of age, particularly if that person is around that age category. In order to accomplish such an age assessment, it is imperative that specialized radiological images of the dentition, hand wrist and the collarbones are taken for interpretation. Decisions on this matter that are based only upon hand wrist radiographs are incomplete and this practice should be abandoned.



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## C- AGE ASSESSMENT BY BONE X-RAY

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### 1- THE FORENSIC RELEVANT AGES IN AUSTRIA

Austrian criminal law defines three age thresholds: 14, 18 and 21 years. Paragraph 1 of the Jugendgerichtsgesetz<sup>112</sup> defines a child as being under 14 years old; if a child is aged between 14 and 18, he/she is classified as an adolescent, and a person between 18 and 21 years old is defined as a young adult as per paragraph 36 of the Strafgesetzbuch (StGB).<sup>113</sup>

A child is exempt from punishment under paragraph 4 (1) of the Juvenile Court Law (JGG). After the age of 14 all persons are deemed accountable for their actions and the Juvenile Court Law is applied.

### 2- AGE ASSESSMENT

As mentioned in the introduction to this chapter, according to the recommendations of the Study Group on Forensic Age Diagnostics, age estimates carried out for the purpose of criminal proceedings should consist of a physical examination, an X-ray of the left hand and a dental examination which records dentition status and evaluates an orthopantomogram.<sup>114</sup> In addition, a radiological or CT examination of the clavicles can be considered to establish whether the person concerned has attained 21 years of age.<sup>115</sup> This contribution will focus on age assessment by bone X-ray (hand wrist and collarbone), as well as case studies presented on the combination of the three radiographs (radiograph of the dentition, hand/wrist radiograph and collarbone radiograph).<sup>116</sup>

#### 2.1- Hand wrist radiographs

An X-ray taken of the left hand is usually used to evaluate the skeletal maturation.<sup>117</sup> On the one hand, the number of right-handed persons in most populations is much larger than the number of left-handed persons and, consequently, the left hand is somewhat less likely to be maimed or otherwise injured than the one that is used more frequently.<sup>118</sup> On the other hand, the observed differences in the skeletal maturation of the two hands are so minor as to be negligible in the evaluation of skeletal status from X-ray images.<sup>119</sup>

Criteria for evaluating hand wrist radiographs include the form and size of bone elements and the degree of ossification of epiphyseal cartilages. The X-ray image is compared with standard images of the relevant age and sex (radiographic atlas),<sup>120</sup> or the degree of skeletal maturity is determined for selected bones (single bone method).<sup>121</sup> The single bone method is time-consuming and does not produce a higher accuracy of results in comparison to the atlas method.<sup>122</sup>

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<sup>111</sup> University Institute for Radiological Diagnostics, General Hospital – Vienna.

<sup>112</sup> Juvenile Court Law.

<sup>113</sup> Criminal Code.

<sup>114</sup> Schmeling, Kaatsch, Marre, Reisinger, Riepert, Ritz-Timme, Rösing, Röttscher, Geserick, 2001: 1–3.

<sup>115</sup> Ibid.

<sup>116</sup> The dental examination is described in section B. Dental Age Assessment.

<sup>117</sup> Greulich, Pyle, 1959.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid and Thiemann, Nitz, 1991.

<sup>121</sup> Tanner, Whitehouse, Marshall, Healy, Goldstein, 1975.

Tanner, Healy, Goldstein, Cameron, 2001; Roche, Chumlea, Thissen, 1988.

<sup>122</sup> Andersen, 1971: 373-376.

Cole, Webb, Cole, 1988: 683-686.

King, Steventon, O'Sullivan, Cook, Hornsby, Jefferson, 1994: 848-851.

The Greulich and Pyle atlas method is based on X-rays of the hand and wrist of white, upper class United States (US) Americans of European origin and was established in a 1933 to 1942 survey in Cleveland.<sup>123</sup>



Fig. 6 X-ray of the left hand: epiphyseal cartilage is not ossified (male, 13 years old).

A high level of medical and economic development accelerates ossification rates, while the low modernization level, which characterizes the countries of origin of many UAMs, delays ossification.<sup>124</sup>

If radiological age diagnostics use the Greulich–Pyle standards for persons originating from a country with a comparatively low modernization status, the age of that person will be underestimated. When performing age assessments, the expert opinion should therefore draw attention to the issue of different modernization levels.<sup>125</sup>

## 2.2- X-Ray or CT-examination of the clavicle

Radiological assessment of the degree of ossification of the sternal epiphyseal cartilage of the clavicle plays a vital part in forensic age diagnosis of living adolescents and young adults.<sup>126</sup> Figure 7 shows the modified ossification stages of the sternal epiphyseal cartilage of the clavicle based on Reisinger's ossification stages.<sup>127</sup>

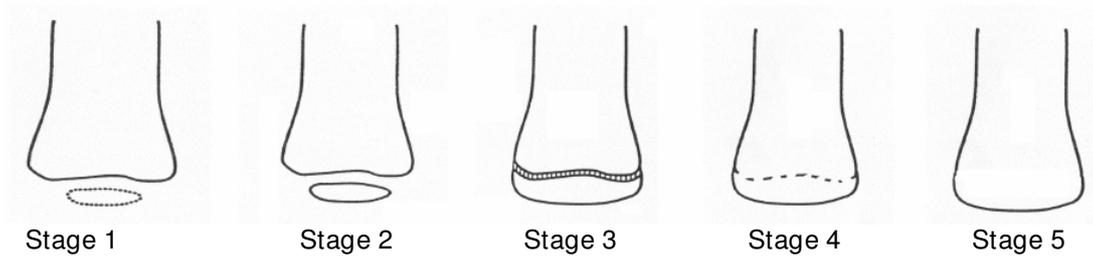


Fig. 7 Modified ossification stages of the sternal epiphyseal cartilage of the clavicle based on Reisinger's ossification stages.<sup>128</sup>

<sup>123</sup> Greulich, Pyle, 1959.

<sup>124</sup> Schmeling, Schulz, Danner, Rösing, 2005: 1–6. DOI 10.1007/s00414-005-0007-4.

<sup>125</sup> Ibid.

<sup>126</sup> Schmeling, Schulz, Reisinger, Mühler, Wernecke, Geserick, 2004: 5-8.

<sup>127</sup> Schmeling, 2004.

<sup>128</sup> Ibid.

Schmeling et al. evaluated retrospectively plain chest radiographs requested by patients aged 16 to 30.<sup>129</sup>

They classified the ossification stage of the sternal epiphyseal cartilage of the clavicle as follows:

- Stage 1: Ossification centre not ossified. (Fig. 8)
- Stage 2: Ossification centre ossified, epiphyseal cartilage not ossified. (Fig. 9)
- Stage 3: Epiphyseal cartilage partly ossified.
- Stage 4: Epiphyseal cartilage fully ossified, epiphyseal scar visible. (Fig. 10)
- Stage 5: Epiphyseal cartilage fully ossified, epiphyseal scar no longer visible. (Fig. 11)

They showed that:

- Stage 3 was earliest detected in both genders at age 16.
- Stage 4 was first observed in women at age 20 and in men at age 21.
- Stage 5 was earliest detected in both genders at 26 years of age.

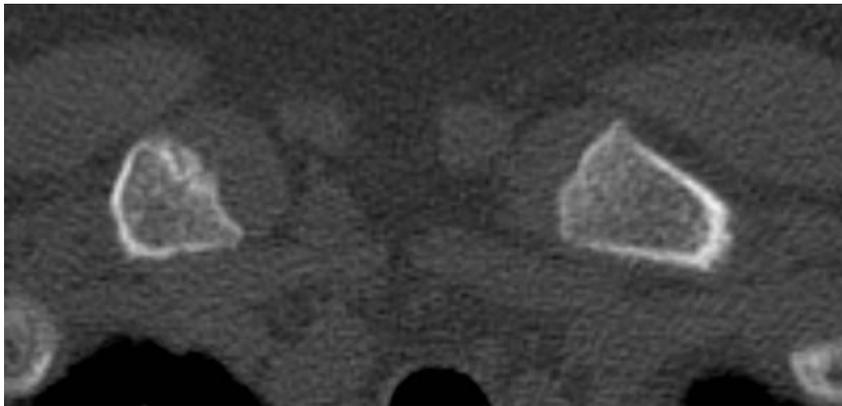


Fig. 8 Clavicle CT  
Ossification Stage 1 of the sternal clavicular epiphysis: ossification centre has not yet ossified (male, 12 years old)

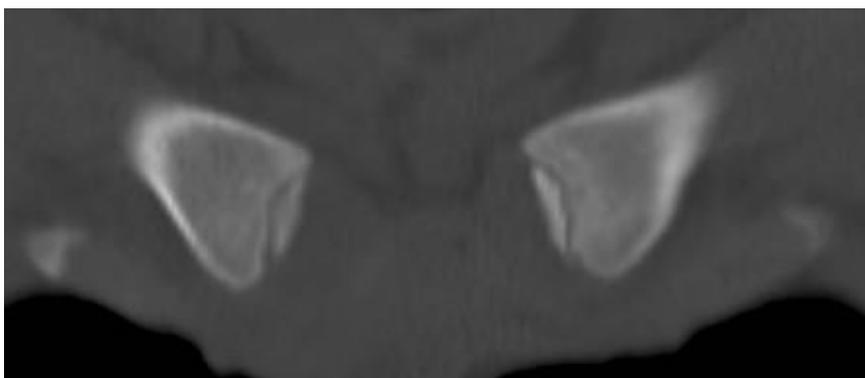


Fig. 9 Clavicle CT  
Ossification Stage 2 of the sternal clavicular epiphysis: ossification centre is ossified, epiphyseal cartilage is not ossified (male, 17 years old)

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<sup>129</sup> Schmeling A, Schulz R, Reisinger W, Mühler M, Wernecke KD, Geserick G., 2004: 5–8.





Fig. 10 Chest Radiograph  
Ossification Stage 4 of the left sternal clavicular epiphysis: epiphyseal cartilage is fully ossified, the arrow shows the epiphyseal scar (male, 26 years old)

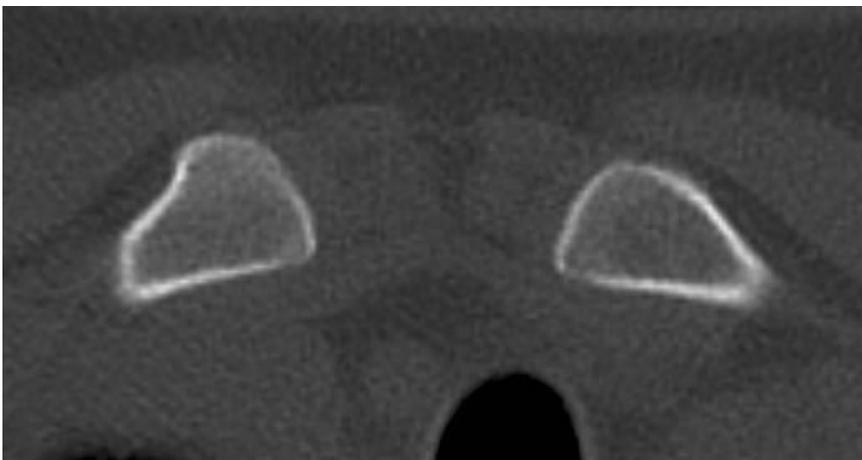


Fig. 11 Clavicle CT  
Ossification Stage 5 of the sternal clavicular epiphysis: epiphyseal cartilage is fully ossified, epiphyseal scar is not visible (male, 31 years old).

Schmeling et al. concluded that plain chest radiographs can essentially be used to assess clavicular ossification.<sup>130</sup> In practice, if an overlap in posterior-anterior views impedes evaluation, an oblique view should also be taken to facilitate age assessment.<sup>131</sup>

R. Schulz et al. also retrospectively analyzed CT images of patients aged between 15 and 30 years during multiple trauma diagnostics at the Unfallkrankenhaus<sup>132</sup> Berlin.<sup>133</sup> They showed that:

- Stage 2 was first noted in both sexes at age 15.
- Stage 3 was earliest noted in male patients at age 17, in female patients at age 16.
- Stage 4 was first achieved by both sexes at age 21.
- Stage 5 was first noted in male patients at age 22 and in female patients at age 21, which is 4 or 5 years earlier than was observed by a comparable study using conventional radiographs.<sup>134</sup>

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<sup>130</sup> Schmeling, Schulz, Reisinger, Mühler, Wernecke, Geserick, 2004: 5–8.

<sup>131</sup> Schulz, Mühler, Mutze, Schmidt, Reisinger, Schmeling, 2005: 142–145. DOI 10.1007/s00414-005-0529-9.

<sup>132</sup> Accident Hospital.

<sup>133</sup> Schmeling, Schulz, Reisinger, Mühler, Wernecke, Geserick, 2004: 5–8.

<sup>134</sup> Schulz, Mühler, Mutze, Schmidt, Reisinger, Schmeling, 2005: 142–145. DOI 10.1007/s00414-005-0529-9.

Increasing slice thickness in computed tomography may mask fine anatomical structures because of the partial-volume effect. Thus the epiphyseal scar, a very fragile anatomical structure, ceases to be visible on CT scans earlier than on conventional radiographs.<sup>135</sup>

The question of how slice thickness affects the age intervals between ossification stages identified by CT examinations should be examined in additional studies.<sup>136</sup>

### 3- EXAMINATION COSTS<sup>137</sup>

– Hand X-ray, max. three images	57.67 Euro
– Chest X-ray, posterior/anterior and oblique	40.10 Euro
– Single slice CT max. 30 slices	225.61 Euro
– Multislice CT max. 300 slices	175.54 Euro
– Magnetic Resonance Imaging (MRI), the first sequence	409.39 Euro

### 4- RADIATION PROTECTION

The effective doses of the above examination are:

– An X-ray of the left hand	0.1 $\mu\text{Sv}$ <sup>138</sup>
– An orthopantomogram	26 $\mu\text{Sv}$ <sup>139</sup>
– An X-ray of the clavicle	220 $\mu\text{Sv}$ <sup>140</sup>
– A clavicle CT	600 $\mu\text{Sv}$ <sup>141</sup>

The level of the radiation exposure of a clavicle CT is too high. Its implementation might be difficult, since the legal situation is not yet clear. Under paragraph 3 (5) of the X-ray Ordinance (MedStrSchV) in Austria, an X-ray examination must be justified and any X-ray examination that is not based on medical indication has to be authorized by federal law. This means that a radiologist can refuse a left hand radiograph or a clavicle CT, since there is no federal law in Austria that justifies this kind of X-ray use.

The problem is that forensically usable reference studies to evaluate skeletal maturation are available only for radiation imaging methods, such as left-hand radiographs or clavicle CTs.<sup>142</sup> The prospect is to evaluate whether comparative results can be obtained with ultrasound or magnet resonance imaging.<sup>143</sup>

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<sup>135</sup> Schulz, Mühler, Mutze, Schmidt, Reisinger, Schmeling, 2005: 142–145. DOI 10.1007/s00414-005-0529-9.

<sup>136</sup> Ibid.

<sup>137</sup> Costs applicable in Austria in October 2005.

<sup>138</sup> Okkalides, Fotakis, 1994: 564-572.

<sup>139</sup> Frederiksen, Benson, Sokolowski, 1994: 123-127.

<sup>140</sup> Okkalides, Fotakis, 1994: 564-572.

<sup>141</sup> Jurik, Jensen, Hansen, 1996: 467-470.

<sup>142</sup> Schmeling, Olze, Reisinger, König, Geserick, 2003: 367-371.

<sup>143</sup> Ibid.

## 5- THE INFLUENCE OF ETHNICITY ON THE EXAMINED DEVELOPMENTAL SYSTEMS



Since reference studies that could be used for forensic purposes are generally not available for the areas of origin of the UAMs, the question arises whether there are significant developmental differences between various ethnic groups, which would contradict the application of relevant age standards to members of an ethnic group other than the reference population.<sup>144</sup> As far as the relevant age group is concerned, ethnic origin apparently exerts no noteworthy influence on skeletal maturation.<sup>145</sup> The progress of ossification depends primarily on a population's socio-economic status. A relatively low socio-economic status delays development and is likely to result in an underestimation of a person's age.<sup>146</sup> Use of standard reference studies when examining members of socio-economically less-developed populations does not, however, put the person concerned at a disadvantage in terms of criminal law, quite the contrary.<sup>147</sup> Given the scarce amount of data available, further research on the influence of ethnicity on the eruption and mineralization of third molars is needed.<sup>148</sup>

## 6- AGE ASSESSMENT IN AUSTRIA

Because of a high standard deviation of the results of age assessment and of radiation exposure, the hand X-ray is not used in Austria anymore. However, there is no other adequate form for age assessment either. The age of an UAM is assessed by visual inspection by an office doctor, for which there are no general guidelines.

## 7- COMBINATION OF METHODS

A. Schmeling et al. indicated that an estimated age, based on physical inspection, in combination with an X-ray of the left hand and the clavicles as well as a dental assessment, allows for a deviation from the actual age of plus or minus 12 months in a forensic setting.<sup>149</sup> Therefore, it can be concluded that the combined application of the above mentioned methods allows forensic age assessment with a sufficiently high degree of reliability.<sup>150</sup>

The results of verification of the age assessments made by the Berlin Institute of Legal Medicine (Charite) show that the combined use of the above methods allows age diagnoses which can be used for forensic purposes and which are sufficiently reliable for legal purposes.<sup>151</sup> There is still no reference study available determining all required features synchronologically.<sup>152</sup>

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<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Schmeling, Reisinger, Loreck, Vendura, Markus, Geserick, 2000: 253-258.

<sup>148</sup> Schmeling, Olze, Reisinger, Geserick, 2004: 243-245.

<sup>149</sup> Schmeling, Olze, Reisinger, König, Geserick, 2003: 367-371.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

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## D- COMBINATION OF DIFFERENT METHODS OF AGE ASSESSMENT

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*“Age assessment is no determination but only just an educated guess.”<sup>153</sup>*

In Sweden, the recommendation for the discrepancy allowed for different age groups is according to the following scale:

- 0-2 years of age, a discrepancy of 6 months
- 2-9 years of age, a discrepancy of 12 months
- 9-18 years of age, a discrepancy of 24 months

If an age assessment is to be carried out, it should be made as soon as possible to avoid a period of waiting in uncertainty on behalf of the child, as it can be crucial to how the application of the individual is to be dealt with.



### 1- THE FIVE DIFFERENT METHODS OF AGE ASSESSMENT

There is a broad agreement on the most suitable methods of age assessment.

#### 1.1- Inspection

The aliens police authority or asylum officers, sometimes along with persons working for the youth welfare agency, examine the physical appearance of the children and then, according to their experience, assess the children's age.

The physical appearance is the basis for the assessment, whereby the individual's psychological maturity is also taken into account. Particularly considered are:

- the child's body language,
- how they move and act,
- how they talk and argue and
- habits (for instance whether males have begun shaving).

#### 1.2- Interviewing techniques

The information gathered in the interview includes the following:

- the child's school and professional career such as:
  - o how many years they have attended school,
  - o at what age they started school and
  - o if they have been working,
  - o adding these years to the age they began school;
- the birth dates of family members, especially sisters and brothers;
- their age when something well known happened in their homeland, e.g. “How old were you when that earthquake/flooding took place?”<sup>154</sup>

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<sup>153</sup> London Boroughs of Hillingdon and Croydon, 2003: 1.

The advantages of interviewing techniques are sometimes used in Sweden (and other countries), where in the course of the interview, the information gathered is assessed against the consistency of the age given. During this procedure, the fact that the interviewer can express him/herself in a language the child understands, and can understand what the child says, or that an interpreter is present is of particular importance. But generally it can be said that all medical examinations would require this.

### 1.3- Physical examination

- Physical examination with determination of anthropometric measures (height and weight, constitutional type),
- Inspection of the signs of sexual maturation and
- Identification of any developmental disorders that might affect age-appropriate development.

### 1.4- Odontological examination

Odontological examination by a dentist with determination of the dental status and X-ray study of the dentition.<sup>155</sup>

### 1.5- X-ray examination

X-ray examination of the left hand.<sup>156</sup>

### 1.6- Timeframe and costs

If an agreement exists between the medical faculties and the national alien's service and law enforcement, the results should take less than two working days. All forms of medical examination are combined with costs, whereby different countries have different tariffs. As it is crucial to conclude whether a person is a child or not, such costs should be considered to be advantageous in the long run.

The cost of the odontological and skeletal examinations is difficult to estimate since so many countries are involved. In Sweden, the cost for the odontological examination is currently approximately 90 Euro, and 85 Euro for the X-ray of the hand.<sup>157</sup>

These methods should be used together to increase the diagnostic accuracy and to improve the identification of any relevant development disorders.

## 2- CASE STUDIES



Two case studies are described below to show the importance of combined methods of age assessment, their application and impacts.

### 2.1- Girl from Ukraine trafficked to Sweden

A girl from the former Soviet Union, born in October 1986, came to Sweden and applied for asylum in October 2003 at the age of 17. She did not know exactly where she came from. On the basis of

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<sup>154</sup> For further details, please see section A of the chapter on Psycho-social Age Assessment, 2.1-.

<sup>155</sup> Please see section B for more information on dental age examination.

<sup>156</sup> Please see section C for more information on bone X-ray assessment.

<sup>157</sup> In October 2005.

the result of a language analysis, the Swedish Migration Board believed she originated from the Ukraine. She did not know of any relatives. She grew up in an orphanage. When she was about 12 or 13 years old she was taken to Turkey, where she was locked up in a room. She spent the nights working as a prostitute in a casino.

She came to Sweden in October 2003, together with two Russian-speaking men. The inspection and the interview made it clear that she was a child. The dental examination showed that she was at least 16.7 years of age. Any further investigation into her age was not necessary; the Swedish Migration Board determined that she was a child, and she remained registered under the date of birth that she had initially given upon applying for asylum. When it became clear that the girl was a child, she was placed in a youth institute run by the Swedish Migration Board. However, one of the Russian companions presented an identity document showing that the girl was over 18 years of age and therefore no longer a child. The Swedish Migration Board did not recognize the document as being authentic.

The girl realized that she had been sold for trafficking purposes in Sweden. She now lives in a protected institution for battered women and other women at risk, run by the social authorities at a secret address, in order to protect her from her Russian male companions that are believed to be pimps involved in trafficking for sexual exploitation. She was granted a time-limited residence permit, valid for one year. During this year, the police authorities had the possibility of investigating her case, and she had the chance to recover both psychologically and physically. She was recently granted a permanent residence permit to remain in Sweden.

#### 2.2- Girl from former Yugoslavia applied for asylum with her husband and his parents and their other children

The girl applied for asylum from a remand prison where she had been placed after having been caught stealing. In remand prison, she claimed to be 16 or 17 years old and that she had been through horrible experiences in the former Yugoslavia when she was very young. She claimed that her parents had been murdered and that she had been raped. She was referred to the Children's Psychiatric Clinic where she was estimated to be older than her own statement. She was taken for a dental X-ray where she was estimated to be an adult. The results showed that she was at least 21.4 years old, which is the highest level of age assessment by a dental examination, and which consolidated suspicion that she was an adult.

Based on this information, the police authorities and the office of the Public Prosecutor deal with the law enforcement authorities differently than if she would have been a child.

Eventually, her brother in the former Yugoslavia made inquiries about his sister. It finally became clear that her parents were alive and, based on the copy of her identity document sent by her brother, she was identified as being 28 years old.

### 3- CONCLUSION

To be able to conclude an age assessment as close to the actual age as possible, all described methods should be used. A very similar practice is used in Norway, consisting of two different physical tests, ideally in combination with observations made through informal discussions and consultations. The two physical tests applied are an X-ray of the hand wrist and a dental examination (including X-ray). If the two physical tests are contradictory, then the lowest age is chosen. If the results are inconclusive, the person is determined to be under 18, hence a child.<sup>158</sup>

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<sup>158</sup> Einzenberger, Halvorsen, Leal, 2002: 12-13.

The interview with the child and the medical evaluation jointly provide a good foundation for age assessment. Sometimes youngsters do not know when they were born, or how old they are. In some countries the birth of children is not registered with the authorities at all. By having an age assessment done, the individual's actual age can be determined using these methods. However, if an agreement is reached between the child, his/her legal guardian/attorney and the authorities, all five of these methods are not needed.

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## E- IDENTIFICATION OF CHILDREN WITHOUT PAPERS

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Many trafficked children travel without identity papers or with forged documents. Furthermore, they may be afraid to disclose their real identity, due to lack of trust in the authorities, in the police or actual threats made by their traffickers. In some cases, these children have been briefed by their traffickers to lie about their identity and recite the “stories” as they have been told by their traffickers, when asked about their identity, age and purpose of travel or stay. Identity can often be very difficult to establish, particularly where children have not been registered at birth in their country of origin.



### 1- INTERNATIONAL AND EUROPEAN STANDARDS

Identity is one of the most important rights of a person, which also applies to children.

Depriving a girl or a boy of his/her identity is a severe infringement on the rights of the child. In accordance with Article 8.2 of the Convention on the Rights of the Child,

*“Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. State Parties shall respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.*<sup>159</sup>



It is therefore important to quickly take measures to determine the identity of the child if he/she does not have the relevant identity documents.

Specific guidelines regarding UAMs are provided by UNHCR:

*“Specific identification procedures for unaccompanied children need to be established in countries where they do not already exist. The main purpose of these procedures is twofold: first, to find out whether a child is unaccompanied and second, to determine whether the child is an asylum seeker or not”.*<sup>160</sup>

Identification is also mentioned in Article 10.c of the Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings, as well as other protective measures for UAMs:

*“In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure*

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<sup>159</sup> Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990; Article 8.

<sup>160</sup> UNHCR, 2002: paragraph 5.1.

*the legal representation, including representation in criminal proceedings, if necessary, in accordance with national law”<sup>161</sup>.*

## 2- PRACTICE IN SWEDEN

### 2.1- Initial meeting upon arrival

When a child’s identity and/or nationality/citizenship are unclear, there are different ways of working with the problem. The case officer normally asks the child about the possibilities of having documents sent to Sweden from the country of origin or from elsewhere where the child might have been.

If the child has relatives or other acquaintances in Sweden or elsewhere, they will be contacted in order to help identify the child.

If there is a total lack of documents, the case officer can suggest that the child, together with his/her guardian, contacts his/her embassy in order to obtain a passport or other documentation proving the correct identity.

Questions that are asked in order to elucidate the identity include: date and place of birth, places of residence, full family picture including addresses, ethnic background, education with names of schools, teachers and employers, churches/mosques attended, etc.

If there are doubts about the child’s nationality, language tests are performed. The child is asked to talk freely about ordinary topics in his/her mother tongue for at least ten minutes. This is recorded on a tape, which is sent to a language institute where an analyst listens to the tape and returns a written analysis of the child’s linguistic background.

If the child is not cooperative, an analyst is contacted and the child and analyst talk directly to each other by telephone. The identity of the analyst is kept secret and the case officer and analyst do not communicate. A clerk at the language institute will telephone the case officer 15 minutes after the analyst has concluded the conversation with the child. A preliminary report of the conversation is given and, a week later after the analyst has listened to the tape repeatedly, a written report is sent to the case officer.

Based on the answers/results of the above-mentioned activities, an overall assessment is made to determine the identity/nationality of the child.

### 2.2- Cooperation with embassies

Swedish embassies and consulates are generally helpful in tracing family members and other relatives in the countries of origin of children, both with and without papers. As an example, a liaison office has been established in Pristina with Swedish and local personnel. The Swedish Migration Board sends requests for further assistance, sharing information already obtained about the child.

Foreign representations in Sweden sometimes also help with research into the child’s identity.

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<sup>161</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (L261/19; Official Journal of the European Union; 6.8.2004).

### 2.3- Other means when nationality is not clear

International Organization for Migration (IOM) can assist in the identification of family members and in family assessment. The International Red Cross and UNHCR work in a similar manner. These organizations demand that tracing, return and reunification take place only voluntarily, based on the child's wish.<sup>162</sup>

The Council of the Baltic Sea States is said to be willing to help when it comes to tracing family members of children from these countries. There is a representative in each country that can be contacted for guidance.

The Swedish Migration Board has successfully been assisted by the International Social Service (ISS), which was founded in 1924, and is a political and religious independent organization represented in 180 countries. They work with child- and family-related questions beyond national boundaries, such as kidnapped children, UAMs and foster homes abroad (summer holidays).

A problem worth noting is that sometimes the child and the host country agree on a child's identity and age, only to later find that the country of origin demands further investigation before recognizing this identity. The reintegration process is thus made more time consuming, cumbersome and sometimes in the end, impossible. Valuable time that should be spent on assisting the child is spent on administrative difficulties.

### 3- EXAMPLE OF COOPERATION BETWEEN ROMANIA AND AUSTRIA

In view of the assisted voluntary return of UAMs to Romania, IOM Vienna has established a procedure, in cooperation with the Austrian and Romanian authorities and institutions. The Austrian authorities responsible for child protection/welfare may contact IOM Vienna in view of an assisted voluntary return of an UAM to Romania.



