

Alliance against Trafficking in Persons
Expert Co-ordination Team

ENGLISH only

Joint Statement on
**Child Protection, Especially among Migrant, Undocumented, Unaccompanied,
Separated and Asylum Seeking Children, to enhance Prevention of Child Trafficking**

Presented at the **OSCE Review Conference**, 8 October 2010, Warsaw
within the working session on:

**“Combating trafficking in human beings, with a particular focus on
trafficking in children”**

Over the last decade, OSCE participating States have adopted a number of commitments to prevent and combat child trafficking.¹ In 2010 the OSCE Kazakh Chairpersonship has set child trafficking as one of its priorities. This focus of the agenda is in line with the international community political will to reaffirm its commitment to fight against human trafficking and to take stock of progress made since the adoption, in 2000, of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UN Trafficking Protocol). In July 2010 the United Nations General Assembly endorsed the *Global Plan of Action against Trafficking in Persons*² which is a new and focused call to the universal ratification and the effective implementation of UN Trafficking Protocol. In February 2010 the *Group of Experts on Action against Trafficking in Human Beings* (GRETA) initiated its first round of the evaluation of the implementation of the *Council of Europe Convention on Action against Trafficking in Human Beings*³ by the parties. In May 2010 the Hague Global Child Labour Conference approved the *Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016*⁴ highlighting the worldwide efforts to counter child labour, including child trafficking, and to identify common policy approaches to address the issue.⁵ Finally, in June 2010 the European Commission adopted the *Action Plan on Unaccompanied Minors*⁶, and the Council of the European Union adopted *Conclusions on unaccompanied minors*⁷ both welcoming the Commission’s Action Plan on Unaccompanied Minors and recalling that children should be treated as such regardless of their migratory status, nationality and background.

¹ These include OSCE MC Decisions: MC(8).DEC/1, MC.DEC/2 /03, MC.DEC/13/04, MC.DEC/13/05, MC.DEC/14/06, MC.DEC/15/06, MC.DEC/8/07, MC.DEC/9/07; PC.DEC/557/03 and PC.DEC/685/05.

² UNGA, *United Nations Global Plan of Action against Trafficking in Persons* (30 July 2010).

³ *Council of Europe Convention on Action against Trafficking in Human Beings* – CETS No.197, open for signature on 16 May 2005, in force as of 1 February 2008.

⁴ *Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016*, adopted at The Hague Global Child Labour Conference 2010.

⁵ ILO, *Joining forces against child labour. Inter-agency report for the Hague Global Child Labour Conference of 2010*, Understanding Children’s Work (UCW) Programme (2010); *Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016*, Outcome document, The Hague Global Child Conference of 2010 (11 May 2010).

⁶ EU, *Action Plan on Unaccompanied Minors (2010-2014)*, COM (2010)213 (6 May 2010).

⁷ Council of the European Union, *Council conclusion on unaccompanied minors* (3 June 2010).

The *Alliance* Expert Co-ordination Team (AECT) welcomes this clear manifestation of international political will. Yet, the AECT is convinced of the need to further intensify and consolidate efforts to eradicate child trafficking and prevent all forms of violence against children by ensuring full and effective respect for their rights.

Evidence shows that children are trafficked into and within the OSCE region, between countries and within countries in the region for a variety of exploitative purposes, including sexual and labour exploitation, forced begging and petty crimes. However, responses at the national and local level fail to effectively prevent all forms of child trafficking, to identify and protect child victims.

Research in the OSCE region also indicates that in many countries comprehensive child protection systems are not yet in place or are ineffective due to an overall lack of care/services for children corresponding to their age, gender, ethnicity and maturity. Therefore child protection systems should be enhanced to strengthen the protective environment around each child.

Child trafficking affects vulnerable groups of children, such as migrant children, undocumented children, separated, unaccompanied and asylum-seeking children but also those who are suffering from abuse and neglect, those who are deprived of parental care and abandoned, and/or left behind by migrating parents and/or children of trafficked parents. States have a duty to prevent abuse of, violence against and trafficking of children, to protect their rights and to meet their needs for special protection and assistance in a coherent and integrated way across the various laws and policies (including asylum, migration and anti-trafficking policies).

