



UNHCR's response to the APPG on Modern Slavery and Human Trafficking inquiry into the situation of unaccompanied and separated minors in Europe

UNHCR is pleased to submit its views to the All Party Parliamentary Group (APPG) on Modern Slavery and Human Trafficking inquiry into the situation of unaccompanied and separated minors in Europe.

UNHCR has been entrusted with the responsibility for providing international protection to refugees, and together with governments, to seek permanent solutions to their plight. As set out in the 1950 Statute of the Office of UNHCR¹ (paragraph 8(a)), UNHCR fulfils its mandate by, *inter alia*, '*[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.*' UNHCR's supervisory responsibility over the implementation of international instruments is also reflected in Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol (1951 Convention),² obliging State Parties to cooperate with UNHCR in the exercise of its functions; and is further found in European Union law.³ UNHCR has also been formally mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people.

UNHCR has an interest in providing its views on this inquiry concerning unaccompanied children based on UNHCR's Statute, Article 35 of the 1951 Convention and Article 22 (2) of the Convention on the Rights of the Child (CRC)⁴. UNHCR becomes involved with the issue of human trafficking by virtue of its international protection mandate and with a view to ensuring that refugees, asylum-seekers, internally displaced persons, stateless persons and other persons of concern do not fall victim to trafficking. UNHCR also works to ensure that these persons are protected against *refoulement* and that competent authorities examine their claims for international protection⁵ in accordance with international standards. UNHCR further assists states in establishing the identity and nationality of trafficking victims without identity documents to help prevent them from being rendered stateless, and to protect stateless victims of trafficking.

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: www.refworld.org/docid/3ae6b3628.html

² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: www.refworld.org/docid/3be01b964.html

³ See, for example, European Union, Declaration on Article 73k of the Treaty establishing the European Community, OJ C 340/134 of 10.11.1997, Declaration 17; Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13 of 13.12.2005, Article 21(c).

⁴ UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6, 1 September 2005 (CRC General Comment No. 6), para. 16: "States are expected to accept and facilitate assistance offered within their respective mandates by the UN Children's Fund (UNICEF), UNHCR and other agencies (Article 22(2) of the Convention) in order to meet needs of unaccompanied and separated children.", available at: <http://www.unhcr.org/refworld/docid/42dd174b4.html>

⁵ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, at: <http://www.refworld.org/docid/443679fa4.html>, para. 5.

UNHCR welcomes the opportunity to contribute to this APPG on Modern Slavery and Human Trafficking Inquiry. UNHCR particularly wishes to respond to the following areas of the inquiry:

- 1) the risk of trafficking and exploitation facing unaccompanied and separated children;
- 2) the alleged 'pull factor' to the UK (the suggestion that a route to the UK encourages traffickers);
- 3) what action is required to better protect children from the risks of trafficking and exploitation;

1) The risk of trafficking and exploitation facing unaccompanied and separated children

UNHCR's recent work has identified a number of challenges and protection risks faced by unaccompanied and separated children in Europe⁶. As these children are often travelling alone they can be particularly vulnerable as they lack the protection and care of an adult who is responsible for them. Such risks may include a heightened risk of violence and abuse, including sexual violence in overcrowded reception places; detention (including alongside adults); psychological distress and trauma and smuggling and exploitation.

While some children set out on the journey alone and have a clear migration plan, there are also reports of children becoming separated unexpectedly from family members during the journey⁷. The latter are then very exposed to exploitation and abuse and may experience additional trauma as a result of the separation.

• Guardianship

The timely appointment of qualified, independent representatives/guardians, is key to ensuring that the best interests of the child are considered at every stage while at the same time mitigating the influence of smugglers, traffickers, or criminal organisations and encouraging the child's cooperation, for example in tracing his or her family. UNHCR notes, however, that despite an obligation to this effect under EU law (notably the EU Asylum acquis⁸ and the Anti-Trafficking Directive⁹), this remains a concern in a number of Member States in Europe.

