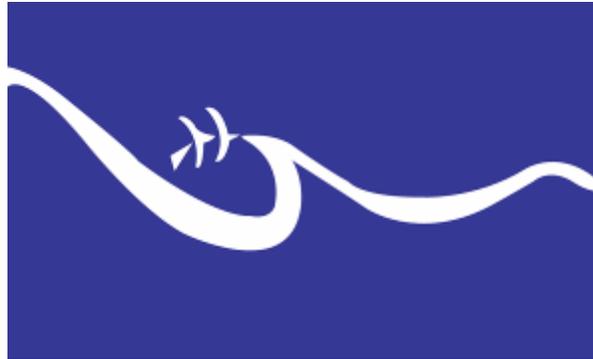


REGIONAL CONFERENCE ON MIGRATION



REGIONAL GUIDELINES FOR SPECIAL PROTECTION IN CASES OF THE REPATRIATION OF CHILD VICTIMS OF TRAFFICKING

**Regional Conference on Migration (RCM)
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REGIONAL GUIDELINES FOR SPECIAL PROTECTION IN CASES OF THE REPATRIATION OF CHILD¹ VICTIMS OF TRAFFICKING

Introduction

Trafficking in persons is a serious crime and an intolerable violation of human rights. Its victims are vulnerable members of the population, often children, who are recruited, transported, transferred, harboured or received, for the purpose of exploitation, including exploitation as defined in the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking in Persons Protocol)*, supplementing the United Nations *Convention Against Transnational Organized Crime*, as well as in applicable domestic legislation of RCM member states.

Combating trafficking in persons transcends borders and requires bilateral and regional cooperation for prevention, assistance and protection to the victim, and the prosecution of the traffickers.

The countries of the Regional Conference on Migration (RCM)² may be countries of origin, transit and, destination for trafficked persons, including children. They are also signatories of international legal instruments that clearly establish the

¹ For the purpose of these guidelines, the Spanish version uses the term “boys, girls and adolescents” in place of the term “child”, which is used in the English version. The terms “boys, girls and adolescents” and “child” are both defined as per the definition of “child” in the article 3.d of the UN Trafficking in Persons Protocol.

² The Regional Conference on Migration, also known as the “Puebla Process” is a forum for dialogue and exchange of information for promoting the development of national policies related to migration. The member countries are: Belize, Canada, Costa Rica, El Salvador, The United States, Honduras, Mexico, Nicaragua, Panama and The Dominican Republic. For more information, refer to: http://www.crmsv.org/pagina_descripcion.htm

responsibility of state parties to fight against trafficking in persons, including the UN *Trafficking in Persons Protocol*.

Other relevant international legal instruments include: the *Convention on the Rights of the Child (CRC)* and its *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, International Labor Organization *Convention 182* concerning the prohibition and immediate action for the elimination of the worst forms of child labor and the Inter-American *Convention on the International Traffic in Minors*.

In using these guidelines, Member States should consider the best interest of the child and respect of his or her human rights. Member states are also committed to protecting them from all forms of exploitation, as defined in the UN *Trafficking in Persons Protocol*.

Whenever a child victim of trafficking is transported from one country to another for any form of exploitation, it is the duty of involved States to take all steps necessary in order to protect the rights of the victim. Therefore, States have the responsibility to detect and provide the protection needed by the victim, including protection of their right to life and to be protected against any form of discrimination

Repatriation is one of the protection mechanisms that involves sending a child victim back to his or her country of nationality or residence, family and community, where deemed appropriate and in the best interest of the child.

Member States should act to ensure that the best interests of the child are taken into consideration, that child victims of trafficking are repatriated safely, with dignity, and without undue delay, and that they are treated according to internationally accepted practices.

To determine if the repatriation is in the best interest of the child, States should cooperate in ascertaining his or her identity and nationality, the family and community situation to which that person could repatriate, and protective measures that could be required for his or her social reintegration.

*REGIONAL GUIDELINES FOR SPECIAL PROTECTION IN CASES OF THE
REPATRIATION OF CHILD VICTIMS OF TRAFFICKING*

I. General remarks

RCM Member States, consistent with domestic laws, in a manner that respects the human rights of children, the best interest of the child, and taking into consideration age, gender, and ethnicity, should use these guidelines as a reference in carrying out the safe repatriation of child victims of trafficking.

The content of these Guidelines shall not affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, the right to seek asylum, when applicable, in accordance with the 1951 Convention on the Status of Refugees and its 1967 Protocol, and the principle of *non-refoulement* as contained therein.

1. Objective

The purpose of these "Regional Guidelines for the Special Protection in Cases of Children Victims of Trafficking in Persons" is to foster cooperation among RCM Member States and provide guidance on how to proceed when a child victim of trafficking is discovered, as well as actions to transfer and repatriate the victim, if it is deemed appropriate and in the best interests of the child.