The Austrian child welfare institution shares information on the child (situation, identity etc.). This procedure is only applicable if the child has expressed his/her wish to return and if it is assessed by the competent authorities that this return is in the best interests of the child, in accordance with the UN convention on the Rights of the Child, Article 3(1) and the UNHCR guidelines for repatriation with special consideration/actions in case the child is a victim of trafficking.

IOM Vienna, in cooperation with IOM Bucharest and the Romanian social services, begins an assessment of the family and home situation of the child, in order to ensure that the family does not represent a danger for the child and has the capacity to provide adequate care to the child.

In cooperation with the Romanian Embassy in Vienna, if necessary the identity of the child is determined and the relevant travel documents issued. Before organizing the travel of the child, IOM Vienna needs to receive a letter stating that the child will be taken care of in the country of origin by social service providers during assessment of the family (if this assessment is not finalized before return) and until a long-term solution and assistance is provided to the child. For security reasons, the voluntary return of the child takes place by plane and the child is accompanied by IOM staff until boarding and upon arrival. In case of medical conditions or special situations, the child might be accompanied during the entire journey.

The child is then handed over to the social services and care institution in Romania, which provide the child with adequate accommodation and care provision, in accordance with national standards.

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<sup>162</sup> Please see Chapter III: Investigative Methods, 2.4.5- Determination of the identity of child victims.

Following the voluntary return of a child, a follow-up of the situation of the child, including information on the place of residence, assistance provided and progress made is done in Romania within 6 months.

For all these steps, the close cooperation of the Austrian authorities, institutions and the Romanian Embassy in Vienna, as well as social services in Romania and IOM Bucharest is essential. Only with this type of cooperation and procedure is it possible to envision the assisted voluntary return of UAMs.

In terms of identification of the child, it has been noted that the presence of Romanian police liaison officers in Austria has improved the identification of children, as the police officer can speak the language and have direct contact with the local authorities in Romania, and therefore would be able to check the information provided in Austria more quickly.

#### 4- CONCLUSION

One of the recommendations regarding the identification of children is the establishment of systematic procedures for the identification of UAMs by the authorities in each country and in cooperation with the countries of origin.

Furthermore, all UAMs should be registered and documented as soon as they come to the attention of the appropriate authorities. The registration should be maintained in a central database. Whenever an adult accompanies a child, the relationship between the accompanying adult and the child should be assessed. Identification should be immediately followed by referral to a relevant and appropriate reception facility<sup>163</sup>.

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<sup>163</sup> Adapted from Separated Children in Europe Programme, 2003: 11.



## F- RECOMMENDATIONS

Identification and age assessment are fundamental points in view of ensuring that children are treated according to their rights and receive appropriate assistance and protection in countries of transit and destination, as well as upon return to their countries of origin in accordance with international guidelines and legal provisions.

*“The value of age assessment depends on the expertise and experience of the medical professional who is conducting the examination. Such assessments are based on a variety of factors including physical examination to ascertain height, weight and presence of secondary characteristics; psychological maturity; dental examination and bone maturity. None of these measures alone have proven to have conclusive validity for the exact establishment of age. Furthermore cultural, racial [gender] and ethnic differences mean that age indicators may vary considerably”<sup>164</sup>*

In case the child does not speak the language of the country where he/she is located, an interpreter should be present during all stages of the age assessment (interview and medical examinations).

- Age assessment should only occur in case of any doubt of the age stated by the child. In such a case, age assessment should take place as soon as possible. If the UAM has no means of identification (e.g. an identity card or passport), but is believed to be over 18 years old, the age assessment procedure can take place.<sup>165</sup>
- Children should be registered and documented as soon as they come to the attention of the authorities.
- The authorities should contact a child-specific shelter and, if a test is needed, the UAM should stay at the shelter throughout the age assessment procedure.<sup>166</sup>
- Social services should be consulted regarding the age assessment decisions of the immigration authorities.<sup>167</sup>
- Procedures for age assessment should recognize that the most accurate assessments are likely to take place over time and should be holistic, using a combination of methods and relevant professional specialists.
- All examinations should be on a voluntary basis and there should be no coercion. In line with Article 37 of the Convention on the Rights of the Child, all procedures must respect the dignity of the child.<sup>168</sup>
- General training of staff, as well as specialized training for staff conducting psycho-social age assessment, and meetings to share information among all actors involved in cases of child trafficking, need to take place on a regular basis to ensure common understanding and the importance of this procedure.
- Standardized procedures should be established and national and international cooperation enhanced in order to be able to ensure the rapid identification of children.

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<sup>164</sup> Separated Children in Europe Programme; Bruce Britton: Training Guide 2001, p.84.

<sup>165</sup> Recommendation identified during the AGIS 2003 Project “Victim Assistance for Minors: Capacity Building via Training and Exchange of Information/Best Practices between EU, Candidate and Third Countries” implemented by IOM Vienna.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Separated Children in Europe Programme: Policies and Practices in European Union Member States: A Comparative Analysis, p. 19.

- Children should have the possibility to challenge the outcome of the identification including the results of age assessment.<sup>169</sup>
- Due to the evident margin of errors in all age assessment methods, children should always be given the benefit of the doubt, with the lowest age selected.<sup>170</sup>

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<sup>169</sup> Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers, page 10: "It was explained to you at the end of the interview that you have the right to disagree with the outcome of the assessment, and to challenge our decision" by contacting the Children's Asylum Service at Hillingdon Social Services or by requesting the "Complaints Procedure for Children and Young People".

<sup>170</sup> Separated Children in Europe Programme: Policies and Practices in European Union Member States: A Comparative Analysis, p. 19.

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## CHAPTER IV

### INTERVIEWING TECHNIQUES

- 1- Introduction
- 2- First contact/identification
  - 2.1- First contact
  - 2.2- First intake
  - 2.3- Legal Guardian
- 3- Conditions and preparation of the evidential interview
  - 3.1- Assessment of suitability for interview
  - 3.2- Planning the interview
  - 3.3- Preparing the persons involved in the interview
  - 3.4- Developmental level, memory and suggestibility of the child
- 4- The evidential interview
  - 4.1- Introduction
  - 4.2- Definitions of types of questions
  - 4.3- Interviewing phases
  - 4.4- Aide memoir relating to trafficking cases
  - 4.5- Evaluation
  - 4.6- Further interviews
- 5- Witness protection
  - 5.1- Risk Assessment
  - 5.2- Cooperation
  - 5.3- Protective measures
- 6- Training of all actors involved
  - 6.1- Profiles of law enforcement interviewers
  - 6.2- Training content
- 7- Recommendations
- 8- List of contributing experts to this chapter
  - 8.1- List of experts participating in the working group
- 9- Bibliography

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## 1- INTRODUCTION

The aim of this chapter is to provide law enforcement officers with current good practices in the field of interviewing child victims of trafficking, which is also applicable to interviews of child witnesses of this offence. It has been compiled by experts of the Metropolitan Police (UK), with the assistance of experts in the field of child focused interviewing from a number of different countries (see list at the end of the chapter). These experts range from child psychologists to law enforcement officers with extensive experience in child abuse investigations.

Particular care is needed when interviewing children, who should always be treated as especially vulnerable. The interviewing methodologies and additional safeguards for children have evolved through experience to provide the best opportunities for obtaining high quality evidence to prosecute offenders.

This chapter presents good practices in interviewing child victims and witnesses, as identified by expert practitioners, which are to be implemented, to the extent possible, within the framework of national legislation.

While the practices outlined provide guidance, law enforcers must work within the framework of existing international standards concerning child victims of crime, e.g. the UNICEF Guidelines for Protection of the Rights of Child Victims of Trafficking<sup>249</sup> and the EC Report of the Experts Group on Trafficking in Human Beings.<sup>250</sup> Resolution 2005/20 of the Economic and Social Council of the United Nations, entitled "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime", details the following principles which outline the rights of all child witnesses/victims:



- *Right to be treated with dignity and compassion*
- *Right to be protected from discrimination*
- *Right to be informed*
- *Right to be heard and to express views and concerns*
- *Right to effective assistance*
- *Right to privacy*
- *Right to be protected from hardship during the justice process*
- *Right to safety*
- *Right to reparation*
- *Right to special preventive measures.*<sup>251</sup>

At the Working Group Meeting on 23 September 2005, the members of the group on Interviewing Techniques agreed upon the following overriding principles:

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<sup>249</sup> UNICEF, 2005.

<sup>250</sup> EC Report of the Experts Group on Trafficking in Human Beings, 2004.

<sup>251</sup> UN, 2005.



### Principles

- Consideration should be given to the best interests of the child at each stage of the process. This is the primary consideration throughout this chapter. All actions shall be based on the principles of protection and respect for human rights as outlined in the UN Convention on the Rights of the Child.
- All children below the age of 18 years old should be treated according to their particular needs and special vulnerability. It is advisable that children as well as trafficked adults with mental/physical disabilities or learning difficulties receive the same treatment (described in this chapter). The language used should, at all times, be adapted to the age of the child. Due consideration of the gender of the child should be made throughout the interview.
- The interview is not an interrogation. The purpose of the interview is to assist the child to disclose information and so contribute to the investigation and the prosecution of offenders.
- Interviews should only be undertaken by trained staff with specialized skills.
- An interpreter should be used in every case where the child is a foreign national, even if the child seems to speak the language of the country where the interview takes place.
- Legislation should take into account the special vulnerability of the child (e. g. consider video recording, no cross-examination and if possible only one interview), as improvements in legislation have resulted in increased prosecutions and convictions of cases involving exploited children.
- The interview performed by law enforcement authorities cannot take place where the child lives, and never in the shelter where the child is residing, but in a child-friendly environment.
- Interviewers must be honest with the child and should never make false promises. Interviewers should explain and inform the child about the purpose of the interview or questioning.
- Interviewers should not wear a uniform for the interview.

Following the description of the first contact or identification phase, this chapter provides a detailed description of the conditions of, and preparation for, the evidential interview, as well as of the phases of the interview itself. A brief description of some relevant aspects of witness protection and training are followed by recommendations, which conclude this chapter.

With regard to this chapter, all interviews for the purpose of the evidence gathering or testimony will be referred to as the *evidential interview*. Depending on the national legislation and on the outcome of the interview, a *statement* or *testimony* may result. For language reasons, the authors use the term *statement* as a general term, specifying *testimony* only when relevant.

## 2- FIRST CONTACT/IDENTIFICATION

### 2.1- First contact

The aim of this first interview is to gather information that may assist in the identification of potential or actual victims of trafficking. These interviews are important and play a vital role in the investigation; however, they are not to be confused with any evidential interview that may follow. As the lack of proper identification of child victims of trafficking is one of the most serious problems related to combating trafficking and providing assistance to child victims, as well as key to the protection of their rights and to finding solutions appropriate to their needs, this phase is essential.

In too many cases, the situation of children is improperly assessed and children are not identified as potential or actual victims of trafficking. Often, children are placed in detention if caught while involved in an illegal activity and over the nationally established age of accountability for their acts, or they are simply deported by the authorities if they are third-country nationals. Notwithstanding that these actions constitute a serious violation of the rights of the child, with possible serious consequences for the child's future (risking to hand back the child to the trafficker), the lack of identification of child victims means that an investigation, followed by the prosecution and conviction of the traffickers, is less likely.

A full, accurate and comprehensive record of first contact interviews should be made and passed to the investigating officer. Information obtained may be sensitive and will need to be assessed together with any other information that is available from intelligence gathering and partner agencies. This information can also be used as a resource for any further interviews.

### 2.1.1- Basic information

First contact will usually be made by a "street police officer". He/she will need to obtain certain information to assist in the identification of the child and his/her situation:

- Language – mother tongue and ability to communicate in language of host country
- Name
- Nationality
- Age
- Family
- Address – where the child currently lives
- Accompanying adult(s) – check information with any accompanying adult as to whether there are any contradictions and identify the relationship between the child and the accompanying adult (i.e. whether he/she is the real parent of the child or not).

### 2.1.2- Potential indicators<sup>252</sup>



Street police officers need to know how to identify potential victims of trafficking during this first contact. The Nobody's Children Foundation distributed the below list in the form of a brochure to raise awareness among law enforcers and border guards in Poland, providing possible indicators of trafficking.



#### Child's behaviour

Law enforcement officers should be alarmed if a child:

- Looks untidy or just the opposite – has very expensive clothes and cosmetics;
- Seems drowsy, which may indicate the influence of drugs;
- Has visible signs of violence on his/her body: bruises, scratches, burns, etc.;
- Exhibits anxious behaviour: looks scared or cries;
- Shows a high level of stress; does not answer questions, avoids eye contact or seems unnaturally excited;
- Provides answers that seem pre-learnt, too mature or unnatural for the child's age or consults with the accompanying adult before answering;
- Travels with an adult who is not his/her biological parent;
- Exhibits unnatural behaviour toward the accompanying adult;

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<sup>252</sup> Please see Chapter III- Investigative Methods, section 3.3.2- Orienting front-line police officers – List of Indicators

- Claims that he/she does not know where his/her parents are, has no contact with the family;
- Does not know the exact destination, cannot define for how long he/she has left the home country;
- Has no travel documents; cannot explain what has happened to his/her passport.<sup>253</sup>

Direct questions to the child that may also result in possible indicators of trafficking:<sup>254</sup>  
As in all interactions with a child, the age and gender of the child should be taken into account at all times.

#### Questions to the child

Questions to ask which may provide indications of trafficking include:

- Are the parents/guardian/legal representative there with the child?
- Where are they?
- When was the last time he/she saw his/her parents?
- Does the child have any documentation such as identity papers or a passport with him/her?
- What was the destination of his/her travel?
- Who organized the travel?
- Who paid for the travel?
- How did he/she travel to the place where he/she is now (e.g. car or airplane)?

#### Other elements to take into consideration

Aside from direct questions to the child, other possible indications of trafficking to be considered include:<sup>255</sup>

- The rescue circumstances (how and where the child was found);
- Any proof of exploitation, such as signs of physical abuse;
- Any evaluation by an NGO or others who may have been involved in rescuing the child.

## 2.2- First intake

This interview should contain further detailed questions to assess whether the child is a potential or actual victim of trafficking. The task of the interviewer is not an easy one and the possibility that they face a hostile, suspicious and reserved victim is very high.

The immediate needs of the child should be assessed by the interviewer on their arrival either at the police station or location where this interview is going to take place. Prior to the interview, consideration and access is to be provided to any medical aid or assistance needed by the child, and the interviewer should check that the child is not hungry or thirsty, needs the toilet or wants to sleep. If any of these are needed, attempts should be made to obtain them for the child before any interview commences. A referral to social services or partner agencies may be necessary at this stage. The start of the interview should be delayed whilst the welfare of the child is addressed.

<sup>253</sup> This list was created in form of a brochure of the project "Combating child trafficking in Poland", implemented by the Nobody's Children Foundation and the British Embassy in Warsaw.

<sup>254</sup> IOM, 2005: 21-25.

<sup>255</sup> However, interviewers should be aware of a possible suggestive effect through the questioning. Please see section 3.1- Assessment of suitability for interview.



Ideally the interview should be conducted in a quiet room away from any distractions, interruptions or where other people could overhear what is being said. Victim identification interviews should never be conducted at the location of exploitation or where the child was found; it is extremely unlikely that any suspected victim of trafficking will ever feel safe enough to respond to questions unless and until he/she is transferred to another location.

Where possible, the interview should be conducted by a police officer who has experience in interviewing children. The number of people present during the interview should be limited to those who really need to be there. If the child does not speak the language of the country they have been found in, an interpreter should be engaged to assist. During the interview, children should be able to communicate in their mother tongue. It may be necessary to recruit the expertise of a psychological adviser. A clear, concise and accurate record of the interview should be made using the specific mode currently accepted within legislation. It is recommended to use the language of the child in the report and include notes on the child's behaviour in case the interview is not taped.<sup>256</sup>

During the interview, specific topics should be covered to assist the interviewer in making an assessment as to the child's legal status, with each interview tailored to the circumstances of the individual child. The purpose of the interview should be explained to the child. Examples of topics to be covered during the interview include:

- Personal information – name, address, date of birth, nationality, identity;
- Recruitment – how was contact made?
- Travel – how did he/she get here?
- Exploitation – what activity were they involved in?
- Work – where and what were the conditions?
- Money – were they paid?
- Debts – what were they for?
- Contact – who he/she had contact with and how was it made?
- Freedom – were they free to move around?

Answers to specific questions should not be taken in isolation during the identification of victims. It is necessary to assess, share and discuss information with other partners involved in the investigation before a decision is reached.<sup>257</sup>



**Remember!**

- A child crossing a state border alone or without his/her parents **MAY BE A VICTIM OF CHILD TRAFFICKING.**
- A person claiming to be the child's relative may actually be engaged in **CHILD TRAFFICKING.**
- Trafficked children hardly ever disclose the offence for they do not realize that they **HAVE BEEN OR ARE GOING TO BE SOLD or EXPLOITED.**<sup>258</sup>

When the child has been identified as a victim or witness of the crime of trafficking first intake questioning should cease. It is at this point that the case moves towards a first evidence gathering related to the investigation procedure and to the assessment of suitability for an evidential interview. There may be a need for protection and assistance from outside agencies, therefore a referral should be made to the relevant departments, such as medical services and social services. It is essential to the well being of the child to provide

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<sup>256</sup> Please see section 4.3.2- Free Narrative.

<sup>257</sup> Please see Chapter III- Investigative Methods, 2.4.4- Profiling victim and offender.

<sup>258</sup> This brochure was created within the project "Combating child trafficking in Poland", implemented by the Nobody's Children Foundation and the British Embassy in Warsaw.

timely and appropriate assistance, as he/she has recently left a trafficking situation and is thus likely to need medical assistance, and is also highly likely to escape or be recaptured by the traffickers.

### 2.3- Legal Guardian

As soon as a child is identified as a victim of trafficking, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim throughout the entire process.<sup>259</sup>



Following initial questioning by law enforcement officials, the guardian shall accompany the child to appropriate accommodation/shelter.

The guardian should have the right to refuse to give testimony in criminal and civil (judicial) proceedings if this is in the best interests of the child.<sup>260</sup>

## 3- CONDITIONS AND PREPARATION OF THE EVIDENTIAL INTERVIEW

During the preparation for the evidential interview, the interviewer needs to be in continuous contact with the investigative team, NGOs, social services, forensics and investigators, as well as anyone else involved in dealing with the child so as to gather as much information as possible on the child.



### 3.1- Assessment of suitability for interview

Gathering information on the child as well as the outcome of the psycho-social assessment will enable the interviewer to make an assessment as to the suitability for interview of the child. Consideration should be given to the following when making the assessment:

- Necessity of the interview – is it in the best interests of the child to participate in an evidential interview?
- Does the child want to make a statement?
- Is the child able to make a statement?
- Individual developmental stage of the child
- Language
- Emotional state
- Assessment of any trauma the child may have suffered
- Health issues
- Disabilities
- Priority of medical assistance
- Legal status of the victim in the country and assistance that may need to be provided, such as temporary residence permit, access to services and referral to shelters and service providers
- Risk assessment for the child, his/her family and loved ones as well as protection measures.

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<sup>259</sup> UNICEF, 2005: 4, Appointment of a guardian.

<sup>260</sup> Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: 1, point 6.

The fact that a child is not able to make a testimony, for example due to trauma with affiliated symptoms, a disability, mental disorder or other such hindrance, should be recognized at an early stage. Such recognition is important both to protect the child from suffering a secondary trauma caused by the interview and to guarantee the possibility of arranging the interview at a later time.

If a child who has been assessed as not being capable of making a testimony is nevertheless interviewed, there is a danger of a suggestive effect through the questioning. This could result in biased responses by the child, which are only given, for example, in order to please the interviewer and be left alone.

### 3.2- Planning the interview



Planning is a vital part of any interview and time must be set aside to prepare for this. Where NGOs, service providers or multi-agency partners are involved, there is a necessity for the interviewer to contact them, in order to share and gather information concerning the child and the case. Children must always be interviewed separately, even if siblings are victims of, or witnesses to, the same crime. Key points to consider when planning an interview include location, timing, transportation, special needs, who will lead the interview and who else will participate.

#### 3.2.1- Where

The interview should be held in a safe and secure environment so that the child does not feel threatened or exposed to threat or danger. It must be guaranteed, that the witnesses are not exposed to the offender. It is necessary to provide a quiet secluded room with no stressing phone calls or persons entering while the interview is in progress. The windows should be closed and there should be a sign outside the room indicating that the room is occupied. The room should convey a child-friendly environment and be adjusted to the needs of the child, with decoration and furniture being selected carefully. The interview room should not be over-furnished as this may distract the child. It may be enough to equip the room with a small table, comfortable armchairs and enough space for the video and/or sound recording equipment (as appropriate).

Young children like to sit on the floor, so it is suggested that this is covered with a soft carpet. A few soft toys, paper, pencils and markers should be made available; however this is not a play room, so care should be taken not to overload the room with toys.<sup>261</sup> For evidential reasons, the technical equipment should be installed in a manner to enable others, for example another interviewer, guardian, defence lawyer, prosecutor or judge, to follow the interview via a TV-monitor in an adjacent room.

Children will be brought to the room either by the person accompanying them or the interviewer will collect them at the entrance to the building so that they do not have to look for the interview room. It is important to explain the purpose of the interview and show children the facilities and installations. Children should be allowed to ask questions and receive answers. If this step is omitted, there is a danger that the child will ask these questions at a difficult phase of the interview, which can be distracting.

- Interview rooms

Good examples of well-equipped rooms used to interview children can be found for example in Sweden, Poland, the Netherlands and Switzerland. Here follows more detailed descriptions of the Swedish and Polish models.



#### Child-friendly interview rooms in Sweden

Sweden has in recent years been substituting the special child investigation units with family violence units, which have been allocated greater resources in terms of personnel,

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<sup>261</sup> Too many toys could draw away the attention of the child.

etc. At these units, the police work side-by-side with special prosecutors. A further step in this direction was taken recently with the introduction of Children's houses in Stockholm and Malmoe. Many other houses are being planned around the country in the near future.

Children's houses are originally a concept from the USA; Iceland followed this practice. The idea is to let the children come to a sheltered and cosy environment that is not frightening. The Children's houses are staffed by social welfare officers, police, prosecutors, psychologists and psychiatrists, and include medical examination facilities. The direct contact and networking of all these actors working in the same place, on the same cases will distinctly improve cooperation between the different authorities. It is hoped that, in the future, children will not have to tell their story several times over, but that one interview will serve all purposes. Conversations conducted during interviews at Children's houses are documented and have such qualities that they can be used both in a legal and psychosocial context.

Below are examples of interview rooms in Sweden:



Figure 1 and figure 2: Interview room/monitoring room in Sweden

#### Child-friendly interview rooms in Poland

In Poland, traditional practice did not recognize abused children's special role in legal procedures, with children interviewed in conditions created for adults. Children waited for their interviews in the corridors and waiting rooms of police stations, interview rooms were small and had no furniture or equipment adjusted to children's needs, and there was no practice of interviewing children outside police stations or prosecutor's offices.

Developing good practice for interviewing children is a recent achievement. The police and the prosecutor's decision to cooperate with Nobody's Children Foundation stemmed from their desperate need to elicit credible testimonies. Interviewing the children at the Foundation proved extremely successful, both in terms of collecting evidence as well as providing protection for the child witnesses.

At that time, the Foundation was well prepared for interviewing children. The room meets both the psychophysical needs of children, and the formal requirements associated with legal interviews. The technical equipment includes a large one-way mirror, providing good visibility; a camera transmitting the image to another room and recording the interview; as well as microphones to register sounds.

The room is not a play room, but is quite ascetic, cosy, nice and a bit "childish". Nevertheless, the selection of furniture, decoration and toys has been thoroughly considered and is purposeful. The room has been furnished with two small tables, a lower one for younger children and a higher one for older children.

Aside from the interview room, the facilities offered by the Foundation include a waiting room, a play room and a therapeutic room. While waiting for the interview, child victims or witnesses are not exposed to the offender and may play freely. The Foundation's psychologists are supported in their work by a kakadu parrot residing in a cage in the

waiting room. The parrot is extremely stimulating for children, both emotionally and cognitively.



Figure 3 and figure 4: Interview room in Poland



Figure 5: Waiting Room in Poland

Representatives of the law enforcement system and judges were motivated to use the Foundation's interview room mainly due to the improved quality of children's testimonies.

An agreement on the cooperation between the Office for Repatriation and Aliens (ORA) and the Foundation was signed in March 2004. The Nobody's Children Foundation's obligations accruing from this agreement include:

- the participation of a pedagogic counsellor or psychologist in the interview of an unaccompanied child refugee;
- preparing assessments of the psychophysical condition of child aliens and
- offering rooms adjusted to interviewing children.

Child victims of trafficking can be interviewed under the same procedure.

### 3.2.2- When

The timing of the interview is important and will normally take place as soon as the child has been identified as a victim of trafficking. While it is important to interview the child as soon as possible after the first contact and intake interview, consideration should be given to the child's immediate needs. Rushing into an evidential interview without careful planning could adversely affect any benefit in obtaining an early account from the child. The child's normal daily routine should be investigated and the interview set for a suitable time. It is not advisable to arrange an interview just before a meal or bedtime.

The pace and duration of the interview cannot be set in general. Every child is an individual and each interview depends on the capabilities of the child in question. Young children or children with disabilities may need more than one interview scheduled over a period of a few days, while an older child may be able to cope with longer sessions. It is important that the interview is conducted at the pace of the child not of the interviewer. Short breaks can be built into the duration of the interview to assist the child.

Arrangements need to be made for transportation to and from the interview for the child and any accompanying person(s).

### 3.2.3- Special needs

Any special needs the child may have should be considered. The assistance of a specialist may be required to aid communication and help facilitate the interview depending on the level of need. If the child suffers from a medical condition, such as asthma, epilepsy or diabetes, it may be advisable to have their medication and/or a responsible person trained to deal with these conditions available.

### 3.2.4- Who is present inside the interview room?

- The interviewer

The investigating team should consider who is best qualified to conduct the interview after a full discussion of any issues raised. The lead interviewer should be a person who understands how to communicate with children. They must have knowledge and understanding of the rules of evidence and specific information required to prove the particular criminal offences they are dealing with. Interviewers must be trained and be prepared to give evidence about the interview in any following court proceedings if required to do so.

Where possible, the cultural background of the interviewer should be considered. The gender of the interviewer might not always be an issue, as long as the interviewer is well trained and able to create a good relationship with the child during the interview. However, as there are cases when the child would prefer talking to a woman or a man, when a male and a female interviewer are available for the interview, the child should be given the choice.

It may be in the best interests of the child to be interviewed by someone in whom they have already placed some confidence (e.g. the social worker who is taking care of them, a police officer they have already met a few times, etc.). Provided that such a person has been adequately trained in interviewing children and that national legislation does permit it, there is no reason why he/she may not conduct the interview.

- Others

The question of how many persons shall be allowed to be present within the interview room is dependent upon the needs of the child, and is therefore decided on a case-to-case basis. It is for the individual investigation leader to make the final decision.

It is identified as good practice that the number of people conducting the interview should be limited to two trained interviewers, plus an interpreter if required.<sup>262</sup>

#### Interviewers in the UK

In the UK, it is standard practice to have two interviewers present in the room: one police officer and one social worker. The police officers and social workers conducting interviews receive the same training. The two interviewers are present in the interview room and either one conducts the interview. The other interviewer only intervenes if the first interviewer has omitted questions, if there is a need for clarification related to a statement made by the child, if the child feels more confident talking to the second interviewer.



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<sup>262</sup> Please see section 3.3.4- Interpreter.

### 3.2.5- Who is present outside the interview room?



It is recommended that the child's trusted adults (e.g. parent, support person) are not permitted to be present in the interview or monitoring rooms. The child is to be allowed to relate his/her story without being prompted by trusted adults. The adults should be available outside the room or in the monitoring room to provide assistance and make the child feel protected and safe in this unfamiliar environment if needed. During the interview, whenever the guardian feels that the child should have benefit of legal counsel, he/she shall have the right to intervene and inform the interviewer of the need to terminate the interview or other.

It is recommended that children should be interviewed alone whenever possible. They are sometimes embarrassed and ashamed of telling the whole story in the presence of a "trusted adult" – an adult whom they trust (parent, relative, guardian, family etc.). Many children feel guilty about their experiences and would prefer that their trusted adults did not know everything. There are children, usually older children, who are afraid of talking about memories they had not previously recounted and, as a result, fear that adults will react negatively. Children generally do not have any trouble speaking to the interviewer on their own, provided they are encouraged to do so by the adults they trust.

Trusted adults can usually persuade children to reveal information to an interviewer if they are convinced of the necessity of undergoing the interview alone. This is why it is important to discuss this issue in detail with the trusted adults in the preparatory phase and to explain to them that their absence might have a positive impact on the child's ability to testify.

