

Chapter 11 Implementation of a Durable Solution

11.1 General principles

While the precise steps to be taken to implement a durable solution vary (depending on whether the durable solution adopted involves local integration, return to the child's country of origin or resettlement and integration in a third country), the main principles are the same, whichever option is chosen:

- Once it is clear in which country or location a trafficked child will remain, child victims are entitled to receive long-term care and protection there, including access to health-care, psychosocial support, social services and education with a view to their social integration.
- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.
- Arrangements for child victims in the medium- and long-term should in all cases favour family- and community-based arrangements rather than residential care.
- Regardless of what durable solution was selected the social welfare authorities should make adequate long-term care arrangements.
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

Other guiding principles apply to different types of durable solutions as follows.

Return to country of origin

- Child victims, who are not nationals/residents of the country in which they find themselves, are as a general principle entitled to return to their country of origin.
- Child victims shall not be returned to their country of origin if, following a risk and security assessment, there are reasons to believe that the child's safety or that of their family is in danger.
- Ministries of the Interior or other relevant state authorities shall establish agreements and procedures for the safe return of child victims to their country of origin.
- A guardian or a social worker assigned to the case should accompany child victims who are being returned until placed in the custody of the Ministry of the Interior, IOM or another organization responsible for their return.
- States shall establish procedures to ensure that the child is received in the country of origin by an appointed responsible member of the social services of the country of origin and/or the child's parents or legal guardian.

Local integration

- In situations where the safe return of the child to his/her family and/or country of origin is not possible, or where such return would not be in the child's best interests, the social welfare authorities should make adequate long-term care arrangements.

Integration in country of origin – reception and reintegration

- Child victims should be cared for by adequately trained professionals who are aware of the special needs and rights of child victims, and of gender issues.
- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through cooperation with relevant international and non-governmental organizations.
- Social service authorities, in cooperation with relevant international and non-governmental organizations, should monitor the life situation of the child following his or her family reunification and/or placement in alternative care.

Resettlement and integration in a third country

- In situations where the safe return of the child to her/his country of origin and the integration in the country of destination are not possible, or where these solutions would not be in the child’s best interests, the States in both countries should ensure the child victim’s resettlement in a third country (unless the child applies for refugee status, in which case the authorities in the child’s country of origin should not be involved).
- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child, including for education needs.

11.2 Implications of the principles

Whichever of the three alternatives for a durable solution is chosen, some standard steps have to be followed to ensure the child is integrated satisfactorily (see figure 8).

