

PHILIPPINE GUIDELINES FOR THE PROTECTION OF TRAFFICKED CHILDREN

The present document sets out principles and guidelines to promote the human rights of trafficked children in the Philippines. This document has been developed based on relevant international and national human and child rights instruments, national laws and other relevant guidelines that include the Convention on the Rights of the Child, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the United Nations High Commissioner for Human Rights Recommended Guidelines on Human Rights and Human Trafficking, the Guidelines for Protection of the Rights of Children Victims of Trafficking, UNICEF Global Guidelines, ILO Convention 182 (Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor), Bohol Document (August 2004), the Proposed Southeast Asian Guidelines for the Protection of the Rights of Trafficked Children (Bangkok, March 2006), Republic Act No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act), Republic Act No. 9231 (An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child), Republic Act No. 9208 (Anti-Trafficking in Persons Act of 2003) and other relevant guidelines and policies issued by the Philippine government.

1. DEFINITION OF TERMS

1.1. Child

1.1.1. A child is any person under eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.¹

1.2. Child Trafficking

1.2.1. Child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, within or outside a country, which shall include but not be limited to child prostitution, child pornography and other forms of sexual exploitation, child labour, forced labour or services, slavery or practices similar to slavery, servitude, removal and sale of organs, use in illicit/illegal activities and participation in armed conflict. For the purposes of these guidelines, the recruitment, transportation, transfer, harbouring or receipt of a child by means of adoption or marriage for the purpose of exploitation shall likewise be considered child trafficking.

¹ Definition taken from RA 9208

1.2.2. Child trafficking can also mean trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration or barter.

1.2.3. The consent of the child or of the person exercising custody over the child to trafficking or any of its elements, is irrelevant and does not exempt the offender from or lessen his/her liability for committing acts that constitute or promote child trafficking.

1.2.4. The employment of threat or use of force or other forms of coercion, abduction, fraud, deception, 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 the child, is irrelevant and does not constitute an essential element in the crime of child trafficking.

1.3. Trafficked Child

1.3.1 A trafficked child is a child who has been recruited, transported, transferred, harboured or received for the purpose of exploitation, within or outside a country.²

1.4. Service Provider

1.4.1 Service providers shall include all those persons working with or providing services to a trafficked child, whether from government or non government organizations.

1.5. Inter-Agency Council Against Trafficking (IACAT)

1.5.1. The Inter-Agency Council Against Trafficking (IACAT) shall refer to the inter-agency body created under Section 20 of Republic Act 9208.

1.5.2. The Local Inter-Agency Council Against Trafficking shall refer to the local institutional structure created at the regional, provincial, city and/or municipal level to coordinate and monitor the implementation of Republic Act 9208 within their jurisdiction.³

2. GENERAL PRINCIPLES

The following principles shall be considered at all stages of care and protection of trafficked children.

2.1. Rights of the Trafficked Child

² No section in RA 7610 provides a direct definition of a “trafficked child”

³ Definition taken from Subic Document (September 2005)

2.1.1. A trafficked child has the right to full respect and the exercise of his/her survival, development, protection and participation rights, as recognized under the Convention on the Rights of the Child.

2.1.2. A trafficked child has special needs and therefore, has the right to special protection measures.

2.1.3. A trafficked child is a victim of human rights violations. He/she should not be treated as an offender, or subjected to or threatened with criminal sanctions for any offense related to his/her situation as a trafficked child.

2.2. Best Interests of the Child

2.2.1. In all actions concerning a trafficked child, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

2.2.2. Best interests of the child shall refer to the totality of the circumstances and conditions that are most congenial to the survival, protection and feelings of security of the child, and are most encouraging to his physical and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.⁴

2.3. Right to Non-Discrimination

2.3.1. A trafficked child has the right to the same protection and rights in the country/place of origin, transit or destination regardless of his/her status, nationality, race, color, sex, language, faith, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status.⁵

2.3.2 A trafficked child shall be discriminated against or stigmatized.

2.3.3. Whenever applicable, these guidelines shall also apply to children conceived and subsequently born of trafficked persons during or as a result of a trafficking incident.

2.3.4. The identification and protection of, and provision of assistance to a trafficked child shall not depend on his or her willingness or ability to provide the police with information or to testify against his or her traffickers. A child's identification as a child victim of trafficking shall not

⁴ Definition taken from the Supreme Court Rule on Examination of a Child Witness

⁵ This also refers to cases of internal trafficking

reduce or restrict his or her entitlement to seek asylum or to be recognized as a refugee or as a legal migrant.⁶

2.4. Respect for the Views of the Trafficked Child

2.4.1. A trafficked child has the right to freely express his or her views in all matters affecting him or her, including in relation to the legal process, interim care and protection and the identification and implementation of a durable solution.