International standards strongly acknowledge and address the particular vulnerability of all children and their specific needs through a comprehensive set of principles and guidelines. These aim at granting full protection and assistance to all children without discrimination of any kind.

The *Alliance* therefore calls upon States to adopt and implement with adequate resources a child-rights approach to child trafficking. This means that all actions undertaken in relation to child victims of any form of violence and children at risk should be guided by applicable human rights standards and in particular by the principles of protection and respect for children's rights as set out in the United Nations Convention on the Rights of the Child (CRC) and in its Optional Protocol on the sale of children, child prostitution and child pornography. Child victims should be considered and treated as children first and foremost. They are entitled to special protection measures, regardless of their legal status both as victims and as children, in accordance with their special rights and needs. In all actions concerning children at risk and child victims, the best interests of the individual child shall be the primary consideration.⁸

The *Alliance* recognizes the primacy of a child-sensitive and human rights-based approach to all aspects of anti-trafficking policies and action. It further reiterates the significance of the prevention of child trafficking, especially among children made vulnerable in the context of migration both cross border and in-country.

⁸ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (2006).

The *Alliance* urges participating States to take the necessary measures to:

1. Promote full and effective implementation of international standards

- Ensure that international human rights standards and protection principles are respected for all children without any kind of discrimination and regardless of their status, including the best interests of the child, the right to be heard, the right to information, to express a view and to active participation, the right to be protected, the right to confidentiality and respect for cultural identity;
- The best interests of the child must be a primary consideration in all actions concerning every child. Any determination or assessment of best interests must be based on the individual circumstances of each child and must take all relevant factors into consideration. It must be a multi-disciplinary exercise involving relevant actors and undertaken by the specialists and experts who work with the child.⁹

2. Step up efforts to prevent child trafficking

- Enhance child care and child protection systems including birth registration in order to respond to the specific needs of vulnerable and socially excluded children and respect their rights so as to ensure their survival and development to the maximum extent possible. Investing in gender sensitive and child friendly social protection systems will contribute preventing vulnerable children from becoming victims of trafficking, as well as ensure that the rights of child victims are guaranteed in the pursuit for a durable and safe solution in the best interests of each individual child.
- Extend and improve access to free, compulsory, quality education for all children¹⁰ without discrimination and regardless of their status. Step up efforts to eliminate the administrative and practical barriers that impede correct and equal access to education for migrant, undocumented, unaccompanied, separated and asylum-seeking children, and introduce life skills programmes into the school curriculum and for out of school children.
- Strengthen collective efforts to prevent child trafficking particularly in sectors and occupations where child labour is most prevalent, such as agriculture and domestic work.
- Develop initiatives to promote regulated youth employment and to address child labour; provide and/or regulate, licence and monitor job counselling services and employment agencies, including for youth of working age.
- Ensure that effective systems are in place to prevent child trafficking for labour throughout service providers and product supply chains by taking effective measures to address child labour, to ensure more substantial protection of workers, especially migrants and youth in all workplaces, and to promote the establishment and

⁹ SCEP, *Statement of Good Practice*, 4th Edition (2009).

¹⁰ ILO, *Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016* (11 May 2010).

implementation of codes of conduct and corporate social accountability/responsibility programmes in the private sector.

- Conduct more targeted qualitative and quantitative research on child migration including on policies to promote safe, child-friendly migration and to prevent migratory conditions that may render children vulnerable to abuse, violence, and trafficking. Research should also examine the impact of migration and border control policies on the protection of the rights of migrant children;
- Develop policies to address the potential vulnerability of children, in particular to the worst forms of child labour, in the context of migratory flows.

