

# PROPOSED GUIDELINES FOR THE PROTECTION OF THE RIGHTS OF TRAFFICKED CHILDREN IN SOUTHEAST ASIA

The present document sets out proposed principles and guidelines to promote the human rights of trafficked children in Southeast Asia. This document has been developed on the basis of relevant international human and child rights instruments including the *Convention on the Rights of the Child*, the *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, the *United Nations High Commissioner for Human Rights Recommended Guidelines on Human Rights and Human Trafficking*, the *Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe* and the *Proposed Guidelines for the Protection of the Rights of Trafficked Children (Bohol Document, August 2004)*.

## 1. DEFINITION OF TERMS

### 1.1 Child

1.1.1 A child is any person under eighteen (18) years of age.

### 1.2 Child trafficking

1.2.1 Child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, within or outside a country, which shall include but not be limited to child prostitution, child pornography and other forms of sexual exploitation, child labour, forced labour or services, slavery or practices similar to slavery, servitude, removal and sale of organs, use in illicit/illegal activities and participation in armed conflict. For the purposes of these guidelines, the recruitment, transportation, transfer, harbouring or receipt of a child by means of adoption or marriage for the purpose of exploitation shall likewise be considered child trafficking.

1.2.2 The consent of the child or the person exercising custody over the child to trafficking or any of its elements is irrelevant and does not exempt the offender from or lessen his/her liability for committing acts that constitute or promote child trafficking.

1.2.3 The employment 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 the child is irrelevant

and does not constitute an essential element in the crime of child trafficking.

### **1.3 Trafficked child**

**1.3.1** A trafficked child is a child who has been recruited, transported, transferred, harboured or received for the purpose of exploitation, within or outside a country.

### **1.4 Social welfare service provider**

**1.4.1** A social welfare service provider shall include all those persons involved in providing direct services to trafficked children, whether from government or non government organizations.

## **2. GENERAL PRINCIPLES**

The following principles should be considered at all stages of care and protection of trafficked children.

### **2.1 Rights of the Child**

**2.1.1** Trafficked children have the right to the full respect and exercise of their survival, development, protection and participation rights as recognized under the Convention on the Rights of the Child.

**2.1.2** Trafficked children have special needs and therefore have the right to special protection measures.

### **2.2 Best Interests of the Child**

**2.2.1** In all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child should be the primary consideration.

### **2.3 Right to Non-discrimination**

**2.3.1** All trafficked children have the right to the same protection and rights in the country/place of origin, transit or destination regardless of their status, nationality, race, color, sex, language, faith, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status.

2.3.2 Whenever applicable, these guidelines should also apply to children who are conceived and subsequently born of trafficked persons.

## **2.4 Respect for the Views of the Child**

2.4.1 A trafficked child who is capable of forming his or her views has the right to express those views freely in all matters affecting him or her, including in relation to the legal process, interim care and protection and the identification and implementation of a durable solution.

2.4.2 The views of the trafficked child should be given due weight in accordance with his or her age, maturity, evolving capacities and best interests.

## **2.5 Right to Information**

2.5.1 Trafficked children should be provided access to information about all matters affecting them including entitlements, services available and the family reunification and/or repatriation process.

2.5.2 Information should be provided in a language which the trafficked child is able to understand. Suitable interpreters/translators should be provided whenever necessary.

## **2.6 Right to Confidentiality**

2.6.1 Information about a trafficked child that could endanger the trafficked child or his/her family members should not be disclosed except as required by law.

2.6.2 All necessary measures should be taken to protect the privacy and identity of trafficked children. The name, address or other information that could lead to the identification of the trafficked child or his/her family members, should not be revealed to the public or media.

2.6.3 The permission of the trafficked child should be sought in an age appropriate manner before sensitive information is disclosed.

## **2.7 Respect for the Child's Ethnic, Cultural, Faith and Religious Identity**

2.7.1 The trafficked child's ethnic, cultural, faith and religious identity should at all times be respected.

- 2.7.2** Where applicable, assistance should be provided to the trafficked child in order to enable him/her to exercise or practice his/her ethnic, cultural, faith or religious practices.