The UK does not provide independent guardians to all unaccompanied and separated children. Legislation provides for this in Scotland and Northern Ireland and a successful project has provided guardianship support on a non-statutory basis for unaccompanied children in Scotland since 2010¹⁰. UNHCR has found that guardianship services across Europe for unaccompanied and separated children have not been considered in a systemic way, which has resulted in guardians across

⁶ UNHCR, *Written evidence to the House of Lords Inquiry on the situation of Unaccompanied Children in Europe*, 26 February 2015: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairssubcommittee/unaccompanied-minors-in-the-eu/written/34375.pdf> UNHCR's briefing note on the situation of unaccompanied and separated children in the context of the Europe Refugee Emergency <http://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Search=%23briefing+note+%23>

⁷ UNHCR Briefing note on the situation of unaccompanied and separated children in the context of the European Refugee Emergency, <http://reliefweb.int/report/greece/europe-refugee-emergency-briefing-note-unaccompanied-and-separated-children>

⁸ The Qualification Directive (2011/95/EU) establishes in Article 31 the duty to ensure that unaccompanied children granted protection are represented by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors. Article 24 of the Reception Conditions Directive (2013/33/EU) and Article 25 of the Asylum Procedures Directive (2013/32/EU) provide for the appointment of a "representative" to unaccompanied children (without referring to a "guardian" specifically), to enable these children to benefit from the rights and comply with the obligations provided for in these directives.

⁹ EU Anti-Trafficking directive (2011/36) http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF_78, Articles 14-16

¹⁰ Scottish Government webpage, <http://www.gov.scot/Topics/People/Young-People/protecting/lac/guardianship>

countries holding different understandings of their roles and responsibilities¹¹. In many instances guardians are overwhelmed, may not be thoroughly screened, and receive little training in how to address the needs of the children they are supporting. This is frequently coupled with a lack of appropriate guidance and institutional support on their role and responsibilities.

- **Identification of children**

The identification of unaccompanied and separated children is a particular challenge. UNHCR is aware that many arrivals of children in Europe are not being registered at all, and children are often reluctant to be identified as such, or may claim to be adults, as they are concerned that being identified as a child may prevent their onward movement. Furthermore, in the context of the refugee movements throughout Europe, it is also likely that some children are being registered in more than one country¹².

The situation of children who go missing from reception facilities or care arrangements has recently been addressed in studies undertaken by the European Commission¹³ and the European Migration Network (EMN).¹⁴ In the UK context, in 2012 the APPG for Runaway and Missing Children and Adults, together with the APPG for Looked After Children and Care Leavers conducted a joint inquiry into 'Children who go missing from Care'¹⁵. All three identified recommendations relating to improved data collection, and prevention measures, such as improved collaboration between authorities, agreed protocols and child-focused procedures.

The Save the Children led CONNECT project on the issue of disappearances of unaccompanied and separated children in select EU Member States (the UK, Italy, Sweden and the Netherlands) lays bare the lack of cooperation between actors to prevent and respond to disappearance of unaccompanied and separated as opposed to national children. Research undertaken in seven countries in the framework of the EU co-funded project SUMMIT¹⁶, showed that the large majority of professionals have never received training in preventing or responding to disappearances, nor in the aftercare of children who were previously missing.

In the UK, data on the number of children who go missing in care is collated by Ofsted¹⁷. However, at least publicly, the 'reasons' for a child going missing are not captured in detail, and no disaggregated data on age, gender, nationality or immigration status is provided. The availability of such information would be helpful in assisting officials to better identify and monitor children at risk as well as understanding the reasons why children go missing from care.

¹¹ UNHCR, UNICEF and IRC *Discussion Paper on a Possible Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children* <https://data2.unhcr.org/ar/documents/download/53109>

¹² UNHCR, webpage data trends 2017 <http://data.unhcr.org/mediterranean/download.php?id=85>

¹³ European Commission, Directorate-General for Justice, *Missing children in the European Union- Mapping, data collection and statistics*, http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf

¹⁴ European Commission. European Migration Network (EMN), *Synthesis report for the EMN focussed study 2014- Policies, practices and data on unaccompanied minors in the EU Member States and Norway*, May 2015, http://www.emn.lv/wp-content/uploads/emn_study_policies_practices_and_data_on_unaccompanied_minors_in_the_eu_member_states_and_norway_synthesis_report_final_eu_2015.pdf

¹⁵ APPG for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers, *Report from the joint inquiry into children who go missing from care*, June 2012, https://www.childrenssociety.org.uk/sites/default/files/tcs/u32/joint_appg_inquiry_report...pdf

¹⁶ European Commission, *CONNECT project report- Identification, reception and protection of unaccompanied children*, June 2012, http://www.connectproject.eu/PDF/CONNECT-Project_Report.pdf

¹⁷ Ofsted, *National Statistic- Fostering in England*, 2014-2015

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522126/Fostering_in_England_2014-15.pdf

Recommendations:

- Priority should be given to the identification and registration of all unaccompanied and separated children arriving in Europe, who should be referred to national child protection systems by well-trained border authorities
- The UK Government should ensure the timely appointment of qualified, independent representatives/guardians, who act in the best interests of the child in all decisions affecting them.

