

CHILDREN, ADOLESCENTS AND HUMAN TRAFFICKING: MAKING SENSE OF A COMPLEX PROBLEM

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INTRODUCTION

This Issue Paper presents current knowledge about the scope and meaning of child trafficking. Although it might seem to be a simple subject to describe, it is not. First, there is the question of what a 'child' is. The international definition in the Convention on the Rights of the Child defines a 'child' as a person under the age of 18 but, at the same time, it recognizes the evolving capacity of adolescents to engage in certain activities and make certain decisions (UN Child Rights Convention, UN Committee on the Rights of the Child 2003).

Additionally, there is confusion about how to distinguish between child employment, which is permissible, and child labor, which is not. Also, there is a conflict between international law and local practices because, in many countries, children routinely start to work before reaching the minimum legal age for employment set by international law. The issue is particularly problematic when children work away from home and are assisted in travelling or finding work by a range of intermediaries. When observers from outside the country denounce these intermediaries as 'traffickers,' the children view their intervention as unhelpful and unrealistic in the local context of their work.

Also, people often confuse smuggling with trafficking. The two are not the same. Child smuggling involves accompanying a child illicitly across an international frontier in return for

payment, but without the intention to exploit the child subsequently. Child trafficking involves an intention to engage in extreme forms of exploitation of the child at the destination. A discussion later points out the difficulties and perils of failing to distinguish between trafficking, smuggling and simple migration.

This Paper introduces the complexity around the issue of child trafficking in light of the current emphasis on the worst forms of child labor, as well as the need for better, evidence- and rights-based research, laws, policy and practices. The Paper ends with recommendations on how to move forward. The overall goal of the Paper is to bring the needs and rights of children and adolescents to the foreground and to argue for more contextually appropriate, rights-based responses.

DEFINING CHILD TRAFFICKING

In simple terms, child trafficking involves the recruitment, transport, harboring or receipt of children or adolescents (under 18) into a situation involving severe exploitation, such as forced labor, slavery, debt bondage, prostitution, pornography or the unlawful removal of organs. Some child trafficking requires force, deception or coercion and some does not (adult trafficking always requires force, deception or coercion). As is discussed in detail later, there is international agreement upon the extreme situations listed above but no agreement on when lesser levels of exploitation may involve 'trafficking' although

there is an understanding that it must be to some degree serious or severe exploitation. The following are some typical cases of child trafficking.

Commercial sexual exploitation (prostitution or pornography)

Sixteen-year-old M left Moldova with a man who promised a job selling citrus plants in a neighboring country. Instead, she was forced into prostitution.

I lived with 20 girls in the trafficker's apartment. I was beaten many times. They told me if I ran away they would find and kill me, would come to my village and kill my mother.... Then he sold me to a woman. We were sold to the clients, three to four girls per night. A woman took the money. We were always supervised. We were beaten for any little thing. We ate only pasta. Several girls ran away, the trafficker caught them and beat them hard in front of us. They told us that the same will happen to us if we run away.

I worked out which client might help me and I managed to save about 500 Euro to travel home. But I cut my hair and dyed it, to change my looks so they would not recognize me. I knew that pimps caught girls who were running away at one of the railway stations where the trains to my country left. So I did not go to that one but to a different station.

M reached home by herself, without receiving any assistance from the authorities in the destination country (Dottridge 2008, 27, 30).

Forced labor

Begging and stealing. M was abducted at the age of nine in Albania's capital, Tirana. He was taken to Athens, Greece, and made to beg and steal 14 hours a day. He became what trafficked Albanian children referred to as a 'robot' (because they had no choice about the work they did). He was arrested three times and taken to a government-run care center. The first two times, his bosses

collected him but the third time no one came. M decided to stay in Greece, as he was scared of encountering his trafficker in Albania. (Terre des Hommes 2003, 12)

Illicit or criminal activities for others. T, a 14-year-old Vietnamese boy, was smuggled by people to the United Kingdom where they put him to work cultivating cannabis. He worked and slept in the house and was completely isolated from British society, entirely dependent on his controllers and had no choice but to do what he was told. He was arrested and placed in residential housing. He walked out but was rearrested four months later at another cannabis farm in the company of three adults. The government reportedly classified him as a young migrant criminal, rather than as the victim of trafficking that he was. He was convicted and placed under a three-year Supervision Order (Staffordshire 2010).

Bonded labor. Eight-year-old S, a boy from Nepal, worked for 16 to 18 hours a day at an embroidery factory in Mumbai (India) for seven months without pay and only two meals a day and "tea occasionally." He was severely beaten by his trafficker/employer, especially when he worked slowly. "[W]hile working if I fall asleep they pour salt and chilly powder in my eyes."

After six months, S asked for his wages and was told that the man who brought him there had already been paid his wages for the first 2-1/2 years. S was told "he is bonded to the factory owner." No news is available on what happened to S later on (WOREC 2002, 35).

Child domestic labor. A trafficker took an 8 or 9 year old girl to a family in Togo. T did not attend school but worked long hours for everyone in the household. Her behavior became gradually more robotic as she worked without needing any instruction. When she was 11, an organization visited the home and arranged for her to move to a different household, where she was fostered and genuinely treated as one of the family (Dottridge interview, 1998).

SOME CHILDREN ARE MORE LIKELY TO BE TRAFFICKED

Children from a wide range of backgrounds are trafficked in varied circumstances. An analysis of the information available about young people who have been trafficked often reveals salient characteristics of gender, nationality, ethnic origin or social background. Sometimes their specific family experiences distinguish trafficked children from other children who are not trafficked. The information makes it possible to determine that children with certain characteristics are disproportionately more likely to be trafficked than other children. Some anti-trafficking professionals refer to children with these characteristics as being more 'vulnerable' than others.

