

GUIDELINES FOR PROTECTION OF THE RIGHTS OF CHILDREN VICTIMS OF TRAFFICKING IN SOUTHEASTERN EUROPE

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UNICEF Guidelines (pulled from ENACT)

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The following guidelines set out standards for good practice with respect to protection and assistance of child victims of trafficking from initial identification up until the final integration and recovery of the child. These guidelines have been developed on the basis of relevant international and regional human rights instruments and provide a straightforward account of the policies and practices required to implement and protect the rights of child victims of trafficking. They aim to provide guidance to Governments and State actors, international organisations and NGOs, in developing procedures for special protection measures of child victims of trafficking.

1 DEFINITION

- Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation either within or outside a country.
- Consent of the child victim to the intended exploitation is irrelevant even if none of the following means have been used: “force, coercion, abduction, deception, abuse of power or actions taken while one is in a state of vulnerability or while one is in the control of another person”
- A child victim of trafficking (“child victim”) is any person under 18 years of age.

2 GENERAL PRINCIPLES

The following principles underpin the Good Practice Guidelines and should be born in mind at all stages of care and protection of child victims of trafficking in countries of destination, transit and origin.

2.1 Rights of the Child

- All actions undertaken in relation to child victims shall be guided by and based on the principles of protection and respect for human rights as set out in the United Nations Convention on the Rights of the Child (1989).
- Child victims are entitled to special protection measures, both as victims and as children, in accordance with their special rights and needs.
- The involvement of a child victim in criminal activities should not undermine their status as both a child and a victim, and his/her related rights to special protection.

2.2 Best Interest of the Child

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

2.3 Right to Non-Discrimination

- All child victims, non-national as well as national or resident children, are entitled to the same protection and rights. They must be considered as children first and foremost. All considerations of their status, nationality, race, sex, language, religion, ethnic or social origin, birth or other status shall not impact on their rights to protection.

2.4 Respect for the Views of the Child

- A child victim who is capable of forming his or her views enjoys the right to express those views freely in all matters affecting him or her, for example, in decisions concerning his or her possible return to the family or country of origin.
- The views of the child shall be given due weight in accordance with his or her age, maturity and best interest.

2.5 Right to Information

- Child victims must be provided with accessible information about, for example, their situation, their entitlements, services available and the family reunification and/or repatriation process.
- Information shall be provided in a language, which the child victim is able to understand. Suitable interpreters shall be provided whenever child victims are questioned/interviewed or require access to services.

2.6 Right to Confidentiality

- Information about a child victim that could endanger the child or the child's family members must not be disclosed.
- All necessary measures must be taken to protect the privacy and identity of child victims. The name, address or other information that could lead to the identification of the child victim or that of the child's family members, shall not be revealed to the public or media.
- The permission of the child victim must be sought in an age appropriate manner before sensitive information is disclosed.

2.7 Right to be Protected

- The state has a duty to protect and assist child victims and to ensure their safety.
- All decisions regarding child victims must be taken expeditiously.

3 GUIDELINES FOR SPECIFIC MEASURES

3.1 Identification

3.1.1 Pro-active identification measures

- States shall take all necessary measures to establish effective procedures for the rapid identification of child victims.
- Efforts should be made to coordinate information sharing between agencies and individuals (including law enforcement, health, education, social welfare agencies, and NGOs), so as to ensure that child victims are identified and assisted as early as possible.
- Immigration, border and law enforcement authorities shall put in place procedures to identify child victims at ports of entry and in other locations.
- Social service, health or education authorities should contact the relevant law enforcement authority where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.

- NGOs/civil society organizations should contact relevant law enforcement authorities and/or social service authorities where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking.

3.1.2 Presumption of age

- Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.
- Pending verification of the victim's age, the victim will be treated as a child and will be accorded all special protection measures stipulated in these guidelines.

3.2 Appointment of a Guardian

3.2.1 Appointment process

- As soon as a child victim is identified, a guardian should be appointed to accompany the child throughout the entire process until a durable solution in the best interests of the child has been identified and implemented. To the extent possible, the same person should be assigned to the child victim throughout the entire process.
- Social service authorities, or other appropriate institutions, shall establish a guardianship service to be implemented directly or through formally accredited organization(s).
- The guardianship service will appoint a guardian as soon as it receives notification that a child victim has been identified.
- The guardianship service will be held responsible/accountable for the acts of the appointed guardian.
- The state shall ensure that this service is fully independent, allowing it to take any action it considers to be in the best interests of the child victim.
- Individuals appointed as guardians must have relevant childcare expertise and knowledge and understanding of the special rights and needs of child victims, and of gender issues.
- Guardians should receive specialized training and professional support.

