

OSCE Review Conference
Working Session “Combating Trafficking in Human beings, with a Particular
Focus on Trafficking in Children”

Dr. Maria Grazia Giammarinaro
**OSCE Special Representative and Co-ordinator for Combating Trafficking
in Human Beings**

Introductory Remarks

Astana, Kazakhstan
27 November 2010

Dear Mr. Chairman,
 Excellencies,
 Distinguished participants, colleagues and friends,

All together, we have come to the final stage in reviewing the implementation of the OSCE commitments on the eve of this historical and critical event in the development of our Organization: the OSCE Summit, which opens a new page of co-operation between the participating States, OSCE Partners for Co-operation, International Organizations and the civil society to ensure comprehensive security for all.

We mean it literally – security for all, - when we speak about the threat of human trafficking, and in particular child trafficking, a violation of human rights and human dignity, a modern form of slavery, a business of organised crime and a transnational threat to security.

Numerous are the factors contributing to making trafficking a massive phenomenon of modern day slavery, including poverty, lack of opportunity, discrimination, conflicts, weak rule of law, corruption, and other factors that may cause people to move in search of a better life.

Trafficking in children, undoubtedly the most cynical form of trafficking in human beings, poses a real threat to the human development of all 56 OSCE participating States and beyond. Its victims, innocent and vulnerable, are sexually exploited, are used and abused in domestic servitude, in agriculture, in construction, in food-processing and sweat-shops, in organized begging and in petty crimes. Furthermore, trafficked children often simultaneously become victims of other serious crimes: kidnapping, violence, sexual assault, rape, murder, forced abortion, torture, and many others.¹ Forms of exploitation may vary, but the cruelty of the crime and the impact of trauma suffered by the child are always deeply destructive and leave lifelong scars. Years are needed to rehabilitate boys and girls whose physical and psychological health has been damaged in this way.

The vulnerability of children depends on their status and the conditions in which they live in – or from which they try to escape. Boys and girls from abusive or dysfunctional families, homeless children, street children, separated children, undocumented children, unaccompanied minors, child drug-addicts, child victims of domestic violence, children disadvantaged in terms of education or their economic situation, orphans and children in institutions, children from migrant families and child refugees and asylum-seekers,² and the list can go on- they are all easy targets for the traffickers.

What is the current situation of child trafficking worldwide? Trafficking is hard to quantify. Yet some estimates on the scale of the problem exist. For example, according to the ILO, worldwide an estimated 215 million children are subjected to child labour, more than a half of them to its worst forms.³ Child trafficking comprises an integral part of (or is one of) those worst forms. And according to the IOM, children comprise 40 to 50 percent of identified

¹ UNODC, Toolkit to Combat Trafficking in Persons.

² Joint Statement of the Alliance Expert Coordination Team, “Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking, 8 October 2010, OSCE Review Conference, Warsaw.

³ The Hague Global Child Labour Conference 2010 “Towards a World without Child Labour. Mapping the Road to 2016.” Conference Report, The Hague, the Netherlands, 10-11 May 2010

trafficked victims. Yet a comprehensive and precise picture is lacking as few child trafficking cases are investigated, and few victims identified and assisted as such.

Children are the targets of traffickers in conflict areas: conflict always exacerbates trafficking in human beings. It is estimated by the UN that 300,000 children (both boys and girls) as young as 8 years of age have been trafficked as child soldiers serving in over 30 armed conflicts all over the world for government or armed rebel forces.⁴ They serve not only as combatants but as curriers, spies, cooks, wives, servants, and are exposed to all kinds of life-threatening situations.

A recent study from UNCHR on unaccompanied Afghan children in Europe, illustrates the vulnerability to abuse and trafficking that many of these children encounter. The study reports the hardships and abuses the children experience during their long journey and after arrival; these include instances of harassment (even by law enforcement), physical violence, detention, forced labour, etc. In many cases these children are not treated as children, especially when they are adolescents, and an accurate individual best interest determination is not always carried out. Furthermore, their vulnerability at their destination may increase “as a result of the lengthy, uncertain and deprived circumstances of their stay in the host country.”⁵ Sometimes the authorities may even “wait” for the children become legal adults before considering the return option.