In case the suspect has the right to be present whilst the interview is conducted, it should be made clear that under no circumstances will he/she be present in the interview room (for instance, in Poland, the suspect or his/her lawyer have the right to attend the interview from the monitoring room). A separate area should be arranged for the suspect and there should be no physical contact between him/her and the child either before or after the interview.



#### Interviewer in Switzerland/Netherlands

In Switzerland and in the Netherlands, for instance, there is usually only one interviewer in the interview room (either a specialized and trained social worker or police officer as interviewer). In this case, it is useful to have another interviewer or an investigator of the case present in the monitoring room watching the interview. Before the end of the interview or during the break, the interviewer in the interview room will consult with the other interviewer about the specific questions or directions which may have been omitted and need clarification.

Any other people present, such as the cameraman, additional interviewer, prosecutor or psychologist (depending on the national legislation and context) who might be behind the one-way mirror in the monitoring room or in the interview room must be introduced to the child.

### 3.2.6- Recording



Where legally accepted and available, the interview should be recorded on videotape. However, it may be obligatory to take a hand written report. In these circumstances it is recommended that this should not be taken by the interviewer in the interview room but by another person listening to the interview in the monitoring room. Another possibility is to record the interview on audiotape and, on completion of the interview, the interviewer can then transcribe the interview him/herself. In any case when the interview is recorded, before the beginning of the interview, the child needs to be informed in his/her language that the interview needs to be recorded, the reasons why it needs to be recorded (in order to avoid another interview, needed as evidence etc.), as well as how the tape will be used (only shown to very few people working on the case and not on television).

Before the start of each interview it is important to check that the camera is ready to be used, that there is a tape in the camera, that batteries are charged and reserve batteries available. Should a dictaphone be needed, this should also be checked.



### Video interview in Sweden

Under Swedish case law, all questioning of children under the age of 15 shall be conducted in the form of video interviews. Also in other cases, for example when interviewing children with mental/physical or learning disabilities, the interview shall be documented on video. A video tape recording gives a clear picture of how information was elicited and may also explain the reason why the child answers in the way he/she does. An inexperienced interviewer often feels uncomfortable during his/her first video interviews. However, with growing experience, the interviewing officer gradually gains confidence. The common opinion among Swedish investigators is that video interviews have a solid evidential value, primarily to the ongoing investigation.

Although the child may also find it unpleasant to have the interview recorded, the method is to be preferred, as the information may be needed to assist further investigations and legal proceedings. In order to make it easier for the child, the cameras in the interviewing room are positioned in such a way as to distract the child as little as possible.

#### 3.2.7- Knowing the child

It is important that the interviewer inform him/herself about the child, obtaining information from other authorities, such as the social welfare service and child and youth psychiatrists. Prior to the interview, the interviewer should collect as much information as possible to be well prepared for the interview, as this is a condition for creating a positive atmosphere and better results. Generally speaking, the following information is needed:

- the child's name, age and gender;
- the child's cultural, ethnic background, religion and mother tongue;
- the child's developmental stage, with a focus on emotional, cognitive, linguistic and social aspects;
- the reason for the interview, including the origin of the complaint, how the suspicion was revealed and in what circumstances it arose or was disclosed;
- the family circumstances of the child, with whom he/she is living and who has custody of the child;
- the names of the child's family members, relevant friends and child care personnel, including nicknames;
- the child's everyday routines and whereabouts of the child during the day;
- any other circumstances that may be useful to know, such as physical and/or mental health;
- the names the child uses for different parts of the body;
- how the child's family feels about the manner in which questions should be put to the child;
- any significant stress recently experienced by the child and/or family, e.g. sickness, bereavement or domestic violence;
- Sleeping arrangements;
- The relationship of the child to the alleged abuser;
- The child's likes and dislikes, pets, hobbies and interests.

#### 3.2.8- Checklist venue and facility

In order not to omit the key points outlined above concerning preparation of the room and the equipment before the interview, it may be useful to use a checklist of these items and go through this before each interview.

### 3.3- Preparing the persons involved in the interview

#### 3.3.1- Child



The child must be briefed before the interview. The omission of this procedure will increase any stress the child is already experiencing and might confuse the child, which has a negative influence on the task of remembering and recalling during the interview. The child can feel more relaxed about the interview if he/she has some knowledge about what will happen, which in turn should reduce anxiety as a result of unpredictability and improve the quality of the interview.

Some experts suggest that it is advantageous for both the child and the interviewer to meet prior to the evidential interview. The interviewer can obtain much information from meeting the child prior to the interview taking place. This is also an opportunity for the child to get to know the interviewer. The vast majority of children in this situation have experienced trauma in many different forms and are likely to find it difficult to come to the interview room and reveal often intimate details to relative strangers.

However, other experts advise that it is better for the child to be prepared for the interview by social services and carers, which can be less stressful for the child.

Whichever option is selected, spending time with the child before the interview may make the task a little easier. Physically showing the child the interview room, or photographs of it, or using a booklet explaining what is going to happen, can also help them to feel more relaxed about the interview. The overriding principle to any pre-interview meeting is that the individual preparing the child needs to be honest and make no false promises to the child.



#### Preparing the child to the interview

What the child needs to know:

- that he/she will be talking to a trained interviewer who frequently talks to children;
- the interview will be conducted at a police station or other suitable venue;
- the interview will just involve talking. In stressing “talking”, confusion about what will happen at the interview is avoided;
- that he/she has done nothing wrong and will not be punished;
- that he/she knows what the subject of the conversation will be. If this is not clear, disclosing might be difficult, more so as children generally do not disclose spontaneously;
- that he/she is free to recall anything he/she wants to;
- the interview is not a test for the child. The child must not be put under pressure;
- the interview room is designed for children;
- the interview will be recorded with what ever means are available/appropriate to the particular investigation. An explanation should be given to the child that this minimizes the number of interviews;
- the tape will be stored in a safe place and the investigating officer decides who can and will see the tape;
- that he/she knows who, apart from the interviewer, will be present at the interview. The child will need to know who they are and what their role is;
- children must honestly be informed about the consequences and risks that their statement might have for themselves and their loved ones. They must also be informed of any available measures to protect themselves and their families during and after the statement, including after any subsequent return to their country of origin.

### 3.3.2- Interviewer

The goal of the evidential interview is to obtain a valid and reliable statement. The interviewer is unlikely to be able to influence how truthful the child is. However, he/she can, but should not, influence the reliability of the story. This is a real danger because of the imbalance of power; not only is the interviewer an adult, he/she is also (in most cases) a law enforcement officer.

It is the task of the interviewer to help the child disclose and tell his/her own true story that consists of factual and detailed information. To achieve this, the interviewer has to minimize his/her influence. He/she must be aware of the things not to do.

The interviewer has to prepare for the interview by taking note of all relevant information concerning the child victim/witness and the case. He/she has to know everything available about the child and the case, as well as to take time for his/her own mental preparation.

#### Checklist to assist in the interviewer's preparation

- Consider whether it is in the best interests of the child to be interviewed. How has this been assessed?
- Develop a neutral and empathetic approach, elaborate several theories including the zero hypotheses. The interviewer must decide which explanation he/she considers to be the most probable and then consciously distance him/herself from it and/or gain a sense of perspective.
- Plan a sufficient amount of time to avoid "context stress", whenever possible.
- Ask questions about the following aspects: evidence of special problems, developmental disorders (i.e. speech disorders, language skills and mental disorders, disabilities, cultural factors and family background). In order to do so, interviewers might have to prepare themselves or refer to other specialists depending on the specific nature of any disabilities.
- Consider whether the child is able to make a statement regarding his/her age, cognitive and emotional level and possible trauma. Does the child need extra care and help during the interview?
- Find out whether the child disclosed him/herself: to whom, when and what exactly did the child disclose. What was the reaction of the person he/she disclosed to?
- Ensure the child has been prepared/briefed about why, with whom and where the interview will take place. How did this preparation go, what has he/she been told and by whom? What was his/her reaction during this preparation?
- What are the chances that the child will make a statement? If the chances are very small, what is the explanation for this and how can the interviewer anticipate this.
- Is there an indication that the child will be reluctant to disclose? If so what might he/she be reluctant about and why? What can the interviewer do to deal with this during the interview?
- What are the safety issues for the child, family or loved ones before, during and after the interview? What means can be used to protect the child and minimize the risks?
- Are the child-friendly surroundings of the interview ready? Is it quiet, are there some toys present? Is it necessary to remove some toys if there are too many in the room?
- Is the recording equipment active and working?
- Is there specific language to be checked with the interpreter to ensure common understanding?

A child's language and speech development is a gradual process and is dependent on feedback from the world around him/her. Generally speaking, this is the combined result of natural abilities and environmental factors. The child's ability to answer the interviewer's questions therefore depends on his/her cognitive development stage and the fact that small children



cannot elucidate and enrich their stories in the same way as older children since they lack the necessary bulk of experience and knowledge.

To the greatest extent possible, the questions asked should therefore be formulated in relation to the child's range of knowledge and capacity to reason. The interviewer is expected to be able to determine the child's language level and adapt his/her interviewing technique to this. It is evident that the more limited vocabulary, the greater the risk that the child's statements will be misunderstood.

To make it linguistically easier for the child to tell his/her story, the following should be kept in mind:

- Desist from using baby talk.
- Do not guess what the child is trying to say.
- Avoid words that children usually do not understand.
- Ask about one detail or concept at the time.
- Use simple sentence structures.

To make it easier for the child to disclose what has happened in a language he/she masters and understands, it is helpful to think of the following:

- The interviewer should not assume that the child understands every word he/she is using. To avoid such misconceptions, check if the child really understands the meaning of what is being said.
- The interviewer should not take it for granted that the child means the same thing with a specific word as he/she does. Ask for clarification if something seems vague or unclear or appears to have been misinterpreted.
- Do not presuppose that children have words for everything they want to describe. If the concepts used are generalizations rather than details, the reason may be that the child cannot find the adequate word for what he/she wishes to describe.
- Avoid unusual or complicated terminology, adult jargon or words with more than one meaning. If professional terminology is used, the interviewer should explain the meaning of the words to the child and check if he/she understands.
- Do not introduce new words before the child him/herself uses them. The child may also need to use non-verbal means of communication, for instance to define different parts of the body.
- Ask several short questions and avoid overloaded or leading questions, such as: "*When you were in the house, on Sunday the 3<sup>rd</sup> and Tom came into the room Doris said that ...*"
- Use sentences with a simple grammatical structure, do not insert subordinate clauses and avoid hypothetical formulations. Do not use relative expressions like "*more or less*", for instance: "*Did it happen more or less than three times?*"
- To make sure that the child is thinking of the same person as the interviewer is, use proper names instead of pronouns like he, her, his or hers. If the interviewer talks about Tom, the name is to be used throughout the conversation. Avoid vague references such as them, the things and this one.
- Passive sentence structures are more difficult for children to understand, for example: "*Was Bill spoken to by Steve?*" Instead use active sentence structures, "*Did Steve speak with Bill?*"
- There may occasionally be situations where the interviewer feels sorry for the child and would like to comfort him/her. The interviewer can show that he/she understands what the child is undergoing, for example by telling the child "I can see that it is hard to talk about this," etc. Trying to comfort the child with physical contact is not



recommended. If the child has been exposed to abuse, he/she may interpret such a gesture as a threat or action of force.

- Children are not always aware of premises and expectations, which makes it necessary for the interviewer not only to adapt the questions to the child's language level but also to try to communicate to the child what is expected to come out of their interaction.

### 3.3.3- Parents/guardians/support person

Trusted adults (such as parents, guardians or support persons) can play an essential part in the preparation of an interview, not only for the child but for the interviewer as well. They may be able to supply the interviewer with the background information required to plan and conduct the interview as well as providing the necessary emotional support such as physical comfort and reassurance to the child.

Any trusted adult in contact with the child prior to the interview, or accompanying the child to the interview, should be encouraged to refrain from asking any questions about the crime. However, the interviewer should be mindful of the fact that adults close to the child will have the need to ask questions.

Trusted adults should be given instruction on how to listen when children talk about their experiences and the recording of any unsolicited comments. They must be told not to coach or offer inducements to the child for complying with the investigation process. It is also advisable for a trusted adult not to discuss the incident, even by telephone, with third parties in the child's presence.

A trusted adult can be asked to inform the child, prior to interview, that they can, may and should talk about their experiences. This is seen as giving the child permission to talk and is vital to the process. The younger the child the less time beforehand they should be informed about the interview appointment so as to avoid undue stress.

The interviewer should explain that children do not come to the interviews to play but rather to be able to recount what has happened and to talk. The reasons why the interviewer would like to conduct the interview in the absence of the child's immediate relatives should be explained. For example, a child may feel embarrassed or ashamed to talk about their experience in the presence of trusted adults, which would not be in the child's best interest.

Brochures, books or other material may be available to assist trusted adults to prepare themselves and child victims/witnesses for evidential interviews.

#### Nobody's Children Foundation Poland campaign

In Poland, Nobody's Children Foundation in cooperation with the National Police Headquarters and the Ministry of Justice, developed the campaign posters: "Your Honour, I'm scared", which were displayed at most Polish police stations, prosecutor's offices and regional courts.

The campaign was also addressed to parents and carers of children who participate in the investigation process and court proceedings as victims of crime. As persons who have the closest relationship with the child, and who are trusted by him/her, parents and caregivers play a crucial role in helping the child cope with the difficult experience of being interviewed by the prosecutor or in court. Their task is to prepare the child for the interaction with law enforcement officials and for this unfamiliar, perhaps frightening, situation. In many cases however, contact with law enforcement institutions is a new, unfamiliar and difficult experience for the parents themselves, who may not know legal regulations or what to expect during the legal proceedings, and are sometimes unaware of how the child feels and how to protect him/her from stress.

Therefore, a brochure was published, "When your child is a witness in court", which is addressed to child witnesses' parents and caregivers. The brochure considers questions such as "How to help the child? Should I tell him/her in advance what is going to happen in court?" and provides answers to these and other important questions. The goal was to make this information available to all parents and caregivers who may need it, so the brochures were distributed to police stations, prosecutor's offices, courts and various assistance institutions



across Poland. Moreover, institutions providing psychological help for abused children were provided with “I go to court” booklets, which instruct psychologists and parents about how to familiarize the child with the court, the persons he/she is going to meet there, and the situations to be expected during the court proceedings.

The campaign was carried out in 2004, with programmes initiated within the campaign being continued. These activities have improved child witnesses’ situation.

### Spanish legal guide for children

In Spain, the Ombudsman for Children institution has published the so-called “Legal guide for children victimized by adults”, with a view to precluding situations of legal, psychological and social defencelessness and disorientation stemming from a lack of knowledge of the legal procedures. The Ombudsman has also published the “Legal Dictionary for Children”, a language tool aimed at providing children with a dictionary that explains the terminology used both in the legal and other supporting fields.

**Your Honour,  
I'm scared**

An interview at a police station, at a prosecutor's office or in court is a traumatic experience for a child victim of crime. The child does not understand the procedures he or she has to participate in, feels guilty, and is afraid of an unknown situation and the potential consequences of accusing a close relative or another significant person.

**A CHILD IS A WITNESS  
WITH SPECIAL NEEDS**

Let's interview children in child-friendly places, adjusting the interview's form and rate to children's psychological states and levels of development. Let's interview children only once, providing them with a mental health professional's support. Let's inform parents and children about their rights.

The Nobody's Children Foundation's campaign – “Child: Witness with Special Needs” – is carried out in cooperation with the Polish Ministry of Justice.

**Wysoki sędzię  
boję się**

Dla dziecka, które jest ofiarą przestępstwa przesłuchanie w komisariacie policji, prokuraturze lub sądzie, jest traumatycznym przeżyciem. Dziecko nie rozumie procedur, w których musi uczestniczyć, czuje się winne, boi się nieznanego i konsekwencji oskarżenia bliskich mu osób.

**DZIECKO JEST ŚWIADKIEM SZCZEGÓLNEJ TROSKI**

Przesłuchujmy dziecko w przyjaznym miejscu, dostosowując formę i tempo przesłuchania do poziomu rozwoju i stanu psychicznego dziecka. Przesłuchujmy dziecko tylko raz, zapewniając mu wsparcie psychologa. Informujmy rodziców i dziecko o przysługujących im prawach.

Kampania Fundacji Dzieci Niczyje „Dziecko – świadek szczególnej troski” prowadzona jest we współpracy z Ministerstwem Sprawiedliwości.

Plakat sfinansowany ze środków Unii Europejskiej

Figure 6: Your Honor, I'm scared

### 3.3.4- Interpreter



If the child is a foreigner, the presence of an interpreter is required, even if the child apparently knows the language of the country in which the evidential interview takes place.

An interview of a foreign child victim of trafficking is a unique situation. On the one hand both the child and the interviewer face difficulties related to cultural and linguistic differences, while on the other hand, it is necessary to follow the formal procedure of the evidential interview. The accuracy of interpretation is an important issue that may influence the course and the outcomes

of the interview. In a standard psychological assessment or interview the psychologist/interviewer analyzes every single detail of the child's answers, the selection of words, the intonation, any stumbling, break or hesitation, etc.

During an interpreted interview, this information may be provided only by someone who perfectly knows the child's native language and culture and is well prepared to interpret children's responses in interview situations. Interpreters coming from the child's native country are especially helpful, as they are more able to understand children's statements, assess their developmental age and make them feel secure. Moreover, native interpreters can motivate children to provide more information.

Interpreters should be:

- screened and officially recognized,
- specialized in dealing with children with disabilities and other special needs,
- unbiased and neutral,
- not related to the child or have any connection to either the child or to his/her environment (community, tribe or ethnicity),
- open in their attitude to the child and the interviewer,
- speak the same dialect of the language the child speaks,
- be trained or have some experience of working with children,
- be able to deal with hearing sensitive and sometimes traumatic information and accept the subject matter (e.g. not refuse to talk about sexual abuse),
- have knowledge of the legal conditions and requirements of the interview.

The context, purpose, protocol and ultimate goal of the interview should be explained by those involved in the investigation. Attention should be drawn to the importance of translating what is said by both the interviewer and the child, using the child's own wording, as accurately and literally as possible. Prior to the interview, wording and terminology in the language of the interviewer and the language of the child may need to be checked with the interpreter.

The aim of the interview is to enable a child to speak freely, and the interpreter should make a conscious effort to let the child pause while recounting what happened. The interpreter should never be allowed to take over the interview or ask the child any of his/her own questions. The interpreter should be able to control any emotion and remain calm and professional throughout. The interviewer should also remind the interpreter of the duty of confidentiality and mention that their translation might be checked by a second interpreter.

### 3.4- Developmental level, memory and suggestibility of the child

Children are not yet fully physically and mentally developed, and their linguistic skills are also at a different level than those of an adult. One of the restrictions interviewers of young children should take into account is that the brain is not fully developed.

#### 3.4.1- Children and perception

A child's functioning of the five senses (sight, sound, smell, touch and taste) is at the same level as adults, so the basis for perception is present. From the age of four, children are capable of giving a factual description of their perceptions, however, they are unable to interpret them and cannot link conclusions. Thus, while an accurate explanation about factual events is possible, there are restrictions.

Young children have difficulties with complex events. If they observe an event, irrelevant details can attract their attention, thus they cannot really pay attention to the main aspects of the event. This is not exclusive to young children as older children and adults can also be distracted. However, older children and adults are more capable of discerning irrelevant from relevant



information. Younger children are less able to distinguish because they are not good at scanning information. They do not look systematically at something.

All children scan a picture, for example from top to bottom, but children under the age of five begin at the central point of the picture, so that they miss the information above this point. They also have the tendency to stop scanning before they have collected all the information. As an event is less complex and concerns familiar people in a familiar environment, the chance is greater that a young child (four to seven years old) will observe this with sufficient accuracy. Children under five are not able to compare the characteristics of one person (e.g. a suspect) with those of another, familiar person. So there is little point in asking a question such as “*Was he taller or shorter than daddy?*” It is better to ask for a description of the person in question.

Until the age of seven or eight, children have difficulty with the concept of time, i.e. hours, days, weeks and months. However, they are able to recall events around their normal daily routine, noting for example, “*when my favourite TV programme was on*” or “*when I was walking to school*”. If no such reference points are available, it is quite difficult for children to give an indication of time. An incorrect indication of time in an interview with a child does not necessarily mean the entire statement is incorrect.

### 3.4.2- Language development

The simple fact that children can talk does not mean that they know the meaning of all the words they use. It will take at least 10 years before a child has mastered the language as well as an adult and, until then, the chance of misunderstandings is great.

Between birth and the age of 10, language acquisition takes place. A baby is still immature. A two-and-a-half year old child can rarely express him/herself in such a way that whatever he/she says is univocally interpretable. A five-year-old generally talks in an understandable way, and at the age of 10 a child has reached the level of an adult. Various factors can cause a breakdown in communication: poor pronunciation, limited vocabulary, no abstraction skills, etc..

As previously mentioned, when a child uses a word, it does not necessarily mean that the child fully understands the word. It could be that a child roughly knows what a doctor and a human is, but gives a negative answer to the question “*Have you seen a human?*” The child has seen a doctor pass by and that is something different than a human in the eyes of a child. The child does not lie, but answers the question truthfully. This limited language skill, however, leads to an incorrect statement.

Children say “*in front of the house*”, while they mean “*behind the house*”, or talk about *more* if they mean *less*. They do not know the difference between *asking* and *telling* and do not know the distinction in the meaning of words like *lie* and *mistake*. Children, under the age of four, have difficulty with objects, persons, location, amounts and characteristics. A *tent* is called a *house*, a *train* is called a *car*, a *nephew* is a *niece*, *left* is *right* and *on top* is confused with *underneath*. A *cellar* is sometimes called an *attic* and also *warm* and *cold* are not univocal terms for this age group.

When children reach the age of five, many of the previously mentioned terms will become clear. Some terms, however, will remain problematic at least until the age of eight, especially amounts, times and abstract concepts: *sometimes* is confused with *very often*, *yesterday* with *tomorrow*, *earlier* with *later*, *partially* with *entirely* and *always* with *now and then*.

The reason why children confuse things is because they use words on the basis of what they know about daily life at a certain point in time. Many meanings, however, only become really clear on the basis of experience, which they do not sufficiently have at that moment. Children, who can count well, will not naturally be able to indicate how many times something has happened. Because events are less fixed in time the answer to “*how many times?*” is unlikely to result in a reliable response. For example, a child who can count to 15, will answer to the question “*How many times did that man do that to you?*” with a number below 15, irrelevant of the number of times it actually happened. Children have to learn how to express themselves in an understandable way, but they also have to learn to understand what other people are saying. The way to do this is to learn to master the language actively as well as passively. The latter is

important to be able to understand what adults are saying. If the passive mastery of the language is insufficient, they will misunderstand adults.

When adults are communicating, assumptions may be made at the beginning of the conversation. The assumption may be that if someone uses a word, they also understand the meaning of it. They assume the listener can understand and handle complicated questions and then assume they can answer them. These assumptions cannot be generalized when communicating with children. It is best for adults, who often talk with children, not to use these assumptions.

### 3.4.3- Memory

Human memory is a huge storage place for information and consists of three parts:

Sensory – registers sights and sounds represented directly but that are not stored for long. For example, if one looks around and then closes one's eyes, an image will probably persist for three to five seconds, after which it decays or disappears unless mental strategies are used to preserve it.

Short term – the conscious part of the mental system, which actively works on a limited piece of information. It is the short term working memory that enables humans to remember information. If information in human heads is organized, then it stands a good chance of being retained in long term memory.

Long term – limitless storage, holds information permanently according to categories. Here information can be filed and retrieved using the same network of associations used to store it in the first place.

- Process of Memory

- Encoding – registering a memory
- Storing – committing to short or long term memory
- Retrieval – recalling from the past

In order to remember information, people use various memory strategies. Possibly the simplest and best known method is to tie a knot in a handkerchief. Repetition is an effective means that stimulates the storage of information. If one repeats something often enough, the chance is bigger that one can reproduce the information. Using visuals can also help storing and recovering information. This way, a person, whose name should be remembered, can be linked to a place that is connected with this name, e.g. thinking of a field of grass in connection with the name Greenfield. Another popular memory strategy is clustering: grouping the subjects to be remembered around a particular central theme. It helps storing as well as recovering information.

- Children's Memory

As a rule, children are not as good at storing and reproducing information as adults. Especially for children younger than eight, it is more difficult to store information than it is for older children and adults. They have difficulty in transferring data from the working memory to the long term memory. It is also difficult for them to recover information in the long term memory and bring it back to the working memory. This is because young children need much more space for the basic action of processing information and therefore there is less space for keeping and manipulating information. As these basic processes become more automatic, space is created and their memories can be used optimally.

Another reason why children are less skilful in recovering information is they do not yet know memory aids, such as repetition and clustering, and do not know many search strategies. Children are also restricted in their verbal skills. It is important to know that children often know more than they spontaneously communicate, because of their limited capacity to

use memory strategies. Children can have a less equipped memory, but this does not mean they do not store anything in their memory.

From the age of two, a child memorizes few detailed images of what he/she has experienced. Children should be able to act as witnesses from this moment on, if it were not that it is very difficult for them to spontaneously talk about something that has happened. At the age of four, it becomes possible for a child to remember events in the form of words and link conclusions to them. When they reach the age of six or seven, it becomes easier for them to put things in order. From then on, they are able to cluster things that are in some way linked and store this under one name. They realize that a pair of trousers, a coat, a pullover and a shirt all belong in the same category of clothing.

So, as children get older, they make better use of their memories. This makes them viable as witnesses, but there are also pitfalls. It is not only the way in which they remember information that changes, but it is also possible to adapt previous observations. Thinking about things that have happened in the past can sometimes increase the accuracy of memories.

Once information has been stored, it can be recovered in three ways: recognition, reconstruction or active thinking. Recognition is the simplest form of remembering. A comparison is sufficient to activate the memory track. Very young children are capable of doing this. Young children are also fairly capable of making a reconstruction; limited language development does not have to be a problem, as a reconstruction does not require any verbal skills. By acting out what has happened using dolls, a reasonable image can be obtained of what happened. However, a reconstruction alone is not sufficient for a testimony. It is necessary to obtain information from the long term memory which is the most complex form of remembering.

On the basis of questions, the victim/witness searches his/her memory for what has been stored about the event. Then, he/she should be able to retell it. Young children are not so good at doing this. Although children spontaneously tell fewer details than adults, they also make fewer mistakes. The most important aspects will be remembered, but details can be forgotten or will not be told. Children tend to miss things out rather than make them up. Like adults, children can remember the meaning of sentences they have heard, but not the exact phrasing.

In general, the younger the child, the more difficult it is to access their memories.

#### Two-and-a-half to three years

Children can accurately report personal experiences, especially if they have adult assistance. The limit for autobiographical memory is around this age. Developmentally, a small child, three to four years old, is totally dependent on adult support.

#### Three to six years

Between three and six years of age, a child is often helped by having access to toys and drawing materials. A child of this age can have his/her memory distorted by suggestibility. A child of this age is capable of pretend play and problem solving. A child can think of only one thing at a time, and draws conclusions from associations, for example, the biggest is the oldest. At age six, the normally developed child has a vocabulary of around 15,000 words.

From age two to seven, children understand the world in an intuitive way. Children are conscious of the phenomena, but do not see all connections, especially the cause-effect connections. Children at this age aim especially at an existing situation and find it hard to focus on process. They do not see how something was realized. Even when seeing a process, they see the sequence of conditions rather than the transition. This can, to a certain extent, be compared with separate pictures of a film, one can see if a film is played in slow motion. This is called pre-operational thinking. Children in this stage have got the urge to move from facts to conclusions, taking big steps.

#### Seven to 11 years

From the age of seven, a child starts to see more and more cohesion between the phenomena. He/she can make a better distinction among the separate phenomena and is more and more able to link them with each other. This leads to insights like: "*What happens if you do what?*" At this stage, they take smaller, reversible steps when drawing conclusions from facts. This is

called the stage of concrete operations and continues at least until the age of 11. The child understands categories, and can sort things, such as bigger, smaller, best, worst, and is capable of understanding concepts, such as children's rights. The autobiographic memory is developing, and begins to become independent of adult support. However, if memories are not rehearsed they tend to fade.

#### 12 years and older

Depending on experience and situations, a child may be either more or less mature than his/her peers. There are also cultural differences in the kind of behaviour that is expected of a child of a particular age.

In this respect, there is also the possibility of misinterpretation of behaviour in the interview situation. One also has to bear in mind that a child's outward behaviour and level of understanding may be in contradiction with each other. One example could be an asylum seeking unaccompanied child who may try to present a more mature role than befits his/her age. This may be due to the heavy responsibility that has been placed on his/her shoulders by family. As a result, the child feels that he/she has to manage the task given by his/her parents and will try to present a brave face, even though he/she may not totally grasp the reasons for having been sent away from his/her home country and is experiencing insecurity.