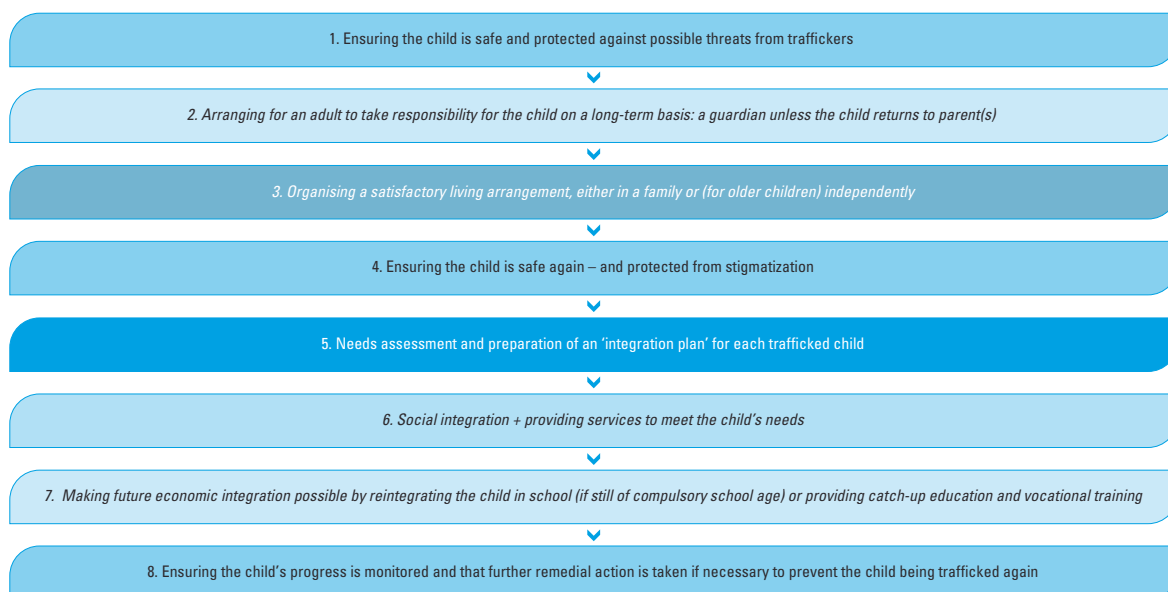


Figure 8: Standard steps to implement any durable solution

11.2.1 Local integration

Children who are going to remain in a country where they have neither nationality nor a legal right to reside must have their immigration status regularized. This permission can take the form of a simple ‘de facto’ right to remain, a humanitarian visa or ‘compassionate grounds’. This residency status should not be conditional – e.g., tied to the child’s involvement in legal proceedings – but viewed as a first step in long-term integration process.

Children who are ‘stateless’ should be assisted in acquiring a nationality. This includes children who say they come from a particular country but the authorities in that country deny that the child is a national.

When it is decided that the child will remain in the destination country, the child’s temporary guardian (appointed until a durable solution is identified and implemented) should contact the guardianship service, explain the decision and request the appointment of a permanent guardian. If the child is already 17 years old, it may be appropriate for the temporary guardian to continue as the child’s legal guardian until the child reaches 18. There are other circumstances in which it may also be appropriate for the same person to continue acting as guardian – particularly if a change is judged to be not in the child’s best interests.

Once a trafficked child is allowed to remain in a destination country, care/welfare authorities should conduct a further assessment of the child’s situation, this time assessing the child’s needs on a

long-term basis. This should take into account the child's age, sex, care history, mental and physical health, education, and family situation in the country of origin.

Every effort should be made to ensure that a child who has been trafficked can live with a family and within a community. Residential institutional care should be a last resort. In the case of older children (such as those who had already left home before being trafficked), semi-independent living arrangements may be appropriate.

Adoption is rarely a suitable option for a trafficked child. Before adoption can be considered viable or desirable, a rigorous assessment, conducted by an authorized organization, of the child's family circumstances in the country of origin is essential (the Hague Conference on Private International Law outlines procedures with respect to refugee children and internationally displaced children⁹¹).

Children who remain in the country to which they have been trafficked have the same rights to education, vocational training and employment as national children. However, trafficked children may have missed out on educational and training opportunities when they were younger, either because of the family's circumstances or because they were trafficked; in both cases, special remedial action is required. Unless the trafficked child already speaks the national language, she or he will require language support or training.

Similarly, trafficked children have the same rights to health care as nationals. Particular attention should be paid to their health needs arising from ill-treatment, physical deprivation and ill-health and from the psychological impact of violence, trauma and loss.

A trafficked child's need for support does not come to an end just because a durable solution is arrived at and suitable accommodation is found. Ensuring that young people are not re-trafficked is important as a form of both prevention and protection. This can be achieved most easily by involving social workers who monitor the situation of the individual child and their family (in case of return) or household and assess what support or other measures are needed to make re-trafficking less likely.

11.2.2 Return to country of origin

Return to the country of origin should be conducted in alignment with agreements and procedures for the safe return and reception of trafficked children to a country of origin. This means that prior to each individual return, the authorities in the country to which a child has been trafficked are responsible for arranging for a representative of the social services or child welfare agency, or parent/guardian, in the child's country of origin to be ready to receive the child.

The trafficked child's guardian or a social worker should also accompany a child who is to be returned and pass responsibility for the child to an official of the Ministry of the Interior, the IOM or other organization designated as responsible for receiving the child. Children who are awaiting return to their country of origin are not to be held in detention centres, but appropriate temporary accommodation must be ensured.

The organization responsible for the child's return should ensure the child is accompanied on the return journey, whatever the means of transport. The adult who accompanies a child during her or his return must physically meet the person appointed to receive the child and pass responsibility for the child to them: they should not leave the child under any other circumstances. At each stage of the return home, an adult who has formal responsibility for the returning child must sign or receive a formal notification of transfer: the guardian when passing responsibility to the Ministry of the Interior, IOM or another designated organization; and likewise the person accompanying the child during her or his return.

