

Protection of Unaccompanied Children in migration movements and on the streets

Budapest
September 2009

Rights of Children

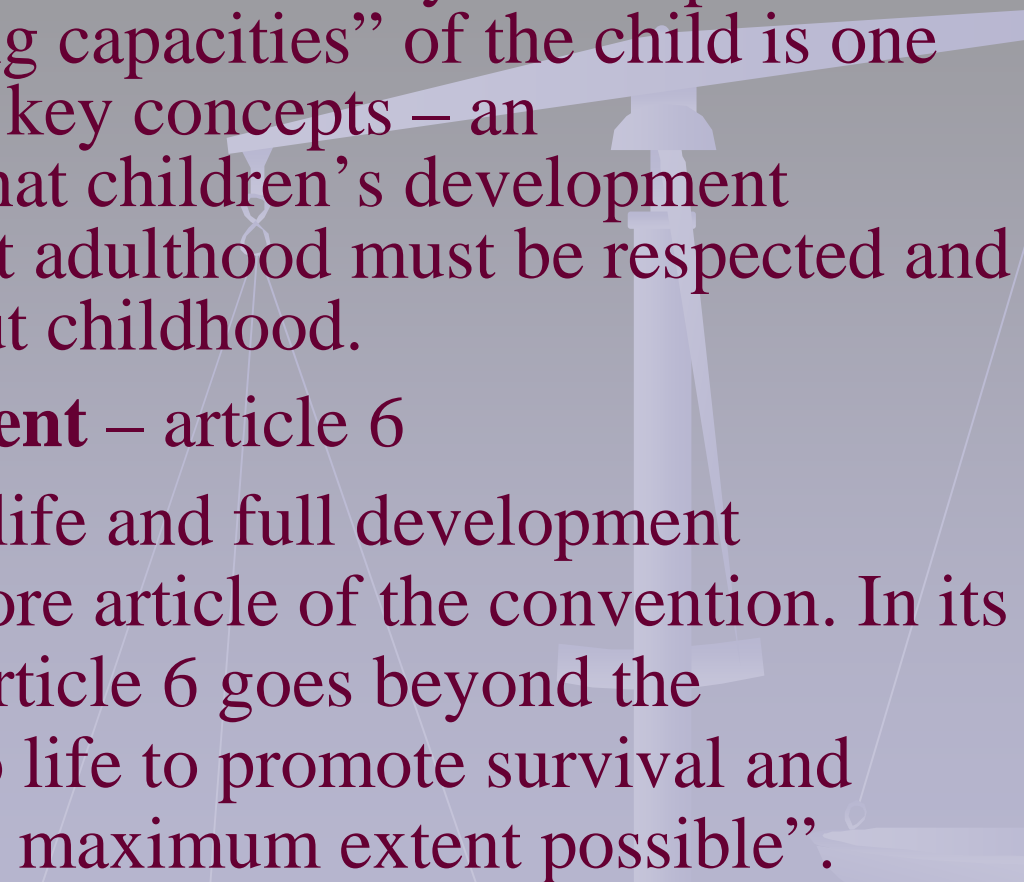
- The Convention on the Rights of the Child – the CRC – 1989
- Fundamental principle for Migrant Children:
The CRC is valid for ALL children on a State's territory and under its jurisdiction.



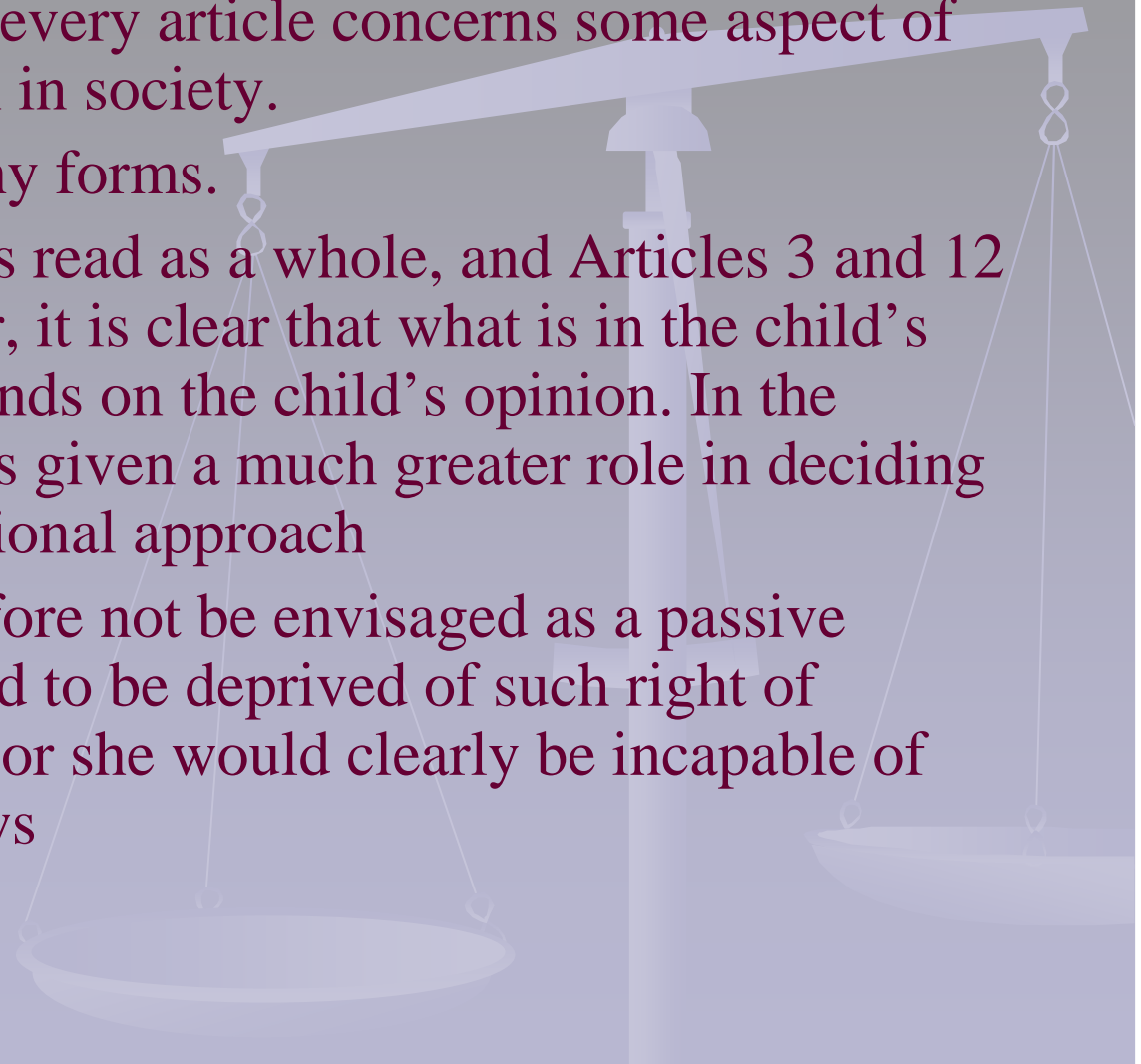
Guiding Principles



- Article 2 – **non-discrimination.**
- *The enjoyment of rights stipulated in the Convention are therefore not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.*
- **Child's best interests** - Article 3: The principle of the child's best interests, derived from article 3 of the CRC, is the second core principle applicable in all policies. Consideration of best interests must embrace both short and long-term considerations for the child.

- 
- **Evolving capacity** – article 5
 - Using the concept of “evolving capacities” has avoided the need for the Convention to set arbitrary age limits or definitions of maturity tied to particular issues. The “evolving capacities” of the child is one of the Convention’s key concepts – an acknowledgement that children’s development towards independent adulthood must be respected and promoted throughout childhood.
 - **Life and development** – article 6
 - The child’s right to life and full development constitute another core article of the convention. In its second paragraph, article 6 goes beyond the fundamental right to life to promote survival and development “to the maximum extent possible”.