2) The alleged ‘pull factor’ to the UK (the suggestion that a route to the UK encourages traffickers)

• Safe and legal routes

UNHCR shares concerns that an increasing number of people are losing their lives in the course of dangerous journeys to reach safety. UNHCR recognises that the absence of safe and legal routes increase the opportunity for smuggling and trafficking networks to take advantage of those forcibly displaced.

UNHCR considers, therefore, that safe and legal routes for refugees seeking protection are of paramount importance as means of reducing human trafficking and smuggling. We strongly urge the UK Government to make more effective use of legal avenues so that vulnerable people do not feel compelled to embark on dangerous journeys which can expose individuals to trafficking. These pathways include resettlement, private sponsorship and refugee-friendly family reunion, as well as student scholarships and labour mobility schemes. While recent years have seen some progress in developing legal routes for refugees, including through the up-scaling of resettlement for Syrian refugees and the introduction of the Vulnerable Children at Risk scheme, the so-called Dubs Amendment and the Community Sponsorship scheme, UNHCR believes that more can be done in the UK. We note in particular gaps relating to family reunion that are in need of being addressed. UNHCR encourages the APPG to consider its 2016 briefing paper on family reunion and the concrete recommendations contained therein¹⁸.

Unaccompanied and separated children in the UK face difficulty in accessing family reunification. A child who has been granted refugee status or humanitarian protection in the UK does not have a right to be a sponsor for family reunification purposes within the *Immigration Rules*. The Asylum Instruction on ‘Family Reunion,’ identifies at chapter 2.1.4 that ‘a minor with leave otherwise qualifying him or her as a sponsor (even to sponsor parents),’ is considered ineligible for this purpose¹⁹. This is contrary to the provisions of the Family Reunification Directive which prevents discrimination on the basis of age²⁰

¹⁸ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0086&from=EN> recital 5

¹⁹Ibid, Article 4

²⁰REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF> , Articles 8-11

and further allows for family reunion of first-degree relatives in the direct ascending line of the sponsor²¹.

- **Resettlement to the UK**

UNHCR estimates that in 2017 the number of people in need of resettlement globally is 1.19 million. Our hope is that the next government commits to addressing these immense needs by resettling at least 10,000 refugees a year. This represents a meaningful but realistic increase over the current commitment; and UNHCR believes that the UK can and is capable of doing more.

UNHCR urges the government to consolidate its current resettlement programmes into a single programme that is flexible and able to address evolving resettlement priorities globally. This will help ensure consistency in standards of treatment for resettled refugees as well as providing routes out of danger for those most in need, including for children.

- **The Dublin III regulation**

The Dublin regulation allows for unaccompanied asylum seeking children with a parent, sibling or relative (aunt, uncle or grandparent) present in an EU Member State to have their application examined there. UNHCR encourages the government to uphold its obligations under the Dublin Regulation by being proactive in the acceptance and transfer of those who have family members present on their territory. UNHCR would further encourage the UK Government to take a flexible and proactive approach in consideration of cases of dependency including on account of pregnancy, disability, illness or old age and in its application of discretion in order to bring together any family relations, on humanitarian grounds²².

Recent events, including Home Office efforts to transfer children from Calais following the dismantling of the camp, have demonstrated the need for government to develop effective and efficient mechanisms for the identification and transfer of vulnerable persons, particularly unaccompanied children with family members in the UK. UNHCR welcomes UK Government efforts to work with partners to strengthen the implementation of the Dublin Regulation and remains available to support the UK in the development of a mechanism to expedite “take charge” requests and transfers.

