

Chapter 10 Individual Case Assessment and Identification of a Durable Solution

10.1 General principles

- Child victims should not be returned to their country of origin unless, prior to the return, a suitable care-giver such as parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection.
- The views of the child should be taken into consideration when considering family reunification and/or return to the country of origin and in identifying a durable solution for the child.
- Social service authorities, in cooperation with Ministries of Interior where necessary, should take all necessary steps to trace, identify and locate family members and facilitate the reunion of child victim with her/his family where this is in the best interest of the child.
- The respective Ministries, in conjunction with relevant social service authorities and/or the child's guardian, are responsible for establishing whether or not the repatriation of a child victim is safe, and for ensuring that the process take places in a dignified manner and is in the best interest of the child.
- Ministries of Foreign Affairs, Ministries of the Interior and other relevant state authorities shall establish agreements and procedures for collaboration with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted in order to determine the best course of action for the child.
- The guardian, acting through and with the assistance of the Ministries of the Interior or other relevant state authorities and the relevant social service authority shall begin the process of obtaining documentation and information from the child's country of origin in order to conduct a risk and security assessment. This evidence will be used to decide whether to reunite the child with her or his family and whether to return the child to their country of origin.
- Once sufficient documentation and information has been gathered, the relevant social service authority shall decide in conjunction with the guardian, the Ministry of the Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin, on the final disposition made in favour of the child.
- If the decision is made against family reunification and/or repatriation, then the guardian shall remain responsible for the child victim, until the appropriate judicial body appoints a legal guardian for the child.
- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, Ministries of the Interior shall assist those authorities in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.

10.2 Implications of the principles

When a trafficked child is first identified, priority should be given to the child's immediate needs. Once these are met, it is time to find out what longer-lasting arrangements would be suitable for the child. These arrangements are referred to as a 'durable solution'.

10.2.1 Principles to guide decisions about a durable solution

The decision-making process is not always simple and requires careful coordination between different agencies, including the Ministry of the Interior and the authority responsible for social services

or child welfare, as well as those responsible for the interim care of the child and with law enforcement officials who might wish to ask the child to provide them with further information or to take part in legal proceedings.

Principles to take into account in making decisions about durable solutions are:

1. The child's best interests must be a **primary** consideration in the decision;
2. The decision-making process must involve at least one person (the child's guardian) whose explicit responsibility is to advocate the child's best interests;
3. The (trafficked) child has a right to have her or his views heard and taken into account in the decision;
4. Every child has the right to maintain contact with his or her family;⁷⁴
5. Every child has a right to return to her or his country of origin;⁷⁵
6. Every child has a right to protection (wherever she or he is located), which must be taken into account in considering whether it is safe for the child to return to the country of origin;
7. Every child has the right to seek and enjoy asylum from persecution and the right to be protected against refoulement.

The ways in which the child's best interests should be taken into account in decisions about a durable solution has been the subject of comment by both international organizations and the Committee on the Rights of the Child (the treaty-monitoring body established to monitor the implementation of the CRC). Parts of this comment are cited below.

The first and most noteworthy principle to be observed in the decision-making process is that the best interests of the child concerned are a primary consideration. The primacy to be given to the child's best interests means that the lead agency responsible for decisions on durable solutions may not give priority to other factors which particular authorities consider crucial and want to be taken into account. Thus, decision makers are required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so a comprehensive decision that best protects the child's rights can be taken.⁷⁶

As many government entities participate in a process of decision-making, the process and the weight to be given to different considerations needs to be explained to every ministry or agency which may be involved in decisions of this sort, to ensure that they understand what the best interests of the child signify and that they are not entitled to try and superimpose their own institution's priorities.

Another important principle is that the child concerned must be given a chance to take part in the decision-making process and to say what solution she or he would prefer, as the child's views regarding her/his future and ability to return to her/his country of origin are absolutely essential to any assessment of durable solutions.

⁷⁴ Under the terms of article 9 (3) of the Convention on the Rights of the Child, "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests".

⁷⁵ Under the terms of article 10 (2) of the Convention on the Rights of the Child, "States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country".

⁷⁶ United Nations High Commissioner for Refugees (UNHCR), Guidelines on Formal Determination of the Best Interests of the Child, forthcoming (2006).