2.4.2. The views of a trafficked child shall be given due weight in accordance with his/her age, maturity, evolving capacities and best interests.

2.5. Right to Information

2.5.1. A trafficked child shall be provided access to information about all matters affecting him/her, including entitlements, services available and the family reunification and/or repatriation process.

2.5.2. Information shall be provided in a language which a trafficked child is able to understand. Suitable interpreter/translator should be provided whenever necessary.

2.6. Right to Confidentiality

2.6.1. All necessary measures shall be taken to protect the privacy and identity of a trafficked child. The name, address or other information that can lead to the identification of a trafficked child or his/her family members, shall not be revealed to the public or media.

2.7. Respect for the Child's Ethnic, Cultural, Faith and Religious Identity

2.7.1. A trafficked child's ethnic, cultural, faith and religious identity shall be respected at all times.

2.7.2. Where applicable, assistance shall be provided to a trafficked child in order to enable him/her to exercise or practice his/her ethnic, cultural, faith or religious practices.

2.8. Responsibility of the State

2.8.1. The State shall take positive action to combat child trafficking and to protect and assist trafficked children.

⁶ Adopted from the UNICEF Global Guidelines (August 2006)

2.8.2. The State shall take all appropriate legislative, judicial, administrative and other measures to protect and assist trafficked children. These measures shall be taken expeditiously and as far as practicable.

2.8.3. The State shall allocate the necessary budget to ensure trafficked children's security from threat and reprisals from traffickers, food and accommodation, access to health care and psychosocial support, and long-term care and assistance.

2.8.4. The State shall also provide the necessary resources for the implementation of capacity-building programs for service providers and for public information campaigns against the trafficking of children.

2.8.5. The State shall be responsible for taking pro-active measures to protect service providers from reprisals from traffickers. These measures shall extend to persons working in non-government organizations, civil society, faith-based and religious groups.

2.8.6. During and after emergency situations that may increase vulnerability of children to trafficking, the State shall take all practicable measures to protect children from trafficking.

2.8.7. The State shall exert efforts to enter into extradition treaties and other bilateral or multilateral agreements to enhance the prevention of child trafficking and protection of trafficked children.

2.8.8. The State shall also endeavor to include offenses of trafficking in persons among extraditable offenses.

3. SPECIFIC GUIDELINES

3.1. Detection and Identification of a Trafficked Child

3.1.1. Presumption of Age

3.1.1.1. Aside from birth documents, biometric data, baptismal certificates, identification cards, and school records of the trafficked person, the physical appearance, psychological maturity, personal statement, and consensual medical or dental examinations may be considered in determining the age of the trafficked person.

3.1.1.2. Legally recognized documents attesting to the birth or age of the trafficked person from persons who have personal knowledge about these facts can likewise be considered. Documents recording cultural or religious practices which indicate age may also be considered.

3.1.1.3. Where the age of the trafficked person is uncertain and there are indicators to believe that the person is a child, the presumption shall be that the person is a child.

3.1.1.4. Pending a reasonable time for the verification of the trafficked person's age, he/she should be treated as a child and accorded with all special protection measures stipulated in these guidelines.

3.1.2. Pro-Active Identification Measures

3.1.2.1. The State shall develop and adopt effective procedures for the rapid identification of trafficked children. These may include the strengthening of birth registration procedures, the listing and recording of missing and exploited children, and the creation of a checklist of warning signs that may indicate that a child is a victim of trafficking.

3.1.2.2. The State shall train all persons having or most likely to have direct contact with trafficked children (i.e. seaport and airport personnel, immigration officers, border patrols, law enforcement officers, social welfare and health care providers, etc.) in rapid identification procedures. This may include training in the use of a checklist of warning signs that may indicate that a child is a victim of trafficking.

3.1.2.3. Surveillance must be respectful and protective of the rights of children. At all times, the sexual exploitation of children as a means to prove the exploitative purpose of trafficking shall not be employed.⁷

3.1.2.4. The State and non-government organizations shall conduct intensive efforts to provide information to families and communities about the issue of child trafficking. Procedures for reporting and referring suspected and actual child trafficking cases shall be popularized and enforced.

3.1.2.5. Measures to coordinate information-sharing between government agencies, including law enforcement authorities, social welfare agencies and non-government organizations shall be adopted to facilitate rapid identification of trafficked children.