UNHCR also believes it is important to highlight the reasons people seek refuge or ‘push factors’. Taking the example of Syrian refugees, UNHCR has identified a number of factors which lead to their onward movement to Europe²³, based on ongoing monitoring, surveys, focus group discussions, and daily interaction with refugees in Jordan, Lebanon, Egypt and Iraq. These include a loss of hope and the feeling of insecurity, deepening poverty, limited education and employment opportunities and difficulties in accessing asylum procedures in the region.

²¹ Ibid 20, Article 16 & 17.2F

²² As provided for under Articles 8-11 Dublin III Regulation

²³ UNHCR, *Seven factors behind movement of Syrian refugees to Europe*, September 2015

<http://www.unhcr.org/afr/news/briefing/2015/9/560523f26/seven-factors-behind-movement-syrian-refugees-europe.html>

Recommendations:

- The UK Government should increase legal pathways of admission for refugees including by resettling at least 10,000 refugees a year, expanding private sponsorship, refugee-friendly family reunification, as well as student scholarships and labour mobility schemes
- The UK government should increase opportunities for refugee family reunification in the UK by making access to family reunification more practical, broadening the current restrictive criteria and providing practical, financial and legal support to applicants.
- European Member States should do their utmost to ensure a flexible implementation of the Dublin III Regulation provisions and conduct a timely and detailed examination of 'take-charge' requests.

3) What action is required to better protect children from the risks of trafficking and exploitation

European level

UNHCR welcomes the publication of the European Commission's important new policy guidelines on protecting all migrant and refugee children in Europe²⁴. Key concrete actions include appointment of guardians for children, boosting child protection at all levels as well as in hotspots, better data collection to ensure that children are properly tracked, adopting a comprehensive approach to identifying durable solutions, as well as better monitoring and co-operation among States. The European Commission calls for Member States to prioritise EU and national funding for children, to refrain from unnecessary and invasive age assessments and to increase resettlement and other legal pathways for children to safely reach Europe. The commitment by the European Commission to invest in child protection training, guidance and tools is another positive development, which will help ensure that children's best interests are properly assessed in all decisions that concern them.

The European Commission in its report on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration²⁵ points to strong evidence that the migration crisis has been exploited by criminal networks involved in human trafficking to target the most vulnerable, in particular women and children and that reception centres may have been targeted. Europol indicates that there is a strong crossover between those smuggling refugees across borders and gangs ensnaring people for exploitation in the sex trade or as forced labour.

The Commission urges that actual or potential victims of human trafficking are identified, made aware of their rights, and that the necessary cooperation takes place with the police and judicial authorities in order to ensure that traffickers are identified and prosecuted. It also calls upon the EU to step up its capacity to provide humanitarian assistance externally and establish the capacity internally, to support

²⁴ UNICEF and UNHCR welcome EU policy to protect migrant and refugee children, April 2017

<http://www.unhcr.org/uk/news/press/2017/4/58edf87b4/unicef-unhcr-welcome-eu-policy-protect-migrant-refugee-children.html>

²⁵ European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration (206), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing-the-refugee-crisis-state-of-play_20160210_en.pdf

countries facing large numbers of refugees and migrants. Consequently, more than €200 million has been earmarked under EU funding programmes to target protection of children in migration. In UNHCR's view there are a range of areas of policy and practice affecting the protection of unaccompanied children which, if strengthened, would help reduce the risk of exposure to trafficking and exploitation. UNHCR, highlights the need to strengthen guardianship systems, to develop best interest procedures in line with suggestions made in the joint UNHCR-UNICEF publication *Safe and Sound*²⁶, and to ensure continuous training and vetting of those who come in contact with children in the course of their work (e.g. (border) police, case workers in national asylum authorities, social workers, representatives, legal advisers, judges and policy makers).

Another welcome initiative would be to include support for the creation of a network of guardianship organisations along the lines of ENGI²⁷ to ensure better cooperation for example in the event of intra EU transfers involving unaccompanied and separated children.

UNHCR further notes the Council of Europe Action Plan on Protecting Refugee and Migrant Children (2017-2019)²⁸. We have repeatedly called for a strong and coordinated European response to the refugee crisis, which shows solidarity and commitment to EU and International Human Rights principles. UNHCR welcomes measures which encourage and support Member States in developing procedures and practice which meet these objectives and also foster better inter-agency and State cooperation.

