

REFERENCE GUIDE
ON PROTECTING THE RIGHTS
OF CHILD VICTIMS OF
TRAFFICKING IN EUROPE



For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

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OF CHILD VICTIMS OF
TRAFFICKING IN EUROPE**



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This Reference Guide has been prepared by Mike Dottridge in collaboration with the UNICEF Regional Office for CEE/CIS. Its contents do not necessarily reflect the policies or the views of UNICEF.

Foreword

Today, virtually every country in Europe is facing the problem of trafficking in human beings either internally or as a country of origin, destination, transit or a combination of these. The phenomenon is not new; however, the political, social and economic changes that swept the continent in the last decade have left a specific mark on the dynamics of trafficking. Transition from centrally planned to free market economies as well as the years of war in the former Yugoslavia increased poverty and the vulnerability of women, girls and boys to exploitation including trafficking. These changes also led to an increase in corruption, lack of a rule of law and the emergence of war economies, thus enabling the trafficking industry to spread.

The response of governments and of international and non-governmental organizations was swift and focused. It especially strengthened the law and law enforcement capacities to fight trafficking, and established assistance programmes for victims of trafficking. Although yielding some results, this approach was often criticized for its lack of a human rights focus. Child victims of trafficking, for example, were seldom recognised as being entitled to special protection measures.

To improve the protection of child victims in anti-trafficking efforts, UNICEF developed the Guidelines on Protection of the Rights of Child Victims of Trafficking. The Guidelines outline the minimum standards for safe-guarding the rights of child victims of trafficking at each stage of anti-trafficking interventions. The governments of South Eastern Europe endorsed the Guidelines at the Stability Pact Task Force sub-regional Ministerial Forum in Sofia on 10th December 2003. Since that time, the Guidelines have been used by a wide range of policy makers and practitioners in South Eastern Europe and more widely. Many provisions from the Guidelines have been incorporated in relevant European programmes and instruments for anti-trafficking action, such as the Council of Europe Convention on Action against Trafficking in Human Beings.

The idea of this Reference Guide was born out of conversations with the members of the Stability Pact Task Force on Trafficking who observed that the implementation of the Guidelines is still too slow. This Guide aims to be a practical tool to assist implementation, explaining and illustrating the implications of each of the standards and measures outlined in the Guidelines and their interconnections. The Guide should also serve as a reference for setting up policies and specific actions and as such is of special use for policy makers, legislators and practitioners responsible for protecting and assisting child victims of trafficking.

We hope that this Reference Guide will serve all those at the forefront of anti-trafficking action across Europe.



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Acknowledgments:

I would like to thank Deborah McWhinney, Judita Reichenberg and Tamara Tutnjevica Gorman of UNICEF for supervising and contributing to the development of this publication. I would also like to thank all those who provided their valuable insights and commented on various drafts, especially, Helene Nilsson and Richard Danziger from IOM, Jyothi Kanics from Save the Children, Kirsten Di Martino, Andrea Rossi and Daja Wenke from UNICEF, Karolina Lindholm-Billing from UNHCR, Barbara Limanowska from UNOHCHR, and Elaine Pearson. A special thanks goes to Jane Foy for editing of the publication.

Mike Dottridge

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List of Acronyms

CRC	United Nations Convention on the Rights of the Child (1989)
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (previously End Child Prostitution in Asian Tourism)
EU	European Union
ILO	International Labour Office and International Labour Organization
ILO-IPEC	See IPEC
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour (part of ILO and referred to as ILO-IPEC)
NGO	Non-governmental organization
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	United Nations Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UAM	Unaccompanied minor
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	UN Office on Drugs and Crime (the UN secretariat for the Convention against Transnational Organized Crime and its Trafficking Protocol) runs a Global Programme against Trafficking in Human Beings
US/USA	United States of America
WHO	World Health Organization

Glossary

Adolescent	A person between the ages of 10 and 19.
Biodata	Personal biographical data about an individual (e.g. age, name, etc...)
Child	In accordance with article 1 of the Convention on the Rights of the Child: "For the purpose of this present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier."
Child prostitution	The use of a child in sexual activities for remuneration or any other form of consideration.
Commercial sexual exploitation (of children)	The sexual exploitation of a child for remuneration in cash or in kind, usually organized by an intermediary (parent, family member, procurer, pimp), mainly for prostitution and pornography.
Durable solution	Long-term arrangements made for a child who has been trafficked.
Exploiter	A person who makes money from a child or adult who has been trafficked, as defined by the UN Trafficking Protocol, notably subjecting them to forced labour or servitude, or to prostitution (commercial sexual exploitation).
Immigration official	Includes border police and others involved in processing new arrivals at airports, ports and other frontier crossing points.
Law enforcement official	Police officer or other officials responsible for enforcing the law.
National Referral Mechanism	Procedure designed by ODIHR-OSCE to ensure coordination among government ministries, NGOs and others that are involved in caring for victims of trafficking and making decisions in regards to them.
Non-national	Person from another country, i.e., foreigner.
Offence	'Offence' and 'crime' are used interchangeably in the Guide and do not imply that one is more serious than the other.
Refoulement	The expulsion or return of a refugee to the frontiers of territories where his or her life or freedom is threatened because of his or her race, religion, nationality, membership of a particular social group or political opinion.
Separated child	Separated from both parents or from their legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members.
Trafficker	A person who engages in trafficking in persons as defined by the UN Trafficking Protocol.
Trafficking Protocol	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, linked to the UN Convention against Transnational Organized Crime (2000). This Protocol is sometimes referred to as the 'Palermo Protocol'.
Unaccompanied child	An unaccompanied child or minor is a child who is separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.
Young person	Refers to children under 18 and young adults aged 18 to 23.