3.1.2.6. The IACAT, local IACAT, or appropriate government authorities and the barangay officials where the trafficked child or possible trafficked child is found, shall immediately be informed about the trafficking incident.

⁷ Participants in the Survivors Speak: National Consultation with Children and Young People based this point on experience wherein law enforcers themselves sexually abused rescued victims to establish that the child has been exploited in the course of being trafficked.

3.1.2.7. Barangays, especially those where trafficking incidents occurred or have been reported, should adopt measures through their Barangay Councils for the Protection of Children (BCPC)⁸ to prevent child trafficking and to facilitate timely reporting of suspected trafficking incidents.

3.2. Initial Contact

3.2.1. Initial Action

3.2.1.1. Upon identification of a trafficked child or possibly trafficked child, any person shall immediately contact the Department of Social Welfare and Development (DSWD), Local Social Welfare and Development Office (LSWDO) or DSWD-licensed/accredited NGOs to assist in responding to the immediate needs of the child.

3.2.1.2. Where possible and appropriate, the parents/guardian must be informed of the status of the child and the circumstances of the child as possible victim/survivor of trafficking in persons.⁹

3.2.1.3. Service providers should protect the trafficked child's right to privacy and prohibit media exposure and interviews.

3.2.1.4. Photographs and video footages taken during rescue or raids should only be used as evidence and not for broadcast.

3.2.1.5. In cases of rescue and recovery operation, the initial interview by the law enforcement officer shall only be limited to the collection of demographic data like the name, age, name of parents/guardians, last known address and contact numbers and country/place of origin and/or nationality. The law enforcement officer is tasked to assist the trafficked child in retrieving his/her personal belongings.

3.2.1.6. A trafficked child or suspected trafficked child shall be removed from the place where he/she is found and immediately brought to a safe location and environment, preferably with the DSWD, LSWDO, or NGOs accredited by the DSWD. A trafficked child should not be kept at police stations or detention centers.

3.2.1.7. Immediately after the rescue, the child should be briefed and debriefed by a social worker before being interviewed by law enforcers. The social worker should explain the

⁸ The Barangay Council for the Protection of Children chaired by the punong barangay serves as the umbrella organization for all children's concerns at the barangay level. It is the mechanism to address all issues concerning children, including trafficking.

⁹ This may also refer to cases where parents of the child are involved in the acts of trafficking.

investigation procedures to the child and help in initially overcoming the fear and stress caused by the rescue.¹⁰

3.2.1.8. The DSWD, LGUs or NGOs should ensure that a safe place should be made available at any time to rescued children. As much as possible, the children should be accompanied by a social worker or a qualified house parent.¹¹

3.2.1.9. Trafficked children who are siblings should remain together whenever possible. In cases where siblings are not able to stay together, efforts are to be made to ensure that the siblings have regular contact with each other.

3.2.1.10. At no time should a trafficked child be placed in the same room or in direct contact with the suspected trafficker/s.

3.2.1.11. For the safety and security of a trafficked child, his/her whereabouts will be kept confidential.

3.2.2. Law Enforcement Procedures¹²

3.2.2.1. A trafficked child should be given some time to rest before he/she is interviewed.

3.2.2.2. A law enforcement officer should respect a trafficked child's right to privacy. The expressed consent of the trafficked child and his/her parent/guardian or social welfare service provider should be acquired prior to the conduct of the interview.

3.2.2.3. As much as possible, the law enforcement officer and interpreter/translator, should be of the same gender as the trafficked child, dressed in civilian clothes, trained in administering child friendly/sensitive interview methods and knowledgeable about the issue of child trafficking.

3.2.2.4. Prior to the interview with a trafficked child, the investigator/officer should inquire whether prior interviews have already been conducted by an person or agency, and if so, he/she should acquire the results from such prior interview.

¹⁰ If these are not addressed, the possibility that children will lie in their sworn statements because of fear and confusion or subsequently recant their previous statements is increased.

¹¹ Because of unavailability of facilities for children rescued on a weekend, holiday or very late at night when government or NGO offices are already closed, it was shared during the *Survivors Speak: National Consultation with Children and Young People* that some rescued children experienced being placed in detention centers.

¹² The IACAT should develop a standard interview guide and mechanism that will gather all the information that may be needed by all agencies involved in the case.

3.2.2.5. The interview should be conducted in a language understood by a trafficked child. Where this is not possible, a qualified translator/interpreter should be provided.

3.2.2.6. The place of interview should be child-friendly. It should be in a room where only the law enforcer and social worker are present. A parent/guardian may accompany the child during the interview.

