

# LEGAL NOTE:

## INTERNATIONAL LAW PROTECTIONS FOR REFUGEE CHILDREN GENDER-BASED RIGHTS CONSIDERATIONS

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### GENDER-BASED RIGHTS CONSIDERATIONS

#### EXECUTIVE SUMMARY

- Numbers of refugee children are increasing worldwide. Factors driving migration of children include new conflicts, climate change, and rapid population growth in urban areas in the developing world.<sup>1</sup>
- International law protections for refugee children are fragmented across multiple legal instruments. Gender-based concerns do not tend to be the key focus of the legal instruments themselves, although in recent decades, UN agencies and NGOs have clearly identified such concerns in relation to displaced children. This is borne out in clearly, for example, UN guidance on State compliance with UN conventions to which they are party.<sup>2</sup>
- Despite widespread ratification, international human rights conventions are often hampered by inadequate incorporation into domestic legal systems of State parties and a lack of accountability of State parties for their non-compliance.

#### BACKGROUND

*How are refugee children defined under international law and what specific issues do they face?*

1. Under the UN Convention on the Rights of the Child, a child is “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.<sup>3</sup>
2. A refugee is someone who, owing to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling, to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear is unwilling, to return to it.”<sup>4</sup>
3. In comparison to an average child, refugee children are at much higher risk of violence, disease, malnutrition, military recruitment, child labour, detention by immigration or border officials, and psychological trauma.<sup>5</sup> Refugee girls, in particular, are at greater risk of sexual abuse and exploitation,<sup>6</sup> especially in militarised camps and settlements,<sup>7</sup> and women and child refugees in populations destabilised by humanitarian emergencies are at increased risk of exposure to HIV infection.<sup>8</sup>
4. Protections for refugee children under international law derive from the intersection of their status as “children” and as “refugees”. While all receive protections as

children, not all unaccompanied, migrant or displaced children are afforded protection as refugees. Children who are victims of trafficking benefit from separate protections.

## INTERNATIONAL LAW

*Which are the key international law instruments that provide protections and rights to refugee children?*

5. This note provides a key snapshot of the principle international law instruments that may provide protection to refugee and/or trafficked children in the destination country. This note does not address international humanitarian law protections for non-combatants in conflict zones or the international criminal law relevant to conflict – both are of lesser relevance from the perspective of providing immediate support to refugee children in a destination country outside the conflict zone.
6. This note also excludes from its scope regional instruments such as the European Convention on Human Rights, protections under EU law, or the domestic law of individual States.
7. Key international instruments are:
  - the 1948 Universal Declaration of Human Rights (the “Universal Declaration of Human Rights”), which resulted directly from the experience of the Second World War, and contains two articles<sup>9</sup> specifically referring to children;

- the 1959 Declaration of the Rights of the Child (the “Declaration of the Rights of the Child”), which affirms in its preamble that “mankind owes to the child the best it has to give” and calls upon individuals, voluntary organisations and local authorities and governments to strive for the observance of children’s rights and freedoms set out in the Declaration, including by the enactment of laws;
- the 1951 UN Convention Relating to the Status of Refugees (the “Refugee Convention”), supplemented by the 1967 Protocol Relating to the Status of Refugees (the “1967 Protocol”).<sup>10</sup> This is the primary instrument protecting and conferring rights on refugees;
- the 1966 International Covenant on Economic, Social and Cultural Rights (the “ICESCR”), which shares its origins with the Universal Declaration of Human Rights and commits its parties to assuring economic, social and cultural rights to individuals in their territories as well as in non-self-governing territories marked by the UN for decolonisation. It contains two articles<sup>11</sup> specifically referring to children;
- the 1989 UN Convention on the Rights of the Child (the “UNCRC”), which creates rights for children that did not previously exist under international law. It is concerned with four aspects of children’s rights: participation by children in decisions affecting them; protection of children against discrimination and all forms of neglect and exploitation; prevention of harm

to them; and provision of assistance to children for their basic needs;<sup>12</sup>

