

## SUPPORTING NOTES FOR MODERATORS TO HELP STIMULATE DISCUSSIONS.

### A. Legal Issues Raised in Original Proceedings and/or subsequent Appeal

#### Different Dimensions of Law Involved:

Criminal Law, Child Protection & Immigration Control/International Protection

#### Different Legal Issues Involved:

1. Age Assessment: identification of the young person as a child.
2. Procedural issues in justice proceedings when child is involved: appointment of a guardian, legal representation, information for the child
3. Identifying the child as a trafficked child.
4. Identifying that the child's criminal activity was consequent to the trafficking.
5. Availability of redress for the child from the trafficker or the State
6. Identifying whether the child has benefited from the support to which he was entitled as a trafficked child
7. Future protection measures for the child.

#### Age assessment:

*Sources of law:* EU Trafficking Directive, UN CRC

*Child Rights involved:* Right to identity:

- In this case, it is clear that the person's identity is a crucial element, in terms of their age and nationality. The absence of documentation means the person has no means of establishing their identity.
- Every possible and appropriate step should be taken to establish their identity, first through trying to get appropriate documentation from Vietnam or secondly through a proper age assessment exercise, with the child assisted by a guardian during the age assessment process.
- Benefit of the doubt to person where there is reason to believe a child, pending age determination

Procedural Safeguards: appointment of a guardian, legal representation, information for the childm adapted procedures

*Sources of law:* EU Trafficking Directive, EU Victims Directive, UN CRC

*Child rights involved:*

- Information in a child friendly way: vital in this complex and sensitive situation, especially where the child may be the only source of certain key information, e.g. journey to the country.
- Guardianship: important for any child deprived of parental care and in conflict with the law. Important for any unaccompanied children from a third country.
- Right to be heard
  - Apart from the steps above, right to legal representation/legal counselling/legal advice.
  - Did the proceedings hear the child directly?
  - Was an interpreter available?

Identifying the child as trafficked:

*Sources of law:* definition of trafficking in the Trafficking Directive, elements relevant to trafficking of a child, no need for use of coercion etc, UN CRC

Identification of a child as trafficked may be done as part of a separate process under a national referral mechanism by a national body, e.g. UKBA, but ultimately for a court to examine any evidence even in the absence of a referral, particularly in the case of a child

*Child rights involved:* right to protection from violence:

- A child has a right to protection from violence, with specific measures set out in Article 19 et al of the UN CRC and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Every effort should be made to identify whether the child is at risk of trafficking, has been trafficked. Evidence of situation in Vietnam, or evidence of Vietnamese criminal activity in the UK, should be reviewed.
- The child also has a right to assistance and care. As an unaccompanied child, the child has a right to special protection and assistance under Article 20 of the UNCRC. General Comment No 6 of the UN CRC provides guidance on how their situation should be addressed.

Practical steps include:

- Appointment of guardian
- Individual needs assessment
- Reception and care, including specialised health and mental health care.
- The principle of non-discrimination can play a significant role in terms of access of a non-national child to health and education services.

Identifying the criminal activity involved as consequent or integral to the trafficking

*Source of law:* Article 8 of the Trafficking Directive; UN CRC non prosecution, non-punishment

*Child Rights:* non punishment, prohibition of detention, due process

Availability of redress for the child from the trafficker or the State:

*Source of law:* EU Trafficking Directive, Victim's Directive, national crime compensation schemes,

*Child Rights:* access to redress

Identifying whether the child has benefited from the support to which he was entitled as a trafficked child:

*Source of law:* Trafficking Directive; UN CRC; National child protection law

*Child rights:* Guardian; needs screening; availability of appropriate care and services, based on a multidisciplinary assessment of his individual needs.

Future protection measures for the child:

*Source of law:* EU Trafficking Directive durable solutions provision; other legal provisions under humanitarian national law? Other immigration/international protection law/National child protection law

*Child Rights:* Child protection; Best interests

Elements of the child's situation which should be addressed to promote their best interests:

- Non prosecution, non-punishment
- No deprivation of liberty
- Finding a durable solution for the child, including whether the child should receive a protection status (international protection, trafficking victim status, humanitarian leave to stay on the basis of national law) that allows them stay in the country or whether return to Vietnam or transfer to another country is in the best interests of the child, e.g. if a family member lives in another country and it is in the best interests of the child to reside with them;
- Availability of compensation

Factors to be considered:

- Views of the child
- Is restoring family links possible and in the best interests of the child?
- The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return, including through home study, where appropriate, conducted by social network organizations;
- The availability of care arrangements for that particular child;
- The child's level of integration in the host country and the duration of absence from the home country;
- The child's right "to preserve his or her identity, including nationality, name and family relations" (art. 8);
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (art. 20)

## B. PRACTICAL CHALLENGES

1. Finding the right procedure and decision – making forum for the different legal issues: Identifying possible outcomes and what decision- making forum can deliver them; Cooperation or Links between different procedures

2. What can help in responding to the challenges? New procedures, involvement of different actors, cooperation between different decision making fora,

3. Information Gathering:

Getting a complete picture of the situation of the child

Engaging with the child properly

Differences between adversarial and accusatorial systems/different models in terms of how information is gathered and decisions are taken?

4. Assessing best interests: are the right elements brought together and who takes the decision

### ACTORS

Law enforcement

Guardian

Services engaged in caring for the child

Interpreter

Lawyer

Actors who may have a role in gathering information about the child, including organisations involved in restoring family links where this is in the best interests of the child

Actors with expert knowledge of child trafficking

Prosecutor

Immigration officials  
Judge – Criminal Court/Child Protection  
Other decision making bodies who can make a decision on the current care of the child and the long term solutions  
Other professionals such as psychologists  
Family members  
Support persons

**Note to moderator:** The aim is to identify key challenges for justice systems to resolving the situation of trafficked children, who often fall between the cracks of different procedures, different laws, a failure to gather sufficient information. This should be a rich and interactive discussion.

The discussion should also lead to identifying the different actors who play a part in the justice proceedings and the role each of them might play in resolving the legal issues that arise. The discussion can identify the authority, role, skills and tools they might have, how they do or might cooperate (see seminar notes). It can be based on an exchange between different professionals and/or between different national experiences on which types of actors are involved and how.