UNHCR invites the APPG's attention to its *Discussion Paper on a Possible Way Forward to Strengthen Policies and Practices for Unaccompanied and Separated Children*²⁹. It is an outcome from a consultative process involving over 100 practitioners (guardians, psychologists, social workers, lawyers, teachers etc.) established by UNHCR, UNICEF and the International Rescue Committee to support states to better operationalise their response for the protection of unaccompanied and separated children in Europe. The consultations were followed by a roundtable with nine European States which discussed key recommendations.

²⁶ UNHCR, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>

²⁷ Nidos, *Towards a European Network of Guardianship Institutions*, <http://goo.gl/1NLjK>

²⁸ Council of Europe, *Action plan on protecting refugee and migrant children in Europe (2017-2019)*, <https://edoc.coe.int/en/childrens-rights/7362-council-of-europe-action-plan-on-protecting-refugee-and-migrant-children-in-europe-2017-2019.html>

²⁹ UNHCR, Unicef, IRC, *Discussion paper on a possible way forward to strengthened policies and practices for unaccompanied and separated children*, January 2017 <https://data2.unhcr.org/en/documents/details/53109>

Recommendations:

The following areas are suggested as priority areas for initial reform in light of their fundamental nature, and their ability to have an immediate and considerable impact on the wellbeing of children

- Proper identification, registration in a Europe-wide system, and holistic age assessment procedures.
- Establishment of a rapid and effective guardianship system, including the engagement of effective cultural mediators (community members who speak the necessary languages) who can form trusting relationships with children, facilitate continuous dialogue with communities, and mobilize communities to support effective identification, referrals, and provision of care.
- Strengthened access to age appropriate and safe care arrangements, including the provision of key services, such as psychosocial support.
- Development of Standard Operating Procedures linking all relevant actors (national, international, governmental and nongovernmental, and communities) for an efficient and effective national procedure.

Domestic level

The UK has a strong legislative framework for the care of unaccompanied and separated children including statutory safeguarding guidance³⁰ and care planning frameworks for local authorities. The UK Government also recently announced plans to introduce a National Safeguarding Strategy for unaccompanied children³¹. However, there are a number of aspects of the child protection framework which could be strengthened. This would help ensure adequate protection for unaccompanied children and reduce the risk of trafficking and exploitation.

• Best Interests of the child

The introduction of the statutory duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 was a welcome development, but the extent to which a child's best interests are being considered, analysed, and given weight both during the asylum process and when identifying a durable solution remains problematic³². UNHCR and UNICEF jointly issued a document entitled *Safe and Sound*³³ as well as a UK specific briefing on what the UK can do to ensure respect for the best interests of unaccompanied asylum seeking children³⁴. UNHCR's concerns include shortcomings in the application of the best interests principle during the asylum decision-making stage as well as when

³⁰ Department for Education, *Statutory guidance on Care of unaccompanied and trafficked children*, July 2014
<https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>

³¹ Department for Education, *Safeguarding: Written statement - HCWS232* , November 2016,
<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-11-01/HCWS232>

³² UNHCR, *Submission to the UK Parliamentary Joint Committee on Human Rights Inquiry into the UK's compliance with the UN Convention on the Rights of the Child*, 26 February 2015,
<http://www.unhcr.org/uk/protection/basic/5756e9dc7/unhcr-submission-to-the-uk-parliamentary-joint-committee-on-human-rights.html>

³³ UNHCR, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>

³⁴ UNHCR and UNICEF, *What the UK can do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children*, 2016,
<http://www.unhcr.org/uk/protection/basic/5756e8c07/what-the-united-kingdom-can-do-to-ensure-respect-for-thebest-interests.html>

identifying durable solutions³⁵, a lack of inter-agency coordination, as well as the need for adequate safeguards, including independent guardians, to ensure sufficiently child focused procedures are in place. These documents aim to support States in applying the best interests principle when dealing with unaccompanied and separated children in their territory and are consistent with the Committee on the Rights of the Child Concluding observations on the fifth periodic report of the UK³⁶.

The Joint Committee on Human Rights made a recommendation during its 2013-2014 session that the UK Government should evaluate the case for the establishment of a formal best interests determination process. In its response the UK committed to doing so³⁷, however, to date no timeframe has been given as to when the UK government will undertake such an evaluation. This recommendation was reiterated in 2016 by the Committee on the Rights of the Child³⁸ noting that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative, policy matters and judicial decisions affecting children, specifically mentioning immigration, asylum and refugee status. UNHCR is concerned that delaying the identification of a durable solution to unaccompanied and displaced children is incompatible with the best interests principle.