There is no one characteristic (such as poverty or lack of education) that marks a child as being 'more likely' to be trafficked. It depends on the context. In places where children are trafficked for sexual purposes, girls are almost always the main targets for traffickers (though boys are trafficked for sexual purposes as well). In some areas, children from indigenous peoples or minority groups may be most likely to be trafficked.

For example, young Albanian boys and girls from a minority community, known as 'Egyptians' (like M in the case described above), account for almost all the children trafficked to Greece to earn money by begging (Terre des Hommes 2003).

In other parts of Southeast Europe, a disproportionate numbers of trafficked girls came from families with a high level of domestic violence or lived in residential care. In one country in West Africa, children in polygamous families were trafficked more than others. In an area in Southeast Asia, the third daughter in families with numerous children was most commonly dispatched to earn a living in the sex industry.

In each of these cases, trafficking patterns were detected and so practitioners were able to target

prevention efforts on the factors that appeared to make particular children more likely to be trafficked.

One publication identifies four sets of characteristics that could reveal salient characteristics about trafficked children:

- (1) Identity (e.g., sex and age) and place of origin,
- (2) Level of education and what the child was doing at the time she/he was trafficked,
- (3) Characteristics of the child's household and
- (4) Circumstances in which the child left home or was trafficked (Dottridge 2007, 24).

People often suggest that poverty, underdevelopment and lack of equal opportunity are factors that make people (especially women and children) more likely to be trafficked. However, one author has observed that rural girls and their families make "trade-off decisions" between their aspirations and the risks entailed in turning these into reality. She notes that:

With some understanding of the true motivations behind these trade-off decisions, development and intervention projects would be much better armed to create more successful, more appealing alternatives that would lead to rural girls' and families' choosing opportunities other than prostitution or trafficking. Academics and policymakers must move beyond 'poverty' and 'lack of education' to recognize the subtleties of the challenges and frustrations confronting people living in the less developed parts of our rapidly developing world (Rende Taylor 2005, 423).

NO INTERNATIONAL AGREEMENT ON THE DEFINITION OF CHILD TRAFFICKING

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol or Palermo Protocol) and the International Labour Organization (ILO) agree that children and adolescents (i.e., anyone under 18) who are moved by someone into situations involving

forced labor or services, slavery, practices similar to slavery, servitude and debt bondage (or bonded labor), prostitution or pornography are trafficked. However, they disagree on whether other situations of child labor can constitute trafficking.

Although this international difference may seem to be unimportant to people working at the local level, these international differences do have local consequences. The following discussion carefully sets out the different positions and also raises concerns about the ILO expansion of the definition beyond the UN Trafficking Protocol approach

UN Approach

The UN Trafficking Protocol is the most recent international agreement dealing with the issue of human trafficking.¹ According to Article 3(a) of the UN Trafficking Protocol:

‘Trafficking in persons’ shall mean

- the recruitment, transportation, transfer, harboring or receipt of persons,
- by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,
- for the purpose of exploitation.

Exploitation shall include, at a minimum: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

The terms “recruitment, transportation, transfer, harboring or receipt of persons” signify that the victim is moved and there is a third party involved. The UN Trafficking Protocol applies to cross border trafficking and internal or domestic (within a single country) trafficking.

The means used are important. The use of one of the mean listed above is always required for adults but not for children because children do not have the same legal capacity as adults to engage in certain forms of work:

“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article” (UN Trafficking Protocol, art. 3(c), emphasis added).

When force or other means of control are present. The terms forced labor or services, slavery or practices similar to slavery and servitude are defined in international law and refer to extreme cases of exploitation. They are characterized by the use of threats, coercion or restrictions on freedom (UN Child Rights Convention; ILO Convention No. 29; UN Slavery Convention, UN Supplementary Convention). Thus, when one of these forms of abuse is accompanied by movement, there is trafficking.

The UN body responsible for monitoring the implementation of the UN Child Rights Convention defines child forced labor as:

...any substantial work or services that a person is obliged to perform, by a public official, authority or institution under threat of penalty; work or services performed for private parties under coercion (e.g. the deprivation of liberty, withholding of wages, confiscation of identity documents or threat of punishment) and slavery-like practices such as debt bondage and the marriage or betrothal of a child in exchange for

¹ For more information on the UN Trafficking Protocol, see Issue Paper 1: UN Trafficking Protocol: An imperfect approach. <http://rightsworld.org/wp-content/uploads/2011/09/Issue-Paper-1.pdf>

consideration (UN Revised Guidelines, Annex, 12).²

Debt bondage (also known as bonded labor) is a form of forced labor and a practice similar to slavery (UN Supplementary Convention). It is prohibited because, first, the worker (such as the Nepalese boy S) must work for the debt-holder until the debt is paid off. Second, the value of the work performed is far greater than the amount of the debt (plus reasonable rates of interest). In some cases, children work off a debt in place of an older relative who received the loan. When a relative who dies still owes on a debt, the debt is passed on to the children.

When force or other means of control are not required. When a third party is involved in moving and using children in prostitution or pornography or removal of organs, there is trafficking. Means such as force or coercion are not required. For example, an adolescent who is recruited to work in a brothel without force or coercion would be a victim of trafficking because she or he is working for a third party.

The UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (UN Optional Protocol) also focuses on the movement and involvement of third party exploiters. Article 2(a) states that the “[s]ale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” Thus, “exploitation” exists when a pimp, employer or other person is in control and profiting from a child’s activities.

On the other hand, children who work in prostitution on their own – with no third party involvement - would not be included in the UN Trafficking Protocol definition of trafficking as no one is controlling them or earning money from them.