10.2.2 Deciding on the best durable solution for a trafficked child

In the past it was widely assumed that the outcome of any process to decide what should happen to a trafficked child would result in the child returning first to her or his country of origin and then to the family home (i.e., family reunification). However, experience shows it is not necessarily in the child's best interest to automatically be returned to either their family or country of origin. In principle trafficked children may not be returned to their country of origin if there are reasons to believe that their safety or that of their family would be in danger. A process of investigation, including tracing the trafficked child's family and assessing the security and risk implications associated with each possible durable solution, is needed before a decision about a durable solution is made. This process is necessary even if the child concerned expresses a wish to return to her or his country of origin.

There are basically three options as far as durable solutions are concerned for children who have been trafficked outside their own country:

1. local integration (in the country to which a child has been trafficked or, in cases of internal trafficking, integration in the area to which a child has been trafficked);
2. return to country of origin and integration there; and
3. moving to a third country for integration there.⁷⁷

The **tracing process** is intended to identify whether a child has a suitable caregiver (parents, guardian or other adult carer) or, as an alternative, whether there is an appropriate government agency in the child's country of origin that is able to provide adequate care and protection for the child.

The **security assessment** focuses primarily on possible threats to the child or her/his relatives from traffickers and their associates. As such it considers security threats that are specific to a child who has been trafficked and those affecting any children returning to the child's country of origin. For this purpose, the relevant social service or child welfare authority in the country in which a trafficked child is located should collect information from law enforcement officials or an intelligence agency involved in law enforcement in the child's country of origin, or from an international police organization.

Risk assessment explores the circumstances of the home and community to which the child is likely to return, in order to assess whether it is in the child's best interests to return there. Initiated by the same social service or child welfare authority wherever the child is located, it requires information from an agency in the child's country of origin, which is familiar with the child's family or the home of the person who is going to take responsibility of the child (or the institution which is going to do so) and the surrounding community.

GUIDELINES ON DETERMINING WHETHER A RETURN TO FAMILY AND/OR COUNTRY OF ORIGIN IS IN THE CHILD'S BEST  P.135

The results of the tracing process, security assessment and risk assessment must be considered by the relevant government ministries in the country to which a child has been trafficked, in conjunction with the relevant social service or child welfare authority and the child's guardian. Trafficked children should not be returned to their country of origin unless the authority responsible for child welfare in the country where the child is located is satisfied that the return will not place the child in danger or at risk.

Furthermore, a trafficked child should not return to her/his country of origin until and unless a suitable carer is ready (and has agreed) to take responsibility for the child there. In this case, it is essential that a suitable person or agency in the child's country of origin should have been contacted and should have agreed to provide the child with appropriate care and protection before a trafficked child can return to her or his country of origin. It must also be clear that this person or agency has the ability and resources necessary to look after the child. Suitable care-givers in the child's country of origin include a parent, another relative, another adult care-giver, a government agency or a child-

⁷⁷ The modalities of implementing these three options are the subject of the Chapter 11 in this Reference Guide. The current chapter focuses on the decision-making process to choose which of the three is most appropriate.

care agency. In principle, the return of children to residential care institutions should be avoided unless all attempts to locate the child's family or find a family-based solution have been exhausted.

When the option of a trafficked child remaining in the country of destination is under consideration, decision-makers still need to examine whether this decision is in the child's best interests. This should include taking into account the child's culture and language, but also ensuring that priority is given to family based care options over institutional ones, especially for children under 16 years of age. This could be a fostering arrangement, while only very rarely would adoption be appropriate. As a matter of principle, any arrangement found for caring for a child in a destination country should involve an individual taking responsibility for the child, rather than an institution. Similarly, an individual should be appointed to act as the child's legal guardian and a plan should be developed for the child's integration, covering all aspects of her or his needs, including education or vocational training. The same considerations should be applied when it is determined that it is in the child's best interests to be resettled in a third country (for example, when a child has a family member in a third country who is willing and able to care for the child). In this case all arrangements should be made prior to the child's arrival.