- **Participation** – article 12
- Participation is a theme that runs throughout the CRC. In one way or another, nearly every article concerns some aspect of children's participation in society.
- Participation takes many forms.
- Since the Convention is read as a whole, and Articles 3 and 12 are considered together, it is clear that what is in the child's best interests also depends on the child's opinion. In the Convention, the child is given a much greater role in deciding than with a more traditional approach
- The child should therefore not be envisaged as a passive human being or allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views

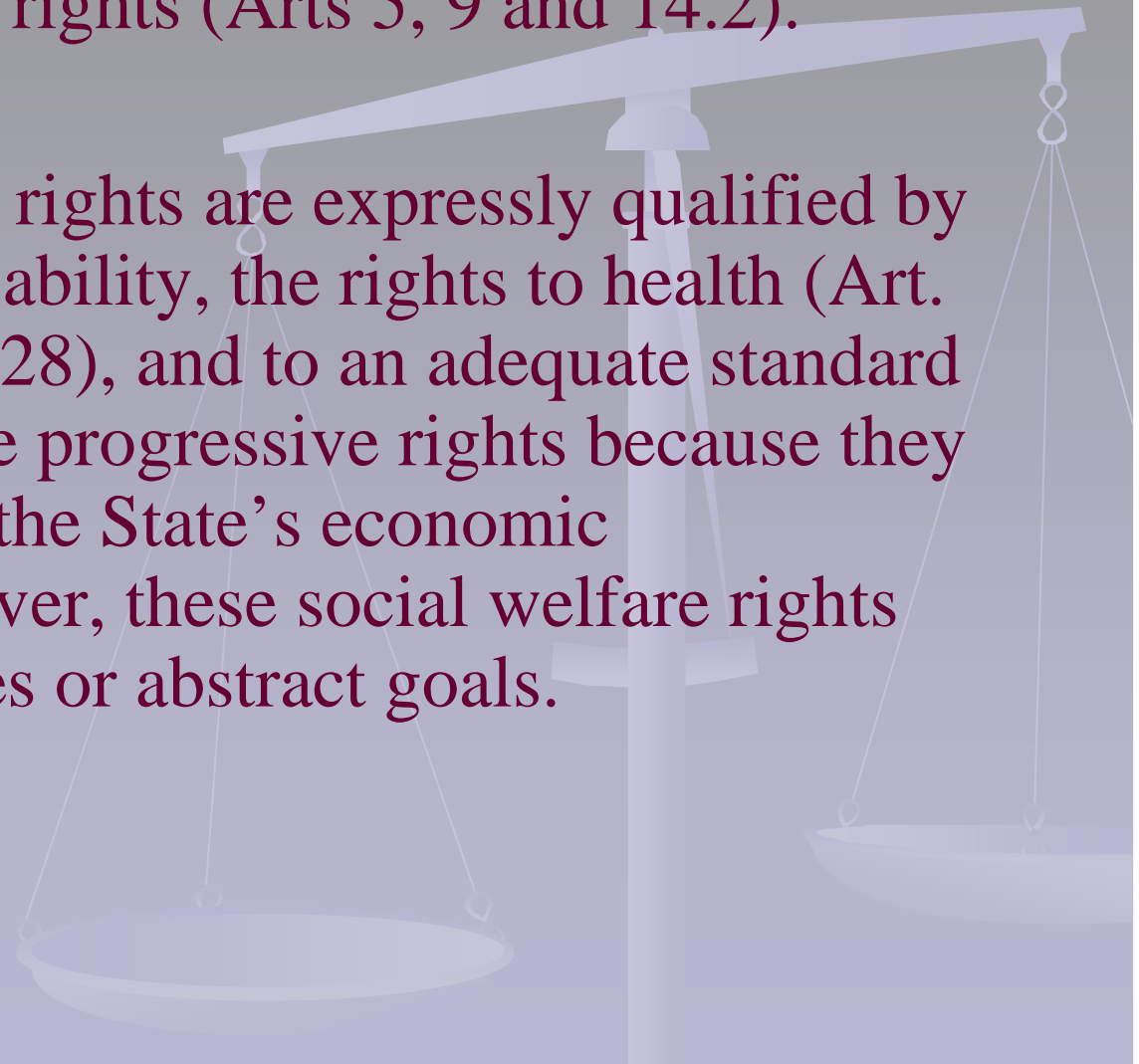


Specific Rights

- All rights are valid
- But some are more relevant than others for particular groups of children.
- The CRC's comprehensive standards cover virtually every aspect of a child's life, from health and education to social and political rights.



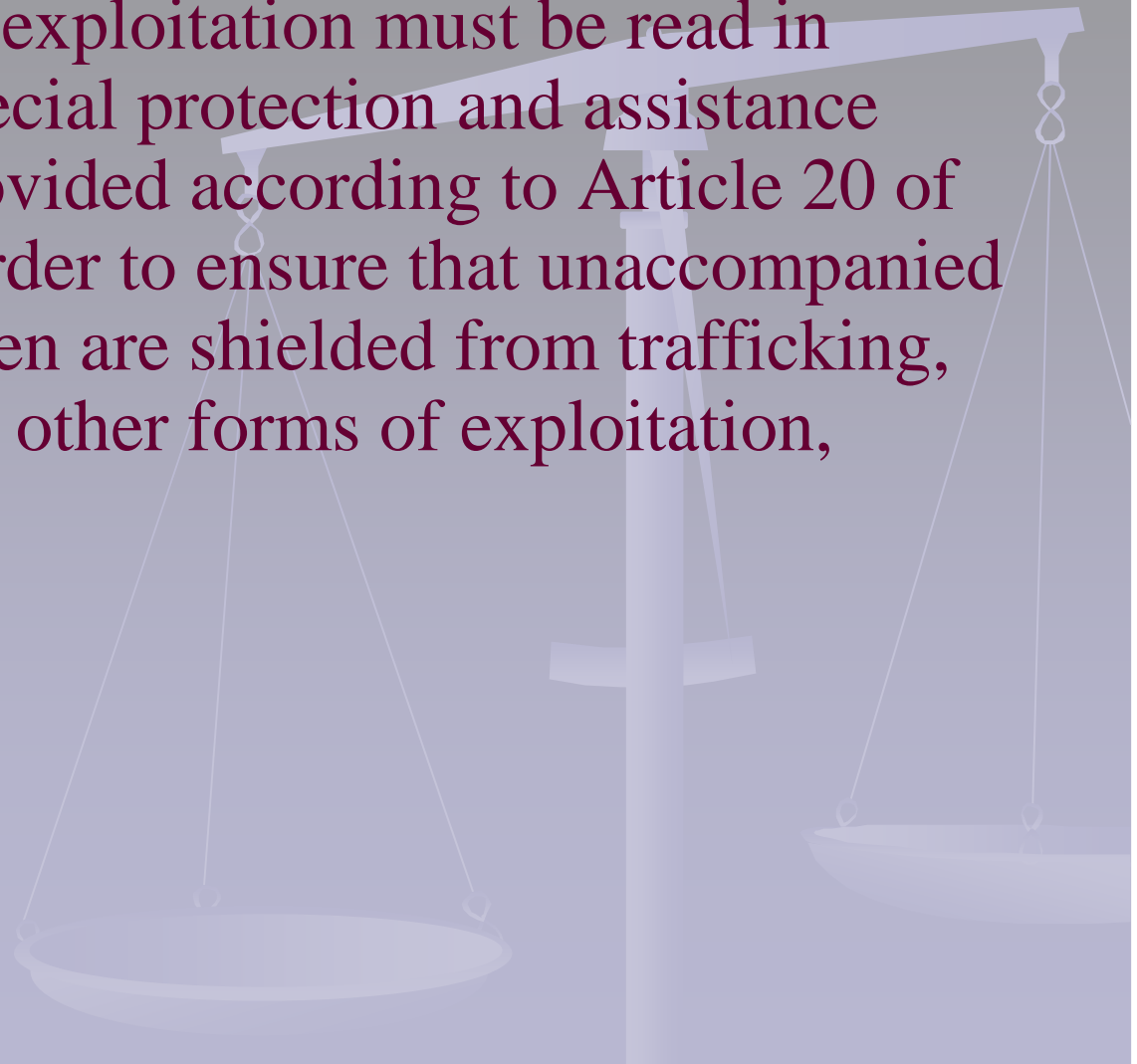
- Some of the standards are specific, such as the articles on juvenile justice (Arts 37 and 40), adoption (Art. 21) and family rights (Arts 5, 9 and 14.2).
- Some social welfare rights are expressly qualified by the State's financial ability, the rights to health (Art. 24), education (Art. 28), and to an adequate standard of living (Art. 27) are progressive rights because they increase along with the State's economic development. However, these social welfare rights are not just principles or abstract goals.



Specific protection against abuse

- An additional level of specific protection is provided in the CRC against abuse and exploitation. Children are to be protected from economic, sexual, military and all other forms of exploitation
- Article 19 of the CRC requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Paragraph 2 sets out possible protective measures, and in particular the provision of appropriate support to children and families, are relevant to the protection of the child from violence, abuse and exploitation.

- Articles 34 to 36 on exploitation must be read in conjunction with special protection and assistance obligations to be provided according to Article 20 of the Convention in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence.



Detention and Juvenile Justice



- Art 37 - The article is formulated so that States have a duty to effectively protect children from such treatment, and not only a duty to prevent State agents from violating the provision. Paragraph (a) of article 37 emphasizes that the absolute prohibition on torture, and cruel, inhuman or degrading treatment or punishment [
- Art 39 - victims
- Art 40 – juvenile offenders.

Education



- The right to education which is enshrined in UDHR Article 26, and ICESCR, Article 13 is crucial for protecting children and enabling them. Importantly respect for this right in countries of origin will create possibilities which will render migration less attractive and respect in the country of destination will create integration and prevent a serious neglect and violation of a basic right. Both articles provide that *everyone* has the right to education.
- Article 29 of the CRC recognises the role of education in enabling the development of the child's personality, talents and mental and physical abilities to develop to their fullest potential.