⁹¹ "Recommendation concerning the Application to Refugee Children and Other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption", October 1994. Among South Eastern Europe countries, as of October 2004, Albania, Bulgaria and Romania had ratified and Republic of Moldova had acceded to the Convention. The Hague Convention can be accessed at: <http://www.hcch.net>

Children arriving back in their country of origin are nominally the responsibility of their parents or guardian. Unless the child's parent or permanent guardian is immediately available to take responsibility for the child, the national authority responsible for social services must appoint someone as a temporary guardian (or ensure that any temporary transit centre where the child stays is legally entitled to look after the child). If it is not in the child's best interests for the child's parent or permanent guardian to take responsibility for the child, the first responsibility of the national authority for social services is to ensure that a guardian is appointed for the child.

The next step is to ensure that the returning child's needs are assessed and that an individual integration plan is developed for the child by the relevant social services. Social services are responsible for ensuring that the child herself or himself is involved in decisions about their future as much as possible and encouraged to take responsibility for her or his choices. This means encouraging the children themselves to design the plan for their own social reintegration in school, their home community and elsewhere, and giving them the professional support necessary to identify their options and make these become a reality.

Returning children are also entitled on their arrival back in their country of origin to long-term care and protection including:

- security;
- food;
- accommodation in a safe place;
- access to health care;
- psycho-social support;
- legal assistance;
- social services; and
- education;

with a view to their social reintegration and development.

An important part of the decision-making process on a durable solution is the determination of a suitable care option for a child returning to their country of origin. Returning the child to their family is the preferred option whenever possible. However, once the child returns, the process of family reunification requires careful managing and monitoring by social services and/or an appropriately qualified organization.

Responsibility for ensuring that care and assistance are provided to returning children lies with the national authority responsible for social services or child welfare. Actual services can be provided by government agencies or NGOs, and both intergovernmental organizations and NGOs can be called upon to play a role. Whether they are in residential care, living at home or residing independently, children who have been trafficked should be cared for by adequately trained professionals who are aware of the special needs and rights of children who have been trafficked and sensitive to the gender issues which affect girls in particular.

Special educational and vocational training programmes should be established that are suitable for children who have missed out on their education, either because they were withdrawn from school before finishing their basic education or for other reasons connected with their experience of being trafficked. The type of support with education and training should also be specified in the individual integration plan for each child.

The national social services authority, in consultation with specialist governmental agencies and NGOs, is responsible for finding out if and how returning children are stigmatized and whether the risks of harm to the child are sufficient to make both family reunification and return to the child's home community unfeasible. As in the case of integration, they are also responsible for monitoring and following individual children that were assisted.

11.2.3 Resettlement and integration in a third country

The procedures involved for resettlement of a child in a third country should also follow up agreements for the safe transfer and receipt of the child. These procedures should be specified between the two states in question (country of origin or destination country and the third country). This means that all arrangements for the child's transfer, receipt and integration to the third country should be completed beforehand.

Social services in the country where the child has received initial care are responsible for making all the arrangements necessary for her or his reception, guardianship, care and subsequent integration in the third country and for ensuring that all relevant information is made available to their counterpart in the third country. Adequate arrangements should also be made to ensure that the child is accompanied throughout the journey and handed over to an officially responsible person. This requires respecting the similar procedures outlined in the case of return to a country of origin.

Since resettlement in a third country is sometimes necessary because of security considerations (threats to the child or the child's relatives), it is particularly important that precautions be taken to maintain the confidentiality of any information about the move. Finally, the same principles outlined above are relevant for the facilitation of the child's integration in the third country (suitable care options, access to health, education and social services, development of individual integration plan, etc). Children who are resettled in a third country have the same rights to education, vocational training and employment as national children in that country.

11.3 Who has responsibility to take action?

The responsibilities vary according to the three options.

11.3.1 Local integration

In case of local integration in the country or area in the country of origin where the child does not have legal residency, the *Ministry of the Interior Liaison Officer* and the authority responsible for social services or child welfare are responsible for ensuring permanent residency status is granted to the child, informing and consulting the child's (temporary) guardian in the process.

If a child is still waiting to give evidence in legal proceedings – even after a durable solution decision has been reached – the *Ministry of the Interior Liaison Officer* should inform the child (and the child's guardian) that her or his status in the country is not conditional or dependent on any involvement in legal proceedings.

Relevant *Ministries (health, education and social welfare)* are responsible for ensuring that the trafficked child has access to special education programmes, health and social services.