2. Definitions

- a. **Trafficking in persons:** The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour

or services, slavery practices similar to slavery, servitude or the removal of organs *in accordance with Article 3.a of the UN Trafficking in Person Protocol*.

- b. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in *subparagraph (a) Article 3.c of the UN Trafficking in Persons Protocol*.
- c. "Child"³ shall mean any person under eighteen years of age (*Article 3.d of the UN Trafficking in Person Protocol*).

II. Identifying child victims and providing immediate humanitarian assistance

3. Identification of a child victim of trafficking When a State identifies a child victim of trafficking or suspects there might be one, be it on the basis of a report from a State, a person or institution, from a victim's request for help, from a finding that results from a police operation, or from any other source, immediate humanitarian assistance is to be provided by the State or a competent authority, including civil society actors with relevant experience.

4. Humanitarian assistance components.

Each state should, in accordance with domestic legislation, provide humanitarian assistance which may include the following:

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- a. Transferring the victim to a safe and appropriate location.
- b. Reassuring the victim that he or she is safe, providing them with information on his/her human rights and making them aware that the intention is to help and protect them.
- c. Treating the victim with respect and taking his/her views into account when possible.
- d. Interviews of child victims should be gender and age sensitive and be carried out by the appropriate qualified authorities, and be consistent with domestic laws and processes in place.
- e. Satisfying basic emergency needs, taking into account the needs specific to the child's gender and age and providing medical and/or psychological attention where required.

5. Referral to the appropriate public institution or other organization with relevant experience

The institution that has the first contact with the victim and provides humanitarian assistance should contact immediately the appropriate institution, which should formally assume protection and legal responsibility,

6. Family members

If the victims constitute a family, the appropriate institution should provide the family protection, and efforts should be made to ensure that the family is not

separated except in cases where such separation is necessary to ensure the best interests of the child.

7. Immediate reporting

Any agency that knows of or suspects someone being a child victim of trafficking should immediately report it to the appropriate institutions, so that the victim can be rescued, receive protection and immediate humanitarian assistance, and so that the appropriate authorities can initiate the actions outlined in these guidelines, in accordance with domestic law.

III. Special protection procedure for the repatriation of the child in keeping with his or her best interests

8. Special Protection

While a determination is being made as to whether it is in the best interests of the victim to be repatriated to his or her country of nationality or residence, the appropriate institution should provide the child victim with special protection, in accordance with domestic legislation, and which should include the following:

- a. Safe, suitable, and specialized lodging. When temporary shelter is to be provided in an institution, steps should be taken to ensure that it is one that is adequate for the victim's security and respect of their human rights.
- b. A diet appropriate to the age of the victim to the extent possible.

- c. Access to immediate appropriate medical and psychological assistance, as well as education and recreational opportunities to the extent possible and consistent with domestic law.
- d. Protection of the victim's identity. The victim's personal information should be shared, as necessary, only with those persons of relevant institutions directly involved in the special protection and assistance to the victim, or when required by competent authorities for investigation of the crime, subject to domestic legislation on privacy of information.
- e. Respect for the child's right to express his or her view, and to have that view taken into consideration, and to be informed about the legal proceedings involving him or her, in a language that can be understood at his or her age and level of maturity.

9. In accordance with domestic legislation, the appropriate institutions should keep statistics on all cases of child trafficking, disaggregating it in such a way to allow assessments for a better understanding of the problem. This information should be comparable and could be shared among RCM member states, ensuring that the identity of the victims is appropriately protected.

IV. Communication between appropriate institutions

10. Contact with diplomatic or consular representatives.

In accordance with the *Vienna Convention on Consular Relations*, and through the corresponding diplomatic or consular channels, the appropriate institution should communicate to the diplomatic or consular representatives of the country of nationality or residence of the victim, his or her location and the protection measures undertaken if it does not compromise his or her safety or is otherwise contrary to his or her best interest. The diplomatic or consular representative should initiate the process for identifying and providing documentation for the victim without undue or unjustified delay, granting consular protection, and assisting with the possible repatriation. This should be coordinated with the national authorities of the victim's country of nationality or residence.

11. Contact between appropriate counterpart institutions.

The appropriate institution providing protection to the victim may contact the appropriate institution in the victim's country of nationality or residence; this contact should not hinder or compromise the communication or coordination that takes place in diplomatic or consular channels. Should there be more than one appropriate institution, the States must designate the one responsible for establishing contact and communication with the other State's institution. To the extent possible, States should determine and share with other member countries a list of designated appropriate institutions and/or organizations working with child protection that also have relevant experience.

12. Assessment of the victim's destination upon repatriation.

In accordance with domestic legislation, the State providing protection should take into consideration submissions from the appropriate institution(s) in the country of which the victim is a national or resident regarding their assessment of the family situation and protection measures available locally in taking a decision on repatriating the victim.