3.2.2 Responsibilities of the guardian

- Regardless of the legal status of the individual appointed as the guardian (e.g. legal guardian, temporary guardian, adviser/representative, social worker or NGO worker) their responsibilities should be:
 - a) to ensure that all decisions taken are in the child's best interest,
 - b) to ensure that the child victim has appropriate care, accommodation, health care provisions, psycho-social support, education and, language support,
 - c) to ensure that the child victim has access to legal and other representation where necessary,
 - d) to consult with, advise and keep the child victim informed of his/her rights,
 - e) to contribute to identification of a durable solution in the child's best interest,
 - f) to provide a link between the child victim and various organisations who may provide services to the child,
 - g) to assist the child victim in family tracing,
 - h) to ensure that if repatriation or family reunification is carried out, it is done in the best interest of the child victim,
- Following initial questioning by law enforcement officials, the guardian shall accompany the child to appropriate accommodation/shelter.
- The guardian shall be responsible for safeguarding the best interest of the child victim until the child is placed in the custody of either IOM, Ministry of the Interior or other competent organisation responsible for the repatriation process or is returned his/her parents or legal guardian. The guardian shall ensure the relevant paperwork is completed that temporarily places the child in the custody of the Ministry of Interior. Until a durable solution has been found for the disposition of the child, the child shall remain a ward of state in ex officio guardianship of the appointed guardian.

- The guardian should have the right to refuse to give testimony in criminal and civil (judicial) proceedings if this is in the best interest of the child.

- The guardian shall attend all police interviews conducted with the child. If the guardian feels at any time during these interviews that the child should have benefit of legal counsel, he/she shall have the right, and responsibility, to inform the police of the need to terminate the interview until legal counsel may be present.

3.3 Questioning, Interviews and Initial Action

3.3.1 Registration

- Law enforcement authorities (i.e. police) should register child victims through initial questioning.

- Law enforcement authorities should immediately open a case file on the child victim and begin to collect information, which will facilitate judicial proceedings as well as measures to be taken for the disposition of the child.

3.3.2 Initial questioning

- Child victims should be questioned in a child-sensitive manner.

- Only specially trained members of the law enforcement authority should question child victims. Wherever possible, child victims should be questioned by law enforcement officers of the same sex.

- Initial questioning of a child victim should only seek to collect biographical data and social history information (i.e. age, nationality, languages spoken etc.).

- Information regarding the experience of the child whilst trafficked, and any knowledge they may have of illegal activities etc. should not be sought at this point.

- Law enforcement authorities should avoid questioning a child victim on their premises or in the location where the child has been exploited and/or in the presence or physical proximity of any suspected trafficker. Whenever possible, initial questioning should be delayed until the child has been relocated to a safe location.

3.3.3 Initial action

- Upon identification of child victim, or when there is presumption that victim is a child, law enforcement authorities shall be responsible for immediately organizing the transfer of the child victim to a shelter/safe location for accommodation.

- Following identification of child victim, police/law enforcement authorities shall contact as soon as possible guardianship services in order to establish appointment of a guardian.

- In the process of appointing a guardian, law enforcement authorities should protect the child's privacy and confidentiality.

- The Ministry of Interior or other relevant law enforcement agencies should make available to every law enforcement station the necessary contact details of the guardianship service.

- Responsibility for contacting the guardianship service and for the formal hand-over of the child into the care of the guardian should rest with the most senior ranking police officer/officer in charge of the investigation.

- Upon presentation of the guardian, the officer responsible will sign the necessary paperwork (which shall be presented by the guardian) confirming that they have handed over the child to ex officio guardianship: as such, they must recognize the right of the guardian to request a halt to proceedings, to speak to the child alone, and take all necessary measures that are in the best interest of the child.

- Relevant law enforcement authorities shall ensure that the appointed guardian accompanies the child victim at all points.