Child victims/witnesses will process information mostly at the pre-operational or concrete operational level. This should be taken into account during an interview by asking concrete questions. An abstract question, such as "*What would happen if...?*" is not desirable. Examples of concrete questions include, "*What did you see?*", "*What did you do?*", "*What was in the room?*" and "*In which room of the house were you?*".

The presence of an adult outside the interview room with whom the child has an attachment can have a positive effect on the confidence of the child and will assist in the reduction of stress and trauma caused by the interview. However, these benefits must be balanced against the potential for the adult to become a suspect in criminal matters. Moreover, it is vital that the interviewer avoids questions, which could influence the child's story.

#### 3.4.4- Suggestibility

Suggestibility is referred to as the degree to which a child's recollection of an incident can be influenced by a range of factors, both social and psychological. There are many situations where an interviewer can, by the use of leading questions or communicating their own expectations and stereotypes, influence what the child says. This may alter the child's report, irrespective of what the child remembers. The child's desire to please the interviewer outweighs the need to be accurately heard.

Some of the factors known to affect children's suggestibility include:

Age – Very young children are more suggestible than adults and older children because of a smaller knowledge base, limited language and source monitoring skills, coupled with an increased desire to please the authoritative adult.

Delay from the time of the incident to the time of the interview – As details of the actual event diminish over time, the likelihood of giving misinformation increases.

Status of the interviewer – Experienced, knowledgeable and authoritative interviewers are able to sway children more easily than adults.

Interviewer bias – Interviewers can inadvertently shape the child's account in accordance with their own preconceptions.

Repeated interviewing – Asking a child to repeatedly think about a fictional or imaginary event can lead the child to believe this event really did happen. Continually repeating the same question in an interview can lead the child to think that their first answer was wrong and that they should change it.

**Stereotyping** – A negative stereotype of a person or incident can lead a child to give answers consistent with that stereotype, e.g. suggesting a person is bad can cause the child to report that that person has lied or cheated when he/she had not done these things.

**Peer pressure** – To make their account tally up with that of a peer, a child may report incorrect information.

**Reinforcing certain answers** – Through unintentional bribes and rewards, the child's answer can be shaped, e.g. "*Only one more question and then we'll stop*" or "*You're such a good boy for saying that*".

**Type of question** – Specific questions, such as "*What colour was her hat?*" have a greater chance of eliciting an incorrect answer than general ones, such as, "*What did she look like?*". This may be because the information in the specific question may not be correct, it assumes that the lady had a hat and the child should know the colour of it. Leading questions such as, "*She was wearing a hat, wasn't she?*", tell the child the type of information the interviewer wants. The interviewer's tone, phrasing or manner can also indicate that he/she wants a particular answer.

**Visualization and socio-dramatic play** – False disclosures of child sexual abuse can occur in response to techniques involving fantasy, visualization and re-enactment during play. Repeated visualization can confuse the child, and an imagined event can become something that actually happened.

Children are more suggestible than adults, but suggestibility is a matter of degree only. No age group, including adults, are immune to suggestion and there is a large difference in the extent to which an individual child may resist suggestions. A child can give very accurate information if interviewed appropriately.

## 4- THE EVIDENTIAL INTERVIEW

### 4.1- Introduction

There is a difference between interviewing children for evidential purposes and those conducted for therapeutic reasons.<sup>263</sup> The purpose of the evidential interview is to gather evidence for use in legal proceedings, immigration matters, child protection issues and/or the prosecution of offenders. Criminal justice systems require the best possible evidence and, for the interview of a child to stand up to that test, evidence must be obtained in a way that is fair, legal and in the child's best interests. It must be seen that the child gave his/her account freely and under no influence or undue pressure from the interviewer.



The motto of any interview should be, "Children are the experts", they are the only ones who know what they have experienced. This is an evidential interview and not an interrogation or therapeutic intervention. The aim of the interview is to obtain a truthful and accurate account of what the child has been victim of or witness to.

### 4.2- Definitions of types of questions

There are four main types of questions, which can be formulated in a direct or indirect manner:

- Open
- Closed Specific
- Closed Alternative
- Leading Questions.

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<sup>263</sup> Please see Chapter V- Cooperation between law enforcement authorities and NGOs/social service providers, section 4.2- Minors as witnesses.

### Open questions

The following are examples of words used in open questions; however children may not fully understand them:

- Tell me
- Explain to me
- Describe to me.

Open questions lead into the specific questions, which begin with the following: who, what, where, when, which and how. A question starting with “*why*” may be seen as demanding, challenging or blaming by a child. The aim is to enable the child to recount as much detail as possible, both to flesh out the account they have given in an earlier statement in as precise terms as possible, and to provide contextual detail, which will lend credibility to the account.

While the child’s free narrative should not be interrupted, it is functional to ask questions topic by topic. The kinds of questions to ask are: *Where did this happen? When? What day? What time? Who was there? What could you see? What could you hear? What could you smell? What did it taste like? Was this the first time? Was anybody else there? What were you wearing?*

### Closed specific

This type of question usually invites a single, specific answer:

Q – “*What time of day did this happen?*”

A – “*In the morning.*”

### Closed alternative

This type of question invites one answer out of a given choice:

e.g. “*What colour was the car: silver, grey or another colour?*”

### Leading

Leading questions can mislead the child and plant false memory. It is imperative that the interviewer avoids using leading questions. These questions have no place in evidential interviewing. As part of an investigation, an example of a leading question would be, “*Did your Granddad touch you where you didn't want him to?*” However, to make things clearer, this question would not be a leading one if the child had already mentioned being touched by his/her granddad prior to the question being asked. More importantly, if leading questions are asked, the interviewer runs the risk of having the question and answer deleted from the interview if the case is presented in court.

## 4.3- Interviewing phases

There is much published research and professional experience to suggest that, when interviewing children, a structured, phased approach should be taken. This approach consists of four main phases:

- Introduction/Rapport
- Free narrative
- Clarification/Questioning
- Closing.

By using this approach it may be possible to obtain evidence from the child in a manner that is compatible with the operation of human memory and the way it develops through childhood. Each phase is equally important. Guidance on the content of each phase follows.



#### 4.3.1- Introduction/Rapport

The rapport phase begins with the day, date, time and location of the interview. Introductions of everyone in the room follow and should be done individually. Each person, including the child, is to give his/her full name. The interviewer(s) (hereafter interviewer)<sup>264</sup> should also explain their role. It is important that the interviewer tells the child what he/she can call him/her and the interviewer establishes what the child wants to be called during the interview. This is significant as, for some children, their name is all they own.

The camera/equipment, together with any recording devices such as microphones, should be explicitly pointed out to the child and the purpose of the recording stated.

The next stage of the introduction is to engage the child in conversation around neutral topics. This could be hobbies, interests, holidays, pets or anything the child is able to speak about. Care must be taken not to introduce any person, family member, location, etc. that relates to the offences. The aim of this conversation is to help settle the child as well as the interviewer. Questions should not be asked about every day routines, such as what they had for breakfast on their route to school, because these are not unique experiences and would not be remembered in full detail, but as repetitive activities that are recalled like a script.<sup>265</sup>

It is important that a question-answer situation does not emerge. The interviewer should begin practicing how to deal with pauses by letting the child stop talking and think, perhaps continuing with open questions, such as “*and then?*” or “*what else?*”.

Do not invest in building rapport if the child only wants to talk and leave, be flexible about the procedure. Be sensitive to what the child does and does not understand. Adapt the interview to the degree of concentration, the younger the child, the shorter the attention span and concentration. However, it is important to let the child talk about other experiences that are not connected to the issue at stake so that an impression of their language and narrative skills can be gained in case psychological expertise is called for at a later point. There is no time limit applied to this stage, it is the decision of the interviewer when to move on.



#### Groundrules about communication

Once the interviewer decides to move on, ground rules about the communication during the interview should be explained:

- If the child does not know the answer to a question asked by the interviewer it is okay to say so. The interviewer should tell the child that he/she does not want the child to make up an answer.
- If the child does not understand a question that is asked, he/she is to tell the interviewer, who will try to put it in different words.
- Tell the child that if the interviewer repeats a question it is because he/she forgot or did not understand the child's answer.
- Tell the child that if the interviewer makes a mistake he/she wants the child to tell him/her.
- Explain to the child that the interviewer does not know what happened and is relying on the child's account.

#### Understanding of the concept of “Truth”

It is recommended that the child's comprehension of the concept of truth is established at this early stage of the interview. It is equally important that the child does not think that the interviewer is questioning his/her commitment to telling the truth about what has or has not happened. This stage can provide non-threatening opportunities for asking the child about their

<sup>264</sup> There may be one or two interviewers in the room, however, for language reasons, the singular of *interviewer* will be used in this section.

<sup>265</sup> Please see also 4.3.2- Free Narrative.

understanding of truth. This can be achieved in a non-intrusive, non-challenging way. The interviewer can say that within the interview room it is very important for both the interviewer and the child to tell the truth.

#### 4.3.2- Free Narrative

This is the child's turn to speak. The child should be encouraged to recount, in his/her own words and at his/her own pace, their account of relevant events. Evidentially, this is the most important phase of the interview and usually provides the most accurate information. The interviewer should be aware that he/she may feel out of control during this phase. Yet, the interviewer's key role is in providing the sense of emotional and physical space for the child to feel confident to speak about the allegations.



The interviewer's body language is very important during this phase. Sitting back and visually looking open to receiving information gives the child a clear message that the interviewer is there to hear what he/she has to say. When the child speaks the interviewer can, by changing position, demonstrate to the child that he/she is listening particularly carefully to what the child is saying.

The major problem is often how to help the child relate the incident or incidents that occasioned the interview, without informing them specifically what to say. The interviewer may, for instance, start with: *"Tell me why you came to see me today"* or *"Mr or Mrs X told me you spoke with him/her, tell me what you talked about"* or *"Tell me why Mr or Mrs X brought you here today"*.

It is important to encourage the child to provide a story from which the initial conversation can then proceed; *"Tell me more about what you said before"* or *"You said before that you were in the kitchen, tell me all about it"*.

If the child starts to disclose spontaneously, the interviewer should adopt a posture of active listening. This is a way of showing the child that the interviewer has heard what they have said, whilst keeping the influence of the interviewer to a minimum. The interviewer should not interrupt, but allow the child to give the account in their chosen way, allowing for silences and pauses. The temptation to interrupt the child to clarify dates, times and places should be avoided. The child will probably not recall what has happened in a chronological account. The interviewer should remember the points, which require clarification and return to them at a later stage of the interview.

If the interviewer has the need to interrupt or to ask a question, consider if the question really has to be asked at this point or whether it could wait; the interviewer might want to make a note of it. Note taking during the interview does not bother children, if they had been told in advance that this might happen. If the interviewer decides that the question is necessary, he/she should think about how to word it in the simplest, most age-appropriate and least suggestive terms. Experience has shown that, while interviewers pause as they try to sort out these questions in their minds, most children tend to continue talking.

The interviewer should avoid excessive praise and encouragement as this may indicate that the interviewer does not have an open mind about the allegations. Non-verbal responses are extremely important. Encourage the child to continue talking by adding neutral, open questions and inputs such as *"and then"*, *"hmmm"* or *"go on"*. Once the child has come to the end of the incident(s) they are recalling, the interviewer should move on to the next phase of the interview.

If it becomes obvious to the interviewer that the child is finding disclosure too painful and diverts for a while to a less painful subject, the interviewer should allow the child to dip in and out of the difficult areas, even assisting the child by a brief return to the introduction/rapport phase until the child is able to go back to the subject of the interview. The interviewer needs to retain in his/her own mind the point at which the child left the subject and re-focus the child to that point when appropriate.

If the child does not disclose spontaneously ask indirect questions. The interviewer can ask reminding questions about persons in the environment of the child in order to direct the conversation back to the suspect. Once the child names the suspect, the interviewer can ask questions about the relationship between the child and the suspect and other persons, for

example, what does the child like or dislike about the suspect, or what does the child like or dislike doing with these persons. These indirect questions may help the child to disclose, if there is anything to disclose.

If this indirect route does not lead to a disclosure, the final option is to confront the child with information from the allegation, without mentioning the source, the name of the suspect or the suspicious acts. If the child then discloses, the interviewer should return to the free narrative for more detail. This in turn will move on to the questioning phase.

#### 4.3.3- Clarification/Questioning

During this phase of the interview, as all others, it is advisable to keep questions as short and simple as possible. The younger the child, the shorter and more simply phrased the question should be. Interviewers should avoid complex questions with witnesses of all ages, such as those involving double negatives and multiple questions. Questions should not involve vocabulary that the child is likely to be unfamiliar with. The information requested in questions should always take account of the child's stage of development.

In order to take into account the impact of memory processes, the questions asked in the course of the investigation should be asked in the same order in which the events of the story were told.

1) Remember the ground rules. It may be advisable to remind the child about some of the ground rules already mentioned in the introduction rapport stage. It is the task of the interviewer to help the child disclose and tell his/her own true story that consists of factual and detailed information. To achieve this, the interviewer must be careful not to influence the child or his/her story. The interviewer must be aware of the things not to do.

2) Begin with open questions. This type of question should be widely employed throughout the interview, and can lead onto specific questions. Open questions serve to ask, in a non-suggestive way, for extension or clarification of information previously supplied by the witness. As specific questions vary in their degree of explicitness, it is best to begin with the least explicit, or most open, version of the question. These questions will usually begin with the words: who, what, where or when. *Why* questions should be avoided because the witness might infer blame from them.

3) Terminology. Words that have important implications for the issue at stake, including names, places and terms referring to family relationships, must be defined since children, more so younger children, often tend to use words differently than adults do. Vocabulary can be very important in dealing with allegations of a sexual nature. Children use terms, which are specific to themselves or their family. Some terms may be vague or unknown to the interviewer, so it is advisable for the interviewer to make sure they understand what the child means. The use of diagrams or toys may be helpful, although visual aids should be used sparingly and exclusively to clarify a statement. Use "ordinary" dolls, not the anatomically correct type as they are too suggestive. Do not ask the child to point to their own bodies to explain what or where they mean. Even if a child uses the correct adult terminology it is advisable to check out their understanding.

4) Closed alternative question. If a specific question proves unproductive, it may be necessary to use a closed alternative question. A closed alternative question invites the child to choose between fixed choices. The drawback of using these questions is that the child might respond with a choice without enlarging on their answer, or that he/she might be tempted to guess in the absence of a genuine memory.

5) Leading questions. A leading question is one that implies the answer or assumes facts that are likely to be in dispute and should only be used as a last resort. In the event of the child responding to a leading question with relevant information that has not been led by the question, revert to open or specific questions.

## Difficult questions/resistance

There are a number of statements made or questions asked by children, which have been repeatedly encountered during evidential interviews. Interviewers should practice their responses to such questions so that they are not fazed by them when and if they arise. Children may block the progress of the interview by introducing these; they cannot be avoided or ignored by the interviewer. The following are a few examples of possible blocking questions and statements:

- *It's a secret and I can't tell you.*
- *What do you think I should have done?*
- *My mum told me not to tell you.*
- *He said I'll go to prison.*
- *Can I come and live with you?*
- *Are you going to break my family up?*
- *Promise you won't tell anyone else?*
- *How could I stop her she's a grown up?*
- *Am I going to be taken away?*
- *Who is going to look after me now?*



When these statements or questions are avoided, and the interviewer moves on with the interview, the child is likely to return to the same statement or phrase again and again until he/she gets a response. The child must receive an adequate and honest response without false reassurances. The interviewer may well not be in a position to answer the question when it is asked, but he/she can emphasize to the child that they will do everything they can to make the child safe and keep them informed.

If a child shows any form of resistance, crying, saying they don't feel like talking or not wanting to tell the whole story, the interviewer first has to try and find out why the child is reacting this way. The interviewer should demonstrate his/her interest by asking, for example "What would happen if you tell me?" A short break might also be helpful. If the child remains resistant, the interviewer should not put pressure on the child, but be patient, accept his/her resistance and consider ending the interview. Always keep in mind that making a statement should be voluntary. Pressuring the child is never in the best interests of either the child or the case.

## Changing topics

Changing topics prematurely, before the child has fully exhausted all the detail he/she can or wishes to give, is distracting and counter-productive. The interviewer should wait until a more appropriate time in the interview before asking questions about another topic. Finish each topic before moving on. If something comes to mind during one topic that is not immediately relevant, a co-interviewer or observer should write it down in order that it can be raised later and is not forgotten.

### 4.3.4- Closing

In order to give the child a chance to correct any misunderstandings, the interviewer should re-tell the child's story in exactly the same order of events as the child has just told it. It is important that recapitulations are based on the child's own story, told in their own words. For example, "*You said... (followed by a summary)*" or "*Have I understood your story correctly... (followed by a summary)*". The child should be told it is okay to correct the interviewer if he/she gets anything wrong. Once the facts have been clarified, before the end of the interview, the interviewer should confer with any second interviewer to ascertain if there are any areas or questions that still need to be covered.

Before the interview can move on to a neutral topic, the child should be given a further opportunity to make comments or ask questions. Older children frequently ask questions like, *“What’s going to happen to the video? Who is going to get to see it?”* Under no circumstances should the child be lied to in an attempt to protect them. It is better for the interviewer to say that he/she does not know who the film is going to be shown to, but that it will be treated with the utmost care and will only be shown to people who have the right to see it.

The child should be thanked for his/her time and effort. The interviewer should give the child the opportunity to ask him/her any questions. This reverse role when the child can ask questions to the interviewer can be a good way of putting the child at ease. If appropriate, the interviewer should then explain what is going to happen next. This should be done without making promises as to the course of the investigation and the child’s future. To help the child make a positive transition back into everyday life, the interviewer should then return to rapport or other neutral topics. Before leaving the room the interviewer should state the time.



#### DO

- Assume a neutral attitude when conversing: The task of the interviewer is to obtain authentic stories. The person who converses with the child must not create an accusing, intimidating or patronizing atmosphere, regardless of whether or not the child's story is credible.
- Avoid moralizing statements: Individuals are all products of cultural beliefs and often have a clear concept of what is right or wrong. Often, an individual’s values and opinions are expressed unconsciously. However, when conducting an interview, these basic moral concepts are of no consequence. Examples of questions reflecting the interviewer’s own opinion include, *“Did you do something to defend yourself against him?”* or *“Did you yourself in any way encourage him to hug you...?”*
- Avoid guilt: Expressions like those above may make the child feel guilt. He/she may interpret the interviewer's words as if his/her own behaviour contributed to what happened.
- Avoid physical contact: There may occasionally be situations where the interviewer feels sorry for the child and would like to comfort him/her, however, this is not recommendable. If the child was exposed to abuse, he/she may interpret such a gesture as threat or force. If the child initiates a contact with the interviewer, the latter should not reject the child but show the limits necessary.
- Maintain an open mind: The interviewer must keep his/her mind open regarding the hypotheses of the suspects or of the alleged crime. During the preparation, the interviewer has to develop the main hypothesis and to consciously formulate alternative hypotheses. It is important during the interview to permanently challenge whether the questions asked consider the alternative and the main hypotheses equally. Pauses can also be used for this purpose.
- Avoid prejudices: The interviewer should also avoid holding prejudice against ethnic communities and countries of origin.



#### DO NOT

- Interview a child multiple times
- Interview a child who is not briefed before the start
- Interview a child in a noisy or child unfriendly surroundings
- Wear a uniform during the interview (as this stresses the imbalance of power)
- Interview a child with more than two people present
- Interrupt the child whilst he/she is disclosing
- Ask leading questions
- Ask *“why”* questions (this can make the child feel guilty)

- Ask more than one question at the same time (may confuse the child)
- Ask developmentally inappropriate questions
- Ask multiple questions at the same time
- Repeat the same questions (the child might infer that their initial response was incorrect)
- Use police jargon
- Put pressure on the child, by being impatient and pushy
- Compliment a child for recalling case-information
- Show your disbelief
- Judge (positively or negatively)
- Topic-hop (i.e. change rapidly from one topic to another and back again).

#### 4.4- Aide memoir relating to trafficking cases

It will be beneficial to the interviewers if they apprise themselves of the required points to cover when interviewing a child victim of trafficking.

An aide memoir is a helpful tool, but interviewers must keep in mind that some questions will not be relevant and others will need to be adapted to a language appropriate to the child. This aide memoir also needs to be adapted to the various forms of exploitation of which the children might be victims. This process needs to be undertaken on each and every occasion a child is going to be interviewed. No two interviews are the same as every child is an individual and needs to be treated as such. A trained interviewer should know which questions need to be asked, and the way he/she needs to ask them.<sup>266</sup>

#### 4.5- Evaluation and report

In evaluating accounts, interviewers should not rely upon cues from the child's behaviour as guides to the reliability or otherwise of children's statements.

Interviewers should consider:

- what information has been obtained;
- how the account provided fits in with other available evidence;
- whether any action needs to be taken;
- what further enquiries need to be made;
- the interviewer's own performance, including how his/her skills could be developed.

The reporting requirements may vary depending on the legislation.

#### Reporting in Switzerland and the Netherlands

In some parts of Switzerland, the video together with a short report containing a summary of the contents and indication of the relevant parts of the film are sent to the authorities that commissioned the evidential interview. A verbatim report must be compiled for the psychological assessment.

The second interviewer (called "specialist" in Switzerland) is obliged to prepare a further report that focuses in particular on whether the child's welfare was taken into consideration during the interview and whether the child appeared to be traumatized by the interview situation. One point in particular that has changed since the beginning of video-recording of interviews of



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<sup>266</sup> Please see Chapter III- Investigative Methods, 3.4.2- Reactive investigative techniques.

children in these parts of Switzerland a few years ago is that minutes are no longer taken during the interview. This was a procedure that had had a very negative impact on the course of the interview because it irritated and annoyed both the children and the interviewers.

In the Dutch legal system, child witnesses between four and 12 years of age, and the mentally handicapped (children as well as adults), do not have to be examined in court, but attend a taped evidential interview. The witness is interviewed by the police and all other players in the legal process have got to rely on this evidence. The written transcript of the interview is accepted by the judge as evidence. The tape is used as supporting evidence, and can be shown to the prosecutor, the defence-lawyer or to the judge in court.

#### 4.6- Further interviews

The key aim of video recording evidential interviews is to reduce the number of times in which children need to recount what has happened and avoid the child's presence in court. Good, pre-interview planning will often ensure that all the salient points are covered in one interview. It may be necessary in some circumstances to conduct an additional interview. Such circumstances include:

- where children tell a third party that they have new information, which they did not share in the initial interview but would like to share now;
- where the initial interview opens up new lines of enquiry or wider allegations that could not be satisfactorily explored within the time available;
- where in the preparation of his/her defence, an accused raises matters not covered in the initial interview;
- where significant new information emerges from other witnesses or sources.

### 5- VICTIM/WITNESS PROTECTION<sup>267</sup>

#### 5.1- Risk assessment

A full risk assessment, considering the safety of the child, should be completed before putting a strategy in place for the child. This risk assessment is ongoing, continually re-visited and updated as the investigation and legal proceedings progress. It should be understood that child victims of trafficking will be at continual risk of reprisals from those involved in the actual trafficking. The responsibility for the safety of the child, and in some cases their family or loved ones, rests with the law enforcement agency involved in the investigation.<sup>268</sup>

#### 5.2- Cooperation

Where a child is to be repatriated to their country of origin, cooperation should be sought from law enforcement agencies, NGO's, social services and any other partner agencies between the countries of destination and origin. Interagency cooperation is important for any protection measures to be successful. A close cooperation with the immigration office is essential.<sup>269</sup>

#### 5.3- Protective measures

If the child is to be involved in giving evidence at any criminal justice proceedings, consideration should be given to their protection prior to, during and after they have given evidence. For this purpose, a Victim/Witness Protection Group should be established;

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<sup>267</sup> Please see Chapter V- Cooperation between law enforcement authorities and NGOs/social service providers, D- Assistance in countries of origin in preparation of and upon return, 4.4- Witness protection.

<sup>268</sup> Please see Chapter III- Investigative Methods, 2- Risk Assessment.

<sup>269</sup> Please see Chapter V- Cooperation between Law Enforcement Authorities and NGOs/social Service Providers, section D- Assistance in countries of origin in preparation of and upon return.

this Group should be composed of all relevant law enforcement authorities as well as NGOs/social service providers and develop and implement special protective steps.<sup>270</sup>

Such steps should be taken to prevent any publication of the identity of the child or any information that may lead to their location. If legislation allows, the child could be provided with a protected identity or pseudonym. The child should be informed that this pseudonym will protect him/her from the media or any other persons. The use of a video link from a separate room in the court building when giving evidence negates the necessity of the child actually have to step inside the court room to face the suspect.<sup>271</sup>

## 6- TRAINING OF ALL ACTORS INVOLVED

Training for law enforcement officers charged with interviewing children is essential. The evidential interview should only be conducted by an evidential interviewer who has been specifically selected and trained for this purpose.

Ongoing training and supervision is also suggested. Interviewers should complete regular assessment to maintain a high quality of interview. If a trained interviewer does not use his/her skills for three months or more, refresher training should be considered.

### 6.1- Profiles of law enforcement interviewers

Suggested requirements for candidates may be as follows:

- Self-motivation to specialize in interviewing children and adolescents;
- Enjoys working with children;
- Motivation and willingness to change one's own attitudes and behaviour;
- Willingness to reflect on one's feelings;
- Ability to analyze situations in a critical manner;
- Ability to collaborate in a team;
- Willingness to work in an interdisciplinary team;
- Effective communication and conversation skills.

The following qualities would be assets:

- Self awareness
- Longer term commitment to interviewing child witnesses
- Experience in all aspects of the criminal and civil law relating to children and child trafficking legislation
- Long-term expertise as an investigator or similar qualifications.

Ideally, an interviewer should have knowledge of child psychology, with special consideration of themes relevant to interviews with children. There should also be a special focus on cognition, perception, language and memory. Interviewers should have an understanding of the basic principles of psychological assessment in evidential interviews and understand how important it is that a child is free to speak.

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<sup>270</sup> Stability Pact, 2003: 4-6. The Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe implemented a Working Group Meeting on "Victim/Witness Protection" clearly recommending: "Special mechanisms and measures to protect victims of trafficking when they act as witnesses should be established and implemented."

<sup>271</sup> Please see Chapter III- Investigative Methods 3.4.3- Protection of the child's identity and protection programmes.

## 6.2- Training content

The training should be practical and interactive. Suggestions for the content of the training include:

- precise definition and clear understanding of the professional role in the multi-agency cooperation;
- role plays and mock interviews;
- interview techniques, coupled with interview mistakes and traps;
- video analysis for self-correction and coaching;
- written analysis of an interview based on what had been learnt;
- watching and analyzing an excerpt of an interview and answering questions.

There is a real necessity to raise awareness of professionals involved in interviewing children to the plight of children who may be victims of child trafficking.

## 4.5- Evaluation and report

In evaluating accounts, interviewers should not rely upon cues from the child's behaviour as guides to the reliability or otherwise of children's statements.

Interviewers should consider:

- what information has been obtained;
- how the account provided fits in with other available evidence;
- whether any action needs to be taken;
- what further enquiries need to be made;
- the interviewer's own performance, including how his/her skills could be developed.

The reporting requirements may vary depending on the legislation.



### Training programmes undertaken by Nobody's Children Foundation in Poland

In cooperation with the Ministry of Justice, Nobody's Children Foundation conducted a campaign: "Child: Witness with Special Needs". The campaign, together with several other programmes, aimed at supporting child victims of crime who participate in legal procedures.

The campaign was addressed to professionals – judges, prosecutors, police officers and psychologists acting as court experts – who participate in legal interventions or help children throughout the process. It aimed at increasing the sensitivity of these professionals to the special needs of children in criminal proceedings and improving their skills and competence in relation to interviewing children.

Training programmes were conducted for these professional groups, organized in collaboration with the Ministry of Justice. Professionals participating in such legal procedures also received campaign publications, which presented research and theory concerning the psychological functioning of child victims and child witnesses, systemic solutions designed and applied in other countries to help such children, as well as Polish experiences in this field. Books, brochures and the special edition of the Foundation's quarterly publication, "Abused Child: Theory, Research, and Practice" were distributed during training sessions and conferences and sent to relevant law enforcement institutions.



### Pilot national training in Switzerland

In November 2001, a course for prospective instructors for seminars on conducting investigations was piloted in the Canton of Bern as an integral part of a project on child

protection. The first course began in April 2002. It lasted a total of six days of instruction offered over a period of nine months.

Based on the above-mentioned course, as well as other initiatives developed in Switzerland, a first pilot course was initiated in September 2004. The first group of graduates was certified in June 2005.

From the very beginning, the basic idea of the pilot course was to have a theoretical and a practical part. Due to the fact that the course was designed to provide further training to professionals, video-recorded interviews are discussed in small groups in coaching sessions. The course runs over a period of 10 months' time. Participants are required to pass a written and an oral end-of-course examination to qualify for certification. The course is currently being evaluated. Although certain changes are being discussed, the basic concept of the course is considered to be relevant and very useful.