3.2.2.7. A trafficked child should be interviewed in a child friendly/sensitive environment. The confidentiality of proceedings and the protection of the trafficked child's right to privacy should at all times be respected.

3.2.2.8. The consent of the trafficked child and his/her parent/guardian or social worker must be secured before using any recording equipment such as video cameras or tape recorders. The purpose for the use of cameras, video cameras and tape recorders, should be explained to the children.¹³

3.2.2.9. The law enforcer should ensure that the child has read, reviewed, and is provided assistance in understanding the official documents that resulted from the interviews.¹⁴

3.2.2.10. After the interview, a trafficked child should be immediately turned over into the custody of the parent/guardian, social worker or accredited NGO.

3.2.3. Medico-Legal Examination

3.2.3.1. Doctors who perform the medico-legal examinations and the methodologies that they use should be child-sensitive and child-friendly. The IACAT should ensure that the law-enforcement and medico-legal agencies involved are equipped to observe child-friendly forensic investigation.

3.2.4. Other Interviews

3.2.4.1. All other interviews should be conducted in a child-friendly and respectful manner. Multiple interviews must be avoided and information gathered from previous interviews should

¹³ Children should not be forced to pose for "mugshots" or their fingerprints taken, as one of the recommendations of the children during the *Survivors Speak* "mugshots." The children further suggested at the IACAT dialogue that if their photograph is needed for profiling purposes, then the process of taking their picture should be child-friendly. This involves explaining to them the purpose of the picture and a child-friendly format or border to be used such as teddy bears at the background or picture borders. This will assure the children that the pictures will not identify them as criminals. The children noted that a teddy bear in the picture will make it a far cry from a "mugshot."

¹⁴ Law enforcers should respect and listen to the children. They should not assume that the child is lying. (Refer to "Manual on Preparing the Sworn Statement" by Child Protection Unit Network).

be taken into account. To facilitate this process, the IACAT shall endeavor to develop an integrated intake form.¹⁵

3.3. System of Referral, Coordination and Cooperation

3.3.1. International¹⁶ and Regional Mechanisms

3.3.1.1. The State shall endeavor to enter into international and regional agreements¹⁷ to define a system of referral and specific areas for coordination and cooperation,¹⁸ including the exchange of information among law enforcement agencies.¹⁹

3.3.1.2. The State shall endeavor to establish referral, coordination and cooperation mechanisms with international and regional non-government organizations, networks and coalitions actively working on the issue of trafficking.

3.3.1.3. The Department of Foreign Affairs (DFA) shall be primarily responsible for cross-border linkages and referrals for expeditious response to cases of cross-border trafficking.

3.3.2. National Mechanisms

3.3.2.1. The IACAT is the national body for coordinating and monitoring national efforts against trafficking in persons. It shall develop and ensure the implementation of the national strategic plan of action, including an effective system of referral and coordination among concerned government agencies and non-government organizations at the sub-national and local levels.

3.3.2.2. The national strategic plan shall provide a comprehensive and integrated program of action against trafficking in persons. It shall be periodically reviewed, evaluated and updated.

3.3.2.3. In the development of the plan, IACAT shall involve various stakeholders, including non-government organizations and civil society, in coordination with inter-governmental bodies.

3.3.2.4. The IACAT shall develop a database that will centralize all information about national efforts to combat trafficking and data/statistics on trafficking occurring within the Philippines or affecting Filipino nationals. Such database should take into due consideration the right to privacy of trafficked children, and the confidentiality of records and information.

¹⁵ This usually refers to trafficking victim's information record or form to be filled up by various service providers.

¹⁶ Trafficking also happens internationally

¹⁷ DSWD and PNP also has international agreements

¹⁸ This refers to international cooperation

¹⁹ i.e. China and Indonesia (on trafficking)

3.3.2.5. The IACAT shall be responsible for coordinating training programs of all relevant agencies and institutions.

3.4. Interim Care and Protection

3.4.1. Safe Places for Children²⁰

3.4.1.1. The DSWD, LGUs and DSWD-accredited NGOs shall provide safe places/spaces and designate specific areas/shelter for children victims/survivors of trafficking. Existing shelters and its facilities shall be improved to suit the needs of trafficked children.

3.4.1.2. Shelters, homes and crisis centers should be run by a sufficient number of well-trained and competent staff, such as, but not limited to, social workers trained in the case management of trafficked children. The gender of the staff should be appropriate for the needs of trafficked children.

3.4.1.3. A trafficked child should not be placed in detention centers, police cells, prisons or other detention facilities for children and/or adults or be in the private custody of law enforcement authorities. Nor shall a trafficked child be sheltered within military bases or at other inappropriate locations.