3.3.4 Interviewing the child victims about their experience

- Police and other law enforcement authorities should only question child victims about their trafficking experience in the presence of the appropriate guardian.
- Law enforcement authorities should minimize the length and scope of questioning so as to minimize further trauma or psychological distress to the child victim.
- Law enforcement authorities should defer to the guardian for information that does not legally require the first person testimony of the child.
- As consent of the child is not relevant for legal purposes, law enforcement authorities should use such information for general investigative purposes only.
- The apparent consent of a child victim to the intended exploitation must not be used:
 - as evidence in the pursuit of criminal charges against the child related to the child's status as a victim of trafficking or situation as a child,
 - as the sole basis for retention of the child in police custody for further – whether related or unrelated – questioning.
- Law enforcement authorities (i.e. prosecutors and judges) should ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
- Law enforcement authorities should ensure that child victims are never detained for reasons related to their status as a victim.

3.3.5 Age assessment

- Verification of the victim's age should take into account:
 - the physical appearance of the child and his/her psychological maturity,
 - the victim's statements,
 - documentation,
 - checking with embassies and other relevant authorities,
 - consensual medical examination and opinion.

3.4 Referral and Coordination/Cooperation

3.4.1 Referral to appropriate services

- Child victims shall be referred expeditiously to appropriate services.
- The state, through relevant ministries, shall assist law enforcement authorities, social service authorities, relevant administrative bodies, international organizations and NGOs/civil society organization in the establishment of an efficient referral mechanism for child victims.

3.4.2 Inter-agency cooperation

- All relevant ministries and government bodies (including police, social service authorities, Ministries of Interior) involved in the referral and assistance to child victims should adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims in order to ensure an effective continuum of care and protection for child victims.

- The Ministry of Interior shall designate "liaison officers" as responsible for liaison with the social services authorities/guardianship service, and in particular, the guardian of the child victim.

- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, the Ministry of Interior shall assist in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.

- Liaison officers shall also liaise with members of the relevant law enforcement agencies dealing with child victims.

- Liaison officers (along with, where appropriate, legal counsel for the Ministry,) shall be responsible for representing the Ministry of Interior, in meetings in which the final disposition of the child is decided in conjunction with the other relevant administrative and judicial bodies.

3.5 Interim Care and Protection

3.5.1 Care and protection

- Child victims are entitled to receive immediate care and protection including security, food, and accommodation in a safe place, access to health-care, psychosocial support, legal assistance, social services and education.

- Care and assistance shall respect the child's cultural identity/origin, gender and age.

- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.

- Child victims should be cared for by adequately trained professionals who are aware of the special rights and needs of child victims and of gender issues.

- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through cooperation with relevant international organizations and NGOs.

- Guardians, in cooperation with social service authorities and NGOs, shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.

3.5.2 Accommodation in a safe place

- Child victims should be placed in safe and suitable accommodation (i.e. temporary shelter or location of alternative care arrangement) as soon as possible after their identification.

- Social service authorities, in cooperation with NGOs and international organisations, shall develop standards of care for places where child victims are accommodated.

- Under no circumstances should a child be placed in a law enforcement detention facility. This includes detention in, for example, detention centres, police cells, prisons or any other special detention centres for children.

3.6 Regularization of Status

- Ministries of Interior and/or other relevant state authorities shall establish policies and procedures to ensure that child victims, who are not nationals/residents of the country in which they find themselves, are automatically granted a Temporary Humanitarian Visa and are entitled to stay in the country on a valid legal basis pending identification of a durable solution.

- For children without documentation, Ministries of Interior and/or other relevant state authorities will provide temporary documents.

- In conjunction with the Ministry of Interior, and where relevant, the social service authorities, the guardian shall be responsible for initiating application procedures for the issuance of a Temporary Humanitarian Visa, and the concordant leave of stay, acting on behalf of the child in any administrative presentations or procedures this may require.

- Such status shall be afforded to the child victim until the relevant judicial and administrative bodies have made a decision regarding the disposition of the child.

3.7 Individual Case Assessment and Identification of a Durable Solution

- Child victims should not be returned to their country of origin unless, prior to the return, a suitable care-giver such as parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection.

- The views of the child should be taken into consideration when considering family reunification and/or return to the country of origin and in identifying a durable solution for the child.

- Social service authorities, in cooperation with Ministries of Interior where necessary, should take all necessary steps to trace, identify and locate family members and facilitate the reunion of child victim with his/her family where this is in the best interest of the child.