## **2.8 Responsibility of the State**

- 2.8.1** The State should take positive action to combat child trafficking and to protect and assist trafficked children.
- 2.8.2** The State should take all appropriate legislative, judicial, administrative and other measures to protect and assist trafficked children.
- 2.8.3** The State is responsible for taking pro-active measures to protect persons who provide care and assistance to trafficked children from reprisals from traffickers. These measures should extend to persons working in non-government organizations, civil society, faith-based and religious groups.

## **3. SPECIFIC GUIDELINES**

### **3.1 Detection and Identification of Child**

#### **3.1.1 Presumption of Age**

- 3.1.1.1** Aside from birth documents/family books of the trafficked person, his/her identification cards, school records, physical appearance, psychological maturity, statement, consensual medical or dental examinations can be considered in determining the age of the trafficked person.

Legally recognized documents attesting to the birth or age of the trafficked person from persons who have personal knowledge about these facts can likewise be considered. Documents recording cultural or religious practices which indicate age may also be considered.

- 3.1.1.2** Where the age of the trafficked person is uncertain and there are indicators to believe that the person is a child, the presumption should be that the person is a child.
- 3.1.1.3** Pending a reasonable time for the verification of the trafficked person's age, he/she should be treated as a child and should be accorded all special protection measures stipulated in these guidelines.

### **3.1.2 Pro-active identification measures**

- 3.1.2.1** The State should develop and adopt effective procedures for the rapid identification of trafficked children. These may include the strengthening of birth registration procedures, the listing and recording of missing and exploited children and the creation of a checklist of warning signs that may indicate that a child is a victim of trafficking.
- 3.1.2.2** The State should train all persons having or most likely to have direct contact with trafficked children (i.e. seaport and airport personnel, immigration officers, border patrols, law enforcement officers, social welfare and health care providers, etc.) on rapid identification procedures. This may include training on the use of a checklist of warning signs that may indicate that a child is a victim of trafficking and on how to distinguish trafficked children from illegal migrants.
- 3.1.2.3** The State and non government organizations should conduct intensive efforts to provide information to families and communities about the issue of child trafficking. Procedures for reporting and referring suspected and actual child trafficking cases should be established.
- 3.1.2.4** Measures to coordinate information sharing between government agencies, including law enforcement authorities, social welfare agencies and non-government organizations should be adopted to facilitate rapid identification of trafficked children.

## **3.2 Initial Contact**

### **3.2.1 Initial Action**

- 3.2.1.1** Upon identification of a trafficked child or suspected trafficked child, the investigator/officer should immediately contact a social welfare service provider and, where possible, the parents/guardian of the trafficked child. In the case of cross border trafficking, the responsible authority of the country of origin, as represented in the country of destination or transit (eg: embassy/consulate) should also be contacted.
- 3.2.1.2** The investigator/officer should protect the trafficked child's right to privacy and prohibit media exposure and interviews.

- 3.2.1.3** The initial interview of the investigator should only be for the purpose of collecting biographical data like the name, age, name of parents/guardians and last known address and contact numbers, country/place of origin and/or nationality.
- 3.2.1.4** The investigator/officer should assist the trafficked child in retrieving his/her personal belongings.
- 3.2.1.5** At no time should the trafficked child be placed in the same room or in direct contact with the suspected trafficker/s.
- 3.2.1.6** For the safety and security of the trafficked child and the social welfare service providers, the trafficked child's whereabouts should be kept confidential.

### **3.2.2 Child-sensitive interview**

- 3.2.2.1** The State should design a standard interview guide and mechanism that will gather all the information that may be needed by all agencies involved in the case.
- 3.2.2.2** Law enforcement authorities should respect the trafficked child's right to privacy. The express consent of the trafficked child and his/her parent/guardian or social welfare service provider should be acquired prior to the conduct of the interview.
- 3.2.2.3** The trafficked child should be allowed some time to rest and stabilize before s/he is interviewed.
- 3.2.2.4** As much as possible, the investigator/officer and interpreter/translator, should be of the same gender as the trafficked child, dressed in civilian clothes, trained in administering child friendly/sensitive interview methods and knowledgeable about the issue of child trafficking.
- 3.2.2.5** Prior to the interview with the trafficked child, the investigator/officer should inquire whether prior interviews have already been conducted by any person or agency, and if so, s/he should acquire the results from such prior interview.
- 3.2.2.6** The interview should be conducted in a language understood by the trafficked child. Where this is not possible, a qualified translator/interpreter should be provided.

