

**Save the Children Submissions on Key Components of EU Recommendations to Enhance
National Coordinating Mechanisms for Early Identification, Assistance and Protection of
the Rights of Victims of Trafficking**
June 27, 2007

Save the Children Europe Group (“SC”) welcomed the opportunity for SC to participate in the European Commission’s Consultative Forum on Trafficking in Human Beings which sought views from various actors on the development of EU Recommendations to enhance national coordinating mechanisms and to ensure early identification, assistance and protection of the rights of victims of trafficking.

Following up on the Forum’s general discussions, the points below identify the SC views as to the contents of any such Recommendations from a child’s rights perspective. They are intended to serve as input for the Commission and the EU Expert Group in the formulation of draft standards. Given the limited time with which such input can be provided, these points focus only on certain key components of such mechanisms. We stand ready to offer further comment on the Commission’s draft which we understand will be circulated in July/August.

Below in Section I we provide general comments surrounding the development of recommendations and in Section II we provide proposals for specific provisions in the recommendations.

Background - SC’s Activities in the Field of Trafficking

SC’s activities in Europe in the field of human trafficking comprise a wide range of both policy and practical activities.

In Brussels and at national level throughout most of its European member organisations, SC monitors and engages in advocacy on national, EU and international policy and legal measures in the field, including, for example, contributing to the recent UNODC Global Initiative to Fight Trafficking and being a member of the Alliance Against Trafficking In Persons. At national level, SC engages in a range of field work, including the provision of services to at-risk children, outreach activities, the provision of direct assistance to child victims and support to their social inclusion.

A key programme for SC Europe is its Child Trafficking Response Programme in South East Europe, currently in a second phase, coordinated from SC Albania and running across 7 countries/entities in the region. One of its major activities currently is qualitative child-centred and participative research on risk and resilience factors in relation to child trafficking, conducted through interviews and focus groups with over 600 children. The results of this research, which will be shortly published, are intended to enable better targeted programme and policy interventions.

I. General Comments

1. As a general matter, SC encourages the European Commission to ensure that, in all of its trafficking measures, the EU properly reflects the *existing* obligations of its Member States to recognise and protect child’s rights as set out in the UN Convention on the Rights of the Child (“CRC”). Although much international and national trafficking law suffers from a human rights

deficit due to the absence of mandatory provisions regarding identification, assistance and protection of victims, the obligations flowing from the CRC directly require Member States to ensure that the human rights of trafficked children are at the centre of all efforts to protect, assist and provide redress to children who have been trafficked. In particular, the CRC's provisions require States, when dealing with trafficked children, to pursue the best interests of the child in a non-discriminatory fashion (regardless of their nationality or any other status) and always ensuring the child's right to be heard and consulted.

2. Broadly speaking, SC welcomes any European Commission's efforts to re-galvanise action as regards anti-trafficking measures and supports the Commission's goal of establishing an EU standard for national referral mechanisms, victim's identification and assistance based on a human rights approach. However, SC emphasises that any non-binding Commission recommendations for national coordinating mechanisms in the field of trafficking must have as their goal the creation of *high standards* within the EU and must at a minimum reflect existing best practices within Member States. As a consequence, SC urges the Commission to continue to consult in a meaningful and full way with all relevant actors, including NGOs, before adopting such Recommendations.

3. Furthermore, SC encourages the European Commission to include child participation in the design of anti-trafficking intervention measures and feed back in impact assessments of such measures. This is as an essential element in ensuring the efficacy of such measures.

4. SC believes a significant value of EU action will lie in fostering implementation of these recommendations throughout the EU (and potentially in neighbouring countries) and by facilitating exchange of expertise and experience between Member States. To this end, SC urges the Commission actively to follow up on its recommendations, including monitoring their implementation and potentially hosting regular meetings and contacts of national coordinators in the field.