3.4.2. Support Services

3.4.2.1. The primary objective of interim care is the healing and recovery of the trafficked child. Immediate counseling, psychosocial services, legal aid, education, vocational skills training and other necessary and appropriate support services should be made available to the trafficked child and his/her family.

3.4.2.2. Mandated and relevant agencies shall ensure access to appropriate services of the trafficked child and his or her family and delivery of appropriate services to them.

3.4.2.3. Appropriate assistance shall be provided to children with special needs, particularly to pregnant children, and to children with disabilities, psychosocial distress, mental and/or other health concerns.

²⁰ Includes those which are existing and available in nearby areas (e.g. municipalities, provinces).

²¹ Output of consultation with children "Survivors Speak."

INTERIM CARE AND PROTECTION

Ensure the coordination of all agencies involved in helping the child. The child should be part of and be made aware of the whole helping process.

Centers should be child-friendly: It should have a home-like atmosphere and should not feel like a prison where children do not have the voice to express themselves. Here, the children felt that their participation is lost.

A newly admitted child in the center should be oriented and well-prepared before being mingled or joined with children who have been in the center for a long time. There should be a room/cottage specifically for newly admitted children in the center.

The social worker should identify children that have been in the center for a long time, who have the capacity to join and help newly admitted children to adjust in the center.

House parents

House parents should have a training course and a probationary period where it can be assessed if they have the capacity to practice what they have learned in the training. All children should be treated equally. There should be a way or procedure for the children to give their feedbacks in the center that will not endanger their interest or welfare.

Social Worker

Ensure that the social worker and the house parent are coordinating and communicating on the process of helping the child. Explore the possibility of a stay-in social worker at the centers.

Rules in the Center

The child should be consulted about changes of the rules in the center. These rules should be explained to them. Taking away privileges of the child, such as visitation rights, should not be used as a form of punishment.

Activities in the Center

Activities should not only be focused on their problems and personal issues. There should also be activities for bonding and sharing. Counseling should not only be done when the child did an offense or has a problem. If possible, a prayer room should be made available. Children should be taught life skills since the children should be prepared to face challenges in life or the situation of the family that she/he will return to.

3.4.3. Legalization of Status²²

3.4.3.1. The State²³ shall ensure that a trafficked child who is not a national/resident of the Philippines is not treated as an illegal migrant.

3.4.3.2. For a trafficked child without legal documentation, the State shall assist him/her in immediately securing legal status such as, but not limited to, the granting of a temporary visa and other appropriate visa arrangements.²⁴

3.4.3.3. The State shall ensure that a trafficked child is exempt from all government fees and charges normally imposed in the process of legalizing status.

3.4.3.4. The Department of Foreign Affairs (DFA) shall facilitate the issuance of certificates of birth registration to children born abroad to trafficked Filipinos.

3.4.3.5. It shall also negotiate with the host country for the regularization of stay of, or highest possible level of protection for a trafficked Filipino child found in that country.

3.5. Social Case management of Trafficked Children

3.5.1. Individual Case Assessment

3.5.1.1. Each trafficked child is entitled to have his/her case individually assessed to determine the appropriate handling of his/her case, with his/her best interests being the primary consideration. This assessment should be conducted by a social worker who has background/intensive training in child protection. A social case management intervention plan for the child should be developed in coordination with the multi-disciplinary team.

3.5.1.2. The social case management intervention plan should consider the preservation and integrity of the trafficked child's ethnic, cultural, faith and religious identity.

3.5.1.3. Where it is considered to be in the trafficked child's best interests, the social worker, in coordination with its counterparts in the country/place of origin and destination, should take steps to locate and assess the trafficked child's family in order to reunite him/her with them.

²² It is relevant to include this provision for children with foreign nationality.

²³ This is a concern not only of the Bureau of Immigration and the Department of Foreign Affairs, but also of other relevant agencies.

²⁴ Philippine policy allows foreign children to stay for a certain number of days in the country. Meanwhile, other countries in Europe grant humanitarian visa. In USA, there is no granting of temporary visa for those who are not willing to cooperate with the prosecution.

3.5.1.4. The implementation of the social case management intervention plan should be done through a multi-disciplinary team approach.

3.5.1.5. In the case of cross border trafficking, the embassy or consulate of the trafficked child's country of nationality in the Philippines should be contacted unless the child claims refugee status.

3.5.1.6. Continuous risk management²⁵ should be undertaken to ensure the safety of a trafficked child.

3.5.2. Identification of a Long-Term Solution

3.5.2.1. The handling social worker, in coordination with the local social welfare and development officer in the place of origin, and non-government organizations in both places of origin and destination, shall have the responsibility to identify the most appropriate long-term solution for a trafficked child.