- the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the “1996 Hague Convention”), which contains a wide range of civil child protection measures;
  - the 1999 Worst Forms of Child Labour Convention, which obliges its signatories to take “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”;<sup>13</sup>
  - the 2000 Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (the “Sex Trafficking Protocol”), which supplements the UNCRC; and
  - the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women (the “Palermo Protocol”), which supplements the 2000 UN Convention against Transnational Organized Crime and aims to prevent trafficking, of women and children in particular, and to protect and assist victims of trafficking with full respect to their human rights. It also seeks to promote cooperation between States in order to achieve those objectives.<sup>14</sup>
8. Although not a legal instrument, the UN Committee on the Rights of the Child’s General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin<sup>15</sup> is a particularly useful

and important guide to the nature of the obligations owed by State parties to displaced children within their territories.

### *The principle of non-refoulement*

9. The Refugee Convention prohibits the expulsion or return of a refugee against his or her will to a territory where he or she fears threats to life or freedom (the non-refoulement principle). The Convention also prohibits the imposition of penalties on refugees for illegal entry or stay in a particular country.<sup>16</sup> In particular, State parties to the UNCRC must ensure that unaccompanied or separated children, including those who are victims of trafficking, are not criminalised solely for reasons of illegal entry or presence in the country.<sup>17</sup>
10. The non-refoulement principle contained in the Refugee Convention applies to refugees only, and does not therefore apply per se to children who are not refugees. However, children receive absolute protections under the UNCRC, and the UN Committee on the Rights of the Child has emphasised that State parties to the UNCRC must not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 (the right to life) and 37 (the right to be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty) of the UNCRC.<sup>18</sup> This extends to refraining from returning a child to the borders of a State where there is

a real risk of underage military recruitment (including not only as combatants, but also for sexual services).<sup>19</sup>

11. It is worth bearing in mind that not all trafficked children will be refugees,<sup>20</sup> in which case they will fall outside the scope of the protections in the Refugee Convention, including the non-refoulement principle.<sup>21</sup> Having said that, for the purposes of the definition of “refugee” in the Refugee Convention, trafficking itself may amount to “persecution”, with the result that trafficked children (or other persons) are more likely to be brought within the scope of the Refugee Convention.<sup>22</sup>
12. Nevertheless, there remains the possibility that trafficked children could, in theory, be repatriated. Generally speaking, the Palermo Protocol does not prohibit State parties from repatriating trafficked persons (including children); it only requires State parties to “consider” (bearing in mind humanitarian and compassionate factors) adopting measures to grant victims of trafficking some form of temporary or permanent leave to remain in the country.<sup>23</sup> Repatriation of a victim of trafficking must, at least, be carried out with due regard for the safety of the person concerned.<sup>24</sup> The UN Committee on the Rights of the Child has stated that children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken, and in all cases return measures must be conducted in a safe, child-appropriate and gender-sensitive manner.<sup>25</sup>

### *Scope of rights and protections specifically extended to refugee children*

13. With regard to refugee children specifically, article 22 of the UNCRC requires State parties to take appropriate measures to ensure that a child seeking refugee status, or considered a refugee in accordance with applicable international or domestic law and procedures, receives “appropriate protection and humanitarian assistance” in the enjoyment of the rights afforded to children by the UNCRC (a number of which are listed in the following paragraphs – note that these are applicable to all children within the scope of the UNCRC, not just refugee children) and other international human rights or humanitarian to which the State parties are party.<sup>26</sup> This is irrespective of whether the child is accompanied or unaccompanied by his or her parents or by any other person. In particular, a State’s obligation under article 22 entails the responsibility to set up a functioning asylum system and to enact legislation addressing the treatment of unaccompanied and separated children in particular.<sup>27</sup> Applications made for refugee status by unaccompanied and separated children must be given priority.<sup>28</sup>
14. State parties to the UNCRC are obligated to ensure that children are protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of their parents, guardians or family members.<sup>29</sup> This includes discrimination on the basis of the status of a child as being a refugee, asylum-seeker or migrant, or as being unaccompanied or separated.<sup>30</sup>