Responsibility for the financial support of trafficked children who are being integrated in the country to which they have been trafficked lies with the *national authority responsible for social services or child welfare*.

11.3.2 Return to country of origin

Ministries of the Interior or other relevant state authorities are responsible for establishing agreements and procedures for the safe return and reception of trafficked children to their country of origin.

The *national authority responsible for social services or children's welfare* also has responsibility for the child, particularly at first, and has some essential tasks to perform. Firstly it has a responsibility to ensure that a guardian is appointed for the child who is being returned if his or her parents are not immediately available, that individual assistance and a protection plan is elaborated for each child and that implementation of that plan and the situation of the child are regularly monitored. This authority can delegate a local branch of social services or an NGO to provide specific services to the returning child but nevertheless it retains responsibility for ensuring that these services are provided.

The *Ministry of Education or Education Service, in cooperation with social services*, is responsible for devising educational programmes and vocational training programmes which are suitable for children who have been trafficked, particularly children who have missed out on their education, either because they were withdrawn from school before finishing their basic education or for other reasons connected with their experience of being trafficked.

11.3.3 Resettlement and integration in a third country

The authorities of both countries – the country of origin or destination and the country where the child will be resettled – have a responsibility to ensure the safe transfer and receipt of the child in the third country. *Ministries of the Interior, Exterior and Social Services* in both countries have a special responsibility to put procedures in place for the child's resettlement and integration. The relevant national authority in the country where the child was trafficked to is also responsible for facilitating a security and needs assessment of the child and preparation of the child's transfer to the third country. The relevant social services authority in the third country is responsible for ensuring the integration of the child.

11.4 Who else may take action?

In recent years, the IOM has played a growing role in facilitating the return of victims of trafficking, including children, to their countries of origin.

Both the IOM and NGOs (both international NGOs and locally based ones) have acquired the expertise necessary to provide a wide range of services to children who have been trafficked during the implementation phase of a durable solution – providing temporary residential care, services such as medical and psychosocial attention, and monitoring how the child manages after returning to her/his family or otherwise resuming 'ordinary' life.

In the absence of specialized services in government ministries to organize or provide education and training to children who have been trafficked, NGOs have acquired experience of devising educational and training programmes for children returning to their country of origin, whether they have been trafficked or are returning home after other forms of exploitation.

11.5 Key challenges and examples of good/bad practices

11.5.1 Protection needs while a durable solution is implemented

Many of the threats which trafficked children face in the country or area to which they have been trafficked remain much the same when they return to their own country or move to a third country. Indeed, the list may now be longer and include:

- the child's original trafficker and people associated with this trafficker (whether or not the trafficker has been accused of an offence or spent time in prison);
- other traffickers who are ready to take advantage of the child;
- journalists or others who may violate a child's right to privacy by revealing their name or other personal details publicly;
- people in the shelter or residential facility where the child stays on a short- or long-term basis, both staff and other residents, whether adults or children;
- members of the public who attack, criticize or discriminate against them on account of the stigma attached to the activities which they or other trafficked children have engaged in, such as prostitution or theft; and
- members of the child's own family who criticize or stigmatize them, sometimes deliberately, but also unconsciously.

In reality, the right of returnees to privacy has frequently been violated, not just by journalists but also by government and law enforcement officials. On some occasions this is because they think

publicity around a child's return may have a preventive or deterrent effect; sometimes it is out of ineptness or even corruption. Whatever the motives, such publicity contravenes the returning child's rights and cannot be said to be in her or his best interests.

Because of such violations, some returnees, both children and adults, insist that the authorities in their country of origin should not be informed of their arrival. It is necessary to give careful consideration to such requests, bearing in mind that if the police or others are not informed, they cannot be expected to monitor what happens to the child, let alone to ensure that she or he is given specialist care or attention. However, children may make incorrect assumptions about the risks they face on return home (i.e., they may believe the risks, if the authorities are informed of their arrival, are much greater than they, in fact, are). They may also be ignorant about the benefits of the services which they will potentially receive. In such cases, it is the responsibility of the child's guardian to provide the child with accurate information. Such a request and the possible risks which a child faces upon return should be the subject of a security and risk assessment before a decision about a durable solution is made. The child's best interests are the primary consideration to take into account in assessing whether to agree with such a request.