It is important to note that if a trafficked child applies for asylum (or is a refugee), the procedures outlined in this chapter are not the correct ones to follow. Instead, alternative procedures which are already in place for considering applications for asylum should be followed. The UNHCR has developed comprehensive guidelines on protection and care of refugee children which set forth clear principles and procedures to ensure the protection and care of all refugee children, including the most vulnerable – those who are unaccompanied.⁷⁸

If the asylum authorities (or UNHCR in situations where it is responsible for conducting refugee status determination) conclude that the child has a well-founded fear of persecution pursuant to the 1951 Convention Relating to the Status of Refugees (or is entitled to international protection based on other provisions in the national legislation or falls within a UNHCR extended mandate), UNHCR can assess whether the child can locally integrate into the first country of asylum or whether she or he falls within UNHCR resettlement criteria.

10.3 Who has responsibility to take action?

The Government is responsible for establishing a clear procedure for making decisions about children trafficked into its country from abroad, for monitoring this procedure and ensuring it functions well, and for ensuring that the best interests of the child are a primary consideration in decisions about a durable solution for each trafficked child. The Government as a whole also has a responsibility to ensure that the non-refoulement principle is respected.⁷⁹

Various Government ministries have a role to play in reaching a decision on a durable solution about a trafficked child's future. The *relevant social service authority* is responsible for deciding, in conjunction with the guardian, the Ministry of the Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin,⁸⁰ on the final disposition made in favour of the child. However, before this decision can be reached, there are numerous other steps.

⁷⁸ For further details, consult The UNHCR Resettlement Handbook November 2004, at <http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3d464a844>

⁷⁹ I.e. that no child who is a refugee or applying for asylum is sent back to her or his country or origin and that no child at risk of being subjected to torture in her or his country of origin is returned there. For fuller details on the non-refoulement principle, see section 10.5.1 below.

⁸⁰ No authorities from the child's country of origin (including Embassy representatives) may be contacted if the child is a refugee or seeking asylum.

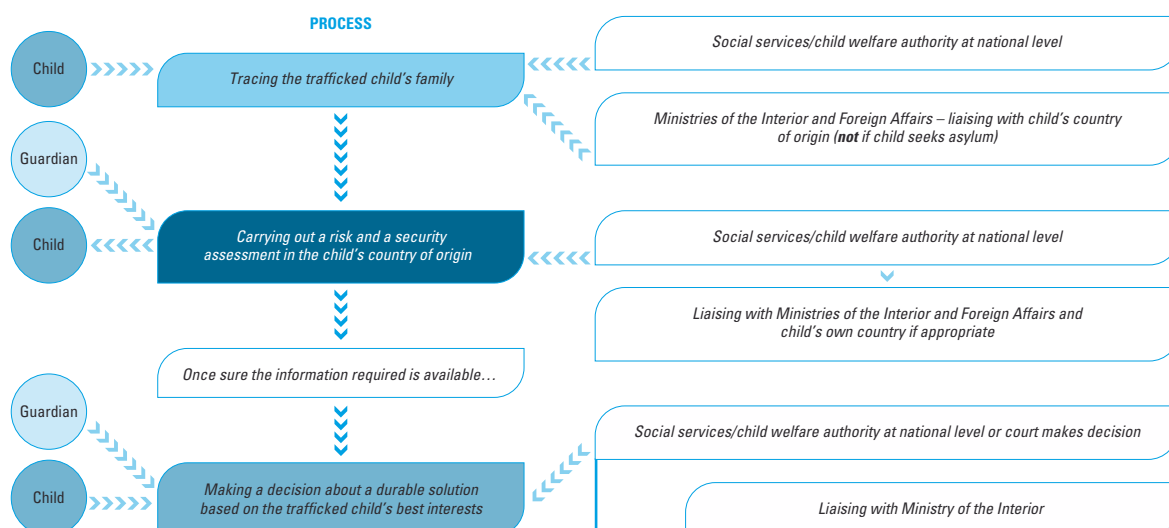


Figure 7: Who has a role in decisions about a durable solution for a trafficked child?

Relevant government Ministries, in conjunction with the relevant social service authorities and/or guardian, are responsible for establishing whether or not it would be safe for a child victim to return to her or his country of origin. If a National Referral Mechanism has been established, the relevant ministries and authorities should already be part of the National Referral Mechanism.

The *Ministry of the Interior* and *Ministry of Foreign Affairs* are responsible for agreeing procedures for channelling inquiries to the child's country of origin and implementing these. This may require additional bilateral agreements and procedures between them to those adopted when a National Referral Mechanism is established.