Guardian

- States are required to create the underlying legal framework and take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child

Family Reunion



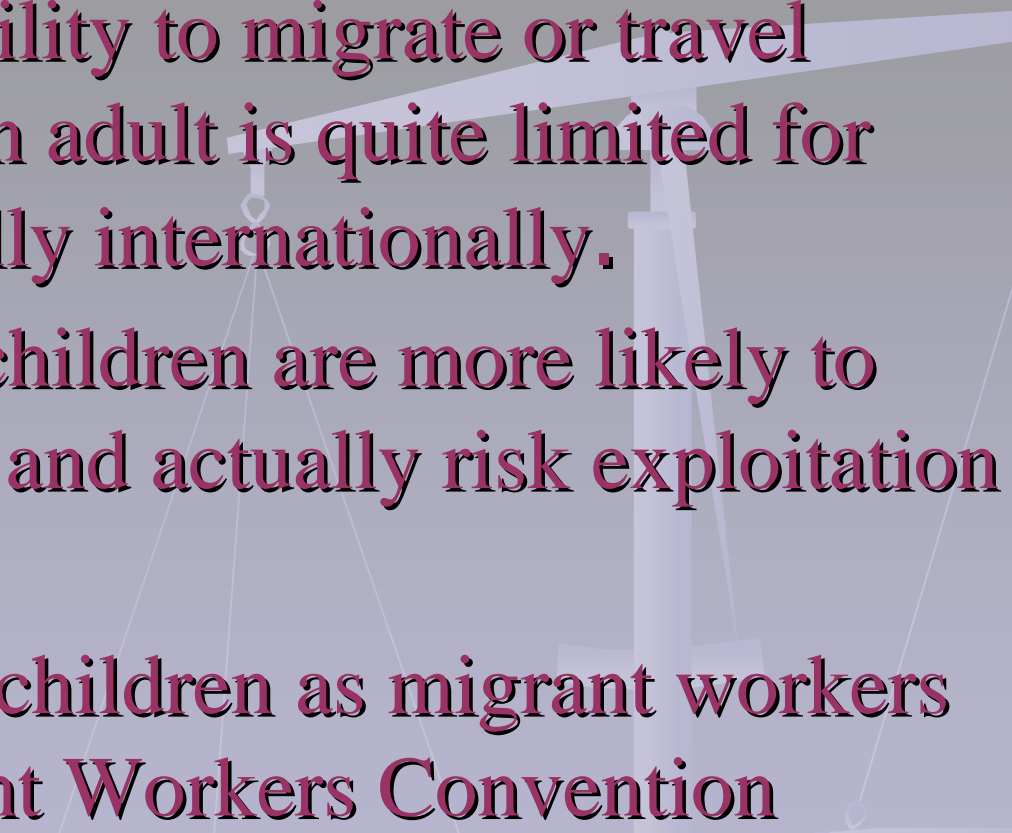
- According to Article 10, applications made by a child or her or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a *positive, humane and expeditious manner*.
- Article 9 of the Convention on the Rights of the Child enshrines two essential principles of children's rights: first, that children should not be separated from their parents unless it is necessary for their best interests and, second, that all procedures to separate children from parents on that ground must be fair.

Health Care



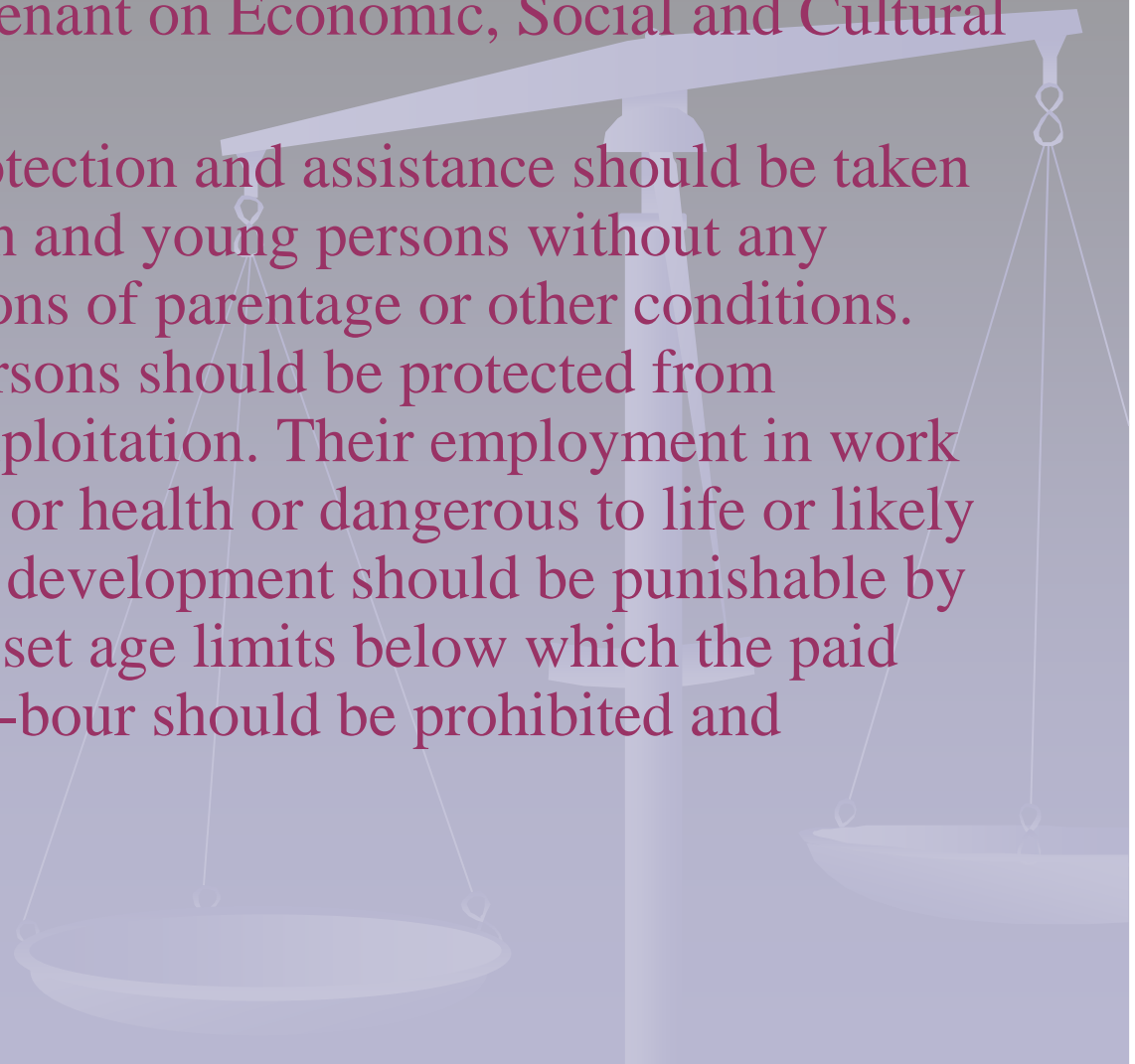
- The provision for health care is found in Articles 24, 39 and for children with disabilities Article 23 of the CRC. Problems may be experienced because of language barriers and lack of awareness of services, attitudes and values of healthcare professionals, lack of resources and cultural insensitivity
- Article 24 of the Convention on the Rights of the Child recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health

Migrant Workers - Children?

- Generally, the ability to migrate or travel legally without an adult is quite limited for children, especially internationally.
 - This means that children are more likely to travel irregularly and actually risk exploitation or abuse.
 - No protection of children as migrant workers in the UN Migrant Workers Convention
- 

A right to work?

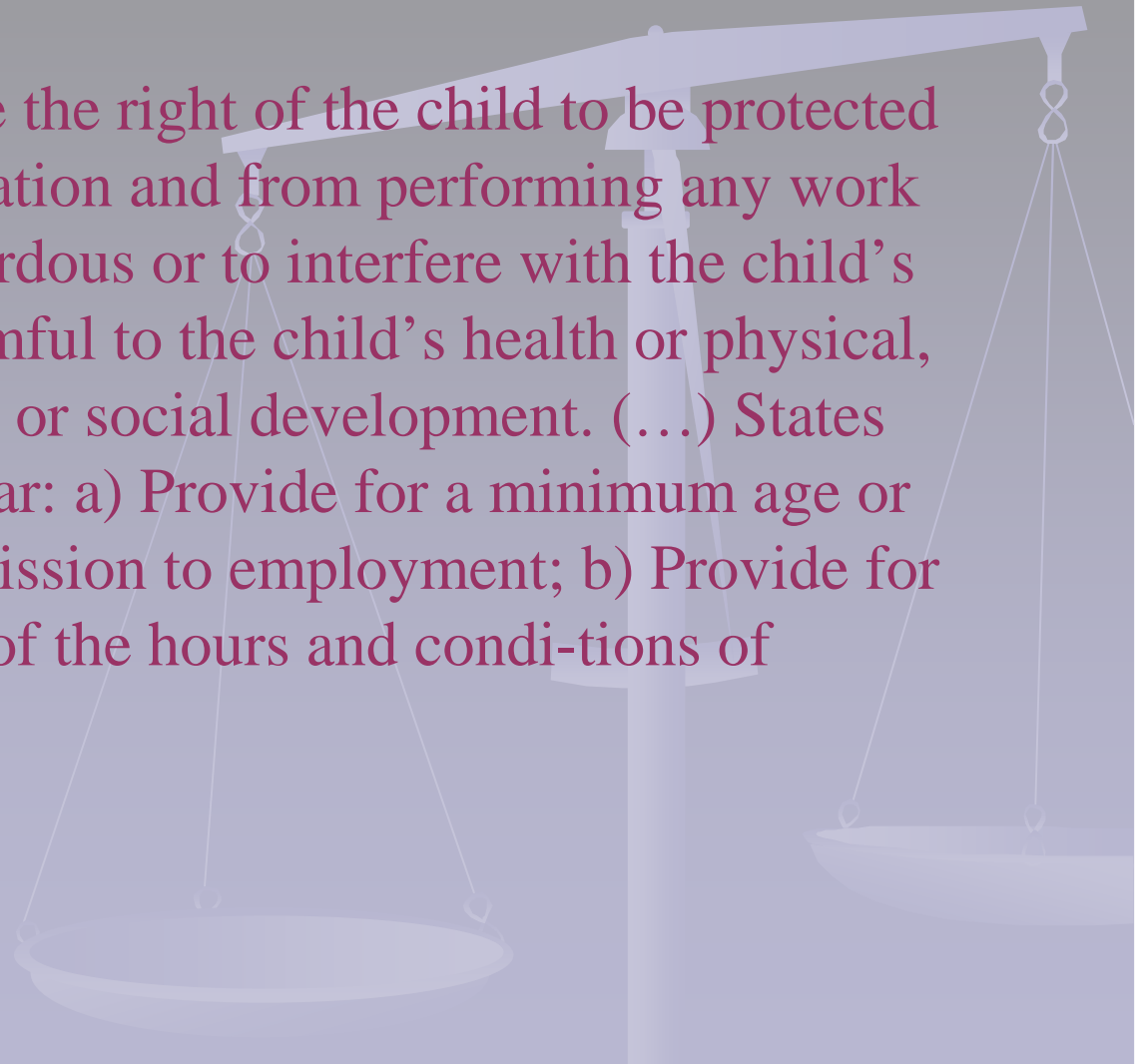
- Article 10.3 of the Covenant on Economic, Social and Cultural Rights states that
- special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.