In principle an organization in a returning child's country of origin which has relevant expertise in supporting the reintegration of trafficked children should monitor what happens to the child for at least some months after their return – preferably for at least a year. This organization should contact law enforcement officials if there are any indications that threats have been made against the child or her or his relatives.

The level of protection offered to a child upon their return should be proportional to the perceived threat from the child's traffickers or others.

While in some cases the child's greatest need for protection occurs upon arrival back in her or his country of origin and home community, in other cases the protection needs increase subsequently because of the evolution of court cases concerning the child's trafficker, e.g., when a trafficker is released from prison. For this reason it is important that the child and her or his family be kept informed of any developments in a court case concerning a trafficker and informed in advance of such a person being released from prison.

11.5.2 Facilitating family reunification

Returning to the home of parents or a legal guardian is generally regarded as an ideal durable solution for trafficked children, but it is not automatically in a child's best interests.

Even when return to a child's country of origin seems likely to be the best option for a trafficked child, it is still necessary for a social worker to investigate the specific circumstances of each trafficked child's family to make a risk assessment and collect evidence to indicate whether family reunification is in the best interests of the child.

Whenever the child has been separated from their parents or close relatives, experience shows that working closely with parents, families and the community is vital in enabling the child to return home successfully.⁹² This means that an agency such as social services or an NGO must facilitate the child's return, rather than simply hoping that the child will be able to return home without running into problems.

For example, preparation for family reunification may consist of family visits where it is explained to the family the importance of integrating the child into the home. It is questionable, however, whether a couple of awareness-raising sessions with the family is enough to provide a comfortable environment for a girl who, in many cases, had previously run away from home because of family problems. Apart from the problematic fact that some girls may be reunified with families in which

⁹² See Celia Petty, Mary Tamplin and Sarah Uppard, "Working with Separated Children: Field guide, training manual and training exercises," Save the Children, 1999.

they may have been abused, there is also a problem understanding to what degree the family and community will be willing to accept the child because of prejudices deriving from trafficking and exploitation. This shows the great need for creating alternatives to family reunification in the cases that this option is not in the best interest of the child.⁹³

The reintegration process does not come to an end when children return home. Individual children must be monitored for several months and their families may need material assistance if the children are to avoid being trafficked once again.

11.5.3 Ensuring children are not stigmatized after their return home

Girls who have been subjected to commercial sexual exploitation face specific obstacles when returning home or to live in a community in which they are known or might be recognized. In part, this is because of the social stigma associated with prostitution. In addition, in many societies the very fact that an unmarried girl is reputed to have had sexual intercourse is a cause of stigma. Child rights activists and others are working to change such popular prejudices as well as gender-based stereotypes and ignorance of the coercion and violence to which trafficked children are subjected. However, it may take decades to make a lasting difference. In the meantime practical ways have to be found for coping with stigma and prejudice and protecting children from its harmful effects.

Box 15

Stigmatizing children returning to the Republic of Moldova

The reaction of the community towards children released from trafficking is influenced by many factors, including the child's age, level of information on the trafficking phenomenon, the child's lifestyle before trafficking. If before being trafficked the children were badly behaved, abused alcohol or were wanderers, then when they returned home they were blamed by the community for what had happened to them, as if being trafficked was just a consequence of their lifestyle. Twenty-three of the trafficked children [out of 60 surveyed] said that they were blamed for what had happened to them.

Conversely, children who were compelled to leave because of poverty or alcoholic parents were usually shown compassion. In general, however, Moldovan society is very sceptical and intolerant, especially of girls trafficked for prostitution. They are marginalized and are not offered any chance of re-entering society. As a consequence, rehabilitation of these children is a real challenge.

From: Institute for Public Policy (Republic of Moldova). Trafficking in Children for Labour and Sexual Exploitation in the Republic of Moldova. Results of a Rapid Assessment Survey. ILO-IPEC. 2003.

11.5.4 Meeting the needs for education and training of children who have been trafficked

Children's needs vary a great deal according to the age at which they have been trafficked and the age at which they are recovered. At any age or stage, trafficked children need to build or restore self-confidence and they need the basic knowledge and skills to survive.

