



Tool 8.3 Protection, assistance and human rights

Overview

This tool discusses the human rights considerations which must be borne in mind in protecting and assisting victims of trafficking.

Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1)

(United Nations High Commissioner for Human Rights)

The Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the United Nations High Commissioner for Human Rights offer important guidance for anti-trafficking efforts.

The guideline of key relevance to victim protection and assistance is provided below.

Guideline 6

Protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.
2. Ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS.
3. Ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.
4. Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.

5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.
6. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.
7. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).
8. In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

The guideline of key relevance to protecting the human rights of child victims of trafficking is provided below. (See also Tool 8.2.)

Guideline 8

Special measures for the protection and support of child victims of trafficking

The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion etc. should not form part of the definition of trafficking where the person involved is a child.
2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking.

3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
4. In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.
5. In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
6. In both the situations referred to in the two paragraphs above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
10. Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.



The Recommended Principles and Guidelines on Human Rights and Human Trafficking are available at:

www.unhcr.bg/other/r_p_g_hr_ht_en.pdf

Guidelines on the Protection of Child Victims of Trafficking

(United Nations Children's Fund)

At all stages of the process of assisting child victims of trafficking, from identification through to reintegration, the following general principles must be taken into account by all actors involved with the child:

Rights of the child

- Human rights standards, in particular the principles of protection and respect for children's rights as set out in the Convention on the Rights of the Child, must guide actions to assist child victims.
- The rights stipulated in the Convention are available to all children, regardless of their nationality, immigration status or statelessness.
- The involvement of child victims in criminal activities does not undermine their status as both a child and a victim, or their related rights to special protection.
- States are required both to refrain from infringing on children's rights and to take positive measures to ensure their enjoyment of these rights without discrimination.

Best interests of the child

- In all actions concerning child victims, the best interests of the child shall be a primary consideration.

Right to non-discrimination

- Child victims have the right to protection, whether they are non-nationals, nationals or residents of the country in which they find themselves.
- They must be considered as children first and foremost.
- Every child shall have, without discrimination of any kind as to race, sex, language, religion, ethnic or social origin, birth or other status, including immigration status, the right to such measures of protection as are required by his or her status as a minor.

Respect for the views of the child

- A child victim capable of forming his or her views has the right to express those views freely in all matters affecting him or her. Respect for the views of the child will be maintained in relation to the legal process, interim care and protection, identification and implementation of a durable solution, particularly in decisions concerning the child's possible return to the family, country or region of origin.
- The view of the child victim shall be sought and given due weight in accordance with his or her age and maturity.
- The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly or through a representative or appropriate body in a manner consistent with the procedural rules of national law.

Right to information

- Child victims shall be provided with accessible information regarding their situation and their rights, including protection mechanisms, other available services and the processes of family reunification and/or repatriation.
- Information shall be provided in a language that the child is able to understand. Suitable interpreters shall be provided whenever a child is questioned or interviewed, or whenever he or she requests it.

Right to confidentiality

- All necessary measures shall be taken to protect the privacy and identity of child victims to ensure the safety and security of the victim and his or her family.

Right to be protected

- Child victims are entitled to special protection measures, both as victims and as children, in accordance with their specific rights and needs.
- The State shall protect and assist child victims and ensure their safety.

Definition of roles and steps

- States should take positive action to combat trafficking in children and to protect and assist trafficked children.

Coordination/cooperation

- International, multilateral and bilateral cooperation between countries is important.
- Complementarity and cooperation among all organizations and institutions concerned is critical for the care and protection of child victims.
- Cooperation between Government and non-governmental sectors should be based on clear delineation of responsibility and transparency, with clearly defined roles.
- All relevant ministries and Government bodies involved in the protection of child victims shall adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims.



Source: These general principles are contained in the UNICEF *Guidelines on the Protection of Child Victims of Trafficking* available at: www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

Recommended resources

Human Rights in Practice: a Guide to Assist Trafficked Women and Children

This 2001 guide is the result of collaboration between a range of anti-trafficking activists in South-East Asia. It is intended to promote the provision of direct assistance to trafficked victims, within a human rights framework. The manual is available in Bahasa Indonesia, Burmese, Chinese, Khmer, Lao, Thai and Vietnamese.



This publication is available in Burmese at: www.gaatw.net/index.php?option=com_content&task=blogcategory&id=9&Itemid=78

Human Rights Standards for the Treatment of Trafficked Persons

This collation of international human rights instruments of value in the protection of trafficked victims, compiled in 1999, is available in English, French, German, Russian, Spanish and Thai.



For more information about this publication, visit:

[www.gaatw.net/index.php?option=com_content&task=blogcategory
&id=9&Itemid=78](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=9&Itemid=78)

Collateral Damage: the Impact of Anti-Trafficking Measures on Human Rights around the World

In September 2007, GAATW issued a report entitled *Collateral Damage: the Impact of Anti-Trafficking Measures on Human Rights around the World*. The report explores the experience of Australia, Bosnia and Herzegovina, Brazil, India, Nigeria, Thailand, the United Kingdom and the United States and analyses the impact of their respective anti-trafficking policies and practices on the people living, working and migrating within and across borders. The report is intended to contribute towards policies and practices in respect of anti-trafficking around the world and draws attention to the gaps that undermine and frustrate efforts to prevent migrating women, children and men from finding themselves in situations of exploitation and trafficking.



More information about the report is available at:

www.gaatw.net