- The respective Ministries, in conjunction with the relevant social worker authorities and/or guardian, should be responsible for establishing whether or not the repatriation of a child victim is safe, and ensure that the process takes place in a dignified manner, and is in the best interest of the child.

- Ministries of Foreign Affairs, Ministries of Interior and other relevant state authorities shall establish agreements and procedures for collaboration with each other in order to ensure that a thorough inquiry into the individual and family circumstances of the child victim is conducted in order to determine the best course of action for the child.

- The guardian, acting through and with the assistance of the Ministries of Interior or other relevant state authorities, and the relevant social service authority, shall begin the process of obtaining documentation and information from the child's country of origin in order to conduct risk and security assessment, upon which the decision as to whether or not to reunite the child with his/her family or return the child to their country of origin shall be made.

- Once sufficient documentation and information has been gathered, the relevant social service authority shall decide in conjunction with the guardian, the Ministry of Interior (or other relevant Ministries), and, where relevant and/or appropriate, representatives of the embassy of the country of origin, on the final disposition made in favour of the child.

- If the decision is made against family reunification and/or repatriation, then the guardian shall remain responsible for the child victim, until the appropriate judicial appoint a legal guardian for the child.

- In order to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the disposition of the child, Ministries of Interior shall assist those authorities in contacts with the corresponding authorities in the child's country of origin. Such assistance will also be afforded to the relevant authorities in the form of support to and coordination with their dealings with the Ministry of Foreign Affairs, and, where appropriate, their contacts with representatives of the embassies of the child's country of origin.

3.8 Implementation of a Durable Solution

3.8.1 Local integration

- Child victims, both who are nationals and not nationals/residents of the country in which they find themselves, are entitled to receive long-term care and protection including access to health-care, psychosocial support, social services and education.

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

- Such arrangements should favour family- and community-based arrangements rather than residential care.

- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

3.8.2 Return to country of origin

- Child victims, who are not nationals/residents of the country in which they find themselves, are as a general principle entitled to return to their country of origin.

- Child victims shall not be returned to their country of origin if, following a risk and security assessment, there are reasons to believe that the child's safety or that of their family is in danger.

- Ministries of Interior or other relevant state authorities shall establish agreements and procedures for the safe return of child victims to their country of origin.

- Guardian or a social worker assigned to the case should accompany child victims who are being returned until placed in the custody of Ministry of Interior, IOM or other organisation responsible for return.

- States shall establish procedures to ensure that the child is received in the country of origin by an appointed responsible member of the social services of the country of origin and/or child's parents or legal guardian.

3.8.3 Integration in country of origin- reception and reintegration

- Child victims, are entitled to receive long-term care and protection including security, food, accommodation in a safe place, access to health-care, psycho-social support, legal assistance, social services and education with a view to their social reintegration.

- Appropriate assistance should be provided to children with special needs, particularly in cases of disabilities, psychosocial distress, illnesses and pregnancies.

- Child victims should be cared for by adequately trained professionals who are aware of the special needs and rights of child victims, and of gender issues.

- Social service authorities shall provide such care through the establishment of appropriate services and where appropriate through cooperation with relevant international and non-governmental organizations.

- Social service authorities shall conduct an individual needs assessment for each child victim in order to determine care and protection provisions.

- Social service authorities, in cooperation with relevant international and non-governmental organizations should monitor the life situation of the child following his or her family reunification and or placement in alternative care.

- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

- Social service authorities shall ensure that alternative care arrangements for child victims deprived of a family environment favour family- and community-based arrangements rather than residential care.

- Ministries of Education shall establish special inclusive education and vocational programs for child victims.

3.8.4 Resettlement and integration in a third country

- In situations where the safe return of the child to his/her country of origin and the integration in the country of destination are not possible, or where these solutions would not be in the child's best interest, the states in both countries should ensure the child victim's resettlement in a third country.

- Such arrangements should favour family- and community-based arrangements rather than residential care.

- Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child, including for education needs.

- Child victims are entitled to receive long-term care and protection including access to health-care, psychosocial support, social services and education.

3.9 Access to Justice

3.9.1 Criminal proceedings

- Child victims have the right to be fully informed about security issues and criminal procedures prior to deciding whether or not to testify in criminal proceedings against persons who are suspected of involvement in the exploitation and/or trafficking in children.

- Child victims of trafficking have the "right to recovery time" before deciding whether or not to pursue criminal proceedings against the trafficker.