5. SC welcomes the fact that the Commission is taking as its point of departure the European Commission's Experts Group Report and recommendations on THB. SC understands the Commission will also have due regard to the Council of Europe Convention and to the OSCE NRM. SC refers the Commission to a range of documents which should provide very valuable input to the drafting of Recommendations. These include UNOHCHR, WHO, UNICEF and ILO guidelines in the field, the Statement of Good Practice 2004 of the Separated Children in Europe Programme, etc. The present document largely reflects the above guidelines.

6. Throughout the issues that the Recommendations will address, SC has a number of general comments, in particular:

- (a) the need to ensure provisions for the periodic updating of any reference points/indicators contained in national coordinating mechanisms in order to ensure that they are *informed by latest research and accumulated experience*;
- (b) the need for a significant level of *capacity building/training* of all those (public institutions, NGOs, IOs etc.) providing services to (or likely to come into contact with) trafficked and at-risk children;
- (c) the need for adequate and detailed *child friendly procedures* throughout the process;
- (d) the need for a multi-disciplinary and inter-agency approach to anti-trafficking work, including government administration, law enforcement, judiciary bodies, social services, civil society/NGOs and regional/international organizations
- (e) the need for a clear *demarcation of mandates and cooperative modes* between the relevant actors in the field (i.e. Standard Operating Procedures); and
- (f) the need to include *effective monitoring and impact assessment* mechanisms.

II. Comments on Specific Provisions in the Commission's Recommendations

Definition of a Victim

A child victim of trafficking is any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country, even if no element of coercion, deception, abuse of authority or any other form of abuse is used.

Age Assessment

Age assessment should be carried out by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background and taking into account psychological factors. Children's participation in any age assessment procedures should be voluntary and these procedures should not be harmful. In cases of doubt, there should be a presumption that someone claiming to be less than 18 years of age will provisionally be treated as such. In making any final assessment, the child should always be given the benefit of the doubt.

Identification

1. SC encourages the Commission to promote proactive modes of identification, in particular, given the difficulties that may be experienced in identifying children in the process of being trafficked. SC underlines the fact that a pro-active mode is consonant with a truly human rights approach to the problem of trafficking.
2. Specific indicators to identify trafficked children should be developed. At national level SC, in consultation with children, law enforcement officers and NGOs, is contributing to the development of these indicators, including those to identify child victims exploited in begging, illegal activities and forced labour. SC stands ready to support the EC and States to develop such indicators. Those indicators should be constantly reviewed, in light of on-going research, in order to respond to the complex and changing nature of the phenomenon.
3. Child friendly procedures should be developed to identify child victims and children at risk. Only specially trained professionals should question child victims. These procedures should be sufficiently detailed to promote sophisticated and comprehensive identification of trafficked children. These include child friendly interviewing techniques in interviews of child victims or at-risk children which should cover the interview environment, language, appropriate filing and recording and confidentiality etc.
4. Child trafficking interventions should consider children as actors, not as passive recipients of assistance. Anti-trafficking initiatives should include and prioritize the empowerment of children to actively participate in claiming their rights. In the process of identification the child's right to participation should be always ensured and promoted. This requires that adequate and age-appropriate information be supplied to the child in relation to the process. His/her views should be sought and taken into consideration.
5. SC recommends a two-phase process, whereby an initial screening interview takes place, with more detailed questioning taking place only post the appointment of a guardian.

Assistance:

1. Immediate State responses should include:
 - Appointment of a suitable guardian in accordance with the SCEP Statement of Good Practice.
 - Subsequent grant of a temporary residence permit, pending a decision on a durable solution. This permit should be issued whether or not the child intends to cooperate with criminal justice system. From the outset, all of the States' actions should be informed by the child's best interests and the need to find a durable solution based on the individual circumstances of the case.
2. Assistance should always be provided to children victims of trafficking or presumed victims, independently of their willingness to cooperate with the authorities.
3. As enshrined in the CRC, any State Party has got the duty to respect, protect and fulfil the rights of any child (CRC art.2). In case the child is identified as separated child, then s/he is entitled to special protection that should be provided without delay (CRC art.20). In addition, whenever there is a presumption that a child is a victim of trafficking or in case he/she is identified as such, then specific assistance measures should be granted to him/her to ensure his assistance and protection.
4. Particular attention should be given to the child's needs, arising from his/her previous condition of deprivation and from the psychological impact of violence, trauma and loss.
5. Immediate assistance provided to children should include, at a minimum: appropriate and secure accommodation, psychological and material assistance, access to emergency medical treatment, access to health assistance, access to education and vocational training, access to social assistance, counselling and information, and translation and interpretation. Human rights standards, such as those enshrined in the CRC, should be taken into consideration in the definition and adoption of assistance measures. Such measures should be specifically addressed to children (as distinct from those provided to adults), therefore, be developed accordingly.
6. As long as security concerns allow, *community based centres* should be given preference so to avoid segregation. Accommodation should be provided in a child-friendly environment. Under no circumstances should a child be placed in a law enforcement detention facility. Where possible, children should be accommodated in a house separate from adults.
7. Any assistance and support should be tailored on the specific needs of each child. Assistance should be provided in a timely manner, responding to the specific needs of the child.

Family Tracing

Tracing for a child's family should be undertaken as soon as possible, provided that this does not endanger the child or the child's family. Children should be properly informed and consulted about the process and their views taken into account.

Long-term assistance and reintegration

1. After immediate assistance, trafficked children are entitled to receive long-term care and protection aimed at supporting their successful social inclusion in the child's origin, host or third country.
2. Starting from the first phases of assistance, an individually-tailored sustainable reintegration plan should be developed with the child. The identification of a durable solution should be based on a

thorough assessment of what option is the best interest of the child and in compliance with his/her wishes.

3. Children victims should be returned to their country of origin only if this is in their best interest. If return is not in the best interests of the child, long-term care, long-term residence permit and an individual integration project should be provided in the host country.
4. A competent assessment of the situation in the country of origin, as well as in the country of destination, should be carried out prior to deciding whether to return the child to the country of origin or seek alternative durable solutions in the country of destination or resettlement in a third country. The principle of the best interest of the child, as well as the child's right to survival and development, should inform this decision. The child should be fully informed and consulted at all stages and provided with appropriate counselling and support.
5. Such an assessment should also aim to ascertain whether the assistance needed by the child victim is available in the country of origin according to minimum quality standards of care.
6. SC encourages the Commission to develop standards of assessment which would address modes of assessment, criteria for assessment, reporting parameters. They might include a provision that a network of actors including local authorities, institutions, NGOs contribute to the assessment.
7. Should the child be reintegrated within her/his family, parents or other care-givers should be prepared to the child's return.
8. Monitoring of the reintegration process should be conducted for at least 12 months up to three years, according to requirements of the specific case. For the first six months, the child should be monitored on a monthly basis.
9. Any assistance as well as monitoring action should be undertaken by a professional organization, in a thorough fashion and in full respect of well-being, safety and confidentiality rights of the child, his family and other close persons.

Access to Justice and Compensation

1. Child victims of trafficking should never be criminalized. They should be treated as children first and foremost. They should always be identified as victims before the criminal justice system and treated as victims of a serious crime rather than criminals.
2. Presumed trafficked children should neither be detained nor subjected to criminal procedures for offences related to their having been trafficked.
3. Non –punishment clause: No penalty should be imposed on a child victim for his/her involvement in unlawful activities.
4. Children cannot be obliged to cooperate nor should they be punished or penalised in any way for failure to cooperate with law enforcement authorities.
5. Children have the right to access to justice. This includes legal information and legal assistance provided in a child-appropriate manner, and the right to compensation for injuries suffered.
6. Child –friendly procedures should be applied in criminal proceedings.

7. Children victims and/or witnesses who accept to cooperate with the authorities in investigation and prosecution efforts should be guaranteed appropriate protection. Such protection should be extended to the child's family members and other closest persons.

8. Legal assistance and psychological counselling should be available to the child throughout the entire process. All measures should be taken in order to avoid re-victimization and any violation of the child's rights to privacy and confidentiality.

9. As stated in the Council of Europe Convention on Actions against THB, investigation into and prosecution of offences shall not be dependent upon the report or the accusation made by a victim. (CoE Art. 27(1)).