Prostitution of a child can also take the form of ‘temporary marriages.’ UNICEF views the ‘so-called temporary marriage’ as a “sale for the purposes of sexual exploitation”: “*Some types involve girls given in marriage to men – often older men – in exchange for money. These marriages may be for a few weeks or for several months, after which the girls are abandoned by their husbands and deprived of the rights acquired by marriage*” (UNICEF Handbook 2009, 10). This is simply child prostitution being passed off as ‘marriage’ and should qualify as trafficking under the UN Trafficking Protocol.

Lastly, the movement of a child for the unlawful removal of an organ for financial gain is trafficking and does not require force or other control. Removal with the consent of a parent or guardian “for legitimate medical or therapeutic reasons” is not exploitation (UN Interpretative Notes, no. 65).

Studies have revealed that, in some countries, children are abducted or used for ritual use of their body parts (Liga Moçambicana 2008). This constitutes trafficking. In some other countries, people believe rumors that children are being abducted and their organs (for example, kidneys) are forcibly extracted and sold for profit.³ Until recently, there was little reliable evidence to support these claims. However, a recent study by the Coalition for Organ Failure Solutions has documented the trafficking of adults and children to Egypt for removal of their kidneys (COFS 2011). These cases would constitute trafficking under the UN Trafficking Protocol.

The illicit inter-country adoption of children. It is worth commenting on the claim that illegal cross-border adoptions are ‘trafficking.’ However, this practice was deliberately left out of the UN Trafficking Protocol. First, adoptions for the purpose of exploitation or abuse rarely occur

² Based upon ILO Convention No. 29, arts. 2 and 11, and UN Supplementary Convention, art. 1.

³ “The stories about tourists waking up to find a kidney stolen or young children being kidnapped or adopted and then killed so that their organs can be used for transplantation can clearly be categorised as myths” (Caplan et al 2009, 60).

nowadays. Second, adoptions are covered by other international agreements (see Hague Convention). Although many people use the term 'trafficking' to refer to illegal inter-country adoptions, these are not cases of trafficking within the UN Trafficking Protocol.

Nonetheless, the UN Trafficking Protocol would cover cases in which adopted children end up in conditions amounting to practices similar to slavery.⁴ For these reasons, there is no need for a special provision in the UN Trafficking Protocol to cover adoptions.

International Labour Organization (ILO) Approach

The ILO distinguishes between children working in economic activities and child labor: "[Child labor] includes all economically active children aged 5-14, except those aged 12-14 engaged in light work only (for statistical purposes, defined as less than 14 hours of work per week), and all children aged 15-17 engaged in hazardous and other worst forms of child labour..." (ILO 2002, 16, note 25, emphasis supplied).

In 2000, the ILO estimated there were:

- "211 million children aged 5-14 engaged in some form of economic activity [of which] **186 million children are engaged in child labour to be abolished** (including in its worst forms)."
- "141 million children aged 15-17 engaged in economic activity [of which] **59 million children are engaged in child labour**" (ILO 2002, 16).

A recent ILO publication offers an 'operational definition' of forced child labor for use in research to gather data on the number of forced laborers worldwide (ILO 2011). It is somewhat

different from the UN definition on pages 4-5 above. It states (ILO 2011, 17):

*For the purpose of these guidelines, **forced labour of children** is defined as work performed by children under coercion applied by a third party (other than by his or her parents) either to the child or to the child's parents, or work performed by a child as a direct consequence of their parent or parents being engaged in forced labour.*

The coercion may take place during the child's recruitment, to force the child or his or her parents to accept the job, or once the child is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent the child from leaving the work.

If a child is working as a direct consequence of his or her parents being in a situation of forced labour, then the child is also considered to be in forced labour.

In 2008, the ILO clarified that "[c]hild trafficking involves movement" in order to distinguish between *child labor* and *child trafficking* (ILO 2008, 15; also ILO, UNICEF and UN.GIFT 2009, 15). This interpretation is logical because it distinguishes between a child who is placed in debt bondage to work alongside his or her parents (a worst form of child labor) or an adolescent who lives at home and goes out to earn money from commercial sex (a worst form of child labor) and children who are moved into debt bondage (child trafficking) or children in moved into prostitution by an agent or broker who knows how they are to be exploited and makes a profit from it (child trafficking).

In addition to movement, the ILO also requires a third party for child trafficking, as is evident in the two examples above.

The most important ILO international agreement on child labor abuses and exploitation is the ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (ILO Convention No.

⁴ UN Interpretative Notes, no. 66: "where illegal adoption amounts to a practice similar to slavery as defined in article 1, paragraph (d), of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, it will also fall within the scope of the Protocol."

182). It focuses on the four worst categories of child labor (art. 3):

- (a) slavery or practices similar to slavery (e.g., sale and trafficking of children, debt bondage, serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict);
- (b) prostitution and pornography;
- (c) illicit activities, in particular for the production and trafficking of drugs; and
- (d) hazardous work that is likely to harm the health, safety or morals of children.

If there is movement and third party involvement, child labor in categories (a) and (b) would constitute trafficking, which is consistent with the UN Trafficking Protocol.

The Convention appears to place all cases of forced labor in category (a). This implies that children in categories (c) and (d) are not subjected to forced labor. If this interpretation is correct, then the activities in (c) and (d) would never amount to trafficking under the UN Trafficking Protocol, even if movement and third parties were present. Obviously, illicit activities and hazardous work are serious child labor problems that must be abolished but they are not trafficking under the UN Trafficking Protocol unless they fit into category (a).

Of course, if the ILO were to determine that it is never possible for children to work in illicit activities or hazardous work on a voluntary basis – something that children are not permitted to volunteer to do – then those activities would be redefined as forced labor that could involve trafficking. However, this does not appear to be the approach taken in ILO Convention No. 182.