- Assistance to the child victim of trafficking should not, under any circumstances, be conditional on the child's willingness to act as a witness.

- The taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay family reunification or the return of child victim to the country of origin if it is in the best interest of the child.

- Direct contact should be avoided between the child victim and the suspected offender during the process of investigation and prosecution as well as during trial hearings as much as possible.

- Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation, as well as interpretation into the native language of the child, if necessary.

- States should consider, if necessary, amendments of their penal procedural codes to allow for, inter alia, videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply child-friendly practices.

3.9.2 Civil proceedings

- Child victims should be provided with information regarding their right to initiate civil proceedings against traffickers and other persons involved in their exploitation.

- Law enforcement authorities should adopt measures necessary to protect the rights and interests of child victims at all stages of judicial proceedings against alleged offenders and during procedures for obtaining compensation.

- Law enforcement authorities should undertake to ensure that child victims are provided with appropriate access to justice and fair treatment, restitution and compensation including prompt redress.

- Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary.

3.10 Victim/Witness Security and Protection

- Child victims who agree to testify should be accorded special protection measures to ensure their safety and that of their family members in both countries of destination, transit and origin.
- Ministries of Interior and other relevant law enforcement authorities should adopt all measures necessary to protect the child victim and their family members, including through international cooperation.
- When the victim/witness protection cannot be ensured in neither country of destination nor in country of origin, measures should be taken to allow resettlement in a third country.

3.11 Training

- All agencies dealing with child victims should establish special recruitment practices and training programmes so as to ensure that individuals / persons responsible for the care and protection of child victims understand their rights and needs, are gender-sensitive, and possess the necessary skills to assist children.

4 IMPLEMENTATION AT COUNTRY LEVEL

The guidelines represent only the beginning of establishing a system of protection and assistance appropriate to the rights and needs of child victims of trafficking.

At national level, national working groups within the frameworks of the National Plans of Action to combat trafficking should establish a specialised group with representatives of appropriate ministries, police, administrative and judicial authorities, etc, to begin a thorough examination of the existing mechanisms and legislative structures, including identification of the following:

1. Roles and responsibilities of different government authorities, including, police, social service authorities, Ministries of Interior, etc;
2. Roles and responsibilities of NGOs and international organisations;
3. Mechanisms and modalities of cooperation;
4. Resources necessary to implement the guidelines, including human and financial.

5 ANNEX

5.1 Legal Basis

Applicable International Conventions are:

- Convention on the Rights of the Child (CRC) (1989)
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2000)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- The Hague Convention 28 on the Civil Aspects of International Child Abduction (1980)
- UN Convention Against Transnational Organised Crime (The Palermo Convention) (2000)
- Annex II – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United National Convention Against Transnational Organised Crime (The Palermo Trafficking Protocol) (2000)
- ILO Convention Concerning the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labour No.C182 (1999)

The ratification status of these Conventions by SEE countries is summarised below in section 5.3. All countries in SEE have ratified CRC, CEDAW and ILO 182 Convention. Most SEE countries are member states of Hague Conference and, to date, have ratified the following conventions relevant to trafficking victims: 1) the Hague Convention 28 on the Civil Aspects of International Child Abduction, and 2) the Hague Convention 29 on International Access to Justice. All countries have signed and many have ratified, the Palermo Convention and the Palermo Trafficking Protocol.

The following is an analysis of the articles, which are most relevant to the issue of trafficking of children. UNICEF takes a human rights approach to child trafficking, which provides greater protection than the Palermo Trafficking Protocol, which is primarily a law enforcement instrument. The foremost obligation on States is to act in the best interest of the child. In essence, the legal provisions contained in these instruments underpin the provisions of the Trafficking Protocol to the Convention on Transnational Organised Crime, but in some instances provide for

greater protections. The intention of the guidelines is to harmonise the obligations, in effect creating, a “Palermo Plus” for States to better understand the approach that they are expected to follow.