3. Strengthen the care and protection of migrant, undocumented, unaccompanied, separated and asylum seeking children to better prevent child trafficking

- Ensure that services offered by public and private service providers meet quality standards of care, monitoring and evaluation in order to prevent the disappearance of children;
- Ensure that all children, including migrant, undocumented, unaccompanied, separated and asylum seeking children, receive immediate care and assistance unconditionally, regardless of their administrative status and on an equal footing with national children;
- Ensure when needed the appointment of an independent guardian who is legally mandated to accompany the child throughout the entire assistance process and guarantee that decisions are taken in the best interests of the child and that a durable and safe solution is identified thoroughly but swiftly;
- Ensure free legal assistance where children are involved in asylum procedures, administrative or judicial proceedings. This can be achieved by providing them with legal representatives at no cost, who possess expertise on areas of migration law, the asylum process, child protection and instruments to protect victims of trafficking. The legal representative should be skilled in representing children, gender-sensitive and aware of child specific forms of exploitation. Ensure also that children receive information in a language that they understand and in a child friendly way;
- Ensure that age assessment procedures are child friendly and undertaken as a measure of last resort, not as a standard practice, by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background. They must balance physical, developmental, psychological, environmental and cultural factors. Grant the child the right to appeal any such decision. Where the age of the child is uncertain and there are reasons to believe that the person is a child, the presumption shall be that she/he is a child;¹¹
- For separated and unaccompanied children, tracing of parents and family needs to be undertaken as soon as possible, but this must only be done where it will not endanger the child, or members of the child's family;

¹¹ See CRC, General Comment No. 06, para. 31(i). c.31 and SCEP, *Statement of Good Practice*, 4th Edition (2009).

- Ensure that migrant, undocumented, unaccompanied, separated and asylum seeking children are provided with appropriate care and are never detained for reasons related to their administrative status nor are kept in closed shelter (or quasi detention facilities) for prevention purposes.
- Ensure that child victims of trafficking are not prosecuted for the activities they are involved in as a direct consequence of their trafficking situation. A child-sensitive approach ensuring the rights of the child should be guaranteed from the moment of arrival in the host country to the identification of a durable and safe solution.

4. Strengthen identification of child victims of trafficking

- Ensure that identification mechanisms for victims of trafficking include appropriate indicators related to abuse and exploitation of children and provide an enhanced focus on labour forms of exploitation;
- Strengthen identification mechanisms by providing resources and trainings to all professionals who work with children and might come in contact with children at risk, developing focused awareness raising campaigns addressing invisible forms of exploitation and involving all relevant actors including the private sector.

5. Implement a durable and safe solution based on individual case assessment

- Ensure that a durable solution is identified for each child taking his or her best interests as a primary consideration, potentially involving return to a country of origin, transfer to another country (for example, for family reunification purposes) or integration in the host country;
- Ensure the identification of durable and safe solutions based on best interests determination whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children;¹²
- Develop practical means to implement the principle of the best interests of the child and mechanisms to monitor the process of best interests determination on a regular basis, and to avoid automatic solutions such as a return to the family without undertaking an individual risk assessment;
- Ensure that individual case assessments are done for each child who comes in contact with the social protection system to secure an appropriate durable and safe solution. Such a process should consider, among other factors, the child's family situation, the situation in their country of origin, their safety and the risks they are exposed to, the level of integration in the host country, their mental and physical health, the possibilities for the development of the child and the adequacy of concrete care arrangements to ensure a safe and secure environment;¹³

¹² UNHCR, *UNHCR Guidelines on the Formal determination of the Best Interests of the Child* (2006), p. 32.

¹³ See Committee on the Rights of the Child, *General Comment No. 6 Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* (2005) <[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2005.6.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2005.6.En?OpenDocument)>, accessed 13 April 2010.

- Ensure that the individual assessments are conducted by adequately trained social workers and that, when needed, on-site investigations are made;
- The families of trafficked children should not be traced (or traced confidentially) if there is a concern that such efforts might endanger the child or his/her family or might be contrary to his/her best interests;
- Migrant, undocumented, unaccompanied, separated and trafficked children must not automatically be returned to their country of origin, or resettled or transferred to a third country. Migration control concerns cannot override the best interests of the child. “In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.”¹⁴

On behalf of the ***Alliance against Trafficking in Persons Expert Co-ordination Team***:
OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, OSCE Office for Democratic Institutions and Human Rights, Anti-Slavery International, Council of Europe, ECPAT, ICMPD, the International La Strada Association, IOM, Save the Children, Terre des Hommes – Child Relief and UNICEF.

The Bureau of the Dutch National Rapporteur, CBSS, ILO and UNODC are not in a position formally to support the statement, but fully support its objectives.

¹⁴ Committee on the Rights of the Child, *General Comment No. 6 Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* (2005).