In cases when the child concerned is not a refugee or seeking asylum, the social services authority, working together with the *Ministry of the Interior Liaison Officer* and with the assistance of the *Ministry of Foreign Affairs*, is responsible for tracing the child's family. In cases of cross-border trafficking, those responsible for tracing will have to make contact with authorities in another country, either starting with the Embassy of the child's country of origin or keeping that Embassy informed.

When the child has expressed a wish to apply for asylum and an application has been submitted on their behalf, the asylum authorities will be responsible for making a decision.

The authorities in a trafficked child's country of origin (and those in any country where a victim of trafficking had a right of permanent residence before being trafficked) have a responsibility to respond to inquiries about a trafficked child and to facilitate and accept the return of the child without undue or unreasonable delay, paying proper attention to the child's safety.⁸¹

The child's guardian is responsible for working closely with the *authority responsible for social services or child welfare*, the *Ministry of the Interior* and any others who need to be consulted in the process of collecting information about the child's background and assessing the implications of a trafficked child returning to her/his country of origin and possibly to her/his family home. The guardian is also responsible for ensuring that the child concerned is given an adequate opportunity (or opportunities) to express her or his views on the possible options, and for ensuring that these views are given appropriate consideration in the decisions taken about the child.

⁸¹ Under the terms of the UN's Trafficking Protocol (Article 8 on 'Repatriation of victims of trafficking in persons').

Box 14

What refugee panel members need to demonstrate according to the United Nations High Commissioner for Refugees (UNHCR)

- an understanding of child rights;
- a thorough knowledge of UNHCR guidelines in relation to children;
- a solid understanding of the practical implications of stages of child and adolescent development and psycho-social well-being including knowledge regarding the psychological, emotional and physical development and behaviour of children;
- expertise on trafficking;
- an understanding of the specific issues involved in the best interests determination;
- a sensitivity to cultural background, age and gender related issues;
- a knowledge of the legal context and protection implications of the BID (best interests determination);
- an understanding of the cultural and religious context of the child;
- a knowledge of the social and economic context of the child.

Source: UNHCR, Guidelines on Formal Determination of the Best Interests of the Child, forthcoming (2006).

The child's guardian and a representative of the authority responsible for social services or child welfare (usually a social worker) are responsible for assessing when a sufficient amount of information has been obtained to make a decision about a durable solution for a trafficked child.

In countries which have ratified the European Convention on the Exercise of Children's Rights,⁸² any *judge or court* involved in making the decision about what should happen to a trafficked child is likely to have a legal obligation to consult the child involved in a particular way.

If a decision is made that a child should neither be returned to her or his country of origin, nor moved to a third country, then the same guardian remains responsible for the child until the appropriate judicial authority appoints a permanent legal guardian for the child.

10.4 Who else may take action?

International organizations such as the IOM play a role in tracing the child's family or in carrying out a risk and security assessment. When a trafficked child is a refugee or applies for asylum, the UNHCR is responsible for the child's protection. NGOs may be requested to provide information about the conditions in which a trafficked child's family are living and the possible risks to the child of being reunited with her or his family.

The process for tracing the parents, guardian or relatives of a child who has been trafficked to another country is significantly different to the process for tracing other categories of unaccompanied children, when National Red Cross or Red Crescent Societies and the International Committee of the Red Cross (ICRC) are routinely involved. While Red Cross and Red Crescent Societies are not all dealing with trafficking cases, some national societies in Europe have already opted to play a greater role in both prevention of trafficking and the treatment of victims of trafficking,⁸³ so can be contacted to see if they can help with tracing. National and international NGOs can play an important role, for

⁸² See Annex 2 ('Selected excerpts from European regional instruments') for Article 6 of the European Convention on the Exercise of Children's Rights. The text of the European Convention on the Exercise of Children's Rights is found at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/160.htm>

⁸³ For example, in December 2004 the Belarus Red Cross signed an agreement with the IOM to set up youth centres which would provide vocational training to young people, as well as psychological and medical support to victims of trafficking. See: The Bridge, spring 2005, International Federation of Red Cross and Red Crescent Societies, Regional Delegation for Central Europe. This can be found at: http://www.drk.dk/graphics/English/trafficking/reference_other/thebridge.pdf

example in situations where the authorities in a child's country of origin are slow or inefficient in providing information, but when NGOs in both the countries involved have already set up systems for exchanging information and tracing trafficked children. For example, the national branches of International Social Services may be able to perform this role.