Recommendations:

- The UK Government should commit to exploring and establishing a best interests determination procedure for children, using UNHCR and UNICEF's *Safe & Sound* as a framework for development.
- The UK Government should strengthen procedures to ensure that all relevant durable solutions are considered at the earliest possible stage for unaccompanied and separated children including long-term settlement and integration in the UK (with the most appropriate form of leave considered on a case-by-case basis), relocation to a third country (whether via family reunion or resettlement) or return to their country of origin.

• National Referral Mechanism

In the UK, applicants that are in the asylum procedure and show indicators of trafficking at any point in the process or who base their asylum claim wholly or in part on human trafficking are required to be referred by decision makers to the National Referral Mechanism (NRM), provided the applicant consents to entering the process³⁹.

³⁵ UNHCR, *Considering the Best Interests of a Child within a Family Seeking Asylum*, December 2013, <http://www.refworld.org/docid/52c284654.html>

³⁶ UNCRC, *Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, 12 July 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

³⁷ Page 4, Recommendation 3 of The Government Response to the First Report from the Joint Committee on Human Rights Session 2013-2014 HL Paper 9 / HC 196: Human Rights of unaccompanied migrant children and young people in the UK, February 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279104/UnaccompaniedMigrantMinors.pdf

³⁸ UNCRC, *Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, 12 July 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

³⁹ UK Home Office Asylum Policy Instruction, *Asylum Interviews*, 31 March 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf
Victims of Human Trafficking Guidance for Frontline staff, January 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275239/Human_trafficking.pdf

UNHCR is aware of reports that Home Office's own First Responders at the Asylum Screening Unit often fail to spot trafficking indicators at the asylum screening interview.⁴⁰ This is partly due to the fact that the asylum screening form has no questions specifically designed to elicit information about potential trafficking and asylum screening officers are instructed to limit questioning on the substantive elements of the asylum claim at this stage. This can limit the ability of screening officers to identify potential victims of trafficking in turn preventing the receipt of appropriate assistance and care.

Furthermore, adults referred to the NRM have a formal reflection and recovery period in which they cannot be removed from the UK, but for children following a referral to the NRM this period does not exist. In practice this leaves little choice but for the child to lodge an asylum claim in order to regularise their immigration status. Often this does not provide adequate time for children to build trust and disclose information to figures of authority, resulting in adverse findings made in asylum claims⁴¹.

The timing of the asylum decision presents another obstacle facing asylum applicants in being correctly identified as victims of trafficking. Applicants referred to the NRM who also raise international protection concerns are likely to proceed under the asylum procedure, generally receiving an earlier asylum decision than a Conclusive Grounds decision despite the 45 day reflection and recovery period. As a result, reasoning used to dismiss the credibility of an asylum claim is often relied upon in subsequent trafficking decisions, including minor inconsistencies, discrepancies and the use of fraudulent travel documents and passports⁴². UNHCR has sought to strongly encourage the government to not only strengthen asylum decision-making but also include safeguarding measures to recognise the interplay between the trafficking procedures and the asylum process to ensure applicants in need of international protection are recognised as such⁴³.

Concerns regarding the UK's adherence to Article 11(5) of the EU Directive 2011/36/EU have also been raised in cases where the applicant has not been correctly identified as a victim of trafficking, and is given assistance and care under the asylum procedure. UNHCR is aware of concerns surrounding the suitability of asylum support accommodation for some victims of trafficking, such as shared rooms and mixed gender accommodation. UNHCR recommends that the UK government ensure that accommodation needs are accurately assessed for victims, including those that have chosen to opt out of the NRM but seek asylum on grounds of human trafficking.

The Home Office commissioned a review of the NRM in April 2014⁴⁴, the findings of which reflected several of UNHCR's concerns. The review proposed fundamental changes to the system. These include the creation of a comprehensive awareness strategy to increase the recognition of victims of human trafficking and the provision of support based on an assessment of individual needs of the victim, an overhaul of the First Responder role replacing this with accredited Safeguarding Leads as well as the creation of regional multi-disciplinary panels to make Conclusive Grounds decisions.