5.1.1 Convention on the Rights of the Child

Article 1

1. For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Whilst the CRC enables the State to recognise an age of majority below that of 18, in order to give effect to the obligation to act in the best interest of the child, States should apply the status determined by the Trafficking Protocol and the ILO Convention 182 which defines a child as anyone under the age of 18.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

This article clearly points out the universality of the obligation to act in the best interests of the child and the absolute prohibition of discrimination whether direct or indirect. The responsibility to provide adequate protection and care to child victims of trafficking at first instance, lying with the State within whose jurisdiction they are found, regardless of their status.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Whilst the provisions in Article 3 are self explanatory, it must be considered in conjunction with Article 4 which provides that: States are responsible for ensuring: “legislative, administrative and other measures” give effect to the obligations contained in the Convention. It is acknowledged that the ability of States to actually provide the requisite level of protection is subject to the economic condition of that State. Hence article 4 articulates the principle of the progressive realisation of rights: “States Parties shall undertake such measures to the maximum extent of their available resources. Where needed within the framework of international cooperation”. This is particularly pertinent given the transborder nature of trafficking and the regional approach that has to be adopted. Article 4 should be interpreted as an obligation on the international community to provide assistance to those less economically secure, to give effect to their Article 3 obligations.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Measures undertaken by government authorities to ensure compliance with Articles 9 and 10 can also be interpreted as the basis for handling the repatriation applications of trafficked children. The state is clearly mandated to decline repatriation of a child to the direct care of his parents if it has reason to believe this may be detrimental to the child's best interests. Further, the logical expansive interpretation of this obligation is that the returning party must have undertaken necessary steps to establish that repatriation is indeed in the best interests of the child.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia and Montenegro further complied with article 11.2 by signature and ratification of the Convention 28 of the Hague Conference, and Romania and Moldova complied by acceding to Convention 28 of the Hague Conference.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and in the child's ethnic, religious, cultural and linguistic background.

These articles, whilst self explanatory, provide the State with the legal basis for positive intervention to protect children, both through law enforcement and through the activities of its social services, and clearly places the burden on the state to provide special protection and assistance for children victims of trafficking (including, as made clear in Article 2, any child within its jurisdiction). Reference should also be made to the provisions of Article 39 and the particular measures which must apply to children who have suffered exploitation.

Article 22

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

States should interpret Article 22 in such manner so as to facilitate both the protection of and assistance towards child victims of trafficking, and to issue 'temporary humanitarian person' status – and the concordant leave of stay that is accorded that status – to trafficked children. Such a measure could be permitted by a prima facie consideration that ALL child victims of trafficking are to be considered as eligible for consideration for asylum until an investigation in conjunction with the social services in the child's country of origin establishes that return is viable.

States should have provision for humanitarian entry into the country whether detected at the border or in country. This status must be extended to unaccompanied minors. Any adult who is accused of or complicit in the trafficking of a child cannot be considered a legal guardian. The trafficked child should then be given a temporary residence permit on humanitarian grounds (the temporary humanitarian permit). Given the special protective measures, which must be applied, an unaccompanied minor should not be subject to the standard entry provisions. Therefore, entry criterion for a temporary humanitarian permit, such as the child having valid travel document, having medical clearance or means of subsistence should be waived.

The temporary permit should automatically attract the provisions of Articles 19, 22 and 39 of the CRC. An unaccompanied minor holding a temporary humanitarian permit shall be informed of his or her right to claim asylum under the 51 Convention. The guardian or social worker is responsible for ensuring the child's participation in any proceedings affecting their stay.

As status must be determined as set out above, the State should not detain a child in an immigration facility on the basis of unauthorised entry.

Article 32

(1) State parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

(2) State parties shall take legislative administrative, social and educational measures to ensure the implementation of this article.

The language used imposes a positive obligation on the State to ensure that all children are protected from the exploitation specified. For example, if a minor is working in a night bar, whether for pay or not, there can be reasonable belief that there is a violation of article 32(1). In such circumstances the State must take action to prevent the continuance through taking protective measures in relation to the minor.

In accordance with the provisions of Articles 19 and 20, the child should be removed from the premises until a determination of the best interests of the child has been made by the authorities, i.e., the police, the judiciary and Ministry for Social Welfare.

Article 34

State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For this purpose State parties shall in particular take all appropriate national, bilateral and multi-lateral measures to prevent:

- a) the inducement or the coercion of a child to engage in unlawful sexual activity
- b) the exploitative use of children in prostitution or other unlawful sexual practice
- c) the exploitative use of children in pornographic performances and materials

Article 35

State parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale or traffic in children for any purpose whatsoever.