13. Decision to repatriate the victim. Considering the family situation of the victim and measures for protection and reintegration that will be carried out by the relevant institution in the country of which the victim is a national or a resident, and where this leads to the conclusion that the repatriation is in the best interest of the victim, the State providing protection should issue the appropriate decision.

14. Decision not to repatriate the victim. In those cases where the State providing protection has reasonable grounds to conclude that the repatriation carries a serious risk for the victim or his or her family, the State may offer legal and/or temporary or permanent humanitarian alternatives to repatriation, including when applicable to ensure access to asylum procedures, consistent with the domestic legislation of each country.

V. Transfer of the Victim

15. Determining the date, time and means for repatriation

The appropriate institutions and authorities in the country providing protection as well the country of which the victim is a national or resident should coordinate the logistical details for the transfer.

16. Communication. The victim should always be kept informed of actions undertaken throughout their process. The diplomatic and/or consular representatives should also be informed if it is determined that such action does not pose a threat to the victim's safety and is not contrary to his or her best interests. The victim should be informed in a clear manner of the date for repatriation to his or her country of nationality or residence, and the means by which such repatriation will occur.

17. End of protection measures.

Once the decision to repatriate the victim has been made, the relevant institution providing protection should request that the competent authority lift any legal provisions preventing exit from the country, if any had been in place. Once the victim is repatriated, other protection measures that have been applied should end.

18. Forwarding of relevant information.

In accordance with its domestic legislation, the country having provided protection should make available relevant information to the appropriate institution in the country that is receiving the victim, with the objective of promoting his or her physical and psychological recovery and reintegration, among other things. The

information should be referred with an exclusive goal of follow up and its confidential character should be maintained.

VI. Criminal Proceedings

19. Procedural Measures.

If possible and in accordance with domestic legislation, certain procedural measures should be considered to avoid revictimization. In this sense, States should consider measures so that only persons trained in dealing with child victims may take statements from child victims of trafficking.

20. Cooperation in criminal matters.

States should make efforts, if considered appropriate, to put into practice, mutual legal assistance agreements for criminal matters so that the victim's physical presence at the trial is not required.

21. Cooperation between counterpart institutions.

The appropriate institutions of the victim's country of nationality or residence could avail themselves of bilateral and regional cooperation mechanisms with the State that protects the victim to provide follow up assistance on cases.

Annex

Ratification of the international legal instruments on the human rights of child victims of trafficking in persons

Member countries of the RCM : Ratification dates of the international legal instruments on the human rights of Children victims of trafficking in persons					
Country	International Legal Instrument				
	CRC (1)	PCRC-1 (2)	C182 (3)	Inter.Con. (4)	Trafficking Protocol (5)
Belize	May 2, 1990	Dec.1, 2003	Mar. 6, 2000	Jun 11, 1997	Sep 26, 2003
Canada	Dec. 13, 1991	Sep. 14, 2005	Jun. 6, 2000	--	May 13, 2002
Costa Rica	Aug 21, 1990	Apr. 9, 2002	Sep. 10, 2001	May 22, 2001	Sep. 9, 2003
El Salvador	July 10, 1990	May 17, 2004	Oct. 12, 2000	--	Mar. 18, 2004
United States	--	Dec. 23, 2002	Dec. 2, 1999	--	Nov. 3, 2005
Guatemala	June 6, 1990	May 9, 2002	Oct 11, 2001	--	April 1, 2004
Honduras	Aug. 10, 1990	May 8, 2002	Oct 25, 2001	--	--

Mexico	Sep. 21, 1990	Mar. 15, 2002	Jun. 30, 2000	--	May. 4, 2003
Nicaragua	Oct. 5, 1990	Dec. 2, 2004	Nov. 6, 2000	Oct. 7, 2005	Oct 12, 2004
Panama	Dec. 12, 1990	Feb. 9, 2001	Oct 31, 2000	Jan. 18, 2000	Aug 18, 2004
Dominican Republic	June 11, 1991	--	Nov 15, 2000	--	--

(1) Convention on the Rights of the Child

(2) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

(3) ILO Convention # 182 on Eliminating the Worst Forms of Child Labor

(4) Inter-American Convention of the International Traffic in Minors

(5) Supplementary Protocol to Prevent, Suppress and Punish the Trafficking of Persons , Especially Women and Children, which complements the UN Convention Against Transnational Organized Crime.

Sources:

(1) <http://www.ohchr.org/english/countries/ratification/11.htm>, 02/24/2006

(2) http://www.ohchr.org/english/countries/ratification/11_c.htm, 02/24/2006

(3) <http://www.ilo.org/ilolex/english/convdisp1.htm>, 02/24/2006

(4) <http://www.oas.org/juridico/spanish/firmas/b-57.html>, 02/24/2006

(5) http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html, 02/24/2006