This is particularly the case for older children who will soon have to manage on their own. In some cases this means reintegrating the child into formal schooling, which may also mean persuading reluctant schools to accept a child who is older than other pupils studying at the same level. In other cases it means providing non-formal education, enabling the child to manage money and to make decisions for himself or herself. A wider set of life skills is considered to be valuable both in helping children avoid being trafficked and in equipping children who have already been trafficked. In the

⁹³ UNICEF (the UN Administered Province of Kosovo), "Trafficking in Children in the UN Administered Province of Kosovo: A study on protection and assistance provided to children victims of trafficking," June 2004.

case of children who have been regimented by traffickers and controllers and required to follow orders, virtually without thinking, this can be a slow process.⁹⁴

Catch-up education is provided by many residential centres, as are various forms of vocational training. Involving children in work in a residential centre is regarded as a useful form of therapy in many parts of the world. However, in such cases, it is important to distinguish between therapy and training which is expected to actually help a young person generate an income after they move on.

Box 16

Providing catch-up education in Albania and confronting obstacles to the reintegration of trafficked children into school

With the assistance of the Swiss Agency for Development and Co-operation (SDC), special alternative education and training classes have been set up by NPF [Ndhmë për Fëmijët, Help for Children, an NGO]. These classes are integrated into the State schools. The children must thus respect the same work schedules as the ordinary classes. They work according to a programme approved by the Ministry of Education. The classes are collective, i.e. they include various classes and thus pupils who have different levels and ages (in general 12 to 15, but they can be older). The first and third classes work together as do the second and fourth. What is special about these classes is that there are two teachers for a score of children on average. The first stage is to start by finding out what knowledge the pupils have already acquired since, in this system, the important thing is to adapt to the level of the children. Then each teacher will deal with children of the same level. While one teacher will give a general education, another will be able to help those which have learning difficulties. They are given adapted work to do so that they can make up for lost time. The treatment will be different according to characteristics of the children in each subject. It is also possible, in these classes, to let the children have their say so that they can talk about any problems they may possibly have in their families or the experiences they have had. Their psychological situation is sometimes fragile and calls for special attention, understanding and sympathy.

...Often, a school principal refuses to admit children during the course of the school year (those repatriated from abroad or those who gave up school but ended up in the street in Albania) because he thinks that these children will, in a few months, increase the number of school dropouts. School dropout is the subject of an official report to the Education Authority of each city... We do not know of a successful case of integration in a school in which the NPF does not intervene.

Source: Terre des hommes and Ndhmë për Fëmijët, "Child trafficking in South-Eastern Europe: The Development of Good Practices to Protect Albanian Children", 2004.

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The various terms used in relation to education each has a specific meaning.

Basic education is education focused on essential learning tools, including literacy, numeracy, problem solving and learning how to learn (and for children and adolescents, recreation and physical education).

Formal education is education that takes place within an established school system.

Non-formal education is education that takes place outside the formal school system and may cover basic skills such as reading, writing and counting, or include practical skills and vocational training.

Vocational training or vocational skills training is the process of learning associated with the world of work - producing goods or services for remuneration.

Life skills refers to a set of skills considered important for young people to relate to others and get on in life: learning to negotiate, coping with decision making, problem solving, critical thinking, communicating effectively, managing interpersonal relationships, resolving conflicts, being self-aware and empathetic towards others, and coping with emotions and with stress.

Catch-up education involves education in life skills and other basic education learning tools which children have missed out on (either through leaving school prematurely or for other reasons) and which is provided at a later date, sometimes within the formal school system, but more usually in the form of non-formal education provided by an NGO or specialized service.

Since many adolescents who have been trafficked have already left school by the time they have been trafficked, vocational training may be more appropriate for them than further basic formal schooling. In the Republic of Moldova, for example, adolescent trafficking victims are routinely invited to attend a professional training course after spending time at the IOM Centre for Rehabilitation of the Victims of Trafficking in Human Beings. Although most trainees are reported to be girls, training is available in a variety of occupations (not only those which are conventionally regarded as appropriate for women and girls).

Relatively few countries are reported to have semi-independent living projects available for adolescents who have been trafficked. These are schemes that allow an adolescent to undertake schooling or training and to get initial experience of the world of work while still living in sheltered accommodation, supervised, for example, by an NGO. In the UN Administered Province of Kosovo, for example, an NGO provides a staff member who sleeps overnight in the sheltered accommodation, checks out potential employers and monitors the adolescent's initial period in employment to ensure that all goes well. Semi-independent living arrangements are appropriate in particular for adolescents who are unwilling or unable, for a variety of reasons including their own best interests, to return to their family home.