

Promoting the best interests of the trafficked child - a framework for co-operation between social welfare, immigration, police, judicial authorities and NGOs – Diana Sutton May 2004

Introduction

In this presentation I will talk about the need to promote the best interests of the trafficked child – looking briefly at the needs and rights of trafficked children and the legislative framework and then focussing on the need for a framework for co-operation between the different authorities who deal with children. Rather than focus on a series of recommendations for policy or legislative change my presentation focuses on the need for multi-disciplinary co-operation amongst different agencies. The co-operation framework is based on the results of a six country child trafficking project by Save the Children that aimed to supply a practical approach for dealing with the issue of child trafficking from a child rights perspective rather than one of crime control or border control.

Specific vulnerability and needs of children

Children are particularly vulnerable to trafficking as it is easier for traffickers to target them, through coercion or deception or manipulation and they have fewer possibilities to escape the exploitative relationship. They cannot always rely on the protection of their families as the following case study from Save the Children's direct work shows:-

“Some families do not report cases of trafficking because they are too frightened of what the traffickers might do. I know one family who was terrorised by traffickers into letting their daughter go. He said he would burn their house down.”

Some groups of children - such as street children, children living in institutions, children from minorities and disadvantaged groups, and girls - are particularly vulnerable to being trafficked, because of the lack of opportunities, education and support.

Children are more vulnerable to the serious effects of being trafficked and exploited and of being treated under immigration and crime control policies. Child victims are sometimes sold to traffickers by their parents and often face dangerous travel. They may be sexually exploited and/or exploited in illegal activities or other forms of labour exploitation, exposed to the violence of the exploiters and the clients. They often live on the streets or in inadequate accommodation, with no adult carers and no access to health, education and social services. These children usually have no legal status and therefore are prevented from seeking protection, for fear of being returned. When identified by law enforcement authorities, they are often treated as illegal immigrants, criminalised, held in detention centres (where some children are abused) and finally deported to their country of origin. Families often do not want the child back, because of the stigma attached, and in the worst cases children are re-trafficked. All these experiences may have devastating long-term

consequences for a child, whose protection needs are much greater than those of adults.

Children are not only victims in need of protection but also subjects of rights, consistent with their status under the Convention on the Rights of the Child, capable of decisions and actions, whose view should be taken into account consistent with Article 12 of the CRC.

The rights of the Child – legal framework

In accordance with internationally agreed legal instruments, the starting point for interventions dealing with the trafficked child should be the best interests of the child. Children are entitled to specific rights under a number of international instruments. The UN Convention on the Rights of the Child (1989) provides the most important legal framework for policy responses concerning children. It defines the child as a person below the age of 18 years, and provides a number of rights: the promotion of the best interests of the child (Art. 3), the non-discrimination principle (Art. 2), the right to participate (Art. 12), the right to survival and development (Art. 6). It also contains specific articles (32, 33, 34, 35, 36) dealing with exploitation, abuse and trafficking. Other relevant articles include the right to protection of children deprived of their family (Art. 20) and the non use of detention (Art. 37). It is important to stress the almost universal ratification of the CRC, as well as an established reporting and monitoring process.

Also relevant is the Optional Protocol on the sale of children, child prostitution and child pornography, ILO Convention 182 on the worst forms of child labour (in particular the definition of the worst forms of child labour). Specific provisions on children are also set out in the Palermo Protocol. According to the Palermo protocol, child trafficking is the “act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation either within or outside the country.” Thus child trafficking can be said to exist from the time a child is recruited to the time that s/he arrives, regularly or irregularly in a country and is exploited. The consent of the child victim to the trafficking is irrelevant – this is true even if none of the following means have been used, force coercion, abduction, deception, abuse of power etc. The main objective being financial gain.

At EU level despite the lack of comprehensive legal base to promote children’s rights in the EU Treaty, there are important legal texts which are relevant. These include Article 24 of the Charter of Fundamental Rights which provides a duty to promote the best interests of the child, Article 29 of the Amsterdam Treaty concerning offences against children and the draft Constitution which includes two articles concerning the promotion of the rights of the child.

Save the Children's approach

Save the Children's approach is that policies and interventions targeting trafficked children in the source and destination countries should be aimed at promoting and protecting the best interests of the child.

Save the Children carried out the ENACT project with a view to providing a common framework for analysis and actions, aiming to respond to the lack of a multi-disciplinary approach. The project took place in six countries (Bulgaria, Denmark, Italy, Romania, Spain, UK) two being countries of origin, two of transit and destination and two of destination. The data gathered come from work done by partner agencies in the project on questionnaires elaborated by SC Italy – they projected a picture of trafficking cycles based on age of child victims, countries of origin, transit and destination and on networks, recruitment and trafficking routes.