NGOs and inter-governmental organizations are sometimes in a position to work together across political and linguistic boundaries with less need for protocol than government agencies. There have consequently been examples of both NGOs and inter-governmental organizations sharing information (about both individual children who have been trafficked and about patterns of child trafficking) across national borders in an efficient and effective way.

10.5 Key challenges and examples of good/bad practices

10.5.1 Non-refoulement

Some children who are trafficked are also refugees or may wish to request asylum in the country to which they have been trafficked. In such cases, the authorities may not repatriate such children (or send them to another country from which they might be repatriated), as this would constitute refoulement and they would be at risk of persecution.

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees set standards that apply to children in the same way as to adults:

- (1) a child who has a "well-founded fear of being persecuted" for one of the reasons stated in the 1951 Refugee Convention is a refugee;⁸⁴
- (2) refugee status is declaratory in nature,⁸⁵ that is to say a child who fulfils the criteria defining someone as a refugee already has the status of a refugee and is arguably entitled to the protection associated with this status before the authorities of the country where she or he is seeking asylum formally recognize the child's status;
- (3) a child who is seeking asylum or who holds refugee status cannot be forced to return to the country of origin or to the frontiers of any country which might in turn force them to return to their country of origin (the principle of non-refoulement).⁸⁶

If the child expresses a fear of returning to her or his country of origin or a wish to apply for asylum, or if the child's guardian has any reason to suspect that the child has a well-founded fear of persecution in her or his country or origin, the guardian should ensure that the child is promptly put into contact with a legal representative in order to make a request for asylum.

The Committee on the Rights of the Child has pointed out that the State's non-refoulement obligations:

apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.⁸⁷

⁸⁴ Including the risk of being subjected to the death penalty, torture or other cruel, inhuman or degrading treatment or punishment. The Refugee Convention refers to anyone "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" [Article 1.A (2)].

⁸⁵ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 (UNHCR Geneva 1992) Chapter 1: 28.

⁸⁶ UNHCR, Refugee Children: Guidelines on Protection and Care, 1994, page 4.

⁸⁷ Committee on the Rights of the Child, General Comment No. 6, 'Treatment of unaccompanied and separated children outside their country of origin', adopted during the Committee's 39th session, 17 May to 3 June 2005, paragraph 27. General Comment No. 6 can be found at: <http://www.ohchr.org/english/bodies/crc/docs/GC6.pdf>

The Committee on the Rights of the Child has also pointed out the obligation that:

States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.⁸⁸

The CRC and other international instruments clearly oblige State parties not to extradite, deport, expel or otherwise remove children from their territory where there are suitable grounds to believe that they are under risks of irreparable harm.⁸⁹

10.5.2 The advantages of voluntary assisted return

If a decision is made that it is in a trafficked child's best interests to return to her or his country of origin, 'voluntary assisted return' is preferable to any form of repatriation in which an element of compulsion is used. Forcing a trafficked child to return to her or his country of origin is quite likely not to be a durable solution, for the following reasons:

- If children do not want to return home, they may well seek out new opportunities to leave their country, exposing themselves once again to the risk of being trafficked and abused.
- Proper preparations are less likely to have been made to receive children who are forcibly repatriated, creating a risk that they may be subjected to neglect, harm, abuse and that they may be trafficked once again. This also reduces the likelihood that return will be a durable solution.

10.5.3 Listening to the child's views and taking these into account

The child must be given opportunities to make comments and express views, and these views must be taken into account by decision-makers in accordance with the child's age and maturity.

By the time the process for deciding on a durable solution is underway, it should be apparent whether the child concerned wishes to apply for asylum, in which case there should be no question of the child returning to her or his country of origin. However, there may be other valid reasons why a child objects to returning to her or his country of origin. These may relate to the child's ambitions for the future (i.e. what the child aspires to, rather than is entitled to). However, they may also concern abuse which the child experienced in the past in her/his country of origin and a fear that this will be repeated.

The issues on which a trafficked child should be given an opportunity to express views are wide-ranging, and the most appropriate way of enabling the child to express her or his opinions will depend on the circumstances, as well as their age and maturity. Some key issues on which they should be asked to give their views are listed below.