## 7- RECOMMENDATIONS

All the principles stated in the introduction to this chapter are supported by all contributing experts. As these principles are not always implemented, they should also be seen as recommendations. Experts also recognized the already identified European and international good practices and recommendations (e.g. Interpol Manual for Investigators of child sexual abuse) and stressed the necessity of implementing these. In addition, the contributing experts identified the following recommendations:

- Resources must be allocated in order to implement the identified good practices in interviewing child victims of trafficking.
- Identification of children as victims of trafficking needs to be improved, which requires political will as well as the awareness of police officers at first contact/intake.
- Develop procedures for all law enforcement personnel to immediately refer children who are identified as potential or actual victims of trafficking for needs assessment. A system of protocols and referral procedures needs to be developed and disseminated to ensure that all local and national law enforcement and other providers follow a simple procedure to arrange for trafficked children to be referred to proper care.<sup>272</sup>
- As soon as a child is identified as a victim of trafficking, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented.
- Child victims/witnesses should never be confronted by, or come into contact with suspects during the interview and legal proceedings.
- Children should not have to re-tell their story. Use one interview and minimize repetition. Work together in a multi-agency approach.
- The money and assets of the traffickers seized and/or confiscated should be redistributed to the victims in the form of compensation, and dedicated to combating trafficking and/or improving assistance to child victims/witnesses (building of interview rooms, care and assistance, etc.).

<sup>272</sup> Bump and Duncan, 2003: 211.



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## CHAPTER V

### COOPERATION BETWEEN LAW ENFORCEMENT AUTHORITIES AND NGOs/SOCIAL SERVICE PROVIDERS

#### Introduction

#### A- Cooperation during identification and referral in countries of destination – examples from France and Italy

- 1- The situation in Italy and France
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#### B- Direct assistance to child victims of trafficking in countries of destination – examples from France and Italy

- 1- Assistance and social integration in Italy
- 2- Assistance and assessment of the situation by AJE, France
- 3- Protection of victims during trial in Italy
- 4- Preparation for a potential return from France
- 5- Conclusion and recommendations
- 6- Bibliography

#### C- Cooperation between civil society and law enforcement: a Belgian example and European Model Protocols

- 1- Genesis of a cooperation
- 2- Child trafficking: a global problem in need of urgent action
- 3- Belgian protocols of cooperation
- 4- Protocol of collaboration between Child Focus – Net-alert and the judicial authorities and specialized services of the Belgian Federal Police forces
- 5- European Model Protocol
- 6- Conclusions and Recommendations
- 7- Bibliography

#### D- Assistance in countries of origin upon return (and in preparation of and upon return)

- 1- Introduction
- 2- Terre des hommes Albania and the Transnational Action against Child Trafficking (TACT) project
- 3- Cooperation frame with law enforcement: a necessity
- 4- Cooperation in Albania in preparing assisted voluntary return and after return
- 5- Conclusions and Recommendations
- 6- Bibliography

#### E- Recommendations

#### F- List of contributing experts to this chapter

## 1- INTRODUCTION

The work of law enforcement authorities and NGOs/social service providers is interrelated in terms of the prevention, identification and provision of assistance to child victims of trafficking and prosecution of their traffickers, as well as in the preparation and implementation of a potential return to, and reintegration in, their country of origin. During the past years, several countries have established good practices in cooperation, with each acknowledging the important role played by the other party as well as recognizing the advantages of close collaboration.

This chapter does not intend to cover all existing forms of cooperation or all the good practices identified, but rather, following an overview of standards and examples of existing mechanisms, describes practical examples of cooperation from France, Italy, Belgium and Albania.

### 1.1- International and European Standards and Guidelines

There is a range of international and European instruments, which promote cooperation, nationally and internationally among a diverse range of governmental, non-governmental and international actors.



The Palermo Protocol states that State Parties should consider “*cooperation with non-governmental organizations, other relevant organizations and other elements of civil society*”<sup>273</sup> to provide assistance and protection to victims of trafficking (Article 6(3)).

In its report of December 2004, the European Commission Expert Group on trafficking in human beings, strongly promotes cooperation between the various actors active in the fight against trafficking in human beings:

*“Given the complexity of the issue and the interconnectedness of the different factors that feed and maintain trafficking, a holistic, multi-levelled and integrated approach is needed. A holistic approach would strive for a balance between empowerment strategies, targeted at the provision of adequate remedies to trafficked persons and the social inclusion and participation of the groups affected, and repressive crime control strategies which are targeted at the prosecution and punishment of the perpetrators, while avoiding unintended and undesirable side effects of repressive policies that might increase vulnerability for trafficking. It should rely on multidisciplinary cooperation and coordination between all concerned actors and stakeholders, including law enforcement agencies, non governmental organizations, labour organizations and other relevant civil society actors”.*<sup>274</sup>

Regarding cooperation at national level “*a systematic mechanism, such as the appointment of National Rapporteurs and/or regular multi-disciplinary group meetings, would support a regular evaluation, monitoring and further improvement in the implementation of national policies*”.<sup>275</sup>

The 2005 EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings provides that:

*“5. (i) Member States should consolidate the cooperation of public authorities with civil society organizations related to the protection of victims, prevention of and the fight against human trafficking, for example by setting up rules agreed upon by both sides that promote mutual understanding and trust. Where appropriate employer organizations, trade unions and representatives of specific industries/economic sectors should also be involved.*

*(ii) Member States and EU institutions should continue to cooperate with relevant international organizations (e.g. UN, OSCE and Council of Europe) and at a national*

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<sup>273</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, see also Article 9(4) and 10(1).

<sup>274</sup> Report of the Experts Group on Trafficking in Human Beings, 2004.

<sup>275</sup> Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 2002.

*level, as appropriate and where necessary, relations with and capacity of relevant NGOs should be strengthened and institutionalized”<sup>276</sup>*

## 1.2- Areas of cooperation and common interests

While cooperation between law enforcement and social service providers is mutually beneficial, according to a discussion paper on law enforcement cooperation with non-governmental organizations (NGOs) prepared by Paul Holmes in 2002, law enforcement agencies should cooperate with NGOs primarily in four main areas:

- *“Prevention by reducing the number of available victims – through education and awareness raising campaign;*
- *Prevention by reducing the number of traffickers – through successful identification, investigation and prosecution;*
- *Victim assistance – rescue, care and support;*
- *Victim/witness assistance – physical and judicial protection”<sup>277</sup>*



Cooperation between law enforcement authorities and NGOs/social service providers is also useful for voluntary return, which constitutes part of victim assistance.

- Assessment of the feasibility and preparation of the voluntary return of the child to his/her country of origin: identification of the child (through contact with the authorities in the country of origin), family situation and assessment and other potential long-term solutions for the child.
- Return to and reintegration in the country of origin: protection of the child and his/her family in case of risk, assistance and protection in legal proceedings and reintegration assistance.

In each of these areas, law enforcement authorities and NGOs/social service providers *“should be working towards the same common humanitarian purpose to prevent and reduce trafficking, alleviate the impact upon the victims of it and punish”<sup>278</sup>* the traffickers. Law enforcement authorities and NGOs/social service providers’ objective should be the protection of the rights of the child victims, as it is the responsibility of the state to prevent and respond to human rights’ violations.

Some further common interests in cooperation are briefly described below.

There is a lack of accurate data on child victims of trafficking, and because child trafficking is an illegal activity, no accurate indication is available as to the number of trafficked children that have *not* been identified as such.

In terms of identification and referral, cooperation between law enforcement and NGOs/social services is crucial. In some cases, police officers are the first point of contact for victims, possibly removing victims from their exploitative situation. In other cases, the first contact takes place with the NGOs/social services conducting outreach work. Moreover, law enforcers and NGOs/social services sometimes work together during such interventions. Notably in relation to child trafficking, effective cooperation and rapid information exchange is vital to ensure that child victims are identified and rescued as quickly as possible. Law enforcement authorities then have the legal powers and resources to remove child victims from exploitative situations, as well as to investigate in view of the arrest of their traffickers or dismantlement of an organized crime group.

<sup>276</sup> EU Plan on Best Practises, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005: 2.

<sup>277</sup> Holmes, 2002: 5.

<sup>278</sup> Holmes, 2002: 5.

Thus NGOs/social service providers should immediately share information with law enforcement authorities, which in turn have to react accordingly. NGOs/social service providers can also provide useful inputs into guidelines or indicators provided to, for example, border guards and police officers, to support the identification of child victims of trafficking.

Being the first point of contact, it is often law enforcers who refer victims of trafficking to NGOs/social services for assistance. Where a victim is, or is presumed to be, a child, he/she should immediately be referred to appropriate child welfare authorities, as well as any other service that could be immediately needed by the child (medical examination, etc.).

Information provided by the victim and witness testimonies can be essential to investigations into, and prosecutions of, traffickers. However, victims are often traumatized and fearful of providing information to law enforcement authorities, even more so when the victim is a child.

NGOs/social service providers caring for child victims of trafficking provide a range of assistance, support and protection to victims, on which a trusting relationship is built. This relationship can help victims to disclose, either directly or indirectly to law enforcers, and so provide critical information during the investigation and any subsequent legal process. In addition, NGOs/social service providers should have specialized counselling staff and appropriate accommodation facilities, which may provide additional support to the victim.

Victims who escape or are rescued and assisted by police and/or NGOs/social service providers represent a high risk to traffickers in terms of the example this may set to other victims still under their control. However, victims who are willing to testify or cooperate with the law enforcement authorities pose a much greater threat to traffickers' freedom and profit. Thus the threat linked to the testimony can be high, for the victims, the victims' families as well as NGO/social service staff assisting them. Law enforcers should provide protection to each of these parties if this is considered necessary.

### 1.3- A basis for cooperation

#### 1.3.1- National referral mechanisms



When a child (or adult) is identified as, or suspected of being, a victim of trafficking, he/she must be referred to appropriate care, either with an NGO, social services or child protection authority, in order to ensure suitable assistance and protection. A system of ensuring this is known as a National Referral Mechanism. “A *National Referral Mechanism (NRM)* is a cooperative 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.”<sup>279</sup> The necessity to establish “*National Referral Mechanisms as an instrument for cooperation,*” as developed by the OSCE Office for Democratic Institution and Human Rights (ODIHR), was reiterated in the recent Communication from the Commission to the European Parliament and the Council “*Fighting Trafficking in Human Beings – an Integrated Approach and Action Plan*”.<sup>280</sup>

“[...] *National Referral Mechanisms (NRMs)* [...] should incorporate:

- *guidelines on the identification and treatment of trafficked persons, including specific guidelines and mechanisms for the treatment of children to ensure that they receive adequate assistance in accordance with their needs and rights;*
- *a system to refer trafficked persons to specialized agencies offering protection and support;*
- *the establishment of binding mechanisms to harmonize the assistance of trafficked persons with investigative and crime prosecution efforts*”.<sup>281</sup>

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<sup>279</sup> OSCE/ODIHR, 2004: 15.

<sup>280</sup> COM 2005/514 2005.

<sup>281</sup> European Commission, 2004: 21-22.

It is important to note that NRMs are flexible mechanisms, designed to respond to an individual country's trafficking patterns as well as its social, political, economic and legal environment.<sup>282</sup>

The experts further suggest the establishment of a National Government Coordinator and a round table to “develop, coordinate, monitor and evaluate national action plans and policies”.<sup>283</sup> In some countries, such structures have already been created, such as the independent National Rapporteur on Trafficking in Human Beings in the Netherlands. Other countries have developed a National Action Plan focusing specifically on Child Trafficking (e.g. Bosnia and Herzegovina, Bulgaria, Czech Republic, Romania),<sup>284</sup> which include activities in cooperation with all actors involved in child trafficking cases. Furthermore, Round Tables or Task Forces on combating trafficking in human beings have been established in many countries, consisting of representatives of all ministries concerned (Ministry of Interior, Foreign Affairs, Employment, Women, Health, Children, Family, Social Security, etc.), as well as all the relevant non-governmental actors, therefore enhancing and strengthening coordination. All these initiatives are of utmost importance in combating child trafficking and providing relevant assistance to trafficked children.

The establishment of multidisciplinary teams on a national level can prevent the confrontation and avoid any conflict between human rights and law enforcement approaches.<sup>285</sup>

### 1.3.2- Memorandum of Understanding or Protocol

The relationship between law enforcement authorities and NGOs/social service providers must be based on mutual understanding and trust, with each recognizing the important role played by the other as well as the different interests of those involved.<sup>286</sup> The establishment of agreed rules, based on a Memorandum of Understanding or similar, helps to institutionalize the relationship. The European Commission recommends the adoption of “a European Model Protocol<sup>287</sup> of cooperation to facilitate such cooperation throughout the EU and in third countries”.<sup>288</sup> This Model Protocol reflects European legal standards, quality standards and general principles of a code of practice for both civil society and law enforcement.<sup>289</sup>



### 1.4- Training

The importance of training, in terms of awareness raising, skill enhancement and promotion of the importance of cooperation, was recognized in Article 10(2) of the Palermo Protocol.

*“The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society”.*<sup>290</sup>

### 1.5- Conclusions

The ensuing chapter provides insights into national-level cooperation within countries of origin/transit and destination, as well as international cooperation. The contributions from Italy

<sup>282</sup> European Commission, 2004: 153.

<sup>283</sup> Ibid.

<sup>284</sup> IOM Vienna, 2005.

<sup>285</sup> OSCE/ODIHR, 2004: 27.

<sup>286</sup> European Commission, 2005: 13.

<sup>287</sup> Please see section C- Cooperation between civil society and law enforcement: a Belgian example and European Model Protocols.

<sup>288</sup> European Commission, 2005: 13.

<sup>289</sup> Vermeulen and De Pauw, 2004.

<sup>290</sup> Palermo Protocol, Article 10(2); see also Guideline 5 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking in the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, which urges the States to ensure that “[...] law enforcement personnel are provided with adequate training [...]. The involvement of relevant non-governmental organizations in such training should be considered as means of increasing its relevance and effectiveness”.

and France demonstrate close cooperation between NGOs/social service providers and law enforcers in referring and providing victim assistance. The example from Belgium considers cooperation between NGOs and law enforcement based on a formal Memorandum of Understanding and presents the European Model Protocol, while the example from Albania focuses on cooperation prior to and after the return of the victim to his/her home country.

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## A- IDENTIFICATION AND REFERRAL IN COUNTRIES OF DESTINATION – EXAMPLES FROM FRANCE AND ITALY

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### 1- THE SITUATION IN ITALY AND FRANCE

#### 1.1- Situation in Marseilles, France

In the early 1990s, a new phenomenon appeared in the city centre of Marseilles: foreign children, the majority from Algeria, were regularly arrested by the police on charges of theft, selling stolen goods or illegal stay. Most arrived illegally by boat due to decreasing security and an up-surge of violence in their home countries. After committing an offence and being arrested, these children were presented to the juvenile judge. As an alternative to imprisonment, they were placed in children's homes, but they rarely stayed there for more than one day; many ran away, committing further offences in the following days. Due to inexperience, the facilities were ill equipped to deal with the situation and could not cope with the language and cultural gaps and children's trauma. It was observed that the groups were organized, and were often supervised by adults who incited the children to commit offences.

In France, foreign unaccompanied minors (UAM) fall under the authority of the state and the provincial departments. From an early stage, this phenomenon brought together many services concerned by the problem. The decision was taken to create a specialized NGO with the appropriate skills to assist foreign UAMs, while also incorporating the related intercultural aspects.

##### 1.1.1- The Association Jeunes Errants

The "Association Jeunes Errants" (AJE, Association of Young Vagrants) was created in July 1994. The NGO's first activities took place in the centre of Marseilles, focusing on the community neighbourhoods where children spent their time, while avoiding a violent reaction from the adults in their company. In the 10 years since the creation of AJE, the organization has grown to twenty employees, providing a range of services (including specialized educational activities, educational orientation and investigation), has opened two regional representations in Corsica and Seine et Marne and is considering further expansion into other regions. AJE is now assisting children originating from over 20 different countries, mostly in Northern Africa and Eastern Europe.

The result of cooperation of the different services concerned by this problem (including governmental and non-governmental services) is that solutions can be found for each unaccompanied minor.

The work of AJE is financially supported by the state (Ministry of Justice) and the local authorities (municipality, general council and the region), as well as the European Fund for Refugees. For the past two years the AJE has also received the financial support of a private foundation (Carrefour Foundation).

##### 1.1.2- French protection laws

Foreign children who arrive illegally are protected by French legislation, especially if they are unaccompanied. Civil and penal codes protect them if their situation is known to be dangerous in terms of morality, health or education.<sup>292</sup> Legally, foreign unaccompanied minors cannot



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<sup>291</sup> Association of Young Vagrants.

<sup>292</sup> Civil Code Dalloz, Article 375 – Ordonnance modifiée n° 45-174 du 2 février 1945 relative à l'enfance délinquante; <http://www.droitsenfant.com/ordonanintegral.htm>

be sent home before the age of eighteen. AJE acts within the legal framework of the Convention on the Rights of the Child.

## 1.2- Situation in the Municipality of Venice, Italy

Within the territory of the Municipality of Venice, child victims of trafficking are exclusively of foreign origin and are exploited in street prostitution and for begging. Other forms of exploitation of these children include prostitution in closed environments (such as apartments, clubs and saunas) and within the black labour market.

In Venice, the children involved in street prostitution are mainly female adolescents, aged between 14 and 18, with most originating from Romania and Nigeria. These adolescents are a part of the larger phenomenon of migrant prostitution and represent five percent of the whole population of street prostitutes. Children exploited in prostitution in closed environments are primarily adolescents aged 16 to 18 years old, mostly originating from Romania.

Exploitation for begging involves male and female children, although the majority are male. The age ranges from six to 12 years old, with primary countries of origin including Romania, Bulgaria, and the Serbian territory of Serbia and Montenegro. Many of the children belong to the sedentary Roma ethnic minority. Further forms of exploitation are linked with the sexual market for child sex offenders. The most exposed children are those forced to beg in close proximity to street crossings where there is high traffic density.

The exploitation of children in the labour market almost exclusively involves children of Chinese nationality, of both genders, aged from 12 to 18 years old. Exploitation takes place within the same Chinese community.

Since 1995, the Municipality of Venice has actively provided support to women and child victims of trafficking for sexual exploitation. Initially through pilot initiatives, and since 1997 through an established service, law enforcement and social services work together to support victims of trafficking during identification, assistance and legal proceedings.

The development from a pilot phase to a permanent service reflects the political will of the Municipality of Venice. The service has been integrated into the framework of all the other institutionalized social interventions of the Municipality, with the counter trafficking initiatives being well synergized with specific support provided to all children, both resident citizens and foreigners.

### 1.2.1- Objectives of cooperation and intervention

The active, coordinated interventions in the field of the counter trafficking of children are based on the following broad objectives:

- the protection of children and their rights and
- the fight against exploitation and criminal networks.

The interventions are an integral part of a wider and more complex set of policies, which address the social phenomenon of prostitution; street prostitution is currently the environment where trafficking flourishes and is nourished, both at a local and national level.

From an operational point of view, all interventions are either addressed to women and child victims of trafficking or are awareness raising and sensitization initiatives targeting local communities. Both entail networking and collaboration with other institutions and relevant actors. Activities are developed within the following three branches:

- identification of victims of trafficking;
- protection, assistance and integration of victims and
- legal assistance to victims who act as witnesses.

Within these three branches, the social, law enforcement and judicial actors<sup>293</sup> are involved through different, inter-linked modalities and responsibilities, through direct and/or indirect interventions. The first possibility of intervention will be presented in this sub-chapter; the second and third type of intervention will be presented in the following sub-chapter “Direct assistance to child victims of trafficking in countries of destination”.

After having described the situation in Marseilles and Venice, this chapter will focus on the identification and referral of children at risk or victims of trafficking.

## 2- OUTREACH WORK AND REFERRAL IN FRANCE

Since the creation of AJE, the origins and problems faced by the target group have changed. It is therefore constantly necessary to adapt the solutions to the needs created by the new situation.

In 2005, during regular outreach work on the streets, AJE regularly observed:

- children (up to four years old) begging, accompanied by adults, often mothers of eastern European origin, particularly from Romania and Bosnia and Herzegovina;
- children selling flowers (seven to 15 years old), mostly of eastern European origin;
- children cleaning windscreens at traffic lights (12 to 17 years old), mostly eastern European origin;
- children selling consumables, such as newspapers, candies, smuggled cigarettes (16 to 17 years old, northern Africa) and,
- more rarely observed, possibly as a less visible form of exploitation, a few of the older children working in prostitution.

The actual number of unaccompanied foreign minors wandering the streets is not known. The organizations working on the street are in touch with:

- two hundred unaccompanied foreign children: the number of assisted children in children's homes and contacts with partners in outreach work;
- one hundred children introduced to the territory by a parent outside the scope of the legal procedure of family reunification: requests for information by the relatives, requests for advice from the social services;
- one hundred displaced children, whose parents are asylum seekers or in a precarious situation: social and educational emergency programme and applied measures as an alternative to a placement.

Currently, the organizations and community services work with street children of sixteen different nationalities, aged from six to seventeen years old. The average total number is between 300 to 400 children a year in Marseilles.

These children are homeless and on the streets, many having been separated from their families. They are involved in survival activities (including provision of services, selling items on the street, occasional prostitution and delinquency), and are often victims of violence and exploitation. They do not have access to educational or medical services.

These children have two commonalities: they are foreigners and they are in danger. However, their administrative status is not the principal reason for the danger. Some enter the territory with the passport of a parent, others try to enter the country illegally, while still others are entrusted to smugglers or traffickers. The danger is based on the type of relationship and exchange they have with adults.

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<sup>293</sup> With reference to children, the latter two include the Juvenile Court for the protection of the children's rights and the State Prosecutor for penal proceedings in which minors are injured parties.

Whether they are sent by their parents (smuggled), absconded (due to ill-treatment or abuse in their home country) or put to work on the streets by their families, they are all victims of disrespectful adults who deny them their fundamental rights. These rejected or exploited children need assistance in order to become autonomous adults, conscious of their capacities and opportunities.



### 2.1- Prevention, localization and first contact with children

This consists of outreach work to known “sensitive” areas or at the request of partner NGOs. The goal is a local assessment including the observation of the phenomenon of vagrancy and referral to the relevant competent authorities.

AJE comes into contact with foreign unaccompanied children in the following ways:

- **Street:** During outreach work in the streets, AJE observes children who are working: selling flowers on the terraces, cleaning windows, occasionally carrying bags at markets and begging. AJE is present in places, where there is a high probability of encountering young vagrants, which is most often in the city centre.
- **Associative partners:** AJE is in direct contact with NGOs active in Marseilles but working on a variety of other problems, as well as with NGOs working on related issues such as prostitution and drugs. Each of these actors work on the streets day and night. It often happens that they come across unaccompanied foreign minors, who they refer to AJE.
- **The citizen:** AJE is regularly mentioned on television and in the media. It is therefore known to be the reference institution for unaccompanied foreign minors. Often ordinary citizens, such as storekeepers working in the city centre, contact AJE because they have noticed a young foreign vagrant sleeping in their stairway or in a parked car at night.
- **The child:** It also happens that the child him/herself directly addresses the police services or the juvenile court to ask for assistance. This remains rare, however, because of the symbolic significance of these institutions, as the children fear expulsion.

Since the preventive work (primarily outreach work in the street) has started, the statistics of delinquency in connection with unaccompanied foreign minors has dropped significantly.

### 2.2- Referral

Since the creation of the AJE, a partnership with the police services has been established. The majority of Marseilles police stations, in particular those in the city centre, have AJE telephone numbers (reachable outside office hours such as at night, weekends or holidays).

The police services are often confronted with false identity. Unaccompanied foreign minors seldom hold proof of their own identity, the minimum being a birth certificate from the country of origin. Thus, during procedures for delinquency, they often use forged identities, and rarely use the same forged identity from one procedure to the other. However, it can happen that the same “alias” identity is used at each interaction with the police.

An unaccompanied foreign child can therefore be brought to the police station following an act of delinquency or because he/she was found on the streets. The latter generally occurs at night during police patrols. The child is taken to the police station and put in a protection cell until the following day.

The police alert the Juvenile Court, which systematically designates the AJE to carry out an assessment of the situation. This can take place at the police station.

Within the framework of penal procedures, the meeting with AJE takes place in the courthouse. The child is often already known to AJE and it is sometimes already known that his/her declared

identity documents do not match his/her actual identity. The elements collected will be used to inform the juvenile judge during the procedure.

Within the framework of civil procedures, the AJE is requested to carry out an assessment of the situation at the police station or the juvenile police bureau. The information collected is transmitted as soon as possible to the child's prosecutor's office, which will decide on the future of the child. In the case of high and proven risk, AJE can be requested to accompany the child to an emergency host family or institution.

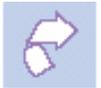
### 3- IDENTIFICATION OF CHILD VICTIMS OF TRAFFICKING IN ITALY

#### 3.1- Cooperation between law enforcement and social services

##### 3.1.1- The origins of cooperation

In 1998, the normative system of Article 18<sup>294</sup> was introduced, followed by further regulations including the law 228/03.<sup>295</sup> The Municipality of Venice and the police headquarters established two specialized operative units, one composed of social services and the other of law enforcement authorities, for the protection and assistance of victims of trafficking.

The first unit, the Street Operators Team, is comprised of five trainers and four female cultural linguistic mediators (Romania, Nigeria, Russia, Albania) and was established within the Adults' Service of the Council Office for Social Policies.<sup>296</sup> The second unit, the Second Section of the Flying Squad, is comprised of law enforcement officers who are part of the Venice police.



According to their mandate the two units are active 24 hours a day, 365 days a year and operate on their own initiative or based on relevant information received from other institutions or citizens.

The cooperation between the social services and the law enforcement authorities has an informal origin.

Intervening the social phenomenon of migrant prostitution, in order to prevent and manage it and harmonize the problems linked to it, means to operate from different fronts, through diversified approaches based on specific methodologies and objectives. Nevertheless, these actions are integrated, based on a common purpose. Each group, both social workers and law enforcement, must be conscious of its own limits, avoid substitutions, overlaps or interferences and promote integration with a view to common benefit.

##### 3.1.2- Forms of cooperation

The social and law enforcement units cooperate through:

- Observation: Monitoring prostitution and trafficking, and the results achieved through social protection.
- Planning: Acting as partners in regional, national and European projects focusing on the fight against criminality and exploitation, territorial safety, policies addressing the support and reception of victims of trafficking and awareness raising among the general public.
- Training: Specific and regular training, aiming to improve the procedures and the interventions in the field of contact, safety, protection and victim support, as well as cooperation between victims and the judicial authorities.

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<sup>294</sup> Decree 286/98 Consolidation on Provisions concerning Immigration Discipline and Rule on the Foreigner's Condition, Section III. Humanitarian Nature's Provisions. Article 18 – Staying for Reasons of Social Protection (Decreto Legislativo 286/98 Testo unico delle Disposizioni concernenti la Disciplina dell'Immigrazione e norme sulla condizione dello straniero. Capo III. Disposizioni di carattere umanitario. Articolo 18 – Soggiorno per motivi di protezione sociale).

<sup>295</sup> Law 228/03 Measures against Trafficking in Human Beings (Legge 228/03 Misure contro la tratta di persone).

<sup>296</sup> Servizio Adulti dell'Assessorato alle Politiche Sociali.

The protection of the child's rights has the utmost priority. These services intervene even if the child is not identified as a victim or does not act as a witness.

### 3.2- Cooperation: identification and referral

In Italy, there are no diversified procedures for children and adults during the first contact or identification phases. Before assessing the victim's age, it is necessary to proceed with maximum caution, treating the victim as a child should there be any doubt.

In the municipality and province of Venice, law enforcement and social services work together during the formalities of first contact with potential victims of trafficking. While law enforcement interventions prevent and fight foreign criminality as well as monitor prostitution and trafficking, social services work to identify victims of trafficking through two specialized teams:

1. Social Protection Team
2. Mobile Unit of Street Operators Team

These two specialized teams, each consisting of nine people – five trainers and four female cultural linguistic mediators – establish contact with potential victims of trafficking. The Social Protection Team is responsible for the protection and support of potential victims and comes into contact with them through the local National Hotline Number on Trafficking.

Through the hotline, it is possible to carry out the following activities:

- Call centre activity is directed to collect the requests for assistance, to provide psychological support and information to anyone who finds him/herself in such a situation or is in contact with a victim of trafficking;
- Conversations with persons exploited in prostitution, recording their needs and stories and
- Information provision about protected reception/shelter facilities to aid escape from emergency situations.

Further, the Social Protection Team provides:

- notification of the victim to the Juvenile Court;
- legal assistance and protection of victims in legal processes;
- accommodation in a safe shelter and
- general assistance to the victim of trafficking, including voluntary return and family reunification.