It is for these hundreds of thousands, if not millions of child victims of trafficking – we have taken commitments to eradicate modern slavery. The challenge for the near future is that the national machineries we have built in the OSCE region over the last ten years should now work on a much larger scale to identify and assist victims, and bring perpetrators to justice. To this end, we have to promote systematic follow up and implementation of legal obligations and political commitments.

First, States should fully implement legal obligations deriving from international instruments including the Trafficking Protocol supplementing the UN Convention against Transnational Organized Crime, 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 ILO Conventions on the Worst Forms of Child Labour and on Minimum age for Admission into Employment, the Council of Europe Convention on Action against Trafficking in Human Beings.

At the same time, we have to go beyond these and other international treaties, considered as minimum requirements, in order to be truly effective in our efforts. There are other documents often containing more advanced, comprehensive and practical provisions and recommendations. These include UNHCHR’s Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Guidelines for Protection of the Right of Children Victims of Trafficking (SEE). In this regard, the OSCE Action Plan to Combat Trafficking in Human Beings remains one of the most advanced tools for use at the

⁴ Alexis Aronowitz, *Human Trafficking, Human Misery: the Global Trade in Human Beings*, 2009 p.103.

⁵ ‘The developmental consequences for asylum-seeking children living with the prospect for five years or more of enforced return to their home country’, M. Kalverboer, A. Zijlstra and E. Knorth, *European Journal of Migration and Law*, 11, 2009 cited in UNHCR, Christine Mougne, [Trees only move in the wind: A study of unaccompanied Afghan children in Europe. , June 2010](#)

national level. The recommendations these documents contain, should become powerful instruments in the hands of executive authorities. They should also serve as guidance to the civil society institutions – especially those working directly with affected children or children at risk.

In this light, we should build or strengthen effective child protection systems which consistently implement child-rights standards. To protect every single child at risk is the most powerful means to prevent child trafficking.

International organizations speak in one voice when they refer to the most significant principles of combating trafficking in children. They include: that the Best Interest of the Child be considered paramount at all times; the Right to Non-Discrimination; Respect for the Views of the Child; Respect of Cultural Identity; Right to Information; Right to Confidentiality; the Right to Education, and the Right to Be Protected. We can help translate them into practice in the following ways:

All agencies or institutions must make the determination of the best interest of the child their primary consideration when deciding on what to all must be done for a trafficked child or a child at risk, whether they are public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Children who have been trafficked must “be provided with appropriate physical, psychological, legal, educational, housing and health-care assistance” and “efforts must be made to protect their privacy and identity”⁶. This means that in some situations it may not be safe or possible for children to return home, or that it may not be in their best interest to do so. Risk assessments accomplished prior to the return of any child to their country of origin is “a must” in each individual case. Authorities are required to make “adequate care arrangements that respect the rights and dignity of the trafficked child”. In addition, there is another aspect of the “best interest” – durability. Decisions that are made with regard to trafficked children should aim at identifying a durable solution for each child taking his or her best interest as a primary consideration, weighing and balancing all the relevant factors in a particular case.

The best interest determination process should be done on an individual basis and be documented; it 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.⁷ To this end it is crucial to ensure that the child has an independent legal representative who accompanies the child throughout the process.

The Right to Non-Discrimination is crucial, whether on gender or ethnic grounds, but especially for cases affecting migrant children, non-citizens, non-residents, undocumented and unaccompanied children. They all are entitled to the same treatment and rights as national or resident children. They should be treated as children first and foremost. All considerations of their immigration status are irrelevant.

⁶ UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking.

⁷ 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.