- 3.2.2.7** The trafficked child should be interviewed in the presence of a social welfare service provider, parent/guardian or trusted adult of his/her choice.
- 3.2.2.8** The trafficked child should be interviewed in a child friendly/sensitive environment. The confidentiality of proceedings and the protection of the trafficked child's right to privacy should at all times be respected.
- 3.2.2.9** The consent of the trafficked child and his/her parent/guardian, social welfare service provider or trusted adult of his/her choice must be secured before using any recording equipment including video cameras or tape recorders.

### **3.2.3 Legal protection for child**

- 3.2.3.1** Trafficked children are victims of human rights violations. They should not be treated as offenders or subjected to or threatened with criminal sanctions for any offense related to their situation as trafficked children.
- 3.2.3.2** Access to basic social welfare and support services should not be dependent on the trafficked child's willingness to cooperate with law enforcement authorities.

## **3.3 System of Referral, Coordination and Cooperation**

### **3.3.1 Regional Mechanisms**

- 3.3.1.1** States should endeavor to enter into a regional agreement to define a system of referral and specific areas for coordination and cooperation.
- 3.3.1.2** States should endeavor to establish referral, coordination and cooperation mechanisms with international non-government organizations, networks and coalitions actively working on the issue of trafficking in the region.
- 3.3.1.3** Each State should designate their own liaison officer/office who shall be responsible for cross-border linkage and referral to the appropriate office for immediate response to cases of cross-border trafficking.

### **3.3.2 National Mechanisms**

- 3.3.2.1** States should develop a national arrangement that will define the roles and functions of each government agency in relation to child trafficking and a system of referral and areas for coordination and cooperation.
- 3.3.2.2** Each State should establish a national body for coordinating referrals for both internal and cross-border trafficking.
- 3.3.2.3** Each State should develop a database that will centralize all information about national efforts to combat child trafficking and data and statistics in relation to incidents of child trafficking occurring within the country or affecting nationals of the country. The development of such a database should take into due consideration the rights to privacy and confidentiality of trafficked children.
- 3.3.2.4** States should endeavor to establish referral, coordination and cooperation mechanisms with non-government organizations, networks and coalitions actively working on the issue of child trafficking in the country.
- 3.3.2.5** States should be responsible for training all relevant agencies about the referral system so as to ensure prompt, effective and appropriate responses to cases of child trafficking.

## **3.4 Interim Care and Protection**

### **3.4.1 Safe places for children**

- 3.4.1.1** Safe, secure and child-friendly shelters, homes and crisis centers should be provided for trafficked children. Existing facilities should be improved to accommodate the needs of trafficked children.
- 3.4.1.2** Shelters, homes and crisis centers should be run by a sufficient number of well-trained and competent staff, such as, but not limited to, social workers trained in the case management of trafficked children. The gender of the staff should be appropriate for the needs of the trafficked children.
- 3.4.1.3** States should set up monitoring mechanisms to oversee, regulate and evaluate shelters and services.
- 3.4.1.4** Trafficked children should not be placed in detention centers, police cells, prisons or other detention facilities for children and/or

adults or be in the private custody of law enforcement authorities. Nor shall children be sheltered within military bases or at other inappropriate locations.

### **3.4.2 Support Services**

**3.4.2.1** States should allocate the necessary annual budget to ensure trafficked children's security from threat and reprisals from traffickers, food and accommodation, access to health-care and psychosocial support.

**3.4.2.2** The primary objective of interim care is the healing and recovery of the trafficked child. Immediate counseling, psychosocial services, legal aid, education, vocational skills training and other support services should be made available to the trafficked child and his/her family as necessary and appropriate.

### **3.4.3 Legalization of status**

**3.4.3.1** States should establish laws, policies and procedures to ensure that trafficked children who are not nationals/residents of the country/place in which they are found are not treated as illegal migrants.

