

Bill C-310

An Act to amend the Criminal Code (trafficking in persons)

Brief submitted by UNICEF Canada to the Standing Senate Committee on Legal and Constitutional Affairs

June 2012

Introduction

UNICEF Canada welcomes the opportunity to provide a written submission on Bill C-310, *An Act to Amend the Criminal Code (trafficking in persons)*. We commend the work of Government of Canada to address the issue of human trafficking, including the recent release of the Government of Canada's *National Action Plan to Combat Human Trafficking* and efforts to date to increase protection for childrenⁱ who have been victims of sexual exploitation and trafficking.

At this moment around the world, about 2.5 million people are victims of human trafficking. UNICEF estimates that 50 percent of these are children. It is a universal imperative to protect all children from this insidious global enterprise that generates criminal profits of \$32 billion a year.ⁱⁱ Protecting children from human trafficking requires prevention to address demand and supply; a strong legislative framework and law enforcement; and victim support, including timely victim identification, placing them in safe environment, providing them with social services, health care, psychosocial support, and reintegration with family and community, if it is proven to be in their best interests.ⁱⁱⁱ All of these elements of the protective framework require special considerations for child victims: from the definition of trafficking and related evidentiary aids in legislation to the protection of child victims, all actions must be designed with a view to the rights and best interests of children. These rights are set out in the United Nations Convention on the Rights of the Child (the Convention), and this framework needs to be considered in actions to address child trafficking, in addition to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* (the "Palermo Protocol") and normative international guidelines and other mechanisms.

Children have the right to protection from trafficking

The Convention on the Rights of the Child articulates State obligations with respect to protecting children from trafficking. All of the Convention's provisions apply, including ensuring priority consideration is given to children in any government action, but two articles directly address child trafficking:^{iv}

Article 11(1): "States Parties shall take measures to combat the illicit transfer and non-return of children abroad."

Article 35: "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."

About UNICEF

UNICEF is the world's leading child-focused humanitarian and development agency. Through innovative programs and advocacy work, we save children's lives and secure their rights in virtually every country. Our global reach, unparalleled influence on policymakers, and diverse partnerships make us an instrumental force in shaping a world in which no child dies of a preventable cause. UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. The only organization named in the United Nations Convention on the Rights of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We are the world's advocate for children and their rights. For more information about UNICEF, please visit www.unicef.ca.

UNICEF Canada's position on Bill C-310

UNICEF Canada supports Bill C-310, *An Act to amend the Criminal Code (trafficking in persons)* in principle, but suggests some further considerations. The proposed amendments, as presently constituted, would see the extension of the application of Canada's anti-trafficking laws to Canadians who traffic and exploit those living in other countries. UNICEF Canada also welcomes the proposed "evidentiary aid" that may help strengthen efforts to prosecute perpetrators of human trafficking. This new interpretative provision in the proposed subsection 279.04(2) of the *Criminal Code* is intended to set out a non-exhaustive list of 'means of exploitation' factors that the Court may take into consideration when determining whether the legal test of "exploitation" has been made out for purposes of establishing the human trafficking offences.

Having said this, UNICEF Canada holds the view that a further amendment is required to make it clear that the provision of an evidentiary aid to demonstrate various 'means of exploitation' for human trafficking generally is not required for purposes of establishing the offence of trafficking

DEFINITION OF TRAFFICKING FROM THE PALERMO PROTOCOL (*Article 3*)

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.**

of a person under the age of eighteen years pursuant to subsection 279.011(1) of the *Criminal Code*. This further amendment, which is being proposed by UNICEF Canada, would ensure that the court need only consider the general vulnerability of minors and that the additional criteria listed in the proposed subsection 279.04(2) would not apply. Such a further proposed amendment, as suggested in the form of a new proposed subsection 279.04(4) later on in this written brief, would bring all of the provisions set out in Bill C-310 into full compliance with Canada's obligations under the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons* (the "Palermo Protocol"),^y and the United Nations Convention on the Rights of the Child.

Building on Canada's progress to date to address human trafficking, its experience in applying extraterritorial legislation to the sexual exploitation of children, and UNICEF's international experience in supporting governments to establish legislation and strengthen law enforcement to counter human trafficking, we also propose that the Government of Canada consider measures through the implementation of the *National Action Plan to Combat Human Trafficking* to boost the efficacy of the extraterritorial application of the *Criminal Code* provision related to trafficking in persons, namely:

- (1) Improved law enforcement and international coordination efforts (given extraterritorial application), and;
- (2) Improved protection of child victims/witnesses, particularly supporting other countries where children are victims of Canadian offenders.

We propose ancillary measures recognizing that Canada's experience, together with international experience, suggests that extraterritorial legislation cannot rely on a country whose law enforcement and judicial systems are not equipped to accommodate such legislation, and where enforcing it without child-sensitive protections may exacerbate the violation of the rights of child victims.

Recommendations to Align the Canadian *Criminal Code* with International Legal Obligations and to Strengthen the Application of the new Extraterritorial Provision

A. Child-sensitive evidentiary aid to section 279.04

A "child victim of trafficking" is any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country. As articulated in the Inter-Parliamentary Union/UNICEF *Handbook for Parliamentarians – Combating Child Trafficking*:

Trafficking was first defined in international law through the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (2000). Known as the 'Palermo Protocol' or the 'Trafficking Protocol', this is the most widely endorsed definition of trafficking and provides an essential basis for national law reform.

The definition clearly states that “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” is not required to constitute child trafficking.^{vi}

With respect to child trafficking, the use of illicit means, including violence or fraud, is irrelevant. Currently, Canada’s *Criminal Code* does not outline the exploitative “means” used for the purposes of trafficking, except for purposes of “caus[ing] [persons], by means of deception or the use of threat of force or of any other form of coercion, to have an organ or tissue removed”, as set out in the current clause 279.04(b) of the *Criminal Code*. However, with the proposed introduction of the evidentiary aid factors outlined in clauses 279.04 (2) (a), (b) and (c), the concept of ‘means of exploitation’ will be introduced into the *Criminal Code* for all victims of human trafficking. Therefore, it is essential to explicitly state that the provision of an evidentiary aid to demonstrate ‘means of exploitation’ for purposes of human trafficking is not required for an offence related to child trafficking, in accordance with Canada’s commitments under the Palermo Protocol.

An international legal norm related to defining child trafficking in a way which recognizes that “means” do not need to be demonstrated is also acknowledged in the United Nations Office on Drugs and Crime (UNODC) *International Framework for Action to Implement the Trafficking in Persons Protocol*. According to UNODC, the criminalization of child trafficking should be measured against the following standard, articulated under Table 1 on *Prosecution*: “Existence of legislation criminalizing trafficking in children, which specifies there is no need to establish means as set forth in the definition.” which can be demonstrated through, “Evidence of a general principle recognizing the vulnerability of children.”^{vii}

Recommendation #1: Amend the language in the proposed revisions to section 279.04 of the *Criminal Code* to make it clear that the provision of an evidentiary aid to demonstrate ‘means of exploitation’ for human trafficking is not required for purposes of establishing the offence of trafficking of a person under the age of eighteen years pursuant to subsection 279.011(1) of the *Criminal Code*. This proposed further amendment would ensure that there is full compliance with Canada’s obligations under the Palermo Protocol. :

In order to make this necessary corrective amendment to Bill C-310, we are proposing the addition of a new subsection (4) to section 279.04 of the *Criminal Code*, which would read as follows:

“(4) In determining whether a child under the age of eighteen years of age has been exploited under section 279.011 of the Criminal Code, the Court shall limit its consideration to the general vulnerability of children, and the factors listed in subsection (2) shall not be construed as constituting additional requirements.”

B. Lessons learned from extraterritorial application of child sexual exploitation law: The importance of improving law enforcement efforts and increasing child-friendly protection measures for child victims and witnesses

Efforts to enhance protection of children's rights abroad through extraterritorial criminality are supported by international norms and practices. As well, it is recommended that to secure justice for victims of trafficking and end impunity for traffickers, States must ensure the principle of "extradite or prosecute" is incorporated into their national legal systems for trafficking related crime. For example, numerous European countries have implemented Article 10 of the Council of Europe Framework Decision of 19 July 2002 on combating trafficking in human beings (2006) with double criminality/extraterritoriality provisions in their legislation (see Appendix 3). The Association of South East Asian Nations (ASEAN) legislative guidelines make specific calls for extradition and mutual legal assistance provisions (MLA) (see Appendix 3). For instance, the Philippines law makes trafficking an extraditable offence.

However, there is a real risk that efforts to stop Canadians from trafficking children outside of Canada will not produce intended outcomes if they are not matched with effective and coordinated enforcement measures at the national and international levels. Since Bill C-15A received royal assent in 2002 and Canada's extraterritorial legislation was put into full-force without restriction, there have been relatively few investigations and prosecutions using the Code's provisions. Extraterritorial legislation designed to stop Canadians from committing sex crimes abroad has been extremely difficult to enforce. This is largely due to the evidentiary requirements needed to prosecute crimes related to child exploitation. It is further complicated by the problems of obtaining evidence in a foreign country (including mechanisms for obtaining victim testimony for the purpose of domestic court proceedings; the willingness of witnesses to testify in a country where proceedings are conducted in a foreign language; and child victims being treated insensitively) and inadequate resources, combined with a lack of close law enforcement co-operation.

Canada's *National Action Plan to Combat Human Trafficking* establishes some measures that should support the effective implementation of the extraterritoriality provision, such as "Training, Legislative Implementation and Policy Development" and the "Anti-Crime Capacity Building Program" but we offer some specific suggestions for implementing them in the context of the new legislation, with a view to enforcing this law and protecting child victims of Canadian offenders outside Canada's borders.

1. Training for law enforcement and other officials

Training on children's rights and child-friendly approaches for supporting and protecting child victims of trafficking could be made mandatory for certain Canadian officials working in the area of human trafficking, with a focus on Canada's domestic and international law enforcement officials (including, in the context of the current bill, those working on extraterritorial offences by Canadians whether from Canada or in international posts), border and visa officials and consular staff. In Holland, for example, police officers entering into the field of human trafficking receive mandatory training and no police officer may interview a potential victim unless they have completed the training. The training includes 256 hours of study, to be completed over the course of 12 weeks and covers protocol for interviewing victims.^{viii} Ensuring that any such training includes a focus on child victims and child-friendly approaches would also support Canada's obligations under