The Street Operators Team directly addresses potential victims of trafficking by:

- monitoring and establishing contact with street prostitutes;
- intervening to protect the physical and mental health of prostitutes (including maternity support and sexually transmitted diseases);
- mediating conflicts between prostitutes and the local community;
- collecting requests for assistance and referral of prostitutes to specialized teams providing assistance and integration and
- reporting to the aforementioned Social Protection Team information about women and children requiring help.

#### 3.2.1- Cooperation during first intake



- Procedures

- Set up an interdisciplinary working group, consisting of trainers, female cultural linguistic mediators and investigators.
- Exchange information on the situation and on the methods used to identify the potential victim.
- Social workers (female cultural linguistic mediators) carry out the interview, which they structure in the following way:
  - they listen to the story as experienced by the person;
  - they assess the situation and acknowledge possible demand for assistance and
  - provide information on possible assistance and risks of an eventual false testimony.
- Where the person is identified as a child during the first intake, inform the person in charge of the social services to arrange his/her stay in an appropriate accommodation. Furthermore, the social services will have to report the child's presence and condition to the Juvenile Court, so that it cares for the protection of the rights of the child and, together with the social workers, for the child's development in all the social, psychological, educational and economic aspects or, if feasible, the return of the child to the social and familiar context of origin.
- The social workers and the investigators report on the outcome of the first intake interview and of the will of the child in establishing a cooperative relationship with the police and judicial authorities.
- Common evaluation of the coherence of the collected information, of the elements of exploitation and criminal networks and on the possibility of taking a statement.
- If the person has been identified as a child, or is presumed to be a child, the first intake becomes a first gathering of information. The information includes the collection of the story in the native language, beginning with what occurred in the country of origin up to the day of the first intake. Law enforcement officials assess the possibility of gaining a testimony from the victim. Social workers make a social and psychological profile of the child, of what he/she has experienced (in terms of abuses and exploitation) and the possible consequences of re-living these events during a possible testimony. These interventions may require several meetings.<sup>297</sup>
- If the victim of trafficking has no identity documents, the law enforcement officers check his/her status in Italy, consulting the central data bank of the law enforcement authority.
- Draft a letter of probation, written by the police to the social services, which will start the procedures for the evaluation of necessary requirements in order to implement Article 18 Law Decree 286/98.<sup>298</sup>
- Place the victim in a reception facility.
- Having taken care of the child's immediate needs, a statement can be taken.
- Possible further investigation by the law enforcement authorities, based on the outcome of the victim's statement.
- Request the judicial authority for the permission for assistance and social integration together with the transmission of the criminal file/form.

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<sup>297</sup> Please see Chapter IV- Interviewing Techniques, 2.3- First intake.

<sup>298</sup> Decree 286/98 Consolidation on Provisions concerning Immigration Discipline and Rule on the Foreigner's Condition, Section III. Humanitarian Nature's Provisions. Article 18 – Staying for Reasons of Social Protection (Decreto Legislativo 286/98 Testo unico delle Disposizioni concernenti la Disciplina dell'Immigrazione e norme sulla condizione dello straniero. Capo III. Disposizioni di carattere umanitario. Articolo 18 – Soggiorno per motivi di protezione sociale).

### Codes of conduct adopted to ensure the protection of the victim's rights, and his/her safety

- Start up of the Street Operators Team and the Social Protection Team two hours after signalling from the police.
- Use linguistic and cultural mediation to communicate with the potential victim of trafficking in all interactions.
- Establish a proper setting, exempt from interferences, to enhance communication.
- Inform the victim of all existing social assistance and legislative interventions implemented before a statement is taken. Furthermore, inform him/her of the duties, implications and consequences regarding a possible cooperative relationship with the judicial authorities.
- Suspend taking the statement if there are contradictions, hindrances or psychological suffering linked to possible episodes of abuse.
- Arrange emergency accommodation based on the evaluation of at least: the child's age, safety of the child from the exploitation network, reliability of the declarations, degree of break from the exploitation network and the need for care and protection (hotel, host family, community, etc.).
- Where the victim is a child, the Office for Social Protection managing the case contacts the Juvenile/Child Protection Service in the Municipality of Venice. The Office then activates its own action within five days, while also transmitting the case of the child to the Juvenile Court.
- The mediator provides support to the victim during the phase of recognizing places mentioned throughout the statement.

### Results



By adhering to the above procedures, law enforcement officers will contribute towards the following:

- Establishing relationship of trust with the potential victim. This relationship is based on listening, providing correct and understandable information, without being authoritarian or alluding false expectations.
- Providing victims of trafficking the time to decide whether to cooperate with the judicial authority or not, after having received all the necessary information. Such cooperation allows the victims to evaluate risks, duties, pros and cons involved in this cooperation.
- Adapting their conduct to the victim, notably considering the guarantees and protection measures adopted in those cases involving children.
- Avoiding possible infiltration by criminal networks.

## B- DIRECT ASSISTANCE TO CHILD VICTIMS OF TRAFFICKING IN COUNTRIES OF DESTINATION – EXAMPLES FROM FRANCE AND ITALY

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### 1- ASSISTANCE AND SOCIAL INTEGRATION IN ITALY

#### 1.1- Italian legal framework

In Italy, assistance and social integration refers to a range of support including, but not limited to reception, health care, identification, psychological support and guardianship. The assistance provided is a social device aimed at protecting all child and adult victims of trafficking and exploitation. It is a process implemented during several phases lasting one year; however, a six-month extension can be granted if all the objectives, which are essential to the conclusion of the programme, have not been achieved.

Assistance and social integration is regulated by Article 18 of Law Decree 286/98<sup>300</sup> and by the Implementation Rules Decree of the President of the Republic N.394 of 31 August 1999.<sup>301</sup> If the victims are foreign citizens in trafficking and slavery conditions, the assistance and social integration is quoted in Article 13 of the law of 11 August 2003, n.228. The latter refers to “*the setting up of an assistance programme for victims of crimes provided in the following articles 600 (reduction and maintenance of slavery or servitude) and 601 (trafficking in human beings) of the penal code*”.<sup>302</sup>



The requirements provided by Article 18, which must be fulfilled by the victims to qualify for the social protection programme include the three following conditions:

1. He/she suffered some form of violence or exploitation,
2. There is a concrete and actual danger to his/her life and
3. He/she made a declaration to law enforcement authorities.

#### 1.2- Assistance and social integration programme description

Interventions provided for unaccompanied foreign minors pledge support up to the legal age, which is 18 years. The current immigration legislation provides that, once the possibility of reintegration in the family has been excluded and the child reaches 18 years of age, he/she can remain in Italy only if he/she has had a relationship with the social services for longer than two years. In this case, he/she can change his/her existing residence permit to one based on study or employment. If this requirement is not fulfilled, he/she will be returned to his/her country of origin.

Usually, a child victim of trafficking who is younger than 16 years old does not have access to the assistance and social integration programme as he/she is adequately protected by the regulation provided for children, specifically also for unaccompanied foreign minors. This regulation establishes reception centres within a protected structure, the involvement of the local social services and the appointment of a guardian. All children under

<sup>299</sup> Association of Young Wanderers.

<sup>300</sup> Decree 286/98 Consolidation on Provisions concerning Immigration Discipline and Rule on the Foreigner's Condition, Section III. Humanitarian Nature's Provisions. Article 18 – Staying for Reasons of Social Protection (Decreto Legislativo 286/98 Testo unico delle Disposizioni concernenti la Disciplina dell'Immigrazione e norme sulla condizione dello straniero. Capo III. Disposizioni di carattere umanitario. Articolo 18 – Soggiorno per motivi di protezione sociale).

<sup>301</sup> DPR n.394 of 31/08/1999. Regulation on the implementation rules of the Testo Unico of the dispositions concerning immigration and regulations on the foreigner's conditions (D.P.R. 31/08/1999 n° 394, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero).

<sup>302</sup> Art.13 of law n.228 of 11 August 2003.

the age of 16 years are assisted by the territorial Social Services Office for Foreign Minors, Juvenile Court and the guardian, which provide:

- material, social, psychological, educational and formative assistance to the child;
- protection of the rights, the anonymity, the privacy and image of the child and
- establishment of relationships with the country of origin and with potential relatives.

Children who are older than 16 years old are assisted under the assistance and social integration programme, a legislative device for victims of trafficking.

The assistance and social integration programme is actually more protective than the ordinary legislation for children, especially for those children who are victims of trafficking, who, once back in their home country, are at risk of being re-trafficked. The programme allows victims of trafficking, both children and adults, to stay in Italy. The Office for Foreign Minors and the Office for Social Protection in the Municipality of Venice will both accompany the victim in case he/she reaches 18 years old before the conclusion of the programme. The Office for Foreign Minors will take over responsibility once the victim is 18 years old.

The assistance and social integration programmes, which are implemented in the territory of the Municipality of Venice are individualized educational projects for children over 16 years old and foresee general targets such as:

- regularization of legal status in Italy;
- legal protection;
- health care;
- vocational training;
- setting up a social support network and
- working and living independence.

Furthermore, the projects provide the achievement of intermediate targets such as:

- assessment of the correct personal details of the individual with the authorities of the country of origin present in the Italian territory, and finding personal identity documents in case the person does not have them;
- registration in the National Health Care system;
- Italian language training and entry procedures to social services, employment, cultural and recreational opportunities;
- integration in socializing situations according to the interests and attitudes of the person and
- balancing of professional competences and personal attitudes with regard to job placement.

Within the territory of the Municipality of Venice, each person who enters an assistance and social integration programme can be accommodated in:

- Protected communities: Accommodation for children or adolescents with limited independence, in need of care and a relationship with peers facilitated by social workers.
- Host families: Temporary reception for those who show progressive qualities or personal independence but need a guide to find his/her way into a new socio-cultural context.

- Accommodation – groups of mutual assistance: Accommodation run autonomously for people who are highly reliable and who have adequate personal and professional qualities so that they can immediately enter the working world.

### 1.3- Cooperation between social and law enforcement interventions in the field of protection, assistance and integration of victims of trafficking

The cooperation between the social, law enforcement and municipal departments in the field of assistance and social integration is realized in all regularization activities. Law enforcement authorities must keep in mind that the person is firstly a trafficked victim and only secondly a witness.



In order to get the best out of the social services and law enforcement cooperation, a continuous dialogue has to take place. Common training is one method of ensuring such dialogue.

Resistance, negligence or lack of cooperation regarding the implementation of Article 18 by one department could jeopardize the achievement of the shared objectives of the other parties involved, with dangerous consequences for the victims of trafficking. For example, a blockage during the issuance of residence documents by the Immigration Office can endanger not only the assistance and social integration available to the victim, but also the cooperation between the victim and the judicial authorities. Similarly, the law enforcement authorities can benefit from the trusting relationship established between victims and social service providers.

The residence permit is not related to assistance and social integration, but rather, this law links the residence for humanitarian reasons with an extension to working activity and study, as explicitly provided in Article 27 D.P.R. 31/08/1999 n° 394.<sup>303</sup> It is evident that the reason for the issuance of a residence permit, as per Article 18 of Immigration Law n. 286/98, must be clearly highlighted in the personal file of the individual.

Further cooperation is needed in order to assist the child in the procedure of the issuance of a residence permit. As described above, the Municipality of Venice has developed a structured cooperation in view of provision of assistance to child victims of trafficking.

Now, we will describe some services provided by AJE in France.

## 2- ASSISTANCE AND ASSESSMENT OF THE SITUATION BY AJE, FRANCE

### 2.1- General day-time assistance

Day-time activities offered by AJE prioritize children living on the streets, especially unaccompanied foreign minors who are not ready to integrate into accommodation facilities. Activities take place where the child is currently living on the street or in a squat, at the “p’tite école” (small school) and at AJE head office. At the small school, the six to 13 year olds are offered courses in French, art, crafts and sports on regular school days. AJE also refers children to health services and seeks alternative solutions appropriate to each child.

One of the aims of AJE is to prevent or reduce the everyday risks of living on the streets and to accompany the children towards access to their rights, including school and accommodation.

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<sup>303</sup> DPR n.394 of 31/08/1999. Regulation on the implementation rules of the Testo Unico of the dispositions concerning immigration and regulations on the foreigner’s conditions (D.P.R. 31/08/1999 n° 394, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero).

## 2.2- Assessment by AJE

On the basis of a protocol, the Juvenile Court calls upon the Service of Specialized Educative Action (SSEA) of AJE as soon as they are aware of an unaccompanied foreign child being in danger. The contact with the Juvenile Court enables the intervention to be adapted depending on the identified danger, and to transmit relevant elements to law enforcement in order to contribute to the investigation into criminal activities linked to the child.

According to the protocol, AJE is asked to

*“meet with the minor and gather as much information as possible to prove his/her identity, his/her being under age and search whenever possible solutions to enable the minor to return to his/her country of origin, or, if the situation of danger is proved, search for a suitable accommodation adapted to the minor’s situation. After this assessment, a measure of provisional placement can be enacted”.*

The AJE’s Service of Specialized Educative Action intends to avoid using the judicial system for situations, which can be solved or supported by community-level action. In any case, children who are in a proven situation of danger or who are victims of trafficking should always be flagged.

Based on this meeting with the child, AJE drafts and submits a report, which summarizes the socio-educational information related to the child:

- Identity (name, first name, age, nationality), birth certificate;
- Family (father, mother, siblings) and location of the parents and legal guardians;
- Addresses and telephone numbers;
- Summary of the family history, including reasons for the child’s departure, elements of recent and past story, as described by the child and confirmed or not by the parents;
- Risk assessment;
- Assessment of the possibility of a return to the family;
- Proposal for an immediate shelter for the child (host family or institution), or if conditions allow, preparation of a rapid return to the country of origin.

This first investigative work requires communication in the mother tongue of the child and takes into account his/her cultural, sociological and historical background. The employees of AJE speak 10 foreign languages and contact interpreters upon demand.

Another specific type of assistance needed by child victims of trafficking is their special protection during trial or court proceedings.

## 3- PROTECTION OF VICTIMS DURING TRIAL IN ITALY

In the Municipality of Venice, the legal protection of victims, and therefore their protection during trial, is a supporting intervention included in the assistance and social integration programmes. This legal protection, together with the regulating actions, continues to be supported even once the assistance and social integration programme has been concluded. Thus, extension of the programme is sometimes necessary as the process can last for more than 18 months.

### 3.1- Legal representation

Legal protection is made up of a complex system of actions that can already start during the first intake. The foreseen actions include:

- appointment of an authorized lawyer,<sup>304</sup>
- appointment of a lawyer to claim compensation in a criminal prosecution involving the victim as the injured party and
- appointment of a lawyer for those prosecutions where the victim is accused of crimes that have been committed during the period of exploitation and coercion.

If the appointment does not take place, the protection of the victim will be guaranteed only by the Public Prosecutor, whereas the defendants, in this case the traffickers, will be supported by lawyers. The claim to compensation for those entering the assistance and social integration programmes is guaranteed in all proceedings, at least up to the achievement of the judgement in the first instance.

### 3.2- Children as witnesses<sup>305</sup>

All children who participate in judicial proceedings as witnesses should be guaranteed protection, which should take into account the trauma and psychological suffering that a child could endure by reliving his/her experiences, both when providing a statement and during trial. Therefore, efforts are made not to involve children in trials. However, where the presence of the child is compulsory, minimum provisions include:

- the provision of psychological, linguistic and educational support and
- the possibility of protected identity and/or video testimony.

However, these guarantees may be lifted for adults who were victims of crimes when they were children. In any case, the implementation of these guarantees is at the judge's discretion.

### 3.3- Cooperation between Social and Law Enforcement Interventions in the Field of Victim/Witness Protection in Penal Proceedings

Based on local experience, the cooperation for the protection of victims/witnesses (child or adult) during the penal proceeding among social service, law enforcement and the judiciary, relates essentially to the safety of the person. Magistrates and judges meet with the social services and police only when the social services and the police have already established contact with, and the collaboration of, the victim of trafficking. Due to the independence of judges, they often do not allow the identification of an interlocutor who may be able to influence the victim's testimony.

The trial sessions and the annexed meetings of the witnesses represent the places and conditions that could allow the traffickers to identify the places where the victims live, in order to intimidate and threaten them. Thus, protection measures are put in place to avoid contact between the victim and the defendant.

The period of time between taking the statement and the anticipated testimony of the witness to the judge before the trial, the so-called "*incidente probatorio*" (crime scene investigation), is the most sensitive period for a victim, who is also a witness. In the current legal system, this may be the first and only examination of a witness in a trial. However, it does not spare the victim from being questioned by the defendant's lawyers in a side room to the court room.



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<sup>304</sup> The so-called authorized lawyer is in regular contact with the child victim while the two others – who are appointed only if needed – communicate with the child victim through the authorized lawyer.

<sup>305</sup> See also Chapter III- Investigative Methods; and Chapter IV- Interviewing Techniques, 5- Victim protection.



Some procedures have been defined to prevent situations of intimidation and blackmail:

- accompanying and supporting the victim in all the judicial phases by the social workers who carry out the assistance and social integration programme;
- escorting the victim to and from all hearings, provided by those police who took the statement and have therefore established a relationship of trust with the victim;
- appointing a legal residence of the victim at the trusted lawyer's office or at the legal office of the Municipality for all the judicial announcements and services and
- requesting the Public Prosecutor to adopt for the trial session all the devices available so that the defendant and/or the people present at the legal hearings cannot recognize the victim. This may include concealing the victim behind a screen or masking the victim's face.

Social service providers taking care of foreign unaccompanied minors might prepare the voluntary return of the child to his/her country of origin, which also implies cooperation with law enforcement authorities, NGOs/social service providers in the country of origin.

#### 4- PREPARATION FOR A POTENTIAL RETURN FROM FRANCE

The number of immediate returns to the family in the country of origin remains low. Often a longer investigation phase is required, during which the child is generally placed with a host family or in an institution.

##### 4.1- Assessment for return

Recognizing a situation of danger in France, the Juvenile Prosecutor makes the decision to open a "file of protection". The magistrate has to answer the following two questions:

- Why did the child leave his/her home environment?
- In which conditions can he/she return?



Under the mandate of the Juvenile Judge, the Investigation and Educational Orientation Service (IEOS) of AJE intervenes following AJE's Service of Specialized Educative Action. The Investigation and Educational Orientation Service is charged with the assessment in a multidisciplinary and intercultural manner in order to offer some pledges of effectiveness and equity. The assessment must be multidisciplinary because the analysis of each situation is based on various factors: sociological, clinical, social, economical, historical and intercultural. It is necessary to take into account the context, family and cultural references of each individual case in order to allocate the adequate resources and solutions.

People specialized in working with children who contribute to the assessment:

- \* Educator
- \* Psychologist
- \* Social worker
- \* Psychiatrist (if necessary).

The results of the assessment must be transmitted to the Juvenile Judge within six months. In order to achieve these results, a link with the country of origin has to be established.

##### 4.2- Cooperation with countries of origin and transit

Since the creation of the AJE, the development of cooperation with key actors in the cities of origin and transit was recognized as a priority. For this purpose, it is necessary to formalize the partnership with the social workers in the countries of origin and transit within the

framework of a third service called Resource Service, which reports to the IEOS. The partners (NGOs) in the countries of origin intervene in precise situations suggested by AJE.

This participation consists of:

- checking the information provided by the child;
- collecting all elements related to the history and the socio-economic situation of the family;
- indicating the reasons for the departure of the child to Europe and the elements of his/her route;
- restoring the ties between the child and members of his/her family, in particular in the case of disagreements;
- including the family by informing them about the legal and social status of their child, his/her psychological state and any risk related to his/her situation. The opinion of the parents on the future of the child in Europe must also be taken into account;
- establishing a continuous network of contacts between the child and his/her family and the partner NGOs;
- helping with the development of integration projects concerning the child and with the development of prevention projects linked with the family.

## 5- CONCLUSIONS AND RECOMMENDATIONS

In France, everyday work of AJE involves all partners (institutions and NGOs) concerned with the question of childhood. The AJE intervenes to assess the children's situation and promote educational solutions. AJE has developed international partnerships with countries of origin and transit. The interventions are intercultural and take into account the origin and the culture of each child.

Since 1995, the Municipality of Venice has gained experience in providing assistance to victims of trafficking while also combating this crime. The close cooperation between the social services and law enforcement through the provision of victim assistance and legal process serves as an example of good practice.

However, problems continue to exist. Italian immigration laws, applied to prevent and combat irregular migration, can be detrimental to these positive collaborative efforts as unrecognized victims may be deprived of protection and assistance and thus deported. Children, who may not be recognized as such, are likewise returned home, where they may be at risk of re-trafficking.

Support to foreign women and child victims of trafficking should not be conditioned by their collaboration with law enforcement authorities.

It is necessary to avoid hierarchies or domination among the interventions of the individual parties in order to allow the police, social workers and judges to integrate their interventions, so that they can achieve their own specific objectives and can promote the other actions linked to social protection. The assistance and social integration programme places single actions into a system where all parties achieve their own objectives due to the synergy with other parties.



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## C- COOPERATION BETWEEN CIVIL SOCIETY AND LAW ENFORCEMENT: A BELGIAN EXAMPLE AND EUROPEAN MODEL PROTOCOLS

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### 1- GENESIS OF A COOPERATION

In 1995, Julie and Melissa (both eight years old), An (17) and Eefje (19), Sabine (12) and Leatitia (14) were abducted and brutally abused by the same men. Despite the cries for help and efforts of their families, the Belgian law enforcement agencies did not manage to respond effectively. For Julie, Melissa, An and Eefje, the events had a fatal ending.

On 20 October 1996 more than 350,000 people gathered in Brussels for a silent and dignified demonstration. This “White March” was the onset for a drastic police reform, and led eventually to the creation of Child Focus, which in the meantime has become the European Centre for Missing and Sexually Exploited Children.

Child Focus is a private, non-profit foundation, working under Belgian law. Since its operational start on March 20, 1998, it has been closely cooperating with the Belgian legal authorities — including local and federal law enforcement agencies, prosecution offices and the Ministries of Justice and Foreign Affairs — in cases of missing and sexually exploited children. This partnership is based on official protocols of cooperation. Having experienced the urgency of this cooperation, Child Focus believes that mutual trust between civil society and the government is the key to the success of a fair and humane society. In this sub-chapter, these agreements will be described as examples of good practice.

The national and international mission of Child Focus is twofold. On the one hand it aims to provide active support to police and judicial investigations in cases of missing, abducted or sexually exploited children. On the other, it aims to contribute to the prevention and the fight against these phenomena on a structural political level. According to its mission statement, Child Focus has a mandate with regard to:

- the missing or abduction of a child;
- extra-familial sexual exploitation (child prostitution, child pornography — including through the Internet – and child trafficking). This means organized sexual exploitation of children by individuals or networks and
- international parental abduction.<sup>307</sup>

As such, Child Focus does not focus specifically on child trafficking. However, while dealing with the cases for which it holds a mandate, in particular sexual exploitation (and mainly child pornography) and missing unaccompanied minors (UAMs), it directly or indirectly tackles the issue.

In this sub-chapter,<sup>308</sup> the protocols of collaboration between Child Focus and the aforementioned legal authorities, which lay the foundation for Child Focus’ operational work, will be highlighted. These protocols can be recommended as examples of good practice in the fight against any form of missing or sexual exploitation of children. In order to remain focused on the needs of this Resource Book, emphasis will be placed on the cooperation between Child Focus

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<sup>306</sup> With thanks to Michiel Bonte, Stéphanie De Smet, Tom Van Renterghem, Tessa Schmidburg and Gert Vermeulen.

<sup>307</sup> Child Focus deals with cases of children who are 18 or younger at the time the file is opened, as well as with cases of missing children between 18 and 25 years old, who are still in the custody of their parents, unless it becomes clear that they left home on a voluntary basis.

<sup>308</sup> The focus of this sub-chapter is to provide an insight into the protocols of collaboration that are used and promoted by Child Focus, as such no specific overview of the way trafficking in children is tackled will be provided in this sub-chapter. In Belgium, an interdepartmental commission is responsible for coordinating the various agencies active in the fight against trafficking in human beings. Recently, an Information and Analysis Centre for Human Trafficking, in which Child Focus actively participates, was set up. Both at local and at federal level, special police forces were set up to deal with trafficking in human beings. For a general understanding of how child trafficking is addressed, please see i.a. [www.ecpat.be](http://www.ecpat.be).

and law enforcement authorities in the case of a missing child and in the fight against child pornography on the Internet. In addition to the actual protocols that are used in Belgium, an introduction will be made to European Model Protocols, dealing respectively with sexual exploitation and missing children. These protocols were developed by the Institute for International Research on Criminal Policy (IRCP) of the Ghent University in collaboration with Child Focus.

## 2- CHILD TRAFFICKING: A GLOBAL PROBLEM IN NEED OF URGENT ACTION

Trafficking in human beings has different facets, and involving a multi-agency approach is of vital importance to equally address the human rights, organized crime and migration dimensions. The vital need for institutionalized cooperation, based on official protocols or Memoranda of Understanding, was loudly echoed by the experts at the conference on “Tackling Human Trafficking: Policy and Best Practice in Europe”.<sup>309</sup> While this necessity is indeed largely confirmed by national and international actors, and was recently underlined by the European Commission Communication,<sup>310</sup> a formal and institutionalized relationship between judicial and law enforcement authorities and NGOs remains rare in Europe.

Inherited from a tragic history, close day-to-day cooperation between governmental agencies and civil society organizations has been the mantra of Child Focus since the very beginning. Complementarity and structural cooperation with legal authorities is the pivotal mechanism at the heart of Child Focus’ operational work. Based on this cooperation, Child Focus handled 3,305 cases involving 3,658 children in 2004. In the course of seven years of operational activities, Child Focus reached out to help over 10,000 children, parents and families, in cases of missing, abduction or sexual exploitation of a child. In many of these cases, Child Focus provided active support to investigation procedures, in close concert with police and judicial authorities. Child Focus insists on the crucial role of NGOs as guardians of democracy and watchdogs of the authorities. This critical role sometimes makes cooperation difficult, but has nonetheless been reasonably well accepted by Belgian police forces as being of utmost importance.

The protocols that allow for this wide range of activities will be introduced in the next paragraphs. They are, and will continue to be, recommended by all actors whose work they structure as examples of good practice in the fight against the missing and sexual exploitation of children.

## 3- BELGIAN PROTOCOLS OF COOPERATION

In its day-to-day work, Child Focus in no way aims to substitute police departments or the law courts, but rather collaborates on a complementary basis, by contributing to the authorities and assisting the victims. Child Focus has, for example, no legal mandate to (pro) actively proceed in investigative procedures. The framework for the day-to-day cooperation is outlined in a protocol between Child Focus and the judicial authorities (referred to hereafter as the “general protocol”). The protocol was signed by the Ministry of Justice, the Board of Attorney Generals and Child Focus on 30 March 1998. It is integrally included in a Directive from the Minister of Justice that regulates the actions of the law enforcement agencies in tracing missing persons. This general protocol is evaluated annually, and adjusted as necessary.<sup>311</sup> In this section, an introduction will be provided to the general principles and methods of the cooperation, with a particular attention to the chapter in the protocol, which deals with the case of missing children.

In addition to this general protocol, a second protocol of cooperation between Child Focus – Net-alert<sup>312</sup> and the Judicial authorities and specialized services of the Belgian Federal Police Forces was signed on 19 June 2002. This latter protocol has as the specific goal of



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<sup>309</sup> “Tackling Human Trafficking: Policy and Best Practice in Europe”, 19-20 October 2005.

<sup>310</sup> Report of the Expert Group on Trafficking in Human Beings, 2004.

<sup>311</sup> The current and most recent version of the protocol dates back to January 28, 2002. It is currently under evaluation, but no major changes are expected to occur.

<sup>312</sup> Child Focus – Net-Alert is a civil hotline established by Child Focus, [http://www.childfocus-net-alert.be/uk/UK\\_homepage.htm](http://www.childfocus-net-alert.be/uk/UK_homepage.htm)

optimizing combating child pornography on the Internet. In the following paragraphs, the general principles and methodology of this protocol will also be outlined. This protocol is an example of good practice in combating child pornography on the Internet, which today affects more than 100,000<sup>313</sup> young victims around the world.

The cooperation in the field of missing children, as outlined in the general protocol and the cooperation between Child Focus and the authorities in the field of child pornography on the Internet, are of relevance in the framework of child trafficking. A considerable percentage of these UAMs are assumed to be victims of trafficking. According to the statistics of the Belgian Immigration Office,<sup>314</sup> for example, 1,778 UAMs were registered in 2003, of which 31 were considered to be victims of trafficking. In 2004, the Office registered 2,694 UAMs, of which 22 were considered to be victims of trafficking. Unaccompanied minors seeking asylum, of which in Belgium 10 percent are assumed victims of human trafficking,<sup>315</sup> disappear in approximately 25 percent<sup>316</sup> of the cases. In 2004, Child Focus assisted 1,052 cases of unaccompanied minors, of which 266 files were new in that year. While some UAMs reappear after some time, most missing cases remain unsolved.