3.5.2.2. The family of the trafficked child shall likewise be consulted in the identification of the long-term solution.

3.5.2.3. The views of a trafficked child should be taken into consideration when identifying a long-term solution and when considering whether he/she should be returned to his/her place of origin and/or reunited with his/her family.

3.5.2.4. The trafficked child's age, maturity and evolving capacity should also be considered.

3.5.2.5. In the process of identifying a long-term solution for a trafficked child, the family background, environment²⁶ and other circumstances, risk of reprisal from traffickers and security capability in the place of origin and destination, should be taken into consideration.

3.5.2.6. A trafficked child should not be returned to the place of origin unless suitable care arrangements have been established. The parents/guardian, relatives, social welfare service providers and the State must accept responsibility for the care and protection of the trafficked child in the place of origin.

3.5.2.7. In case of cross-border trafficking, the following shall be observed in addition to the specific guidelines mentioned above as regards the identification of a long-term solution:

²⁵ Here, the child is not yet reintegrated with the family, the family is still being located.

²⁶ Consider if the place is a war torn area

3.5.2.7.1. In coordination with the DFA, the responsible embassy/consulate or the nearest embassy/consulate to the country where a trafficked child is found, shall have the responsibility to facilitate the immediate repatriation of the trafficked child.²⁷

3.5.2.7.2. In cases where it is in the best interests of the trafficked child to be returned to the Philippines and/or the place of origin, the embassy/consulate of the Philippines shall immediately provide travel documents and coordinate with the DSWD for the safe return of the trafficked child.

3.5.2.7.3. However, if the repatriation of the trafficked child shall expose him/her to greater risk, the DFA shall make representation with the host government for the extension of the appropriate residence permits and protection as may be legally permissible in the host country.²⁸

3.5.2.7.4. The embassy/consulate shall provide the trafficked child with temporary shelter and other forms of temporary assistance. It may coordinate with non-government organizations and social welfare agencies in that country to ensure that appropriate services are provided to the trafficked child.

3.5.2.7.5. It shall likewise be the responsibility of the embassy/consulate to monitor the conditions and status of the trafficked child.²⁹

3.5.2.7.6. Upon return of the trafficked child to the Philippines, the DFA shall coordinate with the DSWD for the identification and implementation of a long-term solution.³⁰

3.5.2.7.7. In case the trafficked child is a foreign national, the DFA shall inform the nearest embassy/consulate of his/her country of origin of the trafficked child's situation unless he/she claims refugee status.³¹ In the meantime, the DSWD shall provide the appropriate services and other assistance.

²⁷ Department of Foreign Affairs: A fund specifically for the repatriation of trafficked children must be established, separate from the ATN and legal assistance funds.

²⁸ Department of Foreign Affairs: It must be emphasized that different countries have different ways of dealing with such requests. While the embassy/consulate will do its best to quickly resolve cases of trafficked children and their repatriation to the Philippines, it must be clarified that much will depend on the immigration rules and regulations of the host country.

²⁹ Department of Foreign Affairs: A fund specifically for the repatriation of trafficked children must be established, where the embassy/consulate may be reimbursed for the provision of temporary shelter and other forms of temporary assistance for the trafficked child while the child is still under the embassy's/consulate's care.

³⁰ Department of Foreign Affairs: The DFA's role will mainly be implementation of the long-term solution. With regard to identification of the long-term solution, the embassy/consulate may submit to the DFA the lessons learned in the handling of the case, for onward transmittal to the DSWD. The DSWD will then use these lessons learned to create procedures for the implementation of the embassies/consulates.

³¹ Department of Foreign Affairs: The DFA need not be the only agency to inform the trafficked child's embassy/consulate in the Philippines. Any government agency or NGO, once it is presented with a case of a foreign

3.5.3. Implementation of a Long-Term Solution

3.5.3.1. In cases where the trafficked child is a Filipino to be returned to the place of origin, the DSWD, in coordination with the LSWDO and NGOs, shall be primarily responsible for the return of the child to the place of origin.

3.5.3.2. The LSWDO shall ensure the implementation of the identified long-term solution.

3.5.3.3. In cases where the return of the trafficked child to the place of origin is not in his/her best interest, alternative family care should be arranged.

3.5.3.4. Long-term care arrangements should, as much as possible, favor family and community-based arrangements rather than residential/institutional care.