Article 36

State parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Articles 34, 35 and 36 use the language of protection, hence the State is obliged to take positive action to prevent the prohibited acts from taking place and will be in breach of obligations if it restricts its activities to the prosecution of those so exploiting the child after the exploitation has taken place.

Article 39

State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

States should take particular care to address the needs of trafficked children with reference to this Article.

The CRC also entitles children to social and economic support, which would assist in the prevention of trafficking if implemented.

5.1.2 Optional Protocol to the CRC on Sale of Children, Child Prostitution and Child Pornography

Article 2

For the purpose of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organised basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in force labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

The above articles place obligation on the states to ensure that domestic laws do not permit engagement of children, under any circumstances, in prostitution or pornography. In conjunction with the Palermo Protocol and ILO 182 Convention, this would mean that the recruitment, transportation, transfer, harbouring or receipt of a child under 18 for the purpose of prostitution or pornography is to be considered trafficking in persons. Penalising any of the acts covered under the Protocol on an individual basis strengthens the provisions of the Palermo Convention, as it does not demand for the involvement of organised exploitation.

5.1.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Article 6

State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

As CEDAW applies to girl children and adult women, this reinforces state parties' commitment to prevent and address all forms of trafficking and forced prostitution of girls and should be addressed in the reports to the CEDAW Committee.

5.1.4 Convention 28 of the Hague Conference / Convention on the Civil Aspects of International Child Abduction

Article 1

(a) The objectives of the present convention are – To secure the prompt return of children wrongfully removed to or retained in any contracting state.

Article 13

The judicial or administrative authority of the requested state is not bound to order the return of the child if the person, institution or other body that opposes its return establishes that –

(a) The person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention: or

(b) There is grave risk that his or her return would expose the child to physical or psychological harm or otherwise place that child in an intolerable situation.

The judiciary or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the social background provided by the central authority or other competent authority of the child's habitual residence.

The provisions of convention 28, especially those of Article 13, clearly establish the right – and duty – of the state to perform adequate investigation with the 'competent authorities' of a child's country of origin before return. Whilst the convention refers primarily to children under the age of 16, application of these principles and guidelines in regard to children victims of trafficking under 18 is obligatory in light of the ILO 182 Convention and Palermo Convention definitions of child trafficking, and once the mechanisms for ensuring compliance with the above articles and their implications have been established, there is an obvious incentive for the state – in terms of full compliance with their obligations to CRC, ILO 182 Convention and the Palermo Convention, and the humanitarian imperative – in extending the measures to include all trafficking victims under the age of 18.

5.1.5 United Nations Convention Against Transnational Organised Crime (The Palermo Convention)

Article 18 – Mutual Legal Assistance

Paragraph 3

Mutual Legal Assistance to be afforded in accordance with this article may be requested for any of the following purposes –

(ii) Any [other] type of assistance that is not contrary to the domestic law of the requested state party.

Paragraph 4

Without prejudice to domestic law, the competent authorities of a state party may without prior request, transmit information relating to criminal matters to a competent authority in another state party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter state party pursuant to this convention.

Paragraph 13

Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

Paragraph 14

Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

Paragraph 15

A request for mutual legal assistance shall contain:

- a) The identity of the authority making the request;
- b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- e) Where possible, the identity, location and nationality of any person concerned; and
- f) The purpose for which the evidence, information or action is sought.

The structure and means of mutual legal assistance as outlined in the above article provide a clearly applicable model for state parties to utilize in conducting inquiries with a child's country of origin as to whether repatriation is viable. Paragraph 13 provides a definition of the format such communications should take in initial contacts between central authorities of state parties: subsequent communications, whilst channelled by the central authority, can be tailored according to the needs and requirements of social service professionals and judiciary entrusted with handling individual cases.

In countries that are signatories to the Hague Convention 28, the provisions of the above article should be interpreted in conjunction with obligations provided for in the Hague Convention 28 to avoid duplication of structures and procedural protocols. State parties should not find any conflict in applying both provisions of the Hague convention and the Palermo convention concurrently: It should be possible to take an over-broad interpretation of the provisions of article 18 in order to sublimate specific provisions if those are already provided for in structures established or utilized in order to ensure compliance with the requirements of the Hague convention. This would apply in cases where the receiving state and state (country) of origin already maintain a bi-lateral agreement pertaining to mutual legal assistance: In such cases, the provision of paragraphs 6 and 7 of Article 18 make clear the latitude afforded to states in harmonizing differing obligations regarding mutual legal assistance.