15. Children in State parties to the UNCRC have the right to acquire a nationality from birth.<sup>31</sup> This is a right which is likely to be violated in refugee situations unless particular attention is given to ensuring the proper documentation of children.<sup>32</sup>
16. In the case of unaccompanied and separated children, State parties should (according to guidance from the UN) provide such children with their own personal identity document, appoint a guardian or adviser, and commence the tracing of family members as soon as possible, in order to comply with their obligations under Articles 8 and 20 of the UNCRC.<sup>33</sup> State parties to the UNCRC are also obligated to make care and accommodation arrangements for unaccompanied or separated children pursuant to article 20, and in doing so should only change a child's residence where this is in the child's best interest, should keep siblings together, and pay due regard to the child's ethnic, religious, cultural and linguistic background.<sup>34</sup>
17. Further, numerous international law instruments recognise the right of children to education, and to make primary education compulsory.<sup>35</sup> The Refugee Convention obliges State parties to give refugees (whether children or adults) the same access to primary education as enjoyed by their own nationals.<sup>36</sup> In the case of unaccompanied or separated children, access to education should be maintained throughout all phases of the child's displacement.<sup>37</sup>
18. State parties have a duty under article 39 of the UNCRC to provide rehabilitation services to children who have

been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts, and the UN calls for special sensitivity and attention in the care and rehabilitation of girl refugees in particular, recognising that they may have experienced gender-based violence in the context of armed conflict giving rise to profound trauma.<sup>38</sup>

#### *Further protections for trafficked children*

19. Under the Palermo Protocol, "trafficking" of children means the recruitment, transportation, transfer, harbouring or receipt of persons under 18 years of age, by any means for the purpose of exploitation. This is broader than the general definition of trafficking applying to adults, which requires the trafficking to be effected via specified means including force, coercion or deception.<sup>39</sup> Among other things, the Protocol requires State parties to adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.<sup>40</sup>
20. The Sex Trafficking Protocol prohibits the sale of children, child prostitution and child pornography, and requires State parties to ensure that such acts are fully covered under their domestic criminal laws.<sup>41</sup>
21. The UNCRC requires State parties to undertake to "protect the child from all forms of sexual exploitation and sexual abuse" and to take all appropriate national, bilateral and multilateral measures to prevent coercion of children into unlawful sexual activity, exploitative use of children in prostitution, and use of children in



pornographic performances and materials.<sup>42</sup> They must also take all appropriate national, bilateral and multinational measures to prevent the abduction of, sale of or traffic in children.<sup>43</sup> The UN Committee identifies such measures as including the identification of unaccompanied and separated children and making regular inquiries as to their whereabouts.<sup>44</sup>

#### *Requirements for international cooperation to support the aims of the key instruments*

22. Both the Palermo Protocol and the Sex Trafficking Protocol recognise the international nature of the networks fostering human trafficking. The Palermo Protocol requires State parties to co-operate with one another by exchanging information relating to, among other things, the methods used by organised criminal groups for trafficking, and to provide training for law enforcement and immigration officials, taking into account the need to consider child and gender-sensitive issues.<sup>45</sup> Similarly, the Sex Trafficking Protocol contains provisions aimed at strengthening international cooperation in: (i) detecting, prosecuting and preventing sex trafficking involving children;<sup>46</sup> (ii) assisting child victims in physical and psychological recovery, social reintegration and repatriation;<sup>47</sup> and (iii) addressing the “root causes” contributing to the vulnerability of children to such exploitation.<sup>48</sup>
23. The 1996 Hague Convention contains procedures for co-operation between States in circumstances where children (including but not limited to refugees and asylum seekers) cross borders; for example, the

authorities of one State party may request any “information relevant to the protection of the child” from the authorities of another State party.<sup>49</sup>