3.5.3.5. Long-term care arrangements should include protection for the trafficked child and his/her family against reprisals from traffickers, access to health-care, psychosocial support, social services, education and livelihood assistance.

3.5.3.6. Whenever possible, it would be the responsibility of the country of origin of the trafficked child found in the Philippines to cover the costs of repatriation. In the event that the country/place of origin does not have the financial capacity to cover such costs, the Philippines, in coordination with international organizations, shall provide assistance.

3.5.4. Monitoring and Evaluation of the Implementation of Long-Term Solution

3.5.4.1. Both the countries/places of origin and destination shall establish mechanisms for monitoring trafficked children to prevent them from being trafficked again.

3.5.4.2. The DSWD, in coordination with the local IACAT, NGOs and other stakeholders, shall establish systems/mechanisms to monitor and evaluate the implementation of the long-term solution.

3.6. Access to Justice

3.6.1. Criminal Proceedings

trafficked child in the Philippines, may directly inform the concerned foreign embassy/consulate about the case, while furnishing the DFA information about the case.

3.6.1.1. A trafficked child should be fully informed, in a language understood by him/her, of the advantages, risks and security issues that are associated with criminal proceedings, prior to deciding whether or not to cooperate in such proceedings.

3.6.1.2. A trafficked child should be given time to decide whether or not to cooperate as a witness in any legal case. If the trafficked child decides to cooperate his/her statement should be obtained at the earliest possible time, and in the presence of his/her parent, legal guardian, or social worker.

3.6.1.3. In cases of warrantless arrest, the trafficked child should be informed of the legal consequences if his/her statement is not secured on time. He/she should, however, be also apprised of other legal options and remedies.

3.6.1.4. Law enforcement authorities should conduct surveillance and other proactive measures to gather evidence to establish probable cause, even without the testimony of the victim.

3.6.1.5. At all stages of criminal proceedings, a trafficked child should be provided with free and competent legal representation.

3.6.1.6. The DOJ shall establish a mechanism for providing free legal assistance to trafficked children, in coordination with the DSWD, Commission on Human Rights, Integrated Bar of the Philippines (IBP), and other NGOs and volunteer groups, particularly before the filing of the complaint and during the preliminary investigation.

3.6.1.7. Wherever possible, the filing of the criminal case should not prevent or delay a trafficked child's return or reunification with his/her family.

3.6.1.8. The State shall consider providing measures to allow the confiscation, freezing and forfeiture of the assets of the trafficker/s so that the proceeds of the sale of such property may be used for the payment of compensation or outstanding liabilities to the trafficked child.

3.6.2. Civil Proceedings

3.6.2.1. A trafficked child and his/her parents/guardian should be informed of possibilities to claim compensation for the damage caused to him/her as a result of him/her being trafficked.

3.6.2.2. Civil actions are impliedly and simultaneously instituted in the criminal case. In such a case, the prosecutor serves as legal counsel for the trafficked child.³²

³² The child has an option to file a separate civil case.

3.6.2.3. The media should respect a trafficked child’s rights to privacy and confidentiality in all proceedings.

3.6.3. Victim/Witness Security and Protection³³

3.6.3.1. A trafficked child who agrees to testify as a witness should be provided with special protection measures to ensure his/her safety and if necessary, the safety of his/her family or of other persons significant to him/her.

3.6.3.2. Social workers, law enforcers and prosecutors must inform a trafficked child of the Witness Protection, Security and Benefit Program and when applicable, assist the child in applying for coverage in the program.

Things to consider when the child appears in court:

Orient the child on the complete process of filing a case and what is allowed and is not allowed in court. For example, they can tell the judge if they feel that they are being deliberately confused or threatened.

There should be an allotted time for the child, the prosecutor, and the social worker to talk or plan before appearing in court.

If possible and when applicable, so as to avoid frustration and disappointments, the service provider should ensure that proper coordination with the court is made before the scheduled court appearance to confirm if the hearing is going to push thru or not.

The social worker should at all times be right beside the child in court hearings, and if needed, be with the child when she is required to testify.

Ensure that the public or people who are not involved in the case should not be inside the court while the child is testifying.

A safe waiting space should be made available for the child and the social worker where they could have privacy while waiting to be called in court.

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³³ For crimes caught in the act, the police and the prosecutor must accomplish the filing and inquest of case within 36 hours. If the case is not filed within the prescribed time, the suspect must be released from detention. After 36 hours has lapsed, then the case must go through the regular preliminary investigation where the police must secure and serve a warrant of arrest from the judge to the suspect. However, this is very demoralizing for most policemen considering that the suspect is someone who has already been arrested, has been let go of and may already be in hiding, but must be pursued again. For a preliminary investigation to prosper, a complaint affidavit from the child victim must also be secured and submitted to the child prosecutor. There are cases wherein without the victim’s complaint, there is no probable cause. Further, the child may say that he or she has not yet recovered from the trafficking incident or can even retract his/her statements, making it more difficult to pursue the case. These are just some of the problems encountered by law enforcers concerning the handling of child trafficking cases.