UNICEF recommends that the central authority designated by the state party establish a permanent liaison with the ministry responsible for social services, in order that the processing of inquiries made by social services and/or the judiciary regarding trafficked children be regularized and formalized at the first opportunity.

5.1.6 Annex II – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United National Convention Against Transnational Organised Crime (The Palermo Trafficking Protocol)

I. General Provisions

Article 3 - Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean 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 or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) 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) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Especially relevant in guiding states in their treatment of child victims of trafficking is Paragraph C. This principle must be instrumental in guiding the actions of, above all, the police involved in the identification and, where relevant, subsequent interviewing of child victims. The priori principle for police officers is that the child under 18 is a trafficking victim. As such, questions regarding a child's consent to, involvement in or understanding of the processes resulting in their being trafficked are to be permitted only as a means of eliciting general information, and should not be allowed in any way to determine the definition whether a child is a victim of trafficking. There should be no detention of a minor by law enforcement.

II. Protection of victims of trafficking in persons.

Article 7 - Status of victims of trafficking in persons in receiving states

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8 - Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Collectively, these articles contain necessary protections for child victims of trafficking in the broader context: however, especially in application of the measures contained in Articles 7 and 8, UNICEF calls upon the states to apply the broadest possible interpretations of these articles necessary to ensure full and adequate protection of child victims.

5.1.7 ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.C182.

Article 2

"Child" shall apply to all persons under the age of 18.

It does not matter whether persons under the age of 18 are defined as children, as long as all persons are covered by the measures of protection against the worst forms of child labour. If protection against the worst forms of child labour is available in a particular situation only up to a lower age, then this will have to be extended to cover everyone under 18.

However, this does not mean that the Convention requires a complete prohibition of work for all persons under 18. Those who are under 18 but have attained the general minimum age for work, which is usually lower than 18, can legitimately be at work, as long as it does not fall within any of the criteria of the worst forms of child labour, and does not contravene article 31 and 32 of the CRC.

Article 3

The term "the worst forms of child labour" is defined as:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances;
- c) the use, procuring or offering a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d) work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Many types of work are intrinsically hazardous, such as mining, construction, deep-sea fishing, and working with radioactive materials and dangerous chemicals. But other occupations also present hazards to children: exposure to pesticides in agricultural work, carrying heavy weights and scavenging in garbage dumps, for example. Apart from the harm they inflict on the child, some forms of child labour involve egregious violations of human rights and are thus deemed intolerable. Convention 182 prohibits slavery, sale and trafficking of children, debt bondage and forced labour (including the recruitment of children for use in armed conflict), as well as the procurement or use of children for prostitution, pornography and drugs, and work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

ILO Minimum Age Convention No.138: prohibits employment below the age designated for the completion of compulsory schooling, and below the age of 15 years. The minimum age for employment in work that is likely to jeopardise health, safety or morals is set at 18 years. Light work, which does not interfere with schooling, is permitted from age 13 years.

5.2 Other Selected Human Rights Instruments and Guidelines

UN High Commissioner for Human Rights, Report to the Economic and Social Council, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002 (E/2002/68/Add.1)
<http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/caf3deb2b05d4f35c1256bf30051a003?Opendocument>

Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women, International Human Rights Law Group, Human Rights Standards for the Treatment of Trafficked Persons, January 1999.
www.hrllawgroup.org/resources/content/IHRLG Trafficking_standards.pdf

UNHCR/Save the Children Alliance, Separated Children in Europe Programme, Statement of Good Practice, Second Edition, October 2000. www.separated-children-europe-programme.org/Global/framed.asp?source=English/GoodPractice/Booklet/StatementGoodPractice.pdf

ECOSOC Resolution 1997/30, Administration of Juvenile Justice (contains important guidelines on child victims and witnesses)
<http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/48a9c549d74bf20f802566c500410104?Opendocument>

The Council for European Union, Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03)
<http://migration.uni-konstanz.de/sourcedown/dokumente/asylrefuglaw/con-e-1997-06-26.PDF>

UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997. www.asylumsupport.info/publications/unhcr/1997.htm

International Bureau for Children's Rights, Draft Guidelines for Child Victims and Witnesses of Crime.
<http://www.ibcr.org/vicwit/Guidelines.htm>