### 3.1- Protocol on cooperation between Child Focus and the judicial authorities

The general protocol of cooperation consists of six chapters:

- o General principles of cooperation
- o General methods of cooperation
- o Special methods of cooperation in case of a missing child
- o Special means of cooperation within the framework of files concerning sexual exploitation
- o Special terms of cooperation in case of international parental abductions
- o Evaluation of the current protocol

#### 3.1.1- General principles and methods

The main goal of the protocol is to establish a functional, cooperative relationship based on reciprocity, aiming to:

- o optimize the possibility of retrieving missing children in good health;
- o deal with the problem of extra-familial sexual abuse of children and
- o deal with international parental abduction.

In order to do so, a special relationship between Child Focus and the main relevant law enforcement and judicial authorities has been institutionalized by the protocol. More specifically, the text underlines the privileged contacts between Child Focus and, inter alia:

- o the federal magistrates;
- o the police forces, in particular the Departments "Trafficking of Human Beings" and "Aggression Against Persons" of the Federal Police;<sup>317</sup>
- o the Ministry of Justice<sup>318</sup> and
- o the Ministry of Foreign Affairs.

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<sup>313</sup> Estimation from *The Challenges of Cybercrime*, Strasbourg, 15-17 September, *Child Pornography on the Internet*, Tom Van Renterghem. Again, caution with regard to figures applies.

<sup>314</sup> Dienst Vreemdelingenzaken (Foreign Affairs Service).

<sup>315</sup> Child Focus, 2005 (The profile and Monitoring Route of Unaccompanied Asylum Seekers in Belgium).

<sup>316</sup> Idem. Of the 683 UAMs that were object of the study, 161 or 23.57% disappeared.

<sup>317</sup> See <http://www.poldoc.be/>

<sup>318</sup> And more particularly the "Guichet Unique", dealing with parental abduction.

The general principles of the protocol clearly state that judicial or police investigations are the sole responsibility of the judicial authorities and police forces.

According to the protocol, Child Focus' actions during investigations concerning missing children include:

- providing permanent availability of the toll-free number “110”;
- dealing with the receipt of information concerning a missing child, the immediate forwarding of information concerning a missing person to the judicial authorities and the follow up of any information received concerning a missing child;
- providing its intervention car;
- mobilizing volunteers to participate in searches;
- staying in close contact with the official authorities responsible for the investigations and
- informing, when necessary, meeting and supporting the relatives of the missing child and/or the victim and referring them to the competent services.

These guidelines correspond with the core activities undertaken by Child Focus in the case of a missing child. The centre disposes of an operational team, which is accessible 24 hours a day, seven days a week, via a national toll-free number “110”,<sup>319</sup> to provide immediate support to victims. Telephone callers are identified and informed that the telephone call will be registered unless they oppose to this.<sup>320</sup> If the caller wants to remain anonymous and Child Focus accepts this request, Child Focus will nonetheless inform the judicial authorities of the value it attaches to the anonymous information. When necessary, Child Focus tries to convince the anonymous caller to disclose his/her identity.

Whenever a case falls within the competence of the Centre, a specialized case manager is designated to closely monitor the file, and to communicate with the judicial authorities as well as with the parents of the victims. As required by the general protocol, Child Focus only acts once the police have registered the declaration of the missing person and with permission from the parents or the persons who have custody of the child. This prevents uncoordinated activities that might harm the common goal. In close consultation with the Missing Persons Unit (MPU) of the Federal Police and, depending on a case-by-case evaluation,<sup>321</sup> posters can be printed and distributed locally by Child Focus' network of 1,800 voluntary workers, organized in Belgium's 27 judicial districts. With a specially equipped intervention vehicle, the team can produce search posters on the spot, at the site where the child has gone missing. Moving into action in the first few hours following a disappearance has proven to be essential for collecting sightings of a missing child.



### 3.1.2- Special methods of cooperation in the case of a missing child

The protocol comprises a special section on the methods of cooperation in the case of a missing child. These methods can be summarized as follows:

#### A. Immediate action

- Before undertaking any other action, Child Focus must check whether the police have received a complaint or a declaration on the issue. Child Focus contacts the police forces as soon as possible to inform of its intervention, to verify the obtained information and to check that the case has not already been solved.
- Child Focus informs the Missing Persons Unit about every missing person file which it opens. This is achieved by faxing the Unit a simplified form. By reciprocity, the Missing Persons Unit is invited to inform Child Focus of every new file that is opened.

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<sup>319</sup> Child Focus can also be contacted by other means, through e-mail, fax, personal contact, etc, and will react uniformly independent of the way in which it was contacted.

<sup>320</sup> For this purpose, Child Focus was granted an exception on the Belgian privacy law.

<sup>321</sup> Depending inter alia on a series of fixed criteria such as age, normal behaviour and need of medication.

- Checks are carried out to examine whether information registered by Child Focus and the records provided by the MPU correlate. This information will be standardized by using model documents.
- Child Focus attributes a case manager or a call manager to every case.<sup>322</sup> This case or call manager will be the direct and privileged discussion partner of the judicial and the police authorities.

#### B. Cooperation during the investigative phase

Child Focus can decide to issue a search message, following an evaluation between competent police authorities, the parents or relatives of the missing child, Child Focus and, if the occasion arises, the Missing Persons Unit. This can be done, for example, by putting up posters locally, by distributing placards or flyers, or by circulating information through Child Focus' website. While the protocol forbids Child Focus to distribute any messages without the permission of the persons with custody of the missing child unless ordered by the magistrate conducting the investigation, Child Focus can at any time, based on a reasoned decision, refuse to implement a magistrate's order to conduct such distribution.

Following any search message, be it issued by Child Focus or through the media upon direct recommendation by the judicial authorities, Child Focus' toll free emergency telephone number "110" remains available for the collection of sightings or leads to the missing child. Authorities are bound to warn Child Focus of their decision to distribute a search message in the media. Child Focus passes all information received in response to the search message to the authorities conducting the investigation.

#### C. Organization of search operations

The protocol outlines that, whenever possible, Child Focus will cooperate in carrying out the search operations requested by the magistrate conducting the investigation. While Child Focus has the right to propose that such a search be organized, the magistrate can object to this proposal if he/she possesses information that leads to the belief that a search would seriously endanger the child or harm the investigation. Whenever a search is organized, the action is coordinated among the different parties in accordance to strict guidelines.

#### D. International contacts

As Child Focus proactively develops an international network of NGOs working in the field of missing and sexually exploited children, as well as a close relationship with the press and media in most European countries, Child Focus can ask these organizations to assist in a transnational case. Again, these actions are undertaken in agreement with the magistrate, the acting institutions and the parents.

#### E. Contacts with the judicial authorities: sharing information, taking part in meetings convened by persons in charge of the investigation

During the course of the investigation, Child Focus will share all information that it receives with the magistrate in charge of it and with the competent police force. If the information is urgent, it may be communicated orally with confirmation by any written or electronic means of communication. In case of a communication breakdown, Child Focus shall contact the Missing Persons Unit. Furthermore, if requested by the parents of the missing child, Child Focus' case manager takes part in the meetings convened between the persons in charge of the investigation and the parents of the victim. Where appropriate, the case manager is asked to take part in the coordination meetings convened by the magistrate.

#### F. Return of the missing person

If the missing child has been recovered, Child Focus must immediately inform the competent authorities and vice versa.

#### G. Regular update of data

The protocol requires that the information gathered by the police and Child Focus is exchanged and updated.

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<sup>322</sup> The call manager deals with all cases concerning runaway children during the first 48 hours in which the child is missing.

### 3.1.3- Conclusion and relevance for trafficked children

The general principles of cooperation outlined in the protocol and referred to above are intended to provide inspiration for actors wishing to strengthen their collaboration in the fight against any category of missing and/or sexual exploitation of children. In particular, the specific methods of cooperation in the case of a missing child, are of special relevance for actors active in the fight against trafficking in children, for example UAMs of which, as mentioned, an estimated 10 percent are alleged victims of trafficking.

## 4- PROTOCOL OF COLLABORATION BETWEEN CHILD FOCUS – NET-ALERT AND THE JUDICIAL AUTHORITIES AND SPECIALIZED SERVICES OF THE BELGIAN FEDERAL POLICE FORCES

In March 2000, the “Surf Safe” campaign was launched, providing 10 to 13 year old children with safety tips on how to surf the Internet. While the campaign’s primary aim was to provide information and raise awareness amongst youngsters, Child Focus received 441 reports concerning alleged child-pornographic material in the year following the launch of the campaign. Having had a good working relationship with law enforcement since its establishment, Child Focus developed a working practice according to which the reports were forwarded to the Central Unit Human Trafficking of the Federal Police (CUHT). The CUHT faxed information to the Federal Computer Crime Unit (FCCU), where it was digitally recorded. Child Focus soon realized the urgency of the need for a long term, simplified and formalized procedure.

As such, Child Focus’ New Technology and Multimedia Team was granted funding by the European Commission, Directorate General Information Society, under the Internet Action Plan in 2002. These funds were used not only to raise awareness, but mainly to create a civil hotline (child focus – Net-alert) through which presumed child pornographic material could be reported. In order to formalize and streamline the existent unofficial collaboration between Child Focus and the CUHT, a protocol of cooperation was signed by the Minister of Justice, the Directorate General of the Judicial Federal Police, the College of Prosecutors and Child Focus. Both the protocol and the civil hotline were launched on 20 June 2002 and are subject to continuous and ongoing evaluation and improvement. The protocol has been inspiration to various hotlines across Europe, and can be acknowledged as an example of good practice of cooperation between civil society and law enforcement in the field of child trafficking.

### 4.1- General principles

The protocol’s main principles are in line with the tradition of complementarity and collaboration, which are the founding imperatives of the working methods of Child Focus and the Belgian judicial authorities. The protocol constitutes a reciprocal relationship aimed at optimizing the fight against child pornography on the Internet. It does not interfere with the existing police hotline of the FCCU but rather offers a complementary hotline that works in close harmony with the authorities. As mentioned, and in accordance with the Belgian law, Child Focus has no competency with regard to research or investigation. These activities are the responsibility of the law enforcement authorities alone and remain fully in their authority. As such, the activities of the civil hotline are restricted to the reception, immediate transmission and follow up of the reports of presumed child-pornographic materials. It consolidates a relationship between the CUHT of the Federal Police and the FCCU of the Federal Police. While the CUHT has the required competencies and mandate to fight child pornography on the Internet, it is assisted by the Federal Crime Control Unit, which provides the necessary technical support.

### 4.2- Methods of cooperation

Whenever alleged pedo-pornographic materials (e.g. the URL of a site, information on a newsgroup, a chat box or an e-mail) are reported through the hotline (e.g. online, by fax, letter or through Child Focus’ toll free three digit number), the following actions are taken:

- The sender receives an acknowledgement of receipt from the hotline.



- Within 24 hours, the information is transmitted to the Central Unit Human Trafficking (CUHT) and in most cases to the Federal Computer Crime Unit (FCCU).
- In case the information is transmitted to both the CUHT and the FCCU, the FCCU acknowledges receipt. Whenever the information is sent to the CUHT alone, this Unit acknowledges receipt.
- Within a reasonable timeframe,<sup>323</sup> the Central Unit Human Trafficking informs the hotline whether or not it is a case of child-pornographic materials to the judicial authorities. It also informs the hotline of which judicial or police department will handle the case.
- If the reporter has left his/her personal data, he/she is informed by the hotline of the results of the report. If the reporter prefers to remain anonymous, the results of the report will not be sent.

#### 4.3- Conclusion

Sexual abuse and exploitation for pornography on the Internet are forms of exploitation of trafficking. Research conducted by Child Focus confirmed the devastating effects of sexual abuse on a child.<sup>324</sup> When the abuse is placed on the Internet, the trauma is bound to repeat itself, continuing for many years. The Belgian general protocol can serve as inspiration for NGOs and law enforcement agencies wishing to strengthen their common fight against this crime.

## 5- EUROPEAN MODEL PROTOCOL

While tragic events forced Belgian authorities to change their single pronged approach and move towards greater transparency and collaboration, the sense of urgency of multi-agency action has not yet reached many of the other European or international authorities. With the aim of stimulating the development of cooperation between law enforcement authorities and NGOs across Europe, Child Focus and IRCP developed “European Model Protocols”, which are promoted as practical tools for authorities and NGOs wishing to formalize their cooperation.

### 5.1- Council Resolution

The origins of the European Model Protocols date back to 27 September 2001, when the Council of Justice and Home Affairs (JHA) Ministers of the European Union adopted a resolution on the contribution of civil society in finding missing and sexually exploited children. In doing so, the JHA Council expressed its belief in enhanced cooperation between civil society organizations and law enforcement services in preventing and combating these phenomena. The Council resolution called on the European Commission to have a study drawn up on:

1. The extent of the phenomena of missing and sexually exploited children in the EU member states;
2. The existence, role and structure of civil society organizations in the member states actively supporting the search for missing and sexually exploited children, along with their arrangements for involvement and cooperation with the competent authorities and
3. The legal issues arising from the involvement and cooperation of such organizations with the competent law enforcement services.

The European Model Protocols are embedded in the answer to the third appeal. The research on the legal issues arising from the involvement and cooperation of NGOs with the

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<sup>323</sup> In the current practice, the “reasonable timeframe” usually comes down to approximately six months. However, discussions are currently taking place to adapt the protocol, specifying the “reasonable timeframe” and restricting it to three months.

<sup>324</sup> Child Focus, 2003: 25-40.





competent law enforcement services resulted in a book entitled “Cooperation between Civil Society Organizations and Law Enforcement Services in the Area of Missing and Sexually Exploited Children. Possibilities and Limits from a European Legal Perspective”. The European Model Protocols are included as an annex in the publication, which can serve as inspiration for establishing official relationships between civil society organizations and law enforcement officers. The three parts of the study were realized with the support of the European Commission,<sup>325</sup> and issued under the common label “Childscope”. The study is available at [www.childscope.net](http://www.childscope.net) and can be downloaded free of charge. The protocols will be the object of a Daphne Project<sup>326</sup> scheduled from November 2005 to November 2006, during which roundtables will be organized in seven new EU member states, which were not yet involved in the Childscope project. At these roundtables, a multi-disciplinary audience will be invited to discuss possibilities for cooperation in their country in the fight against the phenomena of missing and sexually exploited children.

## 5.2- European Model Protocols

The European Model Protocols<sup>327</sup> are the outcome of an extensive study of the common European legal standards and general principles for a code of practice for both NGOs and law enforcement actors. Due to the distinct nature of the phenomena of missing and sexual exploitation, the protocols are divided into two different models. Based on a list of desiderata on possible forms of cooperation submitted by NGOs, law enforcement agencies and academics,<sup>328</sup> two clusters of cooperative forms have been distinguished in each of the aforementioned models, namely information related cooperation and operational cooperation.



With regard to information-related cooperation, the existing legal restriction for the protection of personal data when exchanging data was taken into account. The main European Agreements incorporated in the Protocols are the Council of Europe Convention No 108 (also known as the Data Protection Convention) and its Additional Protocol and Recommendation R (87) regulating the use of personal data in the police sector.

As for the operational cooperation, the Protocols took note of the legal questions arising from standards of criminal proceedings, children’s rights provisions and public and social norms. In essence, they consider the principles of the Convention for the Protection of Human Rights as well as national criminal procedures. When entering in to an operational cooperation, the parties involved are advised to describe their respective responsibilities and duties in order not to hamper individual activity and, in particular, the ongoing investigation.

On a more general note, it should be mentioned that

*“all services and activities offered by civil society in the scope of information related or operational cooperation with law enforcement must be appropriate, strictly proportionate and to the intended purpose and should be adequate to safeguards in accordance to principles of the European Data Protection Convention and the European Convention for the Protection of Human Rights”.*<sup>329</sup>



Before entering into a protocol of cooperation with a law enforcement agency, an NGO is invited to check whether the proposed and preferred activities, be they information- or cooperation-related, are legally authorized and under which conditions. To this aim, the publication includes a practical checklist.

Finally, before entering into an official protocol, general quality standards as well as a code of practice should be guaranteed by both parties. In order to be successful, the cooperation should involve actors with high professional skills and expertise, who agree to respect each other’s ethical codes.

Both protocols, the first aiming at cooperation in the field of sexual exploitation, the second at missing children, are structured as follows:

<sup>325</sup> European Commission, STOP, AGIS and DAPHNE Programmes, references DAPHNE /02/037/YC – JAI/2002/STOP/108 – DAPHNE 04-2 / 029.

<sup>326</sup> Reference JAI/DAP/2004-2/026/C.

<sup>327</sup> With special thanks to Gert Vermeulen.

<sup>328</sup> Meeting in Copenhagen on June 20 & 21, 2003.

<sup>329</sup> Vermeulen and De Pauw, 2004: 50.

- Preamble outlining
  - The need for the specific cooperation agreed upon in the protocol
  - The legal provisions to be taken into account
- General provisions:
  - The specific category(-ies) of missing children or sexual exploitation, object of the protocol (for instance child trafficking in view of sexual exploitation, criminal abduction of children)
  - The respect for human rights and rights of the child in particular
  - Provisions ensuring the necessary qualifications of the staff as well as the prevention of engaging persons convicted of sexual exploitation of children
  - Privileged contacts between the parties and their staff, based on mutual respect
  - The recognition and respect for the distinct mission of each party
  - The statement that criminal investigation shall exclusively be governed by law enforcement authorities and that the NGO shall not conduct law enforcement analysis of its stored data, unless requested by law enforcement
  - The mutual respect for each other's codes of conduct and rules of confidentiality
  - A specific provision for the required attention in the case of sexual exploitation or missing of a child
  - The respect for domestic law
  - An agreement on mutual consultation prior to any action
- Description of responsibilities, including:
  - Respective description of the responsibilities and tasks of the civil society organization/law enforcement unit in the case of sexual exploitation or missing children
- Information-related cooperation, with reference to:
  - Respect for data protection principles by both parties and insurance of protection of data by the civil society organization
  - Confirmation of the willingness to cooperate with each other in concrete cases of sexual exploitation or disappearance. This section can be inspired by the "practical checklist"<sup>330</sup> on preferred information related activities
- Operational cooperation, including:
  - The respect for the privacy provisions
  - Confirmation of the willingness to cooperate in concrete cases of sexual exploitation or disappearance/missing child. This section can be inspired on the "practical checklist" on preferred operational activities
- Final provisions, including:
  - Entering into force
  - Clause for future amendments or disputes on interpretation of the protocol
  - Evaluation
  - Termination clause

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<sup>330</sup> Vermeulen, 2004.

### 5.3- Conclusion

The outline above provides only an introduction to the two distinct protocols for sexual exploitation and missing children. It should be read as an invitation to civil society organizations as well as law enforcement authorities to scrutinize possibilities for information and/or operational cooperation. The European Model Protocol hopes to serve as a basis for the formalization of such collaboration.

In the field of trafficking in human beings, the European Model Protocol has been promoted by the European Commission, in the Communication – Fighting Trafficking in Human beings:



*“Throughout the EU and worldwide civil society organizations play a crucial role in assisting trafficked persons. [...] Member States should consolidate the cooperation of public authorities with civil society organizations related to the prevention of and the fight against human trafficking, e.g. by setting up rules agreed upon by both sides that promote mutual understanding and trust. [...] The Council, further to a contribution from the Commission, should adopt EU guidelines and/or a European Model Protocol of cooperation in order to facilitate such cooperation throughout the EU and third countries”.*<sup>331</sup>

In the fight against the sexual exploitation and missing of children, the Belgian protocol, which has strong similarities with the European Model Protocol, has already proven its value.

## 6- CONCLUSIONS AND RECOMMENDATIONS

In order to address the growing crime of child trafficking, it has been stated that the different — human rights, organized crime and illegal immigration — aspects of the problem should be equally and effectively countered. While law enforcement authorities have the competencies to deal with the criminal investigation, NGOs can tender victim support, often have access to important data, and can offer concrete means, which may contribute to the investigation. Cooperation between law enforcement agencies and civil society organizations is therefore of crucial importance.

Aware of this reality, Child Focus has been working on the basis of protocols since its establishment. In addition, promoting this model of cooperation has been one of the main tasks of the International Development Department of the Centre. With the support of the European Federation for Missing and Sexually Exploited Children,<sup>332</sup> protocols of cooperation have been signed by law enforcement authorities. Other members of the Federation have been assessing possibilities for enhancing cooperation in their countries. As Secretary General of the Federation, Child Focus actively tries to stimulate the development of these members and encourages them to comply with the general quality standards as well as the code of practice included in Childscope’s “Cooperation between Civil Society Organizations and Law Enforcement Services in the Area of Missing and Sexually Exploited Children. Possibilities and Limits from a European Legal Perspective”. Thanks to the support of the European Commission’s Daphne Programme, Child Focus and IRCP will, in cooperation with seven partner NGOs, promote the European Model Protocol in seven countries that had not yet been involved in the Childscope project.

However, the unilateral efforts of NGOs tend to be time consuming and laborious and the outcome of these efforts are not always visible. Without a clear message from the political level, a lot of time and opportunities to help victims may be wasted. Child Focus therefore urges the Commission and the Council to promote the European Model Protocols in order to indeed facilitate cooperation within the EU and with third countries.

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<sup>331</sup> European Commission, COM 2005/514: 10.

<sup>332</sup> Child Focus takes on the responsibility of the Secretariat General of the Federation. For more information, see [www.childfocus.org](http://www.childfocus.org)

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## D- ASSISTANCE IN COUNTRIES OF ORIGIN IN PREPARATION OF AND UPON RETURN

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### 1- INTRODUCTION

An important cooperation exists between law enforcement and non-governmental organizations (NGOs) in the framework of support to children upon their return to their country of origin. This sub-chapter will focus on the good practice established between law enforcement structures in Albania and the Terre des hommes Delegation in Albania (Tdh).

Tdh's experience is considered in view of the Albanian NGO Coalition, "All Together Against Child Trafficking" (abbreviation in Albanian: BKTF).<sup>333</sup> Examples referring to cooperation among BKTF members and between BKTF and local law enforcement will be included. Additionally, this sub-chapter notes the transnational aspects of collaboration, such as the collaboration of law enforcement and civil society between the country of origin and transit/destination; notably between Greek authorities and Arsis, a Greek NGO active in Thessaloniki and Athens.

After discussing the current cooperative practice and the legal framework in the light of the specific needs of the children it serves, this sub-chapter provides a number of recommendations to enhance such cooperation and its efficiency vis-à-vis the needs of child victims of trafficking.

### 2- TERRE DES HOMMES ALBANIA AND THE TRANSNATIONAL ACTION AGAINST CHILD TRAFFICKING PROJECT

The child rights organization Terre des hommes Foundation Lausanne established its own mission in Albania in 1993. In response to concerns expressed by national NGOs on trafficking cases of Albanian children to Greece, in 1999, Tdh together with the Albanian Foundation Ndihmë Për Fëmijët (NPF) conducted the first investigation into child trafficking between Albania and Greece. The results of the investigation provided clear evidence of child trafficking on a large scale, requiring immediate action.<sup>334</sup>

In 2000, Tdh started its first projects to counter child trafficking in Albania. The current project implemented by the organization, entitled "Transnational Action against Child Trafficking" (TACT) is supported by six international donors<sup>335</sup> and is based on the accumulated experience of Albanian initiatives against child trafficking. The project aims at the prevention of child trafficking and the protection, assisted voluntary return (AVR) and reintegration of its victims. The coordination of TACT efforts with other governmental and civil society counter trafficking initiatives occurs within the BKTF Coalition. Tdh Foundation Lausanne is today following the same model of operation in other projects to counter child trafficking implemented by the organization in Southeastern and Eastern Europe, such as in Romania and Moldova.

### 3- COOPERATION WITH LAW ENFORCEMENT: A NECESSITY

#### 3.1- The national context



The Government of Albania has signed all international instruments relating to the fight against trafficking in human beings. It has also signed the United Nations Convention on the Rights of the Child. According to these international instruments, the signatory Parties are obligated to cooperate with international and national NGOs in fighting child trafficking and protecting its (potential) child victims.<sup>336</sup>

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<sup>333</sup> BKTF, founded in 2002, currently consists of 13 national and international NGOs active in the fight against child trafficking in Albania.

<sup>334</sup> Philippe and Tournecueillert, 2003: 33.

<sup>335</sup> TACT Donors are the United States Agency for International Development (USAID), the Swedish International Development Agency (Sida), the Oak Foundation, the United Nations Children's Fund (UNICEF), the National Albanian American Council (NAAC) and Terre des hommes Foundation Lausanne.

<sup>336</sup> Holmes, 2002: 8.

These international obligations of the Albanian State are translated into national laws and policies. Both the Albanian National Strategy for the Fight against Trafficking in Human Beings (September 2001) and the National Strategy for the Fight against Child Trafficking and the Protection of Child Victims of Trafficking (February 2005), emphasize the obligation of government structures to cooperate with national and international NGOs in implementing the counter trafficking measures foreseen.

It should however be noted that the practice of cooperation between law enforcement and NGOs in Albania dates back prior to the adoption of these documents. Their adoption was a formal recognition of the already existing and fruitful cooperation. In fact, the first efforts to address child trafficking in Albania were undertaken by civil society. Even when the Albanian Government recognized the existence of child trafficking in 2001 and committed itself to fight the phenomenon, most of the government's efforts were concentrated on prosecution. The anti-trafficking police, for example, are one of the first specialized police forces in charge of investigating trafficking crimes in Southeastern Europe, and was established following the National Strategy of September 2001. However, the prevention aspect and the various forms of assistance needed by child victims of trafficking were mainly left to the NGO sector. This can be explained by a number of reasons.

First, the existing public structures in Albania were confronted with a new, negative phenomenon. While the criminalization of child trafficking in Albania meant a clear duty for law enforcement, this was not accompanied with legal duties for public social service providers. Second, both law enforcement and other public services of a social character were extremely weak. Moreover, both law enforcement and public social service providers lacked the required child rights expertise to efficiently address a complex phenomenon such as child trafficking. Even today, public social service providers in Albania lack the necessary capacity to provide highly specialized and multidimensional assistance in a sustainable manner to child victims of trafficking.

On the other hand, international and national NGOs had the means and possibilities to quickly adopt the existing operations, providing services corresponding to the needs of (potentially) trafficked children. Many international NGOs already had expertise in fighting child trafficking in other areas of the world. This expertise was used not only to provide direct services to the children, but also to assist law enforcement and other public stakeholders in their efforts to combat child trafficking.

Thus, the collaboration between law enforcement and NGOs in Albania was a direct result of the needs of the (potentially) trafficked children. While the initial cooperation was ad hoc and case specific, it contributed to the establishment of trust between law enforcement and civil society in Albania. Civil society began to coordinate its actions with the BKTF Coalition becoming the main interlocutor of the Albanian civil society with the government. Thus the cooperation between both parties became formalized and sustainable.

The BKTF Coalition was given the opportunity to contribute to the draft child trafficking-related legislation and policies. Different law enforcement agencies, such as police and the prosecution office concluded specific collaboration agreements with its NGO members. These agreements provide *inter alia* for exchange of information, knowledge, expertise and various complementary services to (potentially) trafficked children.

In the framework of the TACT project, Tdh Albania has signed a collaboration agreement with the General Directory of Albanian Police. The Agreement describes the cooperation and the respective procedures to be followed by the Parties in their fight against child trafficking, child exploitation and abuse, as well as in their assistance to Albanian children, victims of trafficking or of other forms of exploitation and abuse. This assistance applies to protection, assisted voluntary return and reintegration. In addition, the Agreement covers children at risk of trafficking, exploitation or abuse, focusing on prevention and protection.



The Agreement lays down the two main roles for Tdh. The NGO commits itself to inform children and structures providing assistance to children and to educate them about the crime of child trafficking and its related risks. It also plays a role in analyzing the social context of the child and family and supports them in the fulfilment of the specific needs of the

child. The General Directory of State Police conforms to Albanian legislation and is committed to intervene in child trafficking cases, ensuring the physical wellbeing of the child and preventing trafficking from occurring.

This Agreement, which is driven by the principle of the best interests of the child, was signed in July 2005 and reflects good practices, based on five years of cooperation between the TACT project and the Albanian police.

### 3.2- The “neglected” transnational context



Cooperation between NGOs and law enforcement in the field of anti-trafficking is very often placed at the centre of attention and debate. However the approach taken has been too simplistic, being focused either on the cooperation in the country of origin or transit/destination, or on both countries but separately. Unfortunately, the cooperation between NGOs and law enforcement is very rarely placed within its real transnational context.

In the case of Albania and Greece, a proper implementation of counter trafficking efforts commences with the identification of the victim. The Albanian trafficked child in Greece is located either by police or NGOs conducting outreach work towards trafficking victims or vulnerable children and can be identified as victim of trafficking only by the prosecutor. To respond to the immediate protection needs of the child, permanent cooperation between Greek law enforcement and NGOs should be started. However, a decision on a permanent solution in the best interests of the child requires an assessment of the possibility of the return of the child to Albania. This necessitates cooperation with both the law enforcement and NGO sectors in Albania.