⁴⁰ The Anti-Trafficking Monitoring Group, 'The National Referral Mechanism: A five year review,' February 2014, p8, <http://webarchive.nationalarchives.gov.uk/20141202113128/https:nrm.homeoffice.gov.uk/wp-content/uploads/2014/08/ATMG.pdf>

⁴¹ Ibid, page 25

⁴² Ibid, page 11

⁴³ UNHCR Comments to the Draft Modern Slavery Bill, *Written Evidence to the Parliamentary Joint Committee*, February 2014, http://www.unhcr.org.uk/fileadmin/user_upload/docs/Draft_Modern_Slavery_Bill_UNHCR_Written_Evidence_-February_2014_01.pdf

⁴⁴ UK Home Office, *Review of the National Referral Mechanism for Victims of Human Trafficking*, November 2014

<https://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking>

The Home Office is currently in the process of producing an implementation plan to show how the recommendations will be translated into practice. The proposed changes to the NRM will have a direct impact upon victims of trafficking that are also in need of international protection. This is encouraging and UNHCR is closely following developments in this area.

UNHCR supports the inclusion of a defence for victims of trafficking who commit an offence under the *Modern Slavery Act 2015*⁴⁵. However, we consider the impact of the section 45 non-penalization provision to be somewhat weakened by its criteria, particularly the use of a 'reasonable persons' test⁴⁶, even in the case of children. The provision provides that a victim of trafficking is not guilty of an offence if a 'reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act'. This does not reflect a full appreciation of the particular situation of victims of trafficking and that they are frequently compelled to commit offences due to control and exploitation. Further, the vulnerability of victims of trafficking means that a rational consideration of realistic alternatives to committing an offence is often unlikely.

The UK Government has also introduced an 'offence of illegal working' in the *Immigration Act 2016*⁴⁷, which, if considered in isolation, many victims of trafficking may fall within given the compulsion they face to undertake illegal work. This offence does not make specific reference to the defences in the *Modern Slavery Act 2015*, although they should apply. This could potentially give rise to a risk of victims of trafficking being prosecuted if the relevant authorities are not adequately informed.

UNHCR is concerned by issues highlighted in the Government's NRM review⁴⁸ of the current approach to decision-making for victims of trafficking with asylum claims; in particular the conflation of the two decisions. For example, trafficking victims were asked if they preferred asylum and trafficking interviews together, there was evidence of decisions being made at the same time, the same language and phraseology being used in both decisions and decision letters being sent together in the same envelope⁴⁹. The NRM review sought to address this by recommending a multidisciplinary body to assess conclusive grounds decisions with a view to ceasing the sole decision-making roles of the Home Office. An NRM pilot is currently underway to test the mechanics of a multi-disciplinary body in practice.

UNHCR also notes that in the UK there is no formal appeal procedure for negative NRM decisions and is concerned that this can have a detrimental impact for victims of trafficking making an international protection claim as the findings from the NRM decision can impact the asylum decision.

⁴⁵ Section 45(1)(d), Modern Slavery Act 2015, <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

⁴⁶ Ibid.

⁴⁷ Section 34, Immigration Act 2016

<http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted/data.htm>

⁴⁸ UK Home Office, *Review of the National Referral Mechanism for Victims of Human Trafficking*, November 2014

<https://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking>

⁴⁹ Ibid, page 43

Recommendations:

- Any planned reforms following the NRM pilots should allow victims of trafficking accessing the asylum procedure to undergo a fair process to establish any well-founded fear of persecution they may have;
- Complementarity should be achieved between the operation of the NRM and the asylum and statelessness processes;
- A statutory right of appeal in the NRM is needed to allow for independent oversight and continued improvement in decision-making; and
- Guidance is required for the Home Office and the Crown Prosecution Service to ensure that victims of trafficking with international protection needs are not penalised under Section 34 of the Immigration Act 2016

4) Concluding observations

UNHCR has repeatedly called for a strong and coordinated European response to the refugee crisis, which shows solidarity and commitment to EU and international human rights principles. UNHCR welcomes measures which encourage and support Member States in developing procedures and practice which meet these objectives and also foster better inter-agency and State cooperation.

States, including the UK, should ensure that future actions are child-focused, proactively address protection needs and risks faced by children, and are guided by the best interests of the child as a primary consideration.

UNHCR in the UK
June 2017