1. The most obvious issue on which trafficked children must express an opinion concerns their possible return to their family. Children must be provided with an opportunity to give information confidentially about any abuse which they might have suffered at home and which would be a reason for not arranging for them to go back to live at home. Children who have no family to return to should likewise be asked their views about the prospect of returning to wherever they were living before being trafficked.

⁸⁸ Ibid, 87, paragraph 28.

⁸⁹ With respect to children seeking refugee status, the Convention on the Rights of the Child states, "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties" (article 22.1).

2. A second issue on which trafficked children must express an opinion concerns their reasons for leaving home (or the place where they were living) in the first place. If they decided themselves to leave, for example because they had no prospects of employment locally or were facing discrimination, it is unlikely that the situation at home will have changed. In such circumstances, returning home is unlikely to be a durable solution. If it is found that no barrier to family reunification exists, the children concerned must still be given an opportunity to comment on whether they are happy to return home, or whether they would strongly prefer a different option. If they state a clear intention to leave home again straight away, it will be apparent that family reunification is not a durable solution.
3. If there is an option of the child going to live with a close relative in either the country to which she or he has been trafficked, or a neighbouring third country, the child should comment on their relationship with this person and whether they would be happy with this solution.

Children who have been trafficked have generally experienced a period in which they were unable to control what happened to them. As part of the recovery process it is important that they be given as much control over the lives as possible: ensuring they have the opportunity to say what they want to happen to themselves next, and seeing adults take this seriously and implement decisions along the lines they have asked for is a necessary part of the recovery process.

Children who are still traumatised by their experience and who are depressed, anxious or upset may well not be able to understand the decisions which are being made or to make realistic decisions themselves. In such circumstances, health care professionals may advise delaying a decision which has long-term implications.

Not bothering to ask children for their views or overruling these as inappropriate will reinforce the sense felt by trafficked children that they still do not control their lives or their future. Appropriate techniques should be used to enable children to express their views.

10.5.4 Consideration of the continuing vulnerability of young people after reaching the age of 18

UNICEF's Guidelines concern anyone under 18. However, this does not mean that a young person who has been trafficked when younger than 18 no longer requires any protection after reaching the age of 18. Careful consideration needs to be given to a young person's continuing vulnerabilities when she or he reaches adulthood. In one EU country, the procedures currently in force have the effect of providing less protection to children who are trafficked when aged 16 or 17 than to either younger children or slightly older adults. This odd discrimination occurs because trafficked children are required to leave the country when they reach 18 unless they have already been receiving assistance for at least two years. Such procedures have the effect of stopping decisions being taken which are in the child's best interests. Like older children, young adults who have been trafficked need support and help in preparing either to return to their country of origin or to remain and integrate in the country to which they have been trafficked.

10.5.5 Challenges in ensuring the best interests of a child

The Committee on the Rights of the Child has pointed out that "non rights-based arguments" may not override considerations about which durable solution is in a child's best interests. The Committee has commented:

Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to society. Non rights-based arguments

such as, those relating to general migration control, cannot override best interests considerations.⁹⁰

Here are two examples of ‘non rights-based arguments’:

- An immigration service might argue that allowing a trafficked child to remain in the country would be a breach of the country’s immigration regulations and create a precedent for other child migrants to get permission to stay in the country in the same way.
- In other circumstances, the police or officials responsible for bringing prosecutions argue that the ‘needs of justice’ require a child to remain in their country for a long period in order to give information as evidence at a trial.

Arguments such as these can be taken into consideration when a decision about the child’s future is made, but may not be the primary consideration. This means that no solution that may place the child under the risk of any type of harm is considered to be in the child’s best interest, for example. Similarly, returning the child to her or his country of origin under the premise that he or she will be placed in a shelter for child victims of trafficking does not respect the best interests of the child as a long-term solution for the child’s care must be determined before the child is repatriated. Also ensuring that the child will be cared for in a residential care institution in the country of origin is not in the best interests of the child if he or she has family capable and willing of caring for him/her.

Thus ensuring the best interests of the child are respected requires good general knowledge and respect of child rights and entitlements stemming from them. The decision-making process and the weight to be given to different considerations needs explaining to every ministry or agency which may be involved in decisions of this sort, to ensure that they understand what the best interests of the child signify and that they are not entitled to try and superimpose their own institution’s priorities.

⁹⁰ Committee on the Rights of the Child: General Comment No. 6, op. cit., paragraph 85.