## **IMPLEMENTATION AND ACCOUNTABILITY**

24. The key challenges to enforcement of the rights of refugee children and/or trafficked children under international law arise from: (i) the fact that a number of the relevant legal instruments tend to take the approach of “soft” provisions, rather than imposing mandatory obligations on States; (ii) the inconsistent and/or insufficient incorporation of international instruments into States’ domestic laws, or limited ratification of those instruments by States parties; and (iii) a lack of practical implementation of international law protections, coupled with the absence of supranational judicial mechanisms that would allow victims to hold States accountable and to seek recourse outside their domestic legal system.

#### *Weak and non-mandatory provisions*

25. Mere “good practice”, as opposed to binding obligation, has the inherent limitation of being non-enforceable. While the 1996 Hague Convention, for instance, imposes a general obligation of co-operation to achieve the purposes of the Convention,<sup>50</sup> it otherwise appears merely to encourage “good practice” rather than placing specific obligations on State parties to protect unaccompanied and displaced children, and obligations are in fact only triggered in limited circumstances once the State authority has decided to take a certain measure of protection under the

Convention.<sup>51</sup> The permissive nature of the Convention, and the absence of strong positive rights obligations on the part of “co-operating” States, hardly serves to bolster protections for displaced children – especially in light of the fact that (as the Practical Handbook on the 1996 Hague Convention acknowledges) “some countries, particularly when faced with large flows of internationally displaced persons, have tended to restrict the definition of ‘refugee’ or used other methods to deny refugees the standards of treatment associated with recognition of refugee status”.<sup>52</sup>

*Insufficient legal implementation of international law protections at domestic level*

26. Following the contextual approach to interpretation required by the Vienna Convention on the Law of Treaties, the UK Supreme Court, among others, has held that the exclusion clauses in the Refugee Convention must be restrictively interpreted and cautiously applied. This has led to the development of a line of jurisprudence that is resistant to claims by States seeking to deny individuals the protection of refugee status on the basis of their involvement in criminal activity. The UN Committee on the Rights of the Child has highlighted the need, in national refugee status-determination procedures, for an age and gender-sensitive interpretation of the refugee definition that takes into account child-specific manifestations of persecution (for example, the risk of under-age recruitment of girls for sexual services or forced marriage with the military).<sup>53</sup> Refugee status determination by States is an area which

could prove fruitful ground for further monitoring and advocacy, particularly when carried out from a gender-based perspective.

27. International conventions may also be subject to reservations by individual States. When acceding to the Refugee Convention, Turkey declared that it would apply the Convention only to persons who have become refugees as a result of events occurring in Europe. However, the UNHCR considers that the non-refoulement principle is a rule of customary international law binding on all States, including States that maintain a geographical limitation.<sup>54</sup> Reservations such as Turkey’s may be permissible, but they undermine the humanitarian objectives of the Refugee Convention: given the relatively small number of refugees originating from Europe, such a restriction is equivalent to not accepting any obligations under the Refugee Convention.<sup>55</sup>
28. States may also take disparate and conflicting approaches to implementing convention obligations, if at all. Despite the Palermo Protocol, for instance, having introduced a clear definition of trafficking, significant discrepancies between trafficking definitions in international law and those adopted in the domestic criminal codes of many State parties have been identified – including those that report being in full compliance with their obligations to criminalise trafficking as per the Palermo Protocol definition.<sup>56</sup> Similarly, although the UNCRC has been widely ratified, a number of countries have not incorporated it into their domestic law,<sup>57</sup> which



limits the ability of refugee children to enforce their rights before domestic courts.<sup>58</sup> Furthermore, UNICEF emphasises that effective implementation of the UNCRC is not achieved by legislative measures alone, and the countries to have most successfully implemented the Convention are those that have adopted a range of approaches including non-legal measures to support, monitor and enforce implementation.<sup>59</sup>