Nonetheless, in 2002, the ILO appeared to expand the scope of child trafficking to include category (c) as trafficking. It labeled categories (a), (b) and (c) as the ‘unconditional’ worst forms of child labor (ILO 2002, x). It estimated that there were:

- (a) 5.7 million in forced or bonded labor and 300,000 forcibly recruited into armed conflict,
- (b) 1.8 million in prostitution or pornography, and
- (c) 600,000 in illicit activities (ILO 2002, 18).

It stated that, among these numbers, were an estimated 1.2 million children who had been trafficked (moved) to work in the above *three* categories (ILO 2001, 18).⁵ Thus, for the first time, the ILO, included children who are moved without force, fraud or coercion by a third party into illicit activities.

Next, in 2009, the ILO, UNICEF and UN.GIFT expanded the definition of child trafficking even further to include:

- children recruited and moved into category (d) – hazardous work - and
- children recruited and moved into *any* economic activity, if they are below the minimum working age set by ILO Convention No. 138 (generally 14 or 15 in developing countries) (ILO, UNICEF and UN.GIFT 2009, 15).

Again, these two categories do not involve any forced labor or services.

These additions would add tens of millions of children to the ‘trafficking’ label if they were adopted globally. They would potentially increase the number of children labeled as trafficked from just over one million to tens of millions. The ILO estimates that there are 170.5 million children in hazardous work alone and there are millions of under-aged child workers; a large percentage of these children are recruited and moved into their jobs without any force or coercion involved.

⁵ Some people wrongly interpret these statistics to suggest that 1.2 million children are trafficked each year. The statistic actually refers to the total number of children the ILO estimates were trafficked in 2000 or earlier and who are still being exploited in the trafficking site.

Millions of children are working, either in child labor or some form of economic activity. Many of them are not experiencing sexual, physical or psychological abuse and want to and need to work (e.g., to support themselves or their families).

The 2009 additions to ‘child trafficking’ are problematic because they arbitrarily include large numbers of children who want or need to work and who are not suffering from physical or psychological abuse. Many of them may have finished their education or never had had any education and, for whatever reason, need to work to support themselves and/or their families.

While many children need to be removed from their work environment, these expansions would include large numbers of adolescents who need to remain working, though preferably with improved working conditions.

Of course, policies and programs are needed to assist them and bring about the changes necessary to allow them to continue living with their families and attend school. However, there are good reasons (e.g., scarce resources and severity of abuse) that governments and donors should focus attention on children who are moved into and kept in the worst forms of abuse and restrict the use of the term ‘trafficked’ to such cases.

THE DIFFICULTY OF DISTINGUISHING BETWEEN CHILD LABOR AND CHILD TRAFFICKING

Despite these UN and ILO definitions, it is quite difficult to apply the concepts of ‘force’ and ‘coercion’ to children, particularly to young children who are entirely dependent on adults. As the following discussion makes clear, there are no clear uniformly-applicable answers.

Child labor versus exploitation. Not all exploitation experienced by children constitutes child trafficking. Some, but not all, of the children who are under the minimum age and are recruited to work far away from home are victims of trafficking. The majority of them might be exploited with poor wages and bad working

conditions but that does not necessarily mean they are trafficked.

In most countries, ‘exploitation’ refers to a wide range of situations that do not involve trafficking - from poor working conditions, long hours or low wages up to the most serious forms of abuse (for example, forced labor or servitude). Exploitation at the lower end of the continuum should not be considered trafficking because it does not involve involuntary labor or serious physical or psychological harm. These milder forms of exploitation (e.g., a child in full-time employment at age 13) are contrary to international law but they do not rise to the level of trafficking or a worst form of child labor.

Indeed, many people would argue that, in countries where families are desperately poor or there is little access to schools, it is in the best interests of some children to start work before reaching the minimum age for work. In such a context, it may be more important for the child to learn a trade as soon as possible rather than to remain at home all day as a non-productive burden on a poor family. In such situations, only if and when authorities provide schools and social protection, including basic shelter and food, for children and their families would working no longer be in the best interests of such children.

Child domestic workers. Although all child domestic labor does not necessarily involve trafficking, conditions can be and often are exploitative. Around the world, hundreds of thousands (perhaps millions) of children (mostly girls) are employed as live-in domestic workers.⁶ Many travel long distances to find work and some travel or are transported abroad.

Many older children go voluntarily and are able to remain in contact with their families through a network of ethnic associations that exist in many countries. However, others are so young that they have no idea where they come from. They

⁶ Reportedly, there are more than one million child domestic workers in just four countries in South East Asia (Matsuno and Blagbrough 2005, 11).

are not in contact with networks that could provide them with support. Some are badly treated and urgently need to be withdrawn from their abusive employers.

Nonetheless, calling all child domestic workers ‘trafficked’ (or ‘domestic slaves’) is inappropriate, as many children have food, shelter and clothing, which are often lacking at home. Some may even obtain an education, as is the case with adolescent girls who migrate to Lima, Peru, and are able to reach levels of education that would be impossible in their villages (AGTR 2004). On the other hand, having food, shelter and clothing does not eliminate the possibility of trafficking. Assessments must be made on a case-by-case basis.

Child fostering. A common practice in West Africa, Bolivia, Haiti and elsewhere is *fostering*, which outsiders might mistakenly think is the same as child domestic work or trafficking. Poor families in the countryside have a long tradition of asking town-based families (sometimes relatives) to ‘foster’ their children and provide them with education and better chances in life. In return, the child is expected to perform some household chores. This practice is easily abused and can become an onerous form of exploitation in which children are working 14 hours a day without schooling. In such circumstances it is correct to refer to their recruitment as ‘trafficking’.

Once again, this does not mean that all cases of fostering involve trafficking. Rather, it highlights the importance of paying attention to the situation of children who work in private households and checking on their well-being. Periodic inspections would ensure that children have the opportunity to spend at least one day a week outside the household so that they are seen by others and have a chance to meet other children or attend classes. Unfortunately, in countries where many young people are engaged in this form of employment, few governments have felt the need to do anything to protect these working children.