³⁴ Output of consultation with children “Survivors Speak.”

3.6.3.3. Social workers, law enforcers and prosecutors must also inform a trafficked child who is also a victim of violent crimes that he/she may apply for compensation with the Board of Claims, within six (6) months from the date of the trafficking incident.³⁵

3.6.3.4. The State shall ensure the proper implementation of special court procedures that are sensitive to the needs of a trafficked child. These may include, but not be limited to, the taking of depositions, admission of video-taped interviews,³⁶ the giving of testimony through closed circuit television and other practical schemes to minimize the need for the child's physical presence in the court room and/or confrontation with the trafficker/s during trial.³⁷

3.6.3.5. Wherever possible, the State shall establish more Family Courts with facilities for child-friendly proceedings such as video conferencing and make available qualified translators/interpreters. Cases involving trafficked children should be expeditiously resolved/decided³⁸ upon.

3.6.3.6. At all stages of the investigation, prosecution and hearing of any criminal or civil action, the right to privacy of a trafficked child shall be protected. The confidentiality of the proceedings shall be ensured by the law enforcement, prosecution and judicial authorities and service providers.

3.7. Care and Protection for Service Providers

3.7.1. Compensation

3.7.1.1. The State shall endeavor to develop a mechanism for providing compensation to service providers who suffer harm or injury as a result of providing assistance to trafficked children, especially those resulting from or likely to be the result of reprisal from traffickers.

3.7.2. Legal Assistance

³⁵ Counting starts from the date when the victim escaped from the brothel.

³⁶ A video-taped review can be done during the initial interview but it cannot stand alone. The fiscal will still cross-examine the witness. Video-taped interviews are just used to minimize the exposure of the victim.

³⁷ Access to Justice:

The prosecutor should be child-friendly (He or she does not intimidate, yell or make condescending remarks at the child and should believe what the child is saying).

The child should be made to understand and feel that she/he is allowed to say what she/he feels while in the witness stand.

The prosecutor or judge should ensure that the lawyer of the accused should be sensitive in her/his manner of speaking, use of words, dealing with the child in asking questions in the witness stand.

The prosecutor or the judge should ensure that protective measures are observed in the courtroom to allow the child to give her testimony freely and without intimidation from the accused.

(Refer to Rule on Examination of a child witness).

³⁸ Resolved – Prosecutor. Decided – Judge.

3.7.2.1. In a case where a suit is filed by a trafficker/s against a service provider for an act done in the performance of his/her duties to provide assistance to a trafficked child, the State shall provide legal protection and/or free legal assistance. Legal assistance may include, but not be limited to, legal counseling, preparation of pleadings, filing of action in courts and legal representations in criminal, administrative and civil proceedings.

3.7.2.2. Such cases filed against service providers shall be properly documented and reported to IACAT to ensure appropriate action.

3.7.3. Support System

3.7.3.1. The State shall establish a support system for service providers and provide venues for the sharing of insights and experiences.

3.8. Capacity Building

3.8.1. Service Providers

3.8.1.1. Training programs for service providers shall be developed to address their needs. A system for monitoring and evaluating the effectiveness of such programs shall also be established.

3.8.1.2. Service providers shall have access to education and training programs which will deepen their understanding and knowledge of issues related to child trafficking. Such training will include topics on human rights, children's rights, gender and development, reproductive health, child labor, migration issues and international and national legal frameworks.

3.8.1.3. All service providers shall have access to education and training which will give them practical skills to assist them in their work with trafficked children. Such training can include topics on Psychological and legal counseling, social case management, documentation, data collection, child-friendly interview methods, personal security and protection for service providers, investigative techniques, and stress management, recovery and healing programs for trafficked children.

3.8.1.4. Service providers shall be trained in the use of these guidelines.

3.8.1.5. The State shall allocate the necessary funds to conduct capacity building activities to address all of the training needs mentioned in these guidelines.

3.8.2. Communities³⁹

3.8.2.1. Awareness seminars, activities and trainings shall be conducted for children, families, community leaders and workers and all sectors of the society, to enable them to actively participate in the protection of children from child trafficking, and in the recovery and reintegration of the trafficked children.

³⁹ To provide protective environment for children.