CRC

Art 32:

- States 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. (...) States Parties shall in particular: a) Provide for a minimum age or minimum ages for admission to employment; b) Provide for appropriate regulation of the hours and conditions of employment (...)

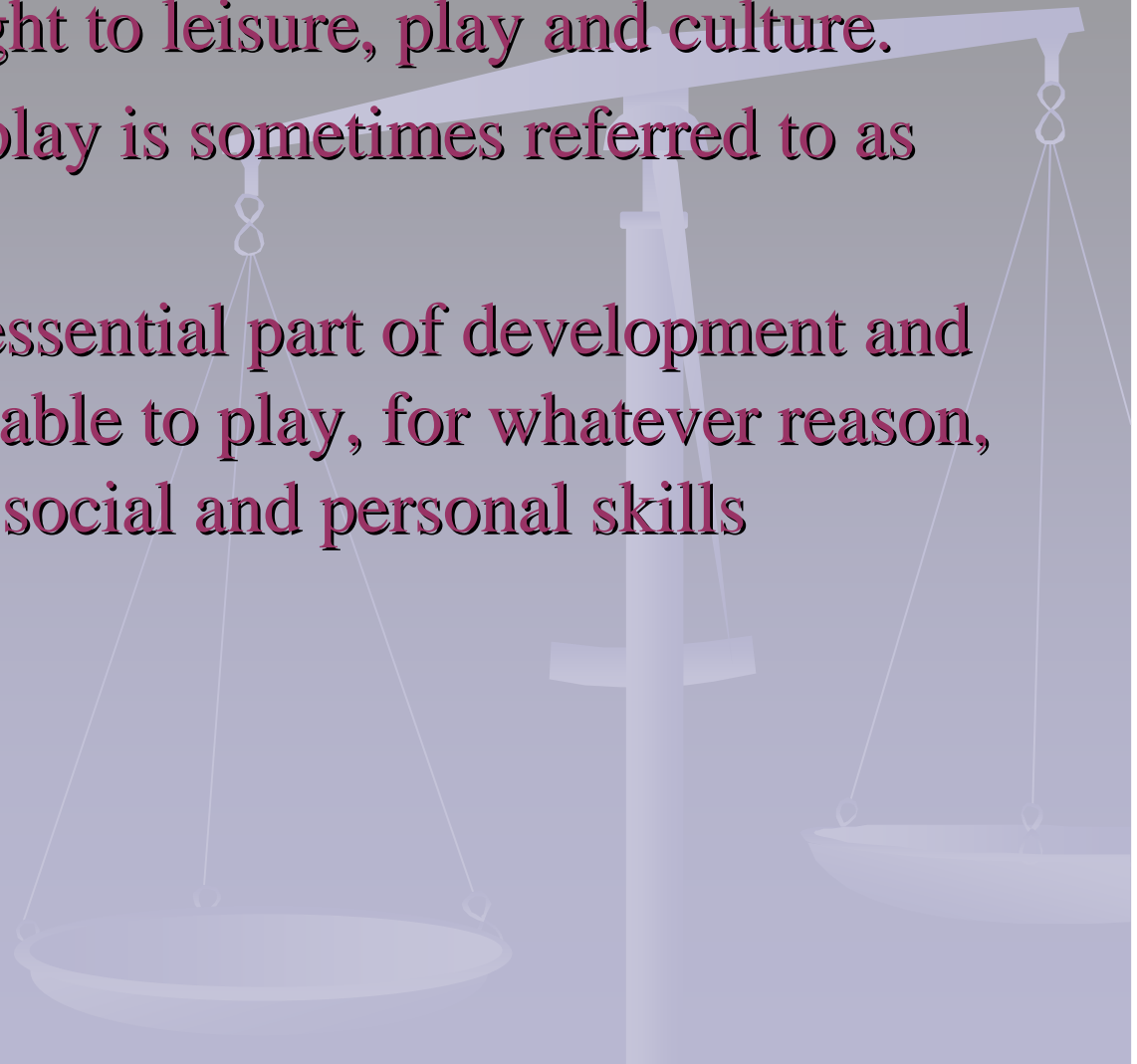


ILO Convention 138

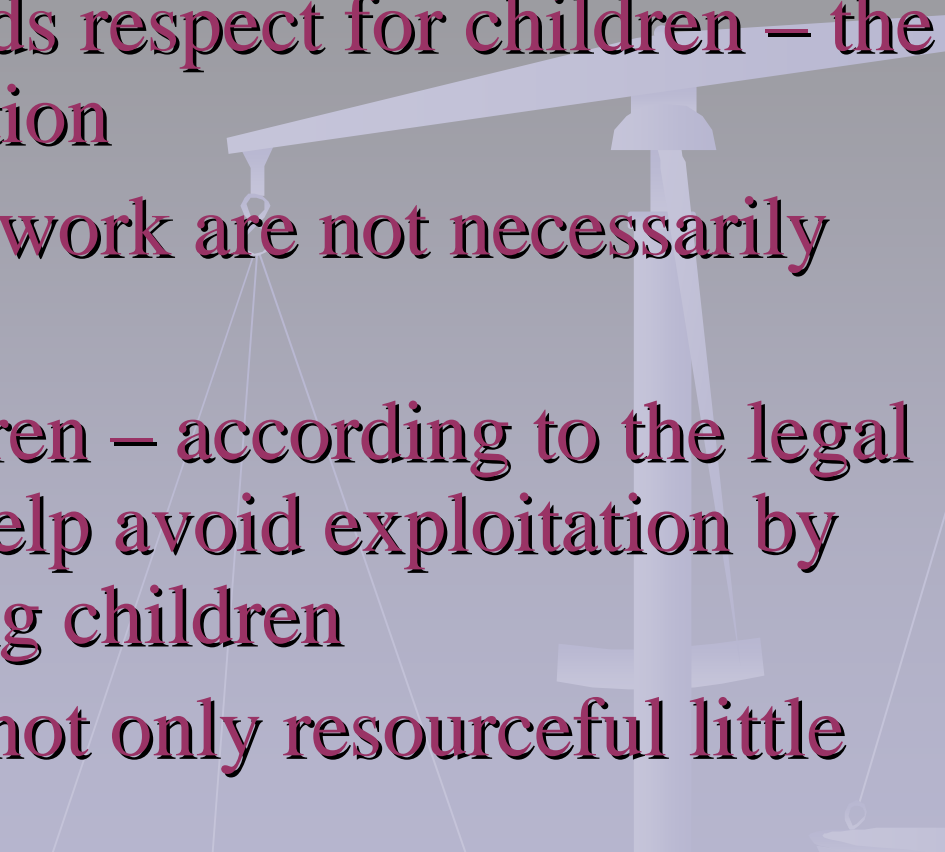
- ILO Convention 138 establishes that States should set a minimum age for employment or work that should be no lower than the age of compulsory schooling and in any case not lower than 15 years.
- Further the ILO Convention protect children from any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons until they are 18 years old

CRC cont.

- Article 31 on the right to leisure, play and culture.
- Children's right to play is sometimes referred to as the "forgotten right."
- But play is also an essential part of development and children who are unable to play, for whatever reason, may lack important social and personal skills



Respecting Children


- The CRC demands respect for children – the right to participation
 - Exploitation and work are not necessarily synonymous
 - Respecting children – according to the legal framework can help avoid exploitation by accepting working children
 - But children are not only resourceful little workers....
- 

Trafficking

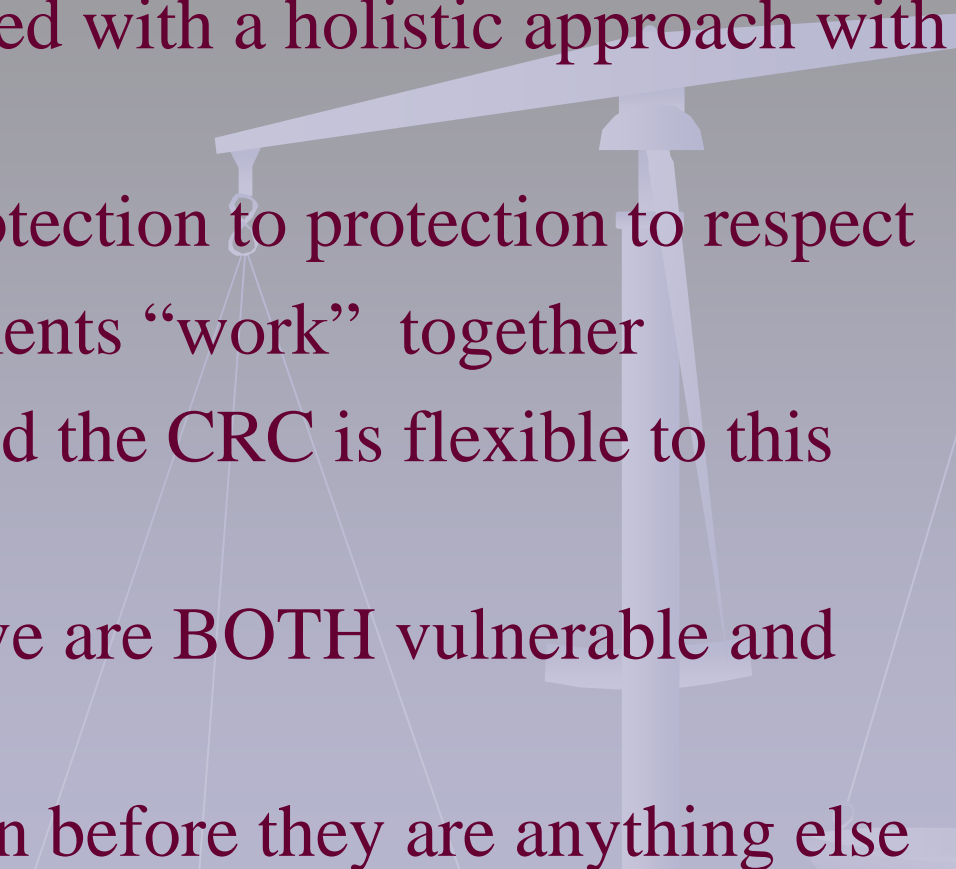


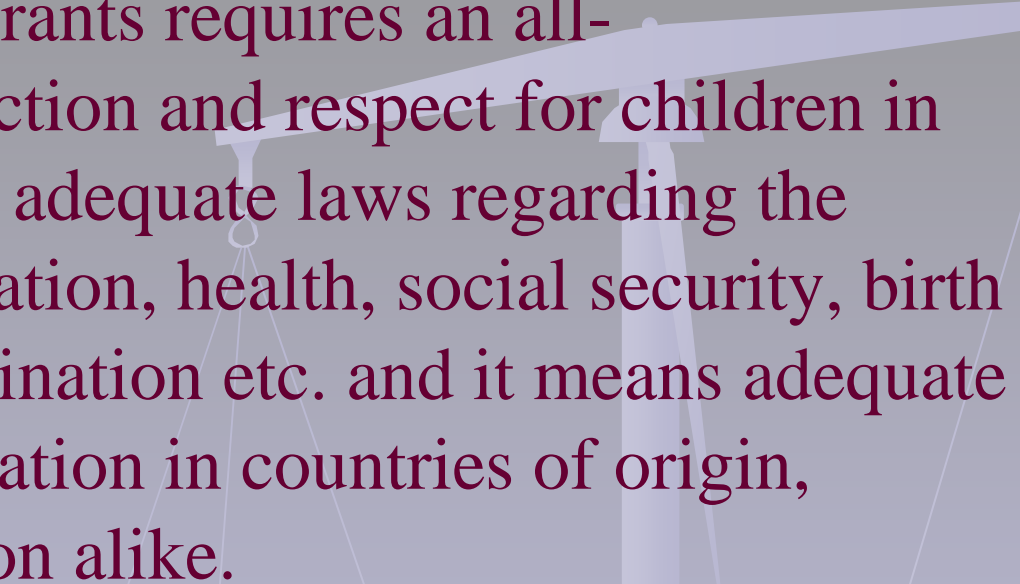
- An interesting particularity about the crime of trafficking is that the victim is very often subject to a crime which should traditionally be punished by criminal law and not a human rights crime, traditionally understood as a crime committed by the state
- The explicit protection against trafficking in the CRC is found in Article 35 Art 35 provides that “States Parties shall take all appropriate, national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”.

The Palermo Protocol

- To **P**revent and combat trafficking in persons
 - To **P**rotect and assist victims
 - To respect the Human Rights of Victims
 - To **P**rosecute and investigate
 - To promote cooperation
 - To create a basis for State **P**olicy
- 

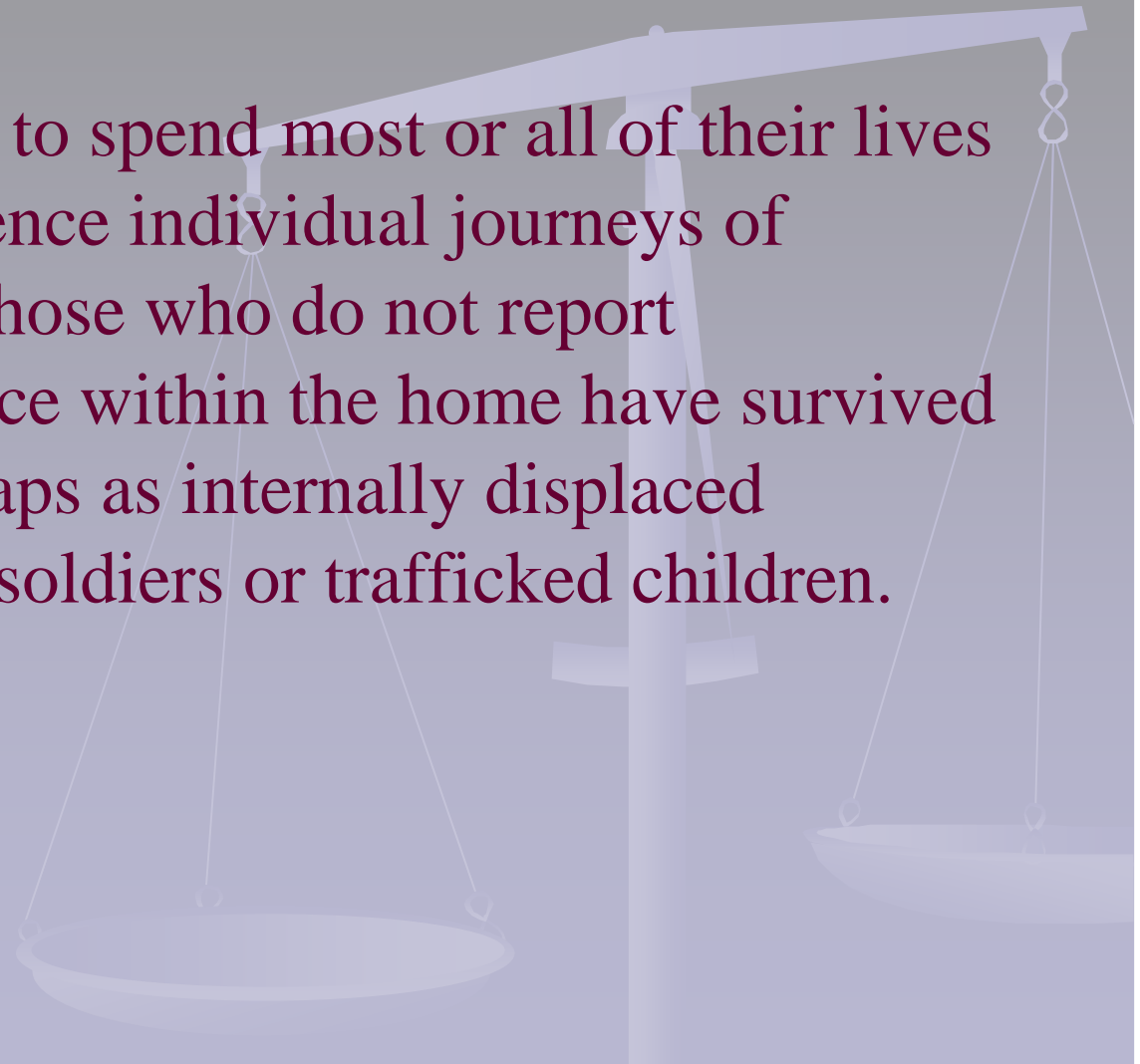
Conclusion


- Children are protected with a holistic approach with the CRC
 - Moving from no protection to protection to respect
 - A variety of instruments “work” together
 - Children develop and the CRC is flexible to this regard
 - Children on the move are BOTH vulnerable and resourceful
 - Children are children before they are anything else
- 

- 
- protecting child migrants requires an all-encompassing protection and respect for children in general. This means adequate laws regarding the labour market, education, health, social security, birth registration, discrimination etc. and it means adequate laws and implementation in countries of origin, transit and destination alike.

Migrants Children and Street Children

- Children who come to spend most or all of their lives on the street experience individual journeys of violence. Many of those who do not report experiencing violence within the home have survived other traumas, perhaps as internally displaced migrants, refugees, soldiers or trafficked children.

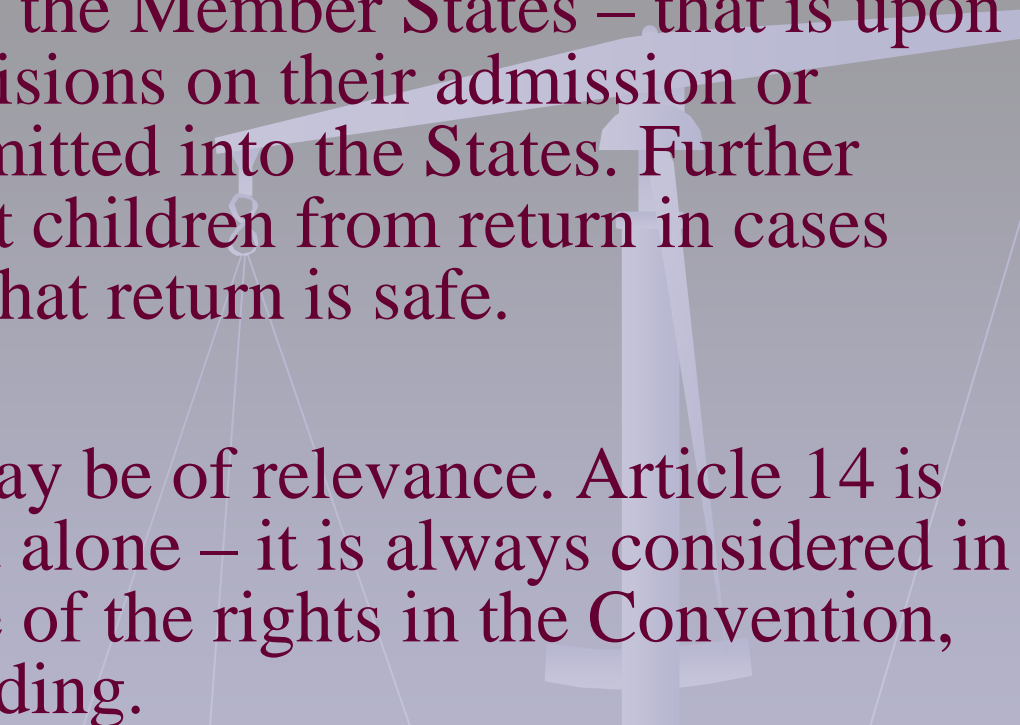


- 
- On the margin of society
 - Outside protection schemes
 - Cannot count on law enforcement to be on their side
 - Detention
 - Alone and thus vulnerable
 - Alone and thus resourceful
 - Specific right important to migrant children often also the right important to street children.

Europe

The European Convention on Human Rights is the major binding human rights instrument valid in the European Union.

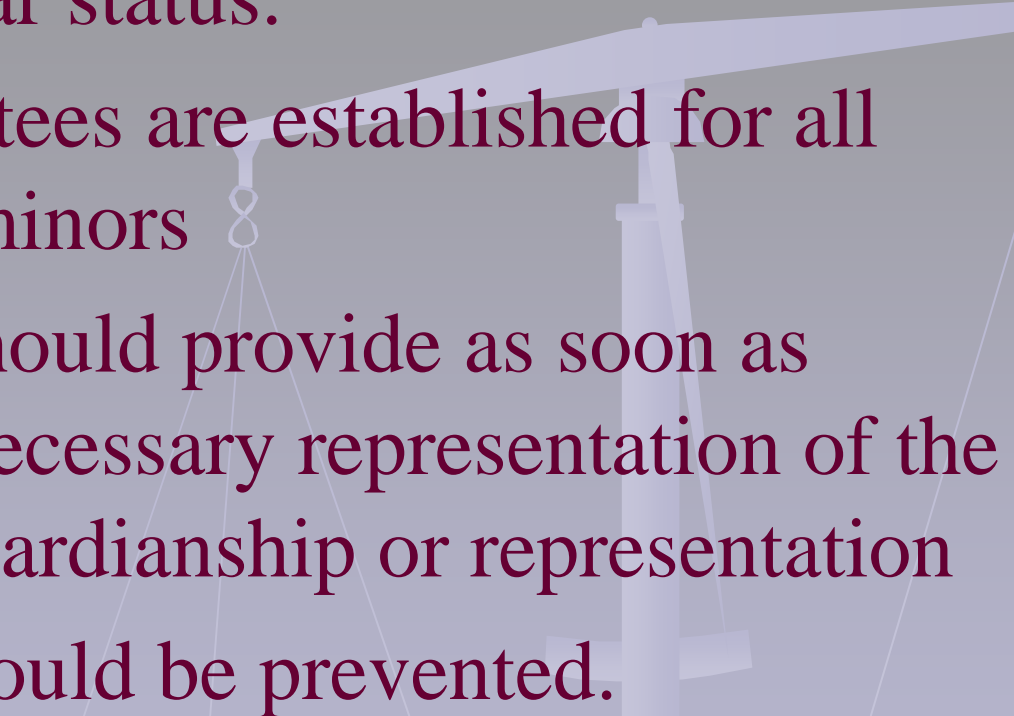
- Especially article 8 on family life may be relevant in cases when an unaccompanied minor can be reunited with family members within the Union.
- In cases concerning article 8 the best interest of the child should be taken into consideration. The case law of the Court however does not allow to clearly concluding anything specific regarding the contents of the best interest principle and whether children are able to participate in defining it

- 
- Probably the most important protection within the ECHR is article 3 which first of all protects children from ill treatment in the Member States – that is upon arrival, pending decisions on their admission or return, and once admitted into the States. Further article 3 may protect children from return in cases where doubt exists that return is safe.
 - Further article 14 may be of relevance. Article 14 is not to be considered alone – it is always considered in connection with one of the rights in the Convention, according to its wording.

Policies

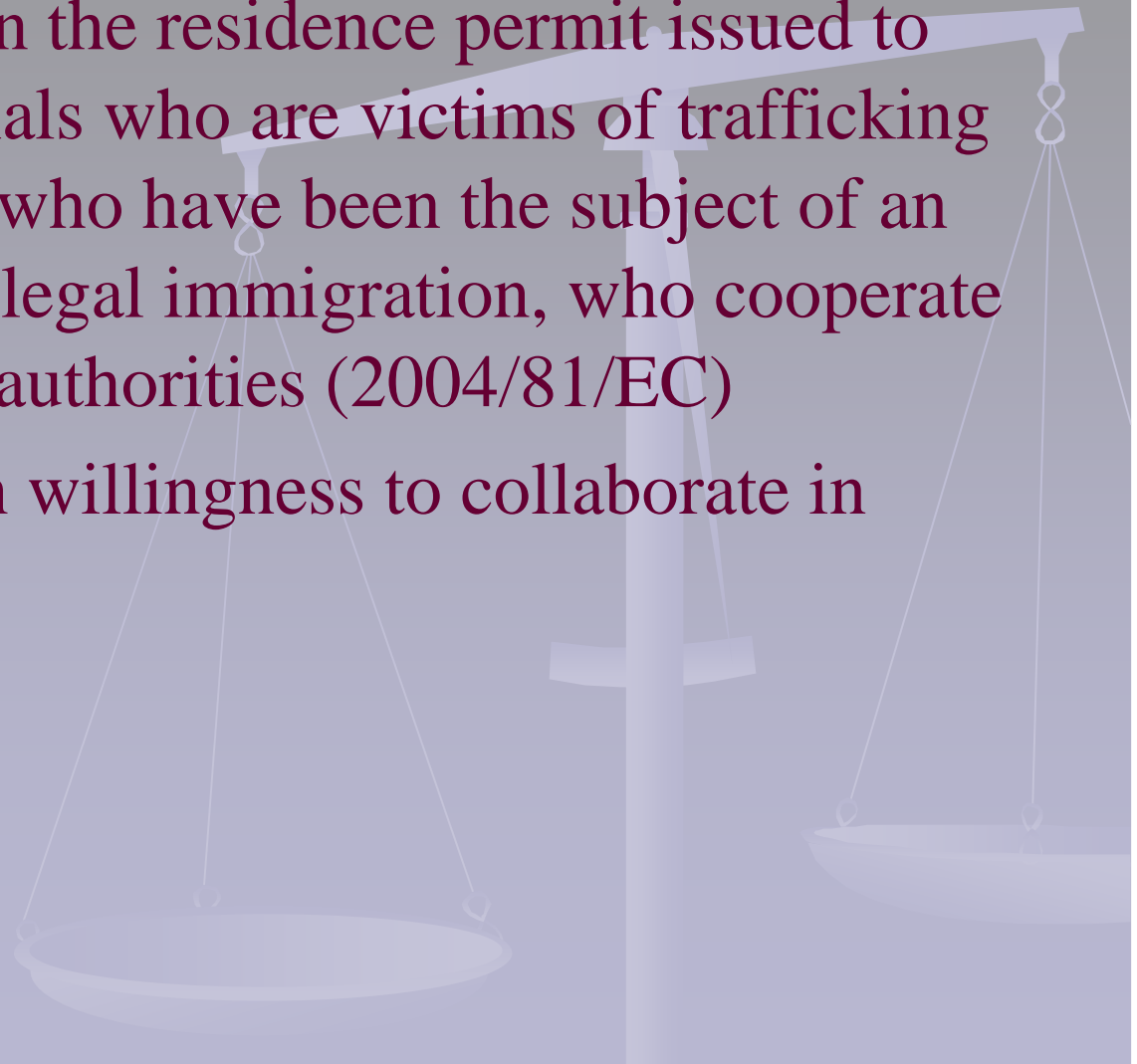


- The Council Resolution of the 26th June 1997
- Minimum guarantees are established for all unaccompanied minors.
- Establish identity as soon as possible after arrival; By means of an appropriate interview, which should be conducted as soon as possible and in a manner in keeping with his/hers age. It is extremely important that such interviews are done by persons who are trained to deal with children.

- 
- Children are entitled to the necessary protection and basic care, irrespective of their irregular or regular status.
 - Minimum guarantees are established for all unaccompanied minors
 - Member States should provide as soon as possible for the necessary representation of the minor by legal guardianship or representation
 - “Illegal” entry should be prevented.

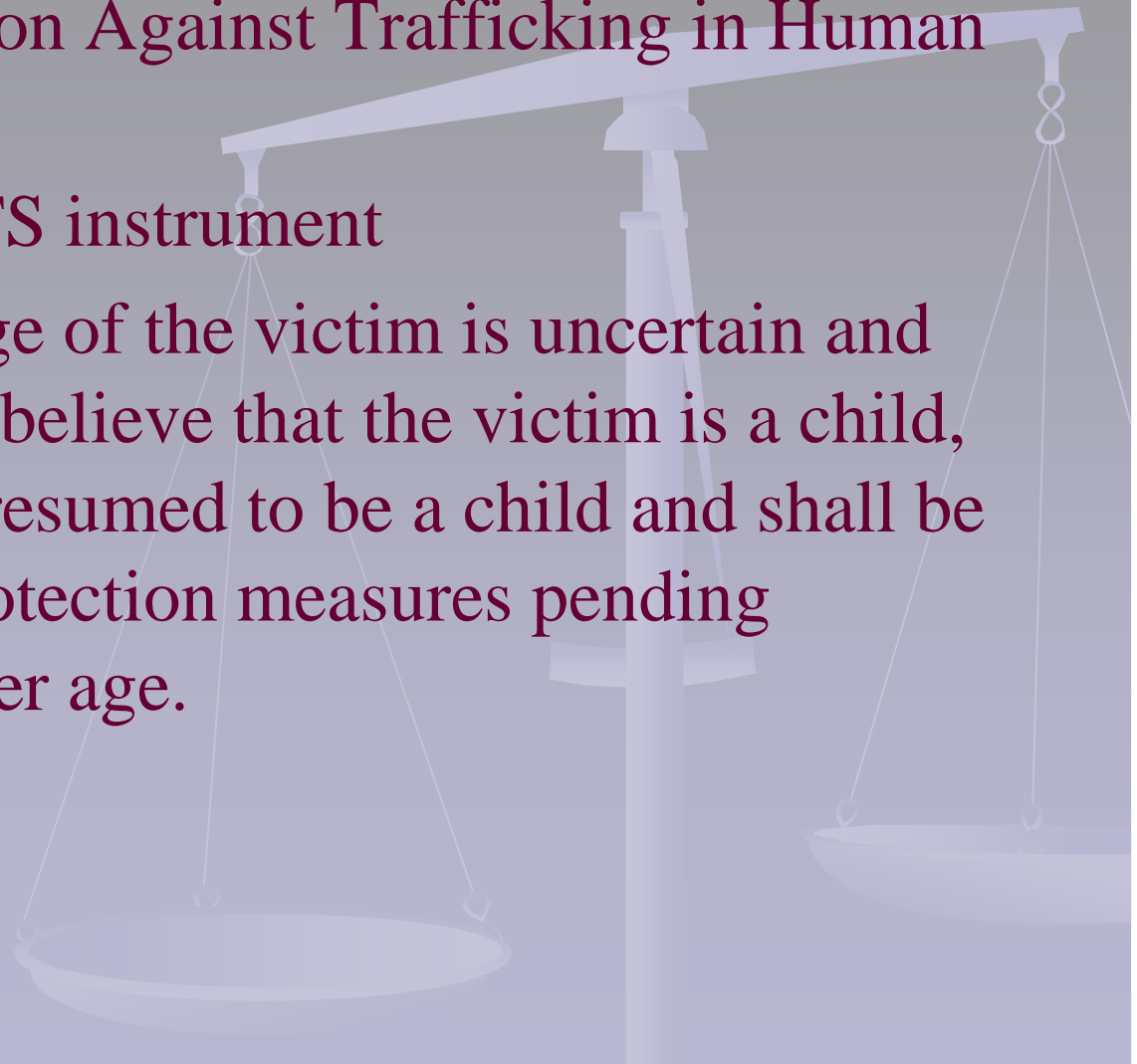
Victims of Trafficking

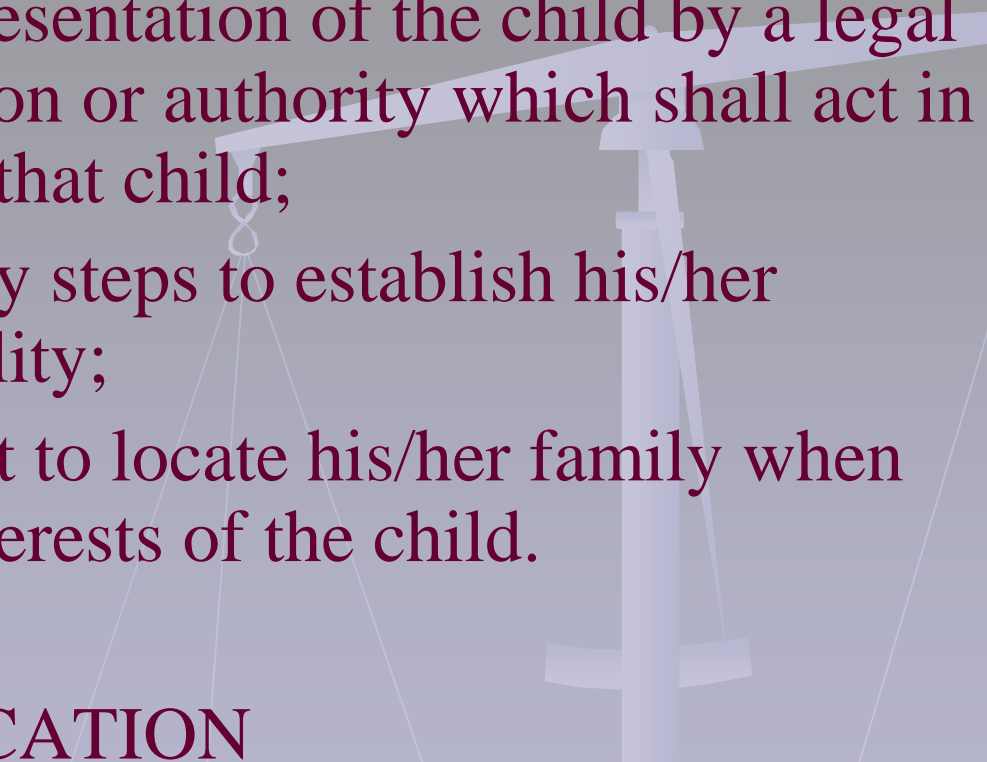
- Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC)
 - Protection depend on willingness to collaborate in prosecution



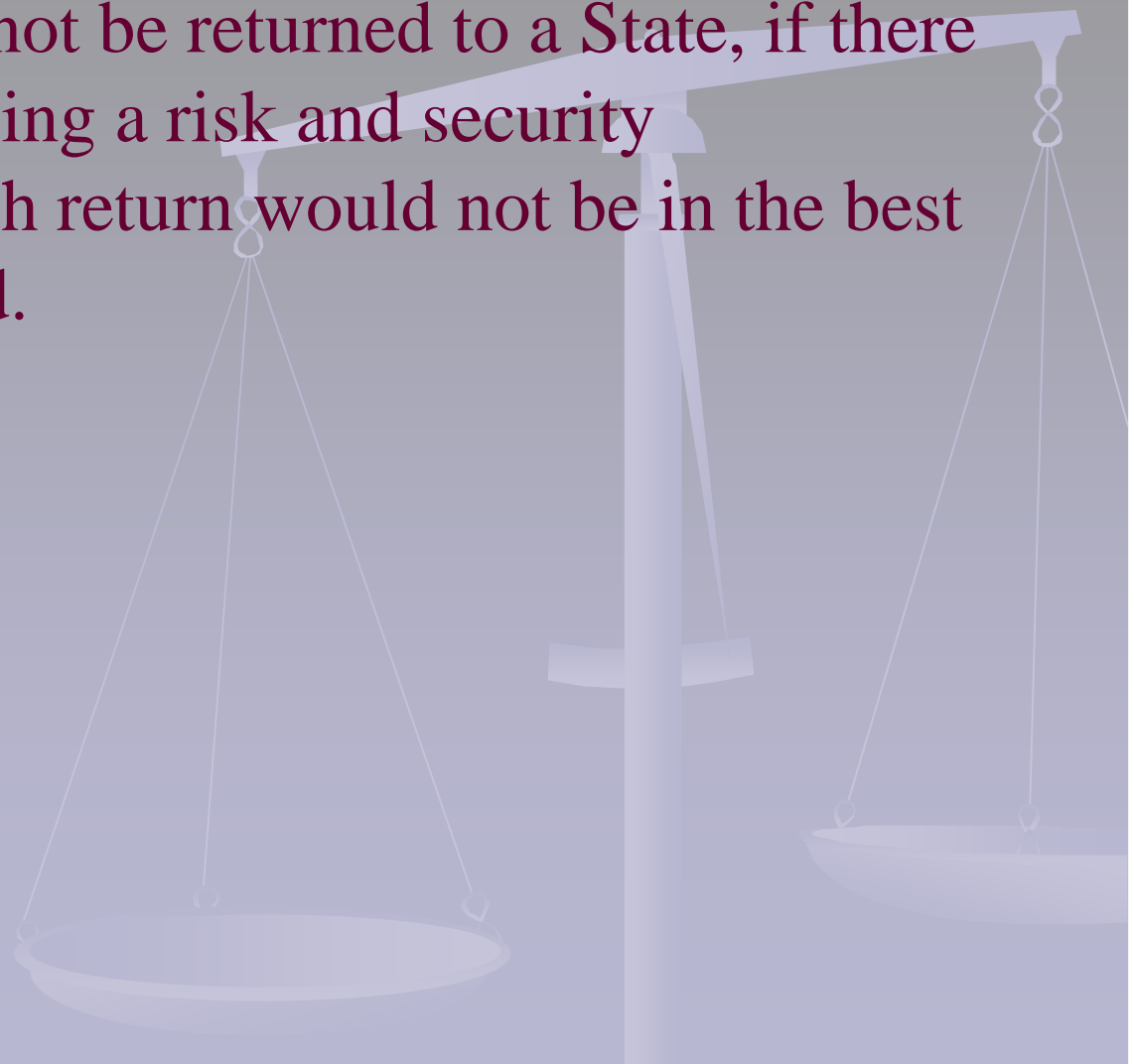
CoE Trafficking Convention

- Convention on Action Against Trafficking in Human Beings
- A HUMAN RIGHTS instrument
- Art 10: When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

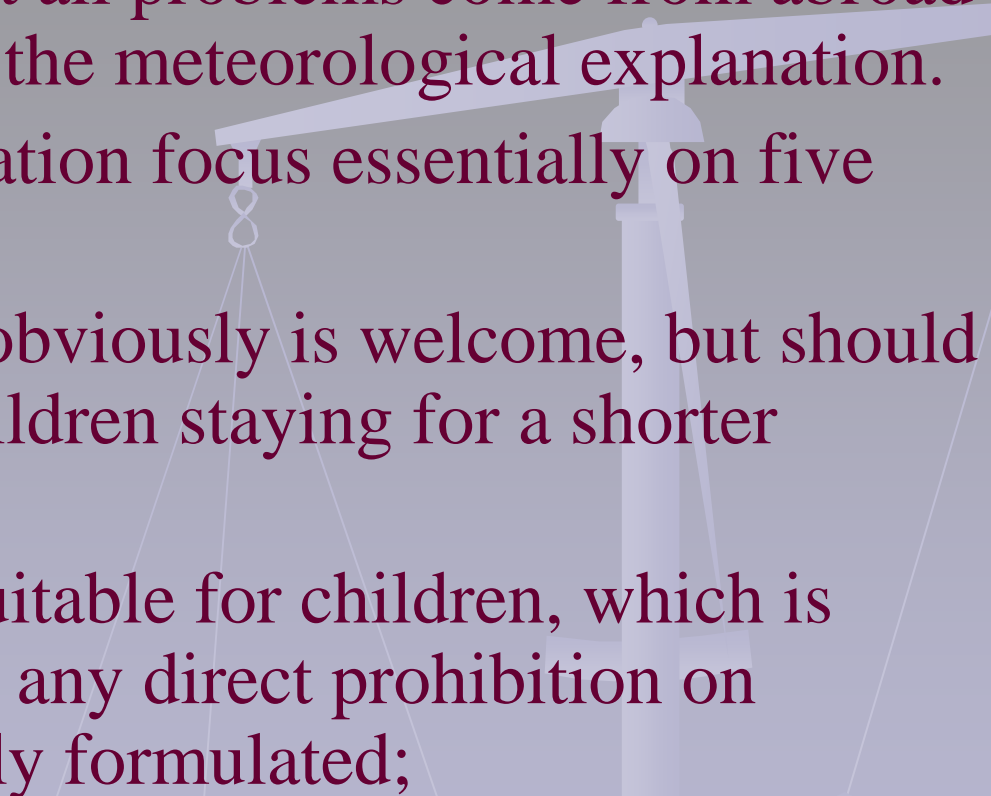


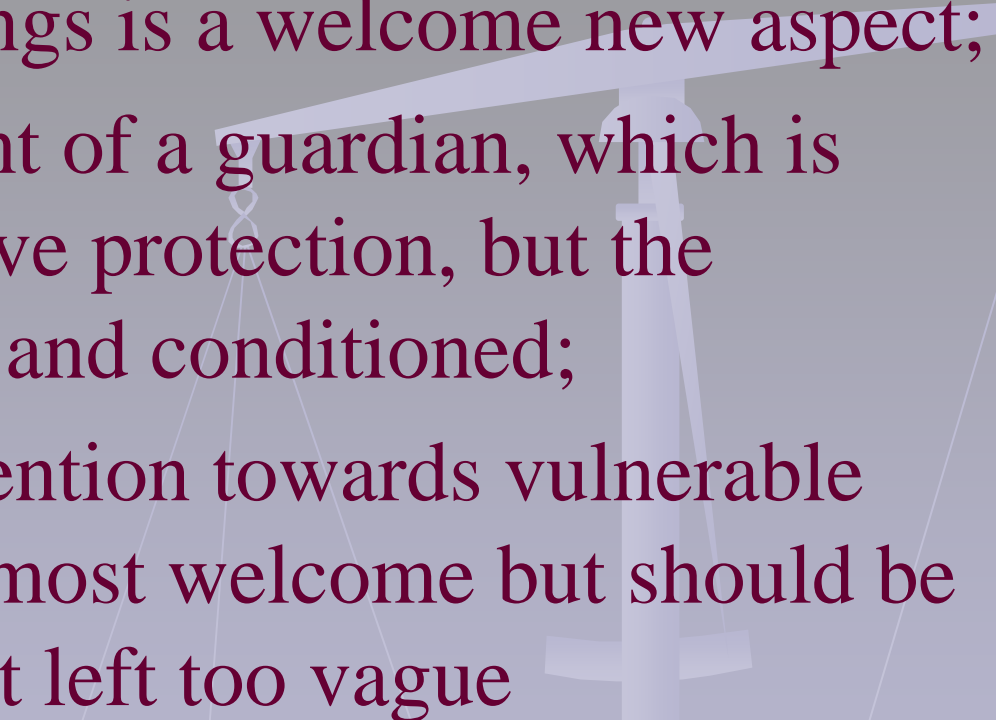
- 
- a provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
 - b take the necessary steps to establish his/her identity and nationality;
 - c make every effort to locate his/her family when this is in the best interests of the child.
 - **ACCESS TO EDUCATION**

- Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.



- 
- Concerns in EU legislation:
 - Lack of incorporation of core CRC principles
 - Lack of special attention towards children
 - Confusion of refugees and migrants
 - Focus on “illegal” migration and “combating” illegal migration
 - Linking migration with criminality
 - Too little focus on rights

- 
- Even if children do receive special attention the European standard legislation on non-nationals seems to mirror the idea that all problems come from abroad – what we could call the meteorological explanation.
 - Child focused legislation focus essentially on five aspects:
 - 1) education, which obviously is welcome, but should be granted also to children staying for a shorter period;
 - 2) accommodation suitable for children, which is welcome but without any direct prohibition on detention, and vaguely formulated;

- 
- 3) unison of siblings is a welcome new aspect;
 - 4) the appointment of a guardian, which is crucial for effective protection, but the wording is vague and conditioned;
 - 5) and special attention towards vulnerable groups, which is most welcome but should be reinforced and not left too vague

Thank you!!