Local knowledge is essential. Governments and NGOs interpret child trafficking differently worldwide. In South Asia, authorities only consider trafficking to involve the sex industry and girls and women. They consider trafficking of boys into forced labor in factories as child labor. In West Africa, trafficking widely refers to child domestic workers and to a few selected sectors, such as the fishing industry and cocoa cultivation. The situation of boys in other types of agriculture or mining is not addressed.

Decisions about what constitutes trafficking should be made by child protection professionals who have an understanding of local social, economic and cultural practices. What an outsider may think is trafficking (for example, a child domestic worker living far from home) may in fact be simply a local practice that does not involve abuse. Decisions should not be made by people who have a vested interest in seeing the exploitation of children continue. All decisions should be assessed by the ‘best interests of the child’ standard:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (UN Child Rights Convention, art. 3.1).

No one could argue, for example, that it is ‘culturally acceptable’ for adolescent girls to practice prostitution at 15 or 16 years of age because this is not in the best interests of any child. However, it could be in the best interests of the child to follow the culturally-acceptable practice of working in a home or shop of a relative at age 14 or 15.

Decisions about new laws or policies, programs or practices must be founded upon empirically sound, rights-based research that documents the lives of children, child labor, child rights and child trafficking. Governments should not adopt legislation or practices without a sound

understanding of the actual situation in their countries. They should not give in to unreasonable pressure from Western governments or international organizations that insist upon the application of a particular approach or definition or understanding of trafficking until they know the facts.

INTERNATIONAL LAW FAILS TO REFLECT THE REALITY OF CHILDREN'S LIVES

Adults or children? International law categorizes adults as those who are age 18 and above and children as those who are age 17 and below. There is some recognition in the Child Rights Convention of the evolving capacity of children and so there are some different standards for adolescents. This difference is not apparent in the UN Trafficking Protocol, which treats 5-year olds and 17-year olds the same. This approach has real life consequences.

The ILO child labor standards also do not reflect the reality of children's lives and needs. They focus on prohibiting children below a specific minimum age from working, rather than on improving the treatment of the tens of millions of young children who currently enter full-time employment before reaching the minimum age for employment.

By defining recruitment into certain forms of exploitation as 'trafficking,' international standards imply that adolescents aged 16 and 17 have no capacity (or right) to make decisions about certain risky situations, such as joining an armed opposition group (when they might be fighting for their lives).⁷ In the case of older

children, it may be a mistake to conflate voluntary entry into such pursuits with situations in which children are coerced or manipulated into working for others (and to describe all of these cases as 'trafficking'), even though distinguishing the two is sometimes difficult.

As discussed previously, many youth under 18 need to work and so a bright line distinction between ages 15 to 17 (on the one side) and 18 (on the other) runs counter to the reality in large parts of the world where childhood stops at puberty, not age 18. Extended childhoods and education are luxuries not available in many parts of the world.

Sometimes this simplistic approach is used to justify policy responses that may be harmful to children. For example, in West Africa, some authorities regard any child who leaves home and migrates to find work as a likely victim who requires rescuing by the police. In reality, the child may simply be migrating for work or even to visit relatives. Some of the persons intercepted may even be young adults (Dottridge and Feneyrol 2007). Obviously, more education and training are often needed on identifying who is being trafficked.

According to international conventions, governments should remove all children from exploitative situations and ensure that they are in school or in a safe space. Governments should provide support to help older adolescents develop skills for an alternative livelihood. However, such support is often unavailable due to government's lack of resources or concern. This situation exposes a conflict between the role of international law in establishing norms about what ought to happen and the failure of governments to take action to implement the norms.

International legal standards are rules and, as such, do not offer any pragmatic ideas on how to protect the rights of all children who must work

⁷ Some view the use of young people in an armed opposition group to be trafficking. For example, the U.S. State Department observed that, "Burundi is a source and destination country for trafficking in persons, primarily children conscripted to serve as porters, cooks, and some as combatants in both government and rebel forces, many of whom were forcibly recruited" (United States 2003, 42). The Child Soldier Prevention Act requires the State Department to include a list of governments that

recruit and use child soldiers in the trafficking in persons report (United States 2011, 12).

below the minimum age or who are exposed to harm. International law simply says the children must be removed from these work sites. However, international law does not answer the question of what should be done when governments fail to meet these obligations and so children have to work.

Dependency of young children unrecognized.

Children under about age 12 (who have not reached puberty) can be trafficked or exploited without being ill-treated or coerced. It is sufficient for traffickers to acquire them and keep them in a state of dependency. It is somewhat surprising then that the UN Revised Guidelines' definition of forced labor of children (see definition quoted in page 5 above) does not consider the use of dependence as a means of controlling or 'forcing' a child to work. It focuses only on actual force and similar methods, which seriously misses an important understanding about the psychology and capacity of young children.

Clearly, children are more malleable than adults, and so they are easier to control once they are removed from their family environment and are dependent on strangers for food and shelter. Under these circumstances, even an adult would eventually submit to control. However, with children, the control is much simpler and quicker. Children at that age have always been dependent upon others. Once they are in a situation where they have no option other than to remain and to do as they are told, they quickly comply (Dottridge 2011, 259). In contrast, it might require more time and more severe methods to keep adolescents under control. These differences must be taken into account when determining whether a child has been trafficked.

Sex sector and adolescents. A 17-year-old (or younger) child who is recruited into the sex industry and whose earnings are passed to someone else (the 'exploiter') is a case of trafficking under the UN Trafficking Protocol. No force or coercion is required when children are involved.