#### *Absence of enforcement mechanisms*

29. State compliance with UN conventions tends to be monitored by individual UN committees made up of independent experts. However, the powers of treaty-monitoring bodies to hold States accountable for failure to legally or practically implement a treaty are limited, and such monitoring mechanisms are by no means the same as enforcement mechanisms which would allow individuals (or groups) to hold States accountable for failures to comply with their international obligations.
30. State parties to the Refugee Convention are obliged to provide routine data on refugee populations to the UNHCR,<sup>60</sup> and may in theory enforce the Refugee Convention as between each other before the International Court of Justice.<sup>61</sup> However, in reality there is no any effective mechanism to hold States accountable for breaches of the Refugee Convention.<sup>62</sup>
31. There is also no mechanism to hold State parties accountable for non-compliance with their obligations under the Palermo Protocol. While the Palermo Protocol imposes obligations on the States that ratify it to adopt legislative measures to establish trafficking as a criminal

offence in their domestic law,<sup>63</sup> it does not create an internationally justiciable criminal offence. Perpetrators of trafficking can only be held accountable under the domestic law of individual States.<sup>64</sup>

32. In light of the foregoing – and as UNICEF has observed in relation to the UNCRC – UN agencies, national human rights institutions, non-governmental organisations, academics and the media all have key roles to play in ensuring progress towards the full implementation of human rights treaties: by observing and documenting States' legal and practical implementation of their international law obligations on the domestic plane, by holding government to account, by lobbying for change, and by engaging and raising public awareness.