Chapter 1 Introduction to Child Trafficking and UNICEF Guidelines

1.1 The purpose of this Reference Guide

In response to reports of child trafficking within South Eastern Europe and from South Eastern Europe to other parts of Europe, in 2003 UNICEF developed a set of “Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe.”¹ A major reason for drafting the Guidelines was that agencies responsible for child protection – governmental, intergovernmental and non-governmental – observed that they are often unsure what procedures to follow when someone under 18 was believed to have been trafficked. A further reason was that the United Nations General Assembly agreed upon new standards regarding ‘trafficking in persons’ and ‘sale of children’ in 2000. With many countries adopting these new standards at the national level, an opportunity emerged to improve protection available to children by setting out standards for good practice.

The Guidelines are based on international standards and were originally designed in the context of South Eastern Europe. Since they were endorsed by the Stability Pact Task Force on Trafficking for South Eastern Europe and adopted by member states (2003), they were widely used to inform policy and practice against trafficking in children across Europe. Minimum standards endorsed in the Guidelines informed the Council of Europe Convention on Action against Trafficking in Human Beings, and the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance. The Guidelines were also used to advocate for more child sensitive provisions in the EU Communication and Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings.

This Reference Guide is meant to serve as an implementation book for the Guidelines as it gives information about the steps and procedures that constitute ‘good practice’ in the protection and assistance of child victims of trafficking. As such, the Guide is a practical tool for policy makers and practitioners from government, non-governmental and international organizations responsible for protecting and assisting child victims of trafficking across Europe.

A brief overview of the Guidelines is offered in this chapter. Chapter 2 presents basic information about child trafficking. This includes details from definitions in international instruments, explanations of why trafficking is a problem, information about patterns of child trafficking in Europe and comments on who has a responsibility to address child trafficking and in what ways.

Although this Reference Guide focuses primarily on action concerning children who have already been trafficked, Chapter 3 suggests actions which can be taken to prevent children from being trafficked.

Starting in Chapter 4, each of the guidelines issued by UNICEF in 2003 is the subject of an individual chapter. In each case, the chapter starts with the text of the guideline, followed by a review of its implications and description of actors with particular responsibility for taking action to implement it. Each chapter ends by mentioning challenges involved in implementing the guideline, along with some examples of existing practice taken from countries around Europe.

However, there is no specific chapter about the last guideline asking agencies dealing with child victims to establish special recruitment practices and training programmes to ensure that anyone responsible for the care and protection of trafficked children understands their rights and needs, is gender-sensitive and has the necessary skills to protect children. Specific training modules for law enforcement, border officials, social service providers and other professionals working in direct contact with children are being developed by different agencies and are not included in this Guide.

Following the chapters about each of the guidelines, the second part of the Reference Guide

¹ The full text of the Guidelines is reproduced in Annex 1 of this Reference Guide. It can also be accessed at <http://www.seerights.org>

contains some specific tools such as check lists for professionals in direct contact with child victims of trafficking. These describe procedures, offer practical examples and are generally intended for specific target audiences.

The full text of UNICEF's Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe as well as the texts of relevant international and European regional instruments (conventions and protocols), including a table indicating the ratification status of seven relevant instruments in Europe are included in Annexes.

1.2 UNICEF Guidelines

The UNICEF Guidelines set out standards for good practice in the protection of and assistance to child victims of trafficking – from identification to recovery and reintegration of the child. The Guidelines are based on 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. The Guidelines aim to help governments and state actors, international organizations and NGOs develop special protection measures for child victims of trafficking.

The Guidelines focus on the steps needed to protect and assist anyone under 18 who is believed to have been trafficked, and to make decisions about their future. The Guidelines *do not* discuss the steps needed to prevent children from being trafficked.

A draft of the Guidelines was issued in March 2003 and considered by the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe. The Stability Pact Task Force formally endorsed the Guidelines in April 2003. They were published in May 2003 and in a revised form in October 2003. At an intergovernmental meeting in Sofia, Bulgaria in December 2003, government representatives from South Eastern Europe signed a Statement on Commitments endorsing the Guidelines and pledging to develop and adopt minimum standards for the treatment of child victims of trafficking based upon the Guidelines.