**3.4.3.2** For trafficked children without legal documentation, the State in which they are found should assist them to immediately secure legal status such as, but not limited to, the granting of a temporary visa.

**3.4.3.3** States should ensure that trafficked children are exempt from all government fees and charges normally imposed in the process of legalizing status.

## **3.5 Social Case Management of Trafficked Children**

### **3.5.1 Individual Case Assessment**

**3.5.1.1** Each trafficked child is entitled to have his/her case individually assessed to determine the appropriate handling of his/her case, with his/her best interests being the primary consideration. This assessment should be conducted by a social worker or allied professional who has background/intensive training in child protection. A social case management intervention plan should then be developed for the child.

- 3.5.1.2** The social case management intervention plan should consider the preservation and integrity of the trafficked child's ethnic, cultural, faith and religious identity.
- 3.5.1.3** Where it is considered to be in the trafficked child's best interests to do so, the social welfare service provider, in coordination with its counterparts in the country/place of origin and destination, should take steps to locate the trafficked child's family in order to reunite him/her with his/her family.
- 3.5.1.4** The implementation of the social case management intervention plan should be done through a multi-disciplinary team approach.

### **3.5.2 Identification of a Durable Solution**

- 3.5.2.1** Authorities in both the country/place of origin and destination, in partnership with non government organizations, have the responsibility to identify the most appropriate long term solution for the trafficked child.
- 3.5.2.2** In the process of identification of a durable solution, the nationality and citizenship of the trafficked child, family background, environment and other circumstances, risk of reprisal from traffickers and security capability of the country/place of origin and destination should be taken into consideration.
- 3.5.2.3** The State should appoint a qualified guardian to represent and assist the trafficked child during the process of identifying a durable solution and the implementation of this solution. The guardian should represent the trafficked child for as long as it is considered necessary to protect the interests of the trafficked child. Any expenses incurred by the guardian in the conduct of his/her duties should be reimbursed by the State. The guardian should be given appropriate protection while performing his/her tasks.
- 3.5.2.4** A trafficked child should not be returned to the country/place of origin unless suitable care arrangements have been established. The parents/guardian, relatives, social welfare service providers and the State must accept responsibility for the care and protection of the trafficked child in the country/place of origin.
- 3.5.2.5** The views of the trafficked child should be taken into consideration when considering whether s/he should be returned to the country/place of origin and/or reunited with his/her family,

with due consideration given to his/her age, maturity and evolving capacities.

- 3.5.2.6** All decisions made on the issue of the return of a trafficked child to the country/place of origin and/or reunification with his/her family should be subject to independent review.

### **3.5.3 Implementation of a Durable Solution**

- 3.5.3.1** In cases where it is in the best interests of the child to be returned to the country/place of origin, the authorities in the country/place of origin should immediately provide travel documents and coordinate with the country/place of destination for the safe return of the trafficked child.
- 3.5.3.2** In cases where a trafficked child is to be repatriated to the country/place of origin, the country/place of origin should cover the costs of repatriation. In the event that the country/place of origin does not have the financial capacity to cover such costs, the country/place of destination or transit should provide assistance. Where none of the country/place of origin, transit or destination have the financial capacity to cover the costs of repatriation, assistance should be sought from international organizations such as the United Nations or the International Organization for Migration.
- 3.5.3.3** In cases where it is not in the best interests of the trafficked child to settle in the country of origin or destination, the countries of origin and destination should explore the possibility of having the child resettled in a third country.
- 3.5.3.4** Long-term care arrangements should, as much as possible, favor family and community-based arrangements rather than residential/institutional care.
- 3.5.3.5** Long-term care arrangements should include protection for the trafficked child and his/her family against reprisals from traffickers, access to health-care, psychosocial support, social services, education and livelihood assistance.

### **3.5.4 Monitoring of Implementation of Durable Solution**

- 3.5.4.1** Both the country/place of origin and destination should establish mechanisms for monitoring trafficked children to avoid them being trafficked again.

- 3.5.4.2** The country/place of origin should establish systems/mechanisms to monitor the implementation of the durable solution.