The project wanted to address the following concerns:-

- The need for an innovative child centred approach
- The need for a common approach
- The need for an analytical framework
- Addressing the lack of coordination among existing interventions
- To address the lack of a multidisciplinary approach

The project approaches the issue of child trafficking from a child rights perspective rather than one of crime control or border control. Moreover it is crucially important to recognise effective interventions in any given country in terms of protection, prevention, counter-actions and re-integration. The first column of the table aims at exemplifying the trafficking cycle, throughout which child victims of trafficking are usually bought from one country to another, exploited and abused.

Push factors of trafficking include poverty, underdevelopment, and lack of opportunities, this coupled with pull factors can fuel child trafficking. The trafficking cycle begins when the recruitment occurs usually by a third person who is close to the child or by traffickers themselves with newspaper advertisements, the promise of a good job etc. The next stages include leaving the country of origin usually using false papers, the transportation across borders and the arrival at a final destination where different types of exploitation and abuse take place. Once a child is in the cycle getting out is a real challenge. There is no way out for victims if there are no means of recovering and reintegrating victims. Lack of such support increases the likelihood of victims getting sucked back into the cycle of exploitation and abuse.

The matrix was used in the six partner countries to help clarify the different stakeholders' roles in the process and demonstrate the need to work in a multidisciplinary fashion and at all stages of the trafficking process. The process has led to some key recommendations.

Some Practical recommendations

In our experience children who have been trafficked are all too easily classified as criminals and not as victims. Children are at high risk of being successively criminalised and of being exposed to further abuses and are faced with unclear and inconsistent immigration policies, and exposed to the risk from potential re-traumatisation by police and judicial practices. There are some key practical measures that should be put into place to ensure that the best interests of the child is the primary consideration.

- Procedures should be put in place to identify trafficked children as soon as possible, in countries of origin, transit and destination, at the border and on the territory of the State. Agencies including law enforcement, social service, health, education agencies, and NGOs should co-operate and share information so as to ensure that child victims are identified and assisted as early as possible. It has to be recognised that relying only on initiatives to address the issue at borders may have limited effectiveness for two reasons first the difficulty of establishing the precise relationship between the child and accompanying adult (if accompanied) but most importantly because in many cases the exploitative nature of the relationship between the adult and child only becomes evident once in the country of destination.
- Unaccompanied children should never be refused entry or returned at ports of entry and immigration, border and other law enforcement authorities should immediately refer unaccompanied children to the appropriate child welfare authorities.
 - If the child is accompanied by an adult who is not able to demonstrate through valid identity and travel documents that they are an immediate relative, law enforcement authorities should take appropriate measures to establish the relationship between the child and the adult and if the child is trafficked.
 - After placing the child in safe accommodation, appropriate measures to establish the relationship between the child and the accompanying adult and if the child has been trafficked or exploited should be taken by the child welfare authorities (e.g. assessing the psychological and physical condition of the child, interviewing the child and the adult, contacting the consulate for the child's identification etc.), as well as by the law enforcement authorities (e.g. consulting the database of missing persons etc.).
 - Social service, health and education authorities should contact the relevant law enforcement authority where there is suspicion that a child is exploited or trafficked or is at risk of exploitation/trafficking.
 - Measures should be taken to address the disappearance of trafficked and exploited children from accommodation centres where they have been placed, as they will probably be re-trafficked and/or exploited.
 - Where the age of the victim is uncertain, due to the absence of papers or to false identity papers, and s/he claims to be less than 18 years of

age, the presumption should be that the victim is a child and s/he should be provisionally treated as such in accordance with current UNCHR guidelines.

- Training of police and law enforcement personnel on children's rights and the specific needs of child victims is needed. In relation to how victims should be treated by the criminal justice system the particular needs of children should be mentioned as an additional aspect. Training needs to be given by appropriate experts (i.e. not necessarily state entities).

Conclusions

The approach of any intervention should be multidisciplinary aimed at delineating the different dimensions of child trafficking and covering countries of origin, transit and destination. For this reason as many practitioners should be involved in defining and implementing national plans of action.

Save the Children wants to stress that child victims of trafficking are first and foremost victims even if they have been involved in illegal activities. It is absolutely necessary for all policies combating trafficking in human beings and preventing and reinserting child victims of trafficking to keep this central to interventions.

It is vital to place exploitation and abuse squarely at the heart of the problem – trafficking is always connected with a form of violence. It is also necessary to link different forms of abuse to different steps in the trafficking process and the different kinds of interventions (prevention, protection and reintegration).