In 2005 UNICEF began a process of global consultation on the relevance and usefulness of the Guidelines in regions and countries beyond Europe. The last up-dating of the text took place early in 2006 and it is expected that the Guidelines will be adopted as a UNICEF global policy instrument by mid 2006.

The Guidelines summarize basic information about child rights as set out in the United Nations Convention on the Rights of the Child (CRC)² and other relevant international legal instruments.

As noted, the UNICEF Guidelines cover 11 specific aspects concerning trafficking of children:

1. identification of children as victims of trafficking;
2. appointment of a guardian for each trafficked child;
3. questioning by the authorities;
4. referral to appropriate services and inter-agency coordination;
5. interim care and protection;
6. regularization of a child's status in a country other than their own;
7. individual case assessment and identification of a durable solution;
8. implementing a durable solution, e.g., possible return to a child's country of origin;
9. access for children to justice;
10. protection of the child as a victim and potential witness; and
11. training for government and other agencies dealing with child victims.

² The 1989 Convention has been ratified by or acceded to every country in the world except two, the US and Somalia. The Convention was accessed at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

It takes more than this checklist to create the ‘protective environment’³ that safeguards children from maltreatment of all kinds. The UNICEF Guidelines explicitly focus on children who *are* being or *have been* trafficked for exploitation.

1.3 An emphasis on child rights

The UNICEF Guidelines emphasize that the human rights of children who are trafficked or at risk of being trafficked must be at the centre of all efforts to prevent child trafficking and to protect, assist and provide redress to children who have been trafficked.⁴

The principle that in all actions concerning children (including actions in response to child trafficking), the best interests of the child should be a primary consideration is guaranteed by article 3.1 of the CRC. This principle underpins the child-rights approach that UNICEF advocates in all its programmes and also in programmes and actions by other intergovernmental, governmental and non-governmental organizations.

Despite the near-universal ratification of the CRC, it is still common for agents of child protection to rely on the conventional approach – albeit, perhaps, more vigorously – of fighting the actors and factors that harm children, rather than on a full rights-based approach. For example, in the case of trafficking, many

Box 1

Key Principles to be applied in efforts to prevent trafficking, and protect and assist child victims

The best interests of the child

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. (CRC, article 3.1)

Non-discrimination

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. (CRC, article 2)

Each child has a right to have his or her views listened to and taken into account in all matters affecting him or her

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (CRC, article 12)

The child’s right to privacy

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (CRC, article 6)

Source: “Convention of the Rights of the Child”.

³ UNICEF and others use the term ‘protective environment’ to refer to the different elements that protect children from discrimination, violence, exploitation, abuse and neglect. A protective environment is comprised of members of the family, community and society as well as laws, policies, regulatory frameworks, services, structures, institutions, and decision-making mechanisms. These elements act individually and collectively to protect children.

⁴ The UN High Commissioner for Human Rights has emphasized that the human rights of anyone who is trafficked should be at the centre of anti-trafficking actions. “The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.” Principle 1 in the High Commissioner’s “Recommended Principles and Guidelines on Human Rights and Human Trafficking,” Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, UN document E/2002/68/Add.1, 20 May 2002. The “Principles” were accessed at www.ohchr.org/english/about/publications/papers.htm

States look primarily at the activity as a crime, a lens that focuses efforts on the perpetrators and even casts victims in the role of objects of wrongdoing. What is missing is an equal emphasis on upholding the rights of the individuals who are trafficked. In the case of children, law enforcement officials determined to detect, prosecute and punish criminals may be sensitive to the needs of the child, but unless the rights of the child are fully respected and protected, the requirements of the CRC are not met.

The CRC contains a number of principles and provisions that underpin a child-rights approach and which are reflected in the UNICEF Guidelines. The first of these is the principle that children have a right to exercise their rights without discrimination of any kind. This implies that children who are trafficked from one country to another are entitled to exercise their rights in a country of which they are not a national.

The second principle concerns the child's right to express his or her views and to have these taken into account. This is especially important in the case of a child who has been trafficked and where decisions are made by a range of agencies both in the child's country of origin and in any other country to which a child is trafficked.

Children also have rights to freedom of expression, of association and to participate fully in cultural and artistic life (guaranteed by articles 13, 15 and 31 of the CRC). Taken together with article 12, these rights constitute a child's right to participate in efforts to exercise their rights, including their right not to be trafficked.

The nature of the activities which are the subject of the UNICEF Guidelines and which have to be taken to protect children who have been trafficked also emphasize the importance of the child's right to privacy. This means it is essential to protect the privacy and identity of children who have been trafficked and to take measures to avoid the dissemination of information that could lead to their identification.