## **3.6 Access to Justice**

### **3.6.1 Victim / Witness Security and Protection**

- 3.6.1.1** A trafficked child should be given time to recover before deciding whether or not to cooperate as a witness in any legal case.
- 3.6.1.2** Before a trafficked child makes a decision about whether to cooperate as a witness in a legal case, a professional assessment should be conducted to determine whether the trafficked child is ready and able to make such a decision.
- 3.6.1.3** A trafficked child who agrees to testify as a witness should be provided with special protection measures to ensure his/her safety and, if necessary, the safety of his/her family or of other persons significant to him/her.
- 3.6.1.4** The State should adopt special court procedures that are sensitive to the needs of trafficked children. These may include, but not be limited to, the taking of depositions, admission of video-taped interviews, the giving of testimony through closed circuit television and other practical schemes to minimize the need for the child's physical presence in the court room and/or confrontation with the trafficker/s during trial.
- 3.6.1.5** Wherever possible, the State should establish a special court for children which has facilities for child friendly court proceedings such as video conferencing facilities and the availability of qualified translators/interpreters.
- 3.6.1.6** At all stages of the investigation, prosecution and hearing of any criminal or civil action, the right to privacy of the trafficked child should be protected. The confidentiality of the action should be ensured by the law enforcement, prosecution and judicial authorities and service providers.
- 3.6.1.7** The media should respect trafficked children's rights to privacy and confidentiality in all proceedings.

## **3.6.2 Criminal Proceedings**

- 3.6.2.1** A trafficked child must be fully informed, in a language understood by him/her, of the advantages, risks and security issues that are associated with criminal proceedings prior to deciding whether or not to cooperate in such proceedings.
- 3.6.2.2** At all stages of criminal proceedings trafficked children should be provided with free and competent legal representation.
- 3.6.2.3** Wherever possible, the taking of a statement by any law enforcement authority, lawyer, prosecutor or any other authorized officer should not prevent or delay a trafficked child's return or reunification with his/her family.
- 3.6.2.4** Wherever possible, and whenever it is in the best interests of a trafficked child, his/her testimony should be given and/or his/her statement should be taken at the earliest possible time.
- 3.6.2.5** The State should consider providing measures to allow the confiscation, freezing and forfeiture of the assets of the trafficker/s so that the proceeds of the sale of such property may be used for the payment of compensation or outstanding liabilities to the trafficked child.

## **3.6.3 Civil Proceedings**

- 3.6.3.1** A trafficked child and his/her parents/guardian should be informed of possibilities to claim compensation for the damage caused to him/her as a result of him/her being trafficked.
- 3.6.3.2** The State should consider providing measures to allow civil actions to be considered as impliedly and simultaneously instituted in the criminal case. In such a case, the prosecutor should serve as legal counsel for the trafficked child.
- 3.6.3.3** A trafficked child should also have the option of filing a separate claim for compensation, according to the procedures acceptable to the State. The State should provide free and competent legal representation in such a case.

## **3.7 Care and Protection for Social Welfare Service Providers**

### **3.7.1 Compensation**

**3.7.1.1** The State should endeavor to develop a mechanism for providing compensation to social welfare service providers who suffer harm or injury as a result of providing assistance to trafficked children, especially those resulting from or likely to be the result of reprisal from traffickers.

### **3.7.2 Legal Assistance**

**3.7.2.1** In a case where a suit is filed by a trafficker/s against a social welfare service provider for an act done in the performance of his/her duties to provide assistance to a trafficked child the State should provide legal protection and/or free legal assistance. Legal assistance may include, but not be limited to, legal counseling, preparation of pleadings, filing of action in courts and legal representations in criminal, administrative and civil proceedings.

### **3.7.3 Support System**

**3.7.3.1** The State should establish a support system for social welfare service providers and provide venues for the sharing of insights and experiences.

## **3.8 Capacity building**

### **3.8.1 Communities**

**3.8.1.1** Community awareness seminars, activities and trainings should be conducted to children, families and communities to enable them to actively participate in the protection of children from child trafficking.

**3.8.1.2** States should allocate the necessary funds to conduct capacity building activities to address all of the training needs mentioned in these guidelines.