Initial cooperation between Tdh and Arsis, a Greek NGO working with vulnerable children, including child victims of trafficking, was established, resulting in common operations in 2002. The cooperation with Arsis aims at providing the continuous assistance to the child in Greece and upon return to Albania. It also aims at coordinating the physical protection offered to the child by both Greek and Albanian law enforcement.

However, during joint activities of Tdh and Arsis, a number of cases have arisen where the rights of the child have not been respected by Greek law enforcement. On many occasions, Albanian unaccompanied children in Greece have been simply classified as illegal migrants by law enforcement. Consequently, they have been placed in detention, on occasions together with adults, and then deported to Albania. In these cases there has been no referral to NGOs and no efforts made by Greek law enforcement to establish whether the children were victims of trafficking. From 2003 to date (September 2005), Tdh and Arsis have supported the voluntary return of only seven victims of child trafficking. In the mean time, Tdh in the framework of the TACT project has assisted in Albania 44 children deported from Greece, where they had been living unaccompanied and without residence permits. In order to enable the screening procedure in Greece, to avoid deportation of victims of trafficking and to enhance law enforcement cooperation with NGOs in the best interest of the child, Arsis and Tdh through the BKTF have been urging both governments to establish a cooperation agreement on the protection of Albanian children trafficked to Greece. The draft of the agreement emphasizes the transnational cooperation, as well as the cooperation between the law enforcement and the civil society in both countries. The negotiations for the signing of the agreement have started in May 2004, but unfortunately the agreement has not been signed yet.

## 4- COOPERATION IN ALBANIA IN PREPARING ASSISTED VOLUNTARY RETURN AND AFTER RETURN

### 4.1- Preparing assisted voluntary return

Arsis has referred a considerable number of cases of children who lived in Greece and were either identified victims of trafficking, potential victims of trafficking or at risk of being trafficked to Tdh Albania. Upon Arsis' notification, the first step undertaken in Albania is the assessment and evaluation of the child's family in Albania.

Such assessments look at the social and economic conditions of the family and are conducted either directly by Tdh, in the areas covered by the TACT project, or by another NGO member of the BKTF Coalition. However, a crucial element of the family assessment is looking at potential security threats for the child upon return to Albania and within the family environment. This security assessment goes beyond the role an NGO can play, therefore the involvement of law enforcement is necessary.

In the framework of the TACT project, close collaboration is established with the anti-trafficking police in Albania. This cooperation has occurred through a long process and remains highly sensitive. In particular, for the social workers of the TACT project it remains difficult to cooperate with the police, while seeking a social solution to prevent the trafficking of a child, or the protection of a child victim.

The solution found in the framework of TACT is the low profile maintained by the social worker. Within the community and the family, the involvement of TACT social workers is not explained in relation to trafficking, but more in terms of general child rights issues, such as education and social assistance to vulnerable children.

Moreover, the intervention of the anti-trafficking police have, on many occasions, proven to be helpful to the social workers, whilst serving the best interests of the child. The anti-trafficking police have sought the implementation of the legal framework in general, rather than taking a repressive approach. They have offered administrative support to the families and have even become involved in improving the material conditions of some families, in one case by repairing a roof.<sup>337</sup>

On several occasions, the regional offices of the anti-trafficking police have been of assistance in locating the family of a child. This has often proven to be difficult, considering the current dynamic trend of internal migration in Albania.

The anti-trafficking police have also assisted the project in determining the level of involvement of the parents in the trafficking of the child. It should be noted however that there is always some level of involvement of the parents of the child and this involvement is evaluated from a future perspective, together with the social and economic assessment of the family. In the majority of cases, the parents are deceived by the trafficker through false promises for a better future for the child and the family. When the trafficker does not keep the promise to the family, some parents understand that the child is being exploited and regret having entrusted their child to the trafficker. However, at the time, they can little change the situation. Often, parents do not even have recent news about their child and his/her whereabouts, thus, when contacted by the social workers, the parents look forward to the return of their child, and upon return, the child does not face any risk by staying with his/her parents.<sup>338</sup>

There are also cases when, after looking at the family situation and discussing with the parents of the child, the social worker is not convinced that the child is safe upon return to the family environment. The level of potential risk varies. In cases when the level is low, law enforcement can still guarantee the safe reintegration of the child into his/her biological family. The child returns to the family under the supervision of law enforcement, which is prepared to intervene should the child be threatened.

In cases when the return of the child to his/her biological family is assessed as potentially high risk, a different solution must be sought, together with law enforcement and other BKTF members. Upon return, the child is placed under the temporary responsibility of law enforcement structures, which should take the legal steps necessary to provide a sustainable solution for the child, through foster care, sheltering and orphanage related services, provided either by the NGOs or public entities. When such services would not respond to the needs of the child, recommendations are presented to Greek law enforcement agencies, through Arsis, in an effort not to return the child due to security risks.

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<sup>337</sup> Tdh 2004: 54.

<sup>338</sup> Tdh, 2004: 47.



In all the above-described cases, the involvement of law enforcement is necessary prior to the return of the child. It guarantees the effectiveness of the solution found, its credibility and proper and safe implementation.

#### 4.2- Protection during return

Prior to the return of the child, Tdh or other BKTF members frequently refer cases to law enforcement. In cases of deportation, it is often the Albanian border and anti-trafficking police which refer cases to Tdh or other BKTF members.

The border police in Albania are very often confronted with “unannounced” returns of Albanian unaccompanied minors. The screening for victims of trafficking within this group does not occur before they reach the Albanian side of the border. It should be noted that the screening procedures have been developed by the Albanian police, in cooperation with International Organizations (IOs) and NGOs, members of BKTF and its Advisory Board. The International Organization for Migration (IOM), for example, has not only contributed to the development of the screening procedures, but also to the training of police officers. Assistance is also provided regarding the establishment of specific accommodation rooms within police border stations to offer short term, appropriate shelter to (potential) victims of trafficking.

According to recent amendments to the Albanian Code of Criminal Procedures,<sup>339</sup> during police interviews of children, a legal representative or a psychologist should be present. Within the framework of the TACT project, the presence of Tdh during such interviews has proven to serve the best interests of the child. Legal Clinic for Minors, an Albanian NGO and a member of BKTF, is also often present with its attorneys and psychologists during child interviews at border points. Such presence seeks to guarantee the application of child-friendly and succinct interviews.

Through the TACT project, other forms of assistance are also provided to the child while at the police station, such as appropriate clothing, food and emergency medical treatment. Very often, the assisting organization is also asked by the police to assess the situation of the child’s family and to accompany the child, either alone or with his/her family, back home.

Nevertheless, it should be noted that despite many such good practices, negative examples can be cited as well. A considerable number of police officers at the border points, in particular in view of regular staff rotations, remain untrained on existing procedures and techniques serving the best interests of the child. As a result, NGOs are not notified and therefore not able to assist the child. In a number of cases, the screening procedures have been unjustifiably long and the police officers too harsh with the child during the interview.

#### 4.3- Cooperation after return

Despite the importance of the interview of the child during the screening procedure, very often the information gathered serves only as a starting point. Law enforcement officers investigate the case only when there are grounds for suspecting that the child is a victim of trafficking.

However, NGOs implementing counter trafficking projects follow up with the child also when they consider that, due to specific conditions, the child runs the risk of being trafficked in the future. On many occasions, it has been through this vigilance that further information has been gathered proving that a child had been trafficked.

Thus the practice followed by Tdh in the implementation of the TACT Project in Albania has been to cross-check information. Other children, friends of the concerned child, have been of considerable assistance in this regard. Transnational cooperation also proves to be of primary importance. Names of persons and places in Greece, received from the child once back in Albania, are transmitted to Arsis in Greece. Arsis verifies this information, either itself or by cooperating with Greek law enforcement officials. Thus, transnational cross-checking helps to ascertain the context of the child’s stay abroad. The cooperation with Arsis has provided effective results, on occasions helping to avoid the long and bureaucratic procedures of

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<sup>339</sup> Code of Criminal Procedure of the Republic of Albania, Law No 7905, dt. 21.03.1995, amended version of 2005.

government-to-government cooperation. If the information gathered both in Albania and Greece results in a suspicion of trafficking, the information is then shared with law enforcement officials, both in Greece and Albania, often upon conditions related to the child's safety.

#### 4.4- Witness protection<sup>340</sup>

For many years, Albania lacked witness protection legislation. The Law on the Protection of Witness and Collaborators of Justice was adopted in March 2004. Protected by this law are persons who testify about facts or circumstances related to core crimes specified in this law and which constitute evidence in the criminal proceedings and, as a result, place the person in "a current, concrete and serious threat".<sup>341</sup> The law also applies when, due to such testimonies, core crimes are prevented or when the testimonies serve to compensate the damage caused. The core crimes specified by this law include child trafficking.<sup>342</sup>



The law recognizes a number of protective measures including physical protection, changes of identity and place of residence, testifying using special equipment, vocational training, employment opportunities, financial assistance in periods of unemployment, legal assistance and counselling. The law enables law enforcement officials to apply the protective measures not only to the benefit of the person testifying, but also to his/her family. The rights and the obligations of the protected person and competent authorities are elaborated in detail on a case-by-case basis in a so-called "protection agreement", which also establishes the duration of the measures and the condition for their termination.

The witness protection law does not deal specifically with child witnesses. However, its provisions also apply to children and when elaborating on the "protection agreement", the law states that, in case of a child, the agreement should be governed by the best interests of the child and signed by the parent or the legal guardian.

The Government of Albania has also established a witness relocation programme and adopted special witness protection provisions allowing for endangered witnesses in trafficking cases to testify via remote video link. However, the programme remains unfunded.<sup>343</sup>

Because these programmes are not yet operational, cooperation with law enforcement in witness protection remains problematic. The situation is even more critical when the witness is a child. Participating as a witness in a court proceeding can be very traumatic for a child, and testimonies via video links are not yet a realistic option in Albania. In 10 cases concerning 14 children victims of trafficking assisted by Tdh in the framework of the TACT project who testified against their traffickers, the children concerned had been required to be present at court on several occasions. Moreover, the statements of the children provided to police officers during the investigation phase proved to be easily challenged before the court. Recently, a case of an alleged trafficker of three children from Southeastern Albania was appealed, claiming irregularities in the evidence obtained by the police, including the children's first statements at the police station. The criminal proceedings of this case commenced two years ago and from this time the media has reported regularly on it, providing also the full personal data of the children concerned.<sup>344</sup> This specific case demonstrates that there are occasions when the Albanian judicial system cannot guarantee a fair balance between the rights of the accused and the rights of the witnesses, in particular when the witness is a child victim of trafficking.



Despite the very good cooperation with the anti-trafficking police, even the physical protection of a child witness remains an area of serious concern. The physical protection should not hinder the daily life activities of the child, including school attendance and leisure activities. In certain cases, it becomes necessary to temporarily remove the child from his/her

<sup>340</sup> Please see Chapter III- Investigative Methods, 3.4.3- Protection of the child identity; and Chapter IV- Interviewing Techniques, 5- Victim/witness protection.

<sup>341</sup> Article 2, Law no 9205, dated 15.03.04 "On the protection of Witness and Collaborators of Justice", Official Journal, 22.04.04.

<sup>342</sup> Article 2, Law no 9205, dated 15.03.04 "On the protection of Witness and Collaborators of Justice", Official Journal, 22.04.04.

<sup>343</sup> U.S Department of State, 2005: 52.

<sup>344</sup> Korrieri, 2005: 11.

biological family and house him/her in a secure environment. Tdh has sought cooperation with the anti-trafficking police and BKTF members, such as NPF, when working with foster care families to ensure the security of the child while in temporary foster care. This has proven to be difficult due to the very limited number of suitable foster care families and the duration of the legal procedure. In general in Albania, court procedures regarding child protection issues, including foster care, are lengthy and the judges are not yet comfortable in applying the recent provisions of family law dealing with the removal of parental responsibilities, foster care, etc..<sup>345</sup>

Another problem is that physical protection is granted for a very limited time and, upon its termination, the child remains in possible danger. In serious cases of organized criminal networks, the relocation and change of identity of a child would be a more sustainable security measure. Based on the best interests of the child principle, an identity change and the relocation of the family of the child is necessary so that the child continues to develop within his/her family environment. This would be possible only through well-funded and operational witness relocation programmes.

It is due to these circumstances that at present law enforcement should seek to base the prosecution case against alleged traffickers on evidence other than the testimonies of child victims. It should be recognized that law enforcement agencies, in particular the anti-trafficking police, understand such concerns deriving from the BKTF Coalition. However, the good will of the anti-trafficking police cannot compensate for the lack of required structures ensuring appropriate protection of child victims of trafficking who testify against their traffickers.

## 5- CONCLUSIONS AND RECOMMENDATIONS

Rather than taking satisfaction from sporadic and case-based cooperation, both law enforcement and NGOs should seek for more sustainable tools of cooperation. The recognition of the necessity of such cooperation in governmental policy and regulatory documents certainly serves this aim. They open the way to the establishment of collaboration agreements between NGOs and law enforcement, specifying the joint actions to be undertaken and the ends they should serve. However, such agreements should not be considered as a monopoly, either by NGOs or the law enforcement structures. From the NGO perspective, it is important to coordinate with other NGOs and agree on a common position towards law enforcement authorities.

When considering cooperation between law enforcement and NGOs in the field of counter trafficking, a transnational approach should be taken. Results, which benefit the child and fulfil the needs of law enforcers, are achieved only when the efforts of the transit/destination country are combined with those in the country of origin. NGOs can play an important role in facilitating law enforcement cooperation between countries, while an agreement between them places this cooperation within a legal framework.

As highlighted in this contribution, in Albania there is a considerable number of good practices in the cooperation between the law enforcement and NGO sector, mainly represented by the BKTF Coalition. However, problems remain, notably relating to witness protection due to the *de facto* inability of law enforcement to provide the measures foreseen in the legislation. The judicial system in Albania should also be able to better respond to the needs of child victims during criminal procedures against their traffickers, as well as considering family issues, such as the removal of parental responsibility and foster care. Efforts should continue regarding the training of law enforcement officials on legislation, policies and good practices regarding assistance to victims, in particular child victims, of trafficking. In this regard, staff rotations within law enforcement structures as well as social workers dealing with trafficking issues should be avoided and training should be developed to manage any turnover.

These measures will further contribute to translate the strong commitment of both law enforcement and civil society into concrete, positive results for Albanian child victims of trafficking.

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<sup>345</sup> Law no. 9062, dated 08.05.03 "On the Family Code".

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## E- RECOMMENDATIONS

The cooperation between law enforcement and NGOs/social services providing assistance to victims of trafficking serves the best interests of the child victim.

Cooperation should be based on the mutual commitment of law enforcement authorities and NGOs/social service providers to work together, firstly to identify, rescue and assist child victims and secondly to convict traffickers. Trafficked children are firstly victims of trafficking and secondly witnesses.

Child victims of trafficking should have full access to assistance and protection services even if they do not act as witnesses or do not cooperate with the authorities.

Cooperation must be based on mutual trust and respect for the role each plays in protecting and assisting child victims.

In order to promote cooperation between law enforcement and NGOs/social services, continuous dialogue is vital. Common training and regular meetings are two methods of promoting this dialogue and strengthening cooperation.

To ensure the timely identification of child victims, it is important that law enforcement authorities and NGOs/social service providers share all relevant information received/obtained on potential victims and at risk children if this does not breach the client-confidentiality rules of the service providers.

In view of institutionalizing cooperation protocols and agreements on cooperation between the law enforcement authorities and NGOs/social service providers should be developed, stating the role of each party, their responsibilities and the type of cooperation.

At the national level, National Referral Mechanisms<sup>346</sup> should be established and adapted to the national context in order to protect the human rights of victims of trafficking and ensure effective referral to appropriate services. Within this mechanism, a national rapporteur, round tables, working groups, national action plans, etc., should be established where relevant to promote coordination and enhance national policy and procedures.

When children are trafficked internationally, the conclusion of inter-governmental bilateral agreements between countries of origin and destination facilitate the assistance and protection of victims as well as the prosecution of traffickers.

It is necessary for NGOs/social service providers in countries of origin, transit and destination to establish and formalize relationships and cooperation to ensure input into counter trafficking prevention activities, criminal investigations, return assessments and reintegration initiatives.

The assessment of the return of a child to his/her home country must be multidisciplinary and intercultural, with the analysis of each individual's situation based on sociological, clinical, social, economical, historical and cultural factors.

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<sup>346</sup> OSCE/ODIHR, National Referral Mechanisms, Warsaw, 2004.

## F- LIST OF CONTRIBUTING EXPERTS TO THIS CHAPTER

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## RECOMMENDATIONS

To conclude, the recommendations presented within this Resource Book are summarized and presented by topics. We would like to reiterate our thanks to all experts and practitioners who contributed to the elaboration of this Resource Book and to the identification of recommendations. For some of these recommendations, a link will be made to the relevant dispositions of the *EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings* (2005/C 311/01), as this latest document should guide the actions of the EU Member States in the fight against trafficking in human beings.

### General recommendations on child trafficking

Resources should be allocated in order to implement the good practices in combating child trafficking and protecting child victims of trafficking identified in this Resource Book.

Consideration should be given to the best interests of the child at each stage of the process. All actions shall be based on the principles of protection and respect for human rights as outlined in the UN Convention on the Rights of the Child, Palermo Protocol<sup>347</sup> and other relevant instruments. All children below the age of 18 years old should be treated according to their particular needs and special vulnerability. Point 3(v) of the 2005 EU Plan<sup>348</sup> stresses that EU anti-trafficking policy reflects a child rights approach, which must apply to any person below the age of 18.

National legislations should guarantee immediate action including a prompt and effective investigation in cases of child trafficking.

Children should be registered and documented as soon as they come to the attention of the authorities. Child victims of trafficking should have full access to assistance and protection services even if they do not act as witnesses or do not cooperate with the authorities.

Child protection systems should be better applied at the national level in order to protect children more effectively from sexual exploitation and from becoming vulnerable to trafficking and unsafe migration.<sup>349</sup>

In child trafficking cases, close cooperation between all actors involved (law enforcement authorities, social service providers etc.) is essential. In case of international child trafficking, cooperation between these actors in the countries of origin, transit and destination play a vital role in identifying, providing assistance, protecting the child victim as well as prosecuting the traffickers. The conclusion of Memoranda of Understanding and Protocols between the actors involved and of intergovernmental bilateral agreements between countries of origin and destination is very useful in this process.

The money and assets of the traffickers seized and/or confiscated should be redistributed to the victims in the form of compensation, and dedicated to combating trafficking and/or improving assistance to child victims/witnesses.

Involving the media can be beneficial in combating child trafficking. Law enforcement officers should make the media reliable partners. In order to avoid an unwanted disclosure of investigative information in contacts with the media, the use of a press police officer is a good practice. Guidelines on ethical and legal obligations of the media to preserve the confidentiality of information and the privacy of the victim/witness should be developed.<sup>350</sup>

<sup>347</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>348</sup> Council, EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01).

<sup>349</sup> ECPAT: Joint East-West research on trafficking in children for sexual purposes in Europe: the sending countries, Point 3 "The most important conclusions".

<sup>350</sup> Stability Pact for South Eastern Europe Task Force on Trafficking in Human Beings; outcome document of the working group meeting on "Victim/Witness Protection", Portoroz, Slovenia "Special Protection Measures for Trafficking Victims Acting as Witnesses".

### Identification/Referral

In accordance with point 3(ii) of the 2005 EU Plan,<sup>351</sup> identification of children as victims of trafficking needs to be improved, which requires political will as well as the awareness of police officers at first contact/intake. In point 4(vi), the 2005 EU Plan encourages measures for rapid identification of potential victims, especially to protect unaccompanied minors, as a particularly vulnerable group.

To ensure the timely identification of child victims, it is important that law enforcement authorities and NGOs/social service providers share all relevant information received/obtained on potential victims and children at risk.

As soon as a child is identified as a victim of trafficking, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented.

Clear procedures should be developed for all law enforcement personnel and other actors involved (social service providers, immigration services, etc.) to immediately refer children who are identified as potential or actual victims of trafficking for needs assessment, appropriate care and protection. At the national level, National Referral Mechanisms (including national rapporteur, round tables, working groups, national action plans, etc.)<sup>352</sup> should be established in order to protect the human rights of victims of trafficking and ensure effective referral to appropriate services. The need for appropriate referral mechanisms was also mentioned in point 3(ii) of the 2005 EU Plan.<sup>353</sup> These procedures or mechanisms should include a specific child-friendly approach and clear guidelines in case the victim of trafficking is a child.

### Determination of the identity of the child including age assessment

The determination of the identity of detected child victims is indispensable. Standardized procedures should be established and national and international cooperation enhanced in order to be able to ensure the rapid identification of children who are found without identification papers or with falsified documents. Close intelligence sharing and coordination is essential between specialist units and the consular officials of the embassies of the countries of origin and destination.<sup>354</sup>

The potential child victim of trafficking should stay at a child-specific shelter throughout the procedure of determination of identity.

Age assessment should only occur in case of a doubt of the age stated by the child and in the absence of means of identification (birth certificate, passport, identity card). In such a case, age assessment should take place as soon as possible.

All examinations should take place on a voluntary basis.<sup>355</sup> All procedures must respect the dignity of the child.<sup>356</sup>

Procedures for age assessment should take into account that age assessment is no determination and that the most accurate assessments are likely to take place over time and should be holistic using a combination of methods and relevant professional specialists.

Due to the margins of errors in all age assessment methods, children should always be given the benefit of the doubt, with the lowest age selected.<sup>357</sup>

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<sup>351</sup> Council, EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01), see also annex 3.3.(c), 3.3.(e).

<sup>352</sup> OSCE/ODIHR, National Referral Mechanisms, Warsaw, 2004.

<sup>353</sup> EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01).

<sup>354</sup> IOM Chisinau; Third Annual International Law Enforcement Conference: International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings; 18-20 May 2005, Chisinau, Moldova, Draft Recommendations, p. 9.

<sup>355</sup> In line with Article 37 of the Convention on the Rights of the Child.

<sup>356</sup> Separated Children in Europe Programme: Policies and Practices in European Union Member States: A Comparative Analysis: 19.

<sup>357</sup> Ibid.

Children should have the possibility to challenge the outcome of the identification including the results of the age assessment.<sup>358</sup>

### Cooperation at national level

Law enforcement authorities and the judiciary should recognize the need to be assisted by and work together with experts including social service providers in relation to the sector of exploitation.

Cooperation should be based on the mutual commitment of law enforcement authorities and NGOs/social service providers to work together, firstly to prevent child trafficking and identify, rescue and assist child victims, and secondly to convict traffickers. Cooperation based rules agreed upon by these different actors and promoting mutual understanding and trust is mentioned in point 5(i) of the 2005 EU Plan.

In view of institutionalizing cooperation, protocols and agreements on cooperation between the law enforcement authorities and NGOs/social service providers should be developed, stating the role of each party, their responsibilities and the type of cooperation.

Focal points for trafficking issues should be established at a national and international level, which should be known and used by all actors within and outside the country.

A permanent communication strategy of multi-agency teams on child trafficking issues should be elaborated. This could be reached through periodic meetings, a network of contact persons in each organization involved, newsletters as well as common training. Multi-agency intelligence enriches police data and improves operational and strategic police analysis.

Integrated training seminars should be organized with people in charge from national agencies on a regular basis and from time to time with responsible officers from concerned countries (origin, transit and destination) in order to share information and good practices and strengthen dialogue among all actors involved.

### International cooperation

According to point 4(ix) of the 2005 EU Plan, Member States should promote police cooperation between special units to combat human trafficking in the Member States and countries of origin, in line with EU standards. Further, the EU Plan encourages the development of common projects to set up and enhance the capacity of special units in countries of origin.

It is necessary for NGOs/social service providers in countries of origin, transit and destination to establish and formalize relationships and cooperation to ensure input into counter trafficking prevention activities, criminal investigations, return assessments and reintegration initiatives.

Increased use should be made of provisions to establish joint investigation teams made up of personnel from the specialist units in the countries of origin and destination in order to conduct properly funded and equipped investigations in appropriate cases.<sup>359</sup> The 2005 EU Plan encourages in point 4(viii) involving Europol in the exchange of information, in joint operations and joint investigative teams.

The assessment of the return of a child to his/her home country must be multidisciplinary and intercultural, with the analysis of each individual's situation based on sociological, clinical, social, economical, historical and cultural factors, for which cooperation between country of origin and destination is very important.

<sup>358</sup> Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers, page 10: "It was explained to you at the end of the interview that you have the right to disagree with the outcome of the assessment, and to challenge our decision," by contacting the Children's Asylum Service at Hillingdon Social Services or by requesting the "Complaints Procedure for Children and Young People".

<sup>359</sup> IOM Chisinau; Third Annual International Law Enforcement Conference: International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings; 18-20 May 2005, Chisinau, Moldova, Draft Recommendations: 6.

### Investigative methods

Child victims of trafficking have special needs and vulnerability that should be taken into account and reflected throughout the investigation; a child-friendly approach should be used and the investigator should be guided by the best interests of the child.

In case of a child as victim of trafficking or a victim in danger, the police have to intervene immediately.

Prioritize child trafficking cases, as other crimes against children. For this purpose, the files should be made clearly recognizable and flagged.

Every investigator and all actors involved have a clear duty to conduct a risk assessment in respect of the safety and welfare of the child victims and their families at every stage of the investigative and judicial process and beyond.<sup>360</sup> The risk assessment must be started as soon as the victim comes to the police's notice.

Pro-active or intelligence-led investigations should be preferred, whenever possible. Flagging suspects and convicted offenders can be a useful tool. The disruptive investigative method should be used only if there is no other option.

In the interest of an investigation it is of utmost importance to be aware of where, when, which specific information is available and can be retrieved, and through or via which obligatory channels – both on a national and cross-border level. The management of the law enforcement information is bound by national and global regulations, which need to be respected.

Each country should feed the national database with all child abuse related information and should in particular organize themselves in view of enhancing the international cooperation by connecting to the I 24/7 (Interpol) and sending the relevant information on child traffickers or other cross-border child related offences to Interpol. Moreover, European Member States should ensure the availability of the Europol information (TECS) and include all child trafficking and child abuse offender or suspect related information in the Information System of Europol.

### Interviewing techniques

Interviewers must be honest with the child and should never make false promises. Interviewers should explain and inform the child about the purpose of the interview or questioning.

The interview is not an interrogation. The purpose of the interview is to assist the child to disclose and so contribute to the investigation and the prosecution of offenders.

Interviews should only be undertaken by trained staff with specialized skills. The interviewer should work very closely with other actors (investigator, social carer, guardian, etc.) in a multi-agency approach.

An interpreter should be used in every case where the child is a foreign national, even if the child seems to speak the language of the country where the interview takes place.

The interview performed by law enforcement authorities cannot take place where the child lives, and never in the shelter where the child is residing, but in a child-friendly environment.

The language used should, at all times, be adapted to the age of the child, and due consideration given to the gender of the child. Interviewers should not wear a uniform for the interview.

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<sup>360</sup> Based on INTERPOL, Interpol Working Group on Trafficking in Women for Sexual Exploitation, 2002, Manual for Investigators: 54-55.

Children should not have to re-tell their story; therefore, the interview should be video recorded and repetition should be avoided.

In case the child needs to testify or make a statement, adequate witness protection measures should be taken; in any case, the protection of the identity of child witnesses is essential.

Child victims/witnesses should never be confronted by or come into contact with suspects during the interview and legal proceedings.

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**Experts from the following organizations and institutions contributed to the content of the Resource Book:**



General Hospital  
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**Police**  
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child focus



Prosecutor General  
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UNIVERSITÄRE  
PSYCHIATRISCHE  
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NOBODY'S CHILDREN  
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Service for the  
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a.j.e.  
ASSOCIATION  
JEUNES ERRANTS



Sharing information, experience, good practice and knowledge is essential for cooperation among all actors involved in the fight against trafficking in children. This Resource Book aims to be a practical and effective tool for law enforcement officers in order to combat child trafficking, investigate and prosecute effectively child traffickers, protect and assist adequately child victims of trafficking.

The Resource Book presents current good practices and recommendations, recognized by an international team of experts having extensive knowledge on the topic. The publication further includes innovative techniques and practical information based on inputs from national and international experts from law enforcement, medical science and civil society.

Having briefly introduced the legal background on the area of combating child trafficking, the Resource Book elaborates good practises on:

- Age assessment/ Identification of the child;
- Investigative methods;
- Interviewing techniques; and
- Cooperation between law enforcement authorities and NGOs/ social service providers.

The Resource Book is the result of the project „Comprehensive Training for Law Enforcement Authorities Responsible for Trafficking in Children/ Minors“ implemented by the International Organization for Migration (IOM) in Vienna on behalf of the Austrian Federal Ministry of the Interior and supported by the 2005 AGIS Programme of the European Union – Directorate General Justice Freedom and Security.