## REFERENCES

1. UNICEF, Children on the move. Why leave home?, available at: [https://www.unicef.org/emergencies/childrenonthemove/90514\\_90523.html](https://www.unicef.org/emergencies/childrenonthemove/90514_90523.html) (last accessed 21 December 2016).
2. Efforts to combat gender-based violence include the 2005 Inter-Agency Standing Committee Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies, which specifically documents the gender-based dangers faced by refugee children in humanitarian emergencies (see in particular the Introduction to the Guidelines, pp. 7-8). For an evaluation of the effectiveness of these guidelines in the context of the Syrian conflict, see UNHCR, Evaluation of Implementation of 2005 IASC Guidelines for Gender-based Violence Interventions in Humanitarian Settings in the Syria Crisis Response, 10 October 2015, available at: <http://www.refworld.org/docid/568f9abe4.html> (last accessed 21 February 2017).
3. UN Convention on the Rights of the Child, 1989, 1577 UNTS 3 (entered into force 2 September 1990), art. 1. This definition is used by the UN High Commissioner for Refugees (the "UNHCR") in its Policy on Refugee Children (UNHCR, UNHCR Policy on Refugee Children, EC/SCP/82, 6 August 1993, para. 3). Note, however, that references to "refugee child" in that document are widened to meaning "any child of concern to the High Commissioner", which would include children under 18 but above the age of majority in the relevant State). Note further, in the context of international humanitarian law (which is outside the scope of this note), that the relevant minimum age for the various protections in the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War ranges between 12, 15 and 18 years.
4. UN Convention Relating to the Status of Refugees, 1951, 189 UNTS 137 (entered into force 22 April 1954), art. 1(A)(2) (as amended by the 1976 Protocol Relating to the Status of Refugees, which removed the geographic and temporal limits of the Convention – originally designed to protect refugees in war-torn Europe – giving it universal coverage). This definition emphasises protection from political or other forms of persecution (see Introductory Note by the Office of the United Nations High Commissioner for Refugees, p. 3).
5. See generally UNHCR, Refugee Children: Guidelines on Protection and Care, Geneva, 1994, available at: <http://www.refworld.org/docid/3ae6b3470.html> (last accessed 21 February 2017). See also UNHCR, UNHCR Policy on Refugee Children, EC/SCP/82, 6 August 1993, section III, and UNICEF, Uprooted: the growing crisis for refugee and migrant children, New York: UNICEF Division of Data, Research and Policy, September 2016, available at: <https://www.unicef.org/videoaudio/PDFs/Uprooted.pdf> (last accessed 21 February 2017), which examines global data about approximately 50 million children who have been forcibly displaced or migrated across borders, and the dangers they face along the way, between 2005 and 2015. See also Committee on the Rights of the Child, General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6, 1 September 2005, para. 3.
6. Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2000, 2171 UNTS 227 (entered into force 18 January 2002), Introduction; see also UNHCR, UNHCR Policy on Refugee Children, *supra* note 5, para. 12.
7. UN General Assembly, Note on international protection, A/AC.96/951, 13 September 2001, para. 31, available at: <http://www.refworld.org/docid/3bb1c6cc4.html> (last accessed 21 February 2017); see also Committee on the Rights of the Child, *supra* note 5, para. 47.
8. UN General Assembly, *supra* note 7, para. 63.
9. UN General Assembly, Universal Declaration of Human Rights (217 [III] A), 10 December 1948, arts. 25 and 26.
10. A current list of the State parties to the Protocol is available on the United Nations Treaty Collection website, available at [www.treaties.un.org](http://www.treaties.un.org) (last accessed 21 February 2017).
11. International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3 (entered into force 1 March 1976), arts. 10 and 13.
12. See, for example, *supra* note 3, arts. 2, 12(2), 19(1), 23, 31 and 32. These protections are sometimes referred to as "the four 'P's": see G. Van Bueren, The International Law on the Rights of the Child, The Hague/Boston/London: Martinus Nijhoff Publishers, 1995, p. 15.
13. Worst Forms of Child Labour Convention, 1999, No. 182, art. 1.
14. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2237 UNTS 319 (entered into force 25 December 2003), art. 2.
15. Committee on the Rights of the Child, *supra* note 5. Similar guidance is provided by the UNHCR's Guidelines on Protection and Care (1994) and the Inter-Agency Guiding Principles on Unaccompanied and Separated Children.
16. *Supra* note 4, art. 31.
17. Committee on the Rights of the Child, *supra* note 5, para. 62.
18. *Ibid.*, para. 27.
19. *Ibid.*, paras. 28 and 58.
20. *Ibid.*, para. 53.
21. UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being