States should implement the principle of the Respect for the Views of the trafficked child, and establish appropriate procedures to ensure that children's views on situations that may affect them are heard and given due attention, taking into account the age and maturity of the child.

Respect of Cultural Identity is crucial especially for children trafficked outside their country of origin. Practitioners do know that this poses particular challenges as quite often trafficked children do not know or remember where they have come from, and or do not know their true name or nationality. It is up to the care-providers and psychologists to do their utmost so that the child could be able to maintain his or her mother tongue and links with their culture and religion. Preservation of culture and language is also important should a child return to their home country.

Trafficked children should be provided with Information about their entitlements, services available, the asylum process, family tracing, and the situation in their country of origin; they should be provided with suitably trained interpreters who speak their preferred language whenever the victims are interviewed or require access to services or legal procedures.

Confidentiality is not just a right to be observed, it is the precondition of safety. All structures involved in the investigation and prosecution of a trafficking case, in the protection of the victim are responsible not to disclose personal information about the victim or information that could endanger her or him and /or his or her family. The permission of trafficked children should be sought in an age appropriate manner before sensitive information is disclosed to other organizations or individuals. Information should not be used for purposes other than for those for which it was given.

The age assumption: this remains an ongoing challenge affecting the treatment of presumed victims of trafficking. We have to 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. The child should be granted 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.⁸

The Right to be Protected – immediately and unconditionally, as well as the right to receive adequate care including health care, social assistance and education, is crucial for any vulnerable child. Yet the reality is that children are sometimes detained and expelled, especially when they are unaccompanied and separated and approaching adulthood; child victims of trafficking are often not identified as such and this results in a further denial of their rights. Do we know how many victims remain unidentified and, hence, with no hope for protection? Let me assure you, a comparison of the number of court cases and prosecutions, on one hand, with the estimated numbers of victims of trafficking in the OSCE region leave no illusions: the vast majority of children trafficked within or across the borders do not have access to justice. They remain hidden, unidentified, unknown, and unassisted, and their numbers reach beyond the imagination.

⁸ See CRC, General Comment No. 06, para. 31(i). c.31 and SCEP, *Statement of Good Practice*, 4th Edition (2009).

Protection of children includes protection from detention. Unfortunately practices of detention of children do exist, sometimes in connection with identity checks. In this respect, it is important to underline that the UN Committee on the Rights of the Child stated, that, in application of Article 37 of the Convention, detention of children cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status.

Unfortunately, these comprehensive principles and guidelines, based on a human rights approach, are rarely implemented in their entirety by the OSCE participating States. Responses at the national and local levels 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. This means that these children will remain vulnerable to trafficking, and the criminals will collect their human harvest over and over again.

I believe there is no need to remind this audience that States have a commitment and a duty to prevent the abuse of, violence against, and the trafficking of children, to protect their rights and to meet their needs for special protection and assistance in a coherent and integrated way across all the various laws and policies (including asylum, migration and anti-trafficking policies). The participating States are strongly supported and encouraged by the international community, namely, the *Alliance against Trafficking in Persons*, in the implementation of this commitment.

In conclusion, dear distinguished participants, let me remind us all that in the course of the first session of the Review Conference in Warsaw the *Alliance Expert Coordination Team* issued a Joint Statement on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to enhance Prevention of Child Trafficking. This Statement represents an outstanding effort of the major organizations at the forefront of combating trafficking in human beings, to share their experience and evidence-based knowledge with the OSCE participating States and provide advanced recommendations in order to promote the full and effective implementation of all relevant international standards; to step up efforts to prevent child trafficking; strengthen the care and protection of migrant, undocumented, unaccompanied, separated and asylum seeking children to better prevent child trafficking; strengthen identification of child victims of trafficking; and implement a durable and safe solution based on individual case assessments. I do believe that this document of the *Alliance* will contribute to the national efforts as well as to our common cause to eradicate this modern slavery in our XXI century, and to ensure the protection of the fundamental freedoms and human rights of all as the core of comprehensive security.