Civil society, the UN Trafficking Protocol and the ILO all condemn any participation of children in the sex sector; there is little support anywhere for the idea that adolescents should be allowed to sell sex or join with other sex workers in order to enjoy relative safety or better working conditions. This view is based on the fear that providing any sort of institutionalized base for adolescents might encourage young people to start earning money from commercial sex before age 18.

Nevertheless, the reality in many countries is that adolescents under 18 do earn a living from commercial sex and some of the older adolescents are viewed in their societies as 'adults.' As one author observed recently,

The issue of adolescent prostitutes is more complicated because they straddle the line that conventionally divides childhood and adulthood. As a result, adolescent prostitutes are generally labeled victims of child slavery or repudiated as irrational, teenage delinquents. However, such labels obscure the strategies that adolescent prostitutes use to secure their own survival and that of others (Kropiwnicki 2011, 232).

When it comes to child prostitution, governments do not have any clear responses and international law has a bright line – no prostitution for children at any age. No one is willing to acknowledge the reality that many older adolescents (who are considered 'children' under international law) are regarded as adults in their own communities, are not controlled or supported by their families, and are able to make their own decisions. They may even be married, have children and live in their own house. So, while no one interferes with these aspects of their lives, international law dictates that these adolescents must be pulled out of prostitution.

At the same time, communities and governments offer no or very poor solutions that would, at a minimum, reduce the harm and, in the best situation, would provide adolescents with skills and means to exit the sex sector. International law says get out, but the adolescents ask, where

do I go? Neither international law nor governments have developed a solution to date and so many adolescents continue earning their living by selling sex, usually under unsafe conditions and often on the streets.

HOW TO IDENTIFY TRAFFICKED CHILDREN

Have a clear definition of child trafficking. While legal definitions may seem tedious to non-lawyers, the conflict between the ILO's broadened understanding of child trafficking and the UN Trafficking Protocol points out the need for a clear and precise definition of child trafficking in national laws. If the definition is too broad, children aged 14 or 15 may be withdrawn from jobs they want and need to stay in – even if there may be aspects of their employment that they would like to see improved. If the definition is narrow (e.g., requires force, coercion, fraud, abuse of power or a position of vulnerability as in the UN Trafficking Protocol), then deciding whether any of those elements are present in the case of children could end up in mis-identification if the adults responsible for identification are not completely familiar with the local context and child psychology. Thus, better identification skills and procedures are essential.

Challenges to identification. Numerous challenges to identifying trafficked children exist:

- (1) It may be difficult to distinguish trafficked from migrant children; both are in transit and look the same.
- (2) It may be difficult to know whether the adults accompanying the children are the real parents, relatives or friends.
- (3) Children may be hidden from view once they are in the situation of exploitation.
- (4) Children may have grown dependent on their traffickers or pimps and regard them as their protectors or *de facto* guardians, and therefore resist any attempts to criminalize or criticize them.
- (5) Government child protection officials and NGOs may have little understanding of the methods used by adults to make child

migrants earn money and so be unable to distinguish between trafficked children and child employment or child labor.

Identification of trafficked children. First, it is essential to understand the local context of child labor. The most unambiguous category to identify is forced labor or services, which involves children who are effectively held captive – through threats, force, dependency or psychological manipulation. Issues of control, agency and choice may be the most useful pointers to the children who should be categorized as 'trafficked.' Movement into the situation is also necessary for trafficking as it distinguishes child trafficking from child labor. However, for identification purposes, the most important indicators are the ones focusing on captivity. On the other hand, it is important to note that younger children may be confined by their employer to a particular place out of a genuine wish to keep them safe, rather than to prevent them from leaving.

Children may be recruited and trafficked within the village or town where they live. A significant factor to consider is whether the children are in communities where they are relatively well protected (by relatives or others who know them), or whether they have been moved to places where no one knows them, no one feels responsible for protecting their interests, or their relatives are, for some reason, powerless to protect them.

Generic indicators. Law enforcement or child protection officials and NGOs that want to intercept children in transit should be careful to distinguish between children who show some of the telltale signs ('indicators') known in their community to suggest child trafficking and children who are migrating, either alone or accompanied, to find work. For example, examples of the telltale signs concerning children travelling alone between countries in Europe are notes with telephone numbers the children have been instructed to call or mobile phones with pre-set numbers to ring.

Indicators must be created specifically to fit local conditions and should not be based on any beliefs in a 'generic' trafficked child. However, on occasion, generic indicators may be helpful. For example, the ILO's *Operational Indicators of Trafficking in Human Beings* includes some useful generic indicators, such as "[e]xcessive working days or hours" (ILO and European Commission 2009, 6).

Specific indicators. Specific indicators are usually compiled on the basis of local law enforcement information and government or NGO research, including interviews with young people who have been trafficked themselves. One example is the United Kingdom's *Strategic Threat Assessment: Child Trafficking in the UK*, which lists 41 indicators and seven types of exploitation that children trafficked to the United Kingdom were known to have experienced (United Kingdom 2009, Annex B).

In developing specific indicators, it is necessary to avoid inaccurate information or reliance on misleading stereotypes. Professional, replicable documentation of real cases is essential.

INTERNATIONAL STANDARDS FOR RESPONDING TO CHILD TRAFFICKING

The Child Rights Convention contains important provisions for the protection of victims of sexual exploitation, sexual abuse, abduction, sale or trafficking of children (UN Child Rights Convention, arts. 34, 35). It applies to anyone under 18 even though in many parts of the world older adolescents are not regarded by fellow citizens as children. It also spells out protections, including programs to prevent trafficking, protect children against economic exploitation, and help trafficked children recover. It has almost universal ratification (except for the United States and Somalia).

In addition, the UN Trafficking Protocol and the ILO Convention No. 182 contain protection measures. The most useful guidelines for the treatment of trafficked children are the UNICEF Guidelines on the Protection of Child Victims of Trafficking (and explained in detail in the UNICEF

Reference Guide). For example, they specify that as soon as a child victim is identified, a guardian should be appointed by a competent authority to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been chosen and implemented (UNICEF Reference Guide 2006, 149). The Guidelines are an important tool for addressing child trafficking and, had they been used in the cases discussed in this Issue Paper, could have made a difference in the children's lives.⁸

Adopt a child rights approach. Conventional approaches to stopping trafficking generally give priority to law enforcement strategies to arrest and punish traffickers and other criminals. The advantage of a child rights approach is that it focuses on the rights of children and requires all actions affecting children (for example, programs to stop children from being trafficked or exploited) to be measured by the impact they have on the rights of the children concerned.

UNICEF has observed:

"The child rights-based approach to trafficking means placing the children at the centre of all trafficking related interventions. The child's best interests need to be given primary consideration in all actions. These should be determined for each child, giving due consideration to his or her views" (UNICEF 2008, 39).

Avoid counter-productive or harmful responses. Human rights defenders have identified numerous cases in which the responses to child trafficking have caused yet more anguish and rights violations. For example, children have been kept in residential centers and not allowed to go out and journalists have published children's

⁸ The Association of Southeast Asian Nations (ASEAN) Ministers for Social Welfare and Development adapted the Guidelines to regional conditions (Abueva and Saguisag 2007) and the Philippines adapted a national version (Philippine Guidelines 2008).

photographs or names, violating their right to privacy. Various methods have been developed for monitoring such abuse and influencing the behavior of the professionals or organizations responsible. One example is in Central Europe, where NGOs developed a system for scoring media publications mentioning trafficked children or other aspects of child trafficking. They grade answers on five to ten questions on the structure, objectivity, child rights perspective and iconography used in an article (Dottridge 2010, 26).

Growing fears of child trafficking have resulted in different prevention strategies. Films, posters and public advertisements have been used to provide children and their parents with information about what trafficking is and what precautions to take. Many of these efforts tell stories so extreme and stereotyped that young migrants respond with “this can’t happen to me because I’m traveling with a friend or relative.” So they ignore the telltale signs of trafficking (e.g., giving up control over their passport). These types of public information campaigns have not been proven to have a significant impact on preventing child trafficking (Rosenberg et al 2004).

Some programs have proven to be counter-productive and a few have even increased the risk that children might come to harm. For example, the police in Burkina Faso in West Africa stopped 12- and 13-year-old girls who traveled together to the capital to seek work as domestics, alleging that the girls might be in the process of being trafficked. Although the response was well-intentioned, it ended up being the cause of potential harm. Many girls now travel in smaller groups or by themselves to avoid the police and so they are increasing the risk of being abused or trafficked.

Some programs violate the internationally-recognized right of people to leave their country freely. For example, along the Nepal-India border, immigration officials have been trained to identify and stop adolescent girls from particular ethnic groups or castes. They often work together

with NGOs that are empowered by the government to stop women and girls, even those who are traveling with a family member. However, they often simply pull girls aside, interview them and return them home or to an NGO center when they suspect that trafficking might be involved. There is no independent research documenting how many of the girls and women who are stopped and returned were actually victims of trafficking and how many were migrants who were prevented from exercising their right to leave the country. While they may have saved some girls from being trafficked, the campaign has been criticized for failing to respect the rights of the girls and women. At the same time, neither the government nor the NGOs are paying any attention to the trafficking of boys, such as S, who are not identified as potential victims.

A child rights approach would avoid these harmful consequences. To prevent the abuses inherent in child interception programs, some immigration officials look for more information. If they suspect child trafficking, they ask where the child is scheduled to reside and arrange for a social worker to visit the child. In some cases, NGOs provide advice to children who are traveling alone and offer to provide temporary accommodation to children who they suspect may be destined for exploitation. However, they do not use coercion. At the center of this approach is respect for the rights of each child.

Another concern exists in some rural communities in West Africa, South Asia and South East Asia where people set up “vigilance” committees to stop traffickers from taking children. In Mali, in West Africa, the adult men who were appointed to vigilance committees were not trained to distinguish between cases of trafficking and migration. Consequently, they reportedly tried to stop any young person from emigrating from their village to find work elsewhere – in a region where a long dry season offered no employment opportunities and where migration is a long established strategy for economic survival (Castle and Diarra 2003).

The child rights approach would be to include adolescents themselves in such initiatives, to ensure that terms such as ‘trafficking’ are translated (and defined) accurately in local languages, to base actions on evidence and the rights of the child, and to train and monitor members of such vigilance committees.

HOW TO STOP CHILD TRAFFICKING AND ASSIST TRAFFICKED CHILDREN

1. Insist on an appropriate legal definition

- **Use UN Trafficking Protocol elements:** Include the UN Trafficking Protocol elements of recruitment, movement and control for all situations, except for prostitution or pornography where any participation, by whatever means, is considered trafficking.
- Distinguish between trafficking and child labor. Ensure the legal definition includes:
 - The best interests and rights of the child.
 - Children who are effectively held captive by their employers or traffickers and that it takes issues of control, agency and choice into account.
 - Children who appear to travel or work voluntarily, but are doing so as a result of discriminatory cultural traditions or hidden pressures, such as a debt owed by their parents.
 - The types of child trafficking cases known to exist in the country or region.
- **Focus on worst situations:** Be careful not to define the crime of trafficking either too broadly or too narrowly. The definition should not suggest that all children recruited into child labor (working below the minimum age for entry into employment) or that all children recruited into any of the worst forms of child labor are ‘trafficked’.

Without condoning other harmful situations in which children work, confine the use of the term ‘trafficking’ to the most abusive cases, in which the appropriate remedy is to move the child or adolescent out of the control of the

abuser, rather than to improve the young person’s working conditions.

- **Focus on children, not adults:** Remember that laws created to deal with adult trafficking - including the definition of trafficking and identification of victims - are NOT appropriate for children.
- **Advocate:** If necessary, lobby legislators to ensure that the forms of child labor exploitation that do not amount to trafficking are criminal offences.

2. Identify trafficked children

- **Victims:** Improve identification procedures, taking particular care to identify children who might be involved in illegal activities and ensure that they are treated as victims of a crime and not as criminals.
- **Evidence:** If and when local or regional ‘indicators’ are drawn up to help in the identification process, ensure they are based on research and the actual experience on the ground and not on general assumptions or prejudices.

3. Establish procedures to protect and assist trafficked children

- **Fit the situation:** Use the UNICEF Guidelines to create measures to fit the needs of children and the realities of the country or region where they live or are found.
- **Consultations:** Consult relevant children (those who have been trafficked themselves) and child’s rights advocates when preparing the guidelines.
- **Separate children from adults:** If a government proposes procedures for adults and/or children, propose separating children’s and adults’ issues and use the UNICEF Guidelines to create appropriate procedures for trafficked children.

4. Preventing child trafficking

- **Evidence:** Use evidence or on-the-ground information about children who have already

been trafficked as a basis for prevention measures.

- **Do no harm:** Avoid prevention measures that have the potential to do harm to children or violate children's rights, such as stopping adolescents from leaving their home community to seek work or intercepting them once they are traveling. Ensure that children participate in the design and, if possible, the implementation of preventive measures.
- **Empower:** When presenting children and adolescents with information about trafficking and other forms of exploitation, ensure that it empowers them. For example, include practical advice on what to do to migrate in relative safety and avoid being trafficked and how to escape from traffickers. Do not disempower children by advising them to stay home and not migrate or not to try to improve their situation.
- **Root causes:** In the areas from which children are trafficked, address the root causes by finding out whether children were trafficked after leaving home as a result of circumstances that could be addressed by social workers or others. For example, was the situation caused by domestic violence, early marriage, or lack of livelihood opportunities near to home?
- **Demand:** Address demand for the services of trafficked children by (1) strengthening laws punishing child trafficking and the forms of exploitation associated with trafficking and

ensuring that law enforcement officials (for example, police and labor inspectors) are trained and have appropriate resources to apply the law, and (2) influencing anyone who buys the services or products of trafficked children.

The focus should go beyond boys and adults who pay for sex with adolescents. It should include consumers who buy products that are known to have been made wholly or in part by trafficked children – such as hand-knotted carpets made by child bonded laborers in South Asia. It could also, for example, focus on persuading people not to hand money to child beggars who are known to be controlled by traffickers

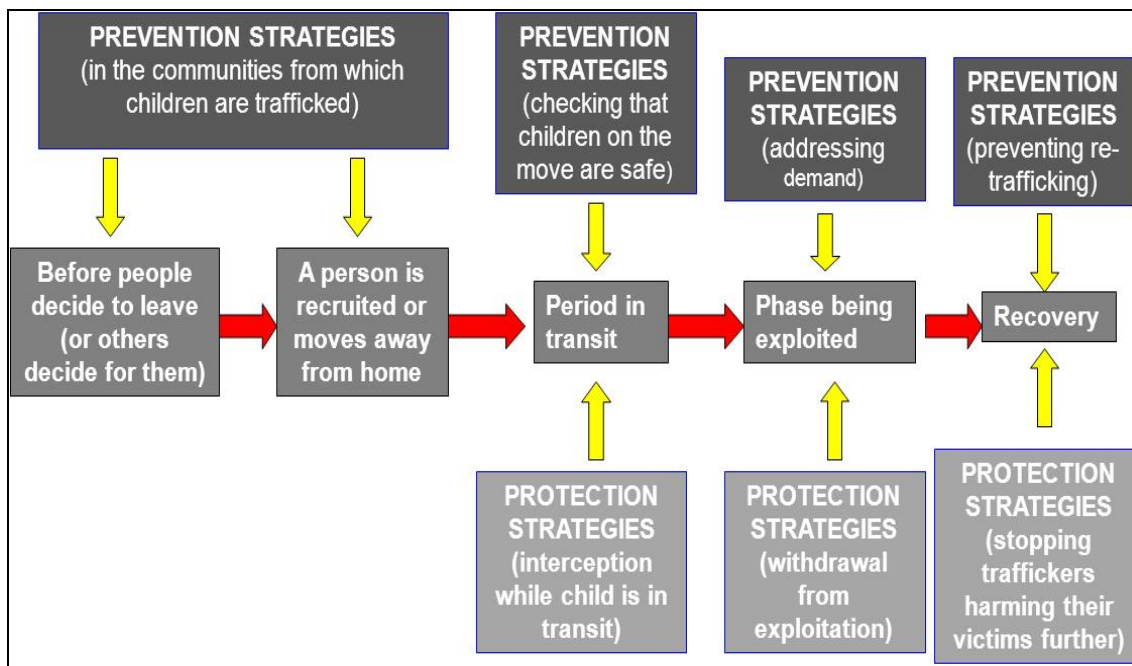
It is worth noting that it is easy for campaigners to claim that child workers have been trafficked when this is not the case. So it is important to check on the facts before you resolve not to purchase particular products.

- **Design to fit:** Tailor the methods used to prevent child trafficking to the particular circumstances or phase of the trafficking cycle that you are in a position to influence and build ties with others who are better placed to intervene at other points in the cycle (see diagram in Annex A).

In closing, do take action to stop child trafficking, but take care to find out what is really happening and tailor your intervention to suit those specific circumstances, rather than assuming that there is a 'one size fits all' solution.

ANNEX A

From Dottridge 2007



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