- trafficked, HCR/GIP/06/07, 7 April 2006, paras. 12-13, available at <http://www.unhcr.org/uk/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html?query=guidelines%20on%20international%20protection> (last accessed 21 February 2017).
22. *Ibid.*, paras. 14-15 and 19-20.
  23. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2237 UNTS 319 (entered into force 25 December 2003), art. 7.
  24. *Ibid.*, art. 8.
  25. Committee on the Rights of the Child, *supra* note 5, paras. 53 and 87.
  26. *Supra* note 3, art. 22(1).
  27. Committee on the Rights of the Child, *supra* note 5, para. 64.
  28. *Ibid.*, para. 70.
  29. *Supra* note 3, art. 2(2).
  30. Committee on the Rights of the Child, *supra* note 5, para. 18.
  31. *Supra* note 3, art. 7.
  32. UNHCR, Refugee Children: Guidelines on Protection and Care, *supra* note 5, chapter 8, section II.
  33. Committee on the Rights of the Child, *supra* note 5, paras. 31 and 33. Art. 22(2) of the UNCRC requires State parties to assist the UN in tracing the parents or other family members of a refugee child and to assist in family reunification.
  34. *Ibid.*, para. 40.
  35. Under art. 26 of the UNCRC, State parties declare that they recognise the right of the child to education and that they shall make primary education compulsory and free to all; Principle 7 of the Declaration of the Rights of the Child states that children are entitled to receive free and compulsory elementary education; and although they do not refer specifically to children, art. 26 of the Universal Declaration of Human Rights and art. 13.2(a) of the ICESCR provide that primary or elementary education should be compulsory and free to all.
  36. *Supra* note 4, art. 22(1). See also S. K. N. Blay and B. M. Tsamenyi, Reservations and Declarations Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, *International Journal of Refugee Law*, 2(4), 1990, p. 547.
  37. Committee on the Rights of the Child, *supra* note 5, para. 41.
  38. *Ibid.*, paras. 47 and 48.
  39. *Supra* note 23, art. 3.
  40. *Ibid.*, art. 9(5).
  41. *Supra* note 6, arts. 1 and 3.
  42. *Supra* note 3, art. 34.
  43. *Ibid.*, art. 35.
  44. Committee on the Rights of the Child, *supra* note 5, para. 52.
  45. *Supra* note 23, art. 10.
  46. *Supra* note 6, art. 10(1).
  47. *Ibid.*, art. 10(2).
  48. *Ibid.*, art. 10(3).
  49. Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996 (entered into force 1 January 2002), art. 34.
  50. *Ibid.*, art. 30.
  51. *Ibid.*, arts. 33 and 36; see also Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, The Hague: Hague Conference on Private International Law Permanent Bureau, 2014, para. 11.12, available at <https://assets.hcch.net/docs/eca03d40-29c6-4cc4-ae52-edad337b6b86.pdf> (last accessed 21 February 2017).
  52. Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, *supra* note 51, para. 13.59.
  53. Committee on the Rights of the Child, *supra* note 5, paras. 59 and 74.
  54. UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, Geneva, 26 January 2007, para. 15, available at: <http://www.refworld.org/pdfid/45f17a1a4.pdf> (last accessed 21 February 2017).
  55. Blay and Tsamenyi, *supra* note 36, p. 539.
  56. M. Madden Dempsey et al., Defining Sex Trafficking in International and Domestic Law: Mind the Gaps, *Emory International Law Review*, 26, p. 139.
  57. For example, Australia, Germany, Ireland, Canada, Denmark (though Danish courts are required to consider all binding international conventions where there is an apparent conflict with relevant national law), Iceland, New Zealand and South Africa have not incorporated the UNCRC into domestic law. See UNICEF, The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries, November 2012, available at [https://353ld710iigr2n4po7k4kgvv-wpengine.netdna-ssl.com/wp-content/uploads/2012/11/UNICEFUK\\_2012CRCImplementationreport-FINAL-PDF-version.pdf](https://353ld710iigr2n4po7k4kgvv-wpengine.netdna-ssl.com/wp-content/uploads/2012/11/UNICEFUK_2012CRCImplementationreport-FINAL-PDF-version.pdf) (last accessed 21 February 2017).
  58. UNICEF, *supra* note 57, pp. 20-21.
  59. *Ibid.*, pp. 22 and 108.

60. See UNHCR, Evaluation and Policy Analysis Unit, Enhancing UNHCR's capacity to monitor the protection, rights and well-being of refugees, EPAU/004/06, June 2004, chapter 5, para. 32.
61. *Supra* note 4, art. 38; see also UN Protocol Relating to the Status of Refugees, 606 UNTS 267 (entered into force 4 October 1967), art. IV.
62. J. C. Hathaway, A. M. North and J. Pobjoy, Introduction, *Journal of Refugees Studies*, 26(3), 2013, p. 323.
63. *Supra* note 14, art. 5.
64. Note that the UNHCR considers that in certain circumstances and if on a large enough scale, trafficking could constitute a crime against humanity; and, in armed conflict, a war crime; *supra* note 21, para. 3.

## CONTACT INFORMATION

This briefing note is published to provide general information and not as legal advice. Please contact a member of the Accountability Unit Legal Team or Research Team if you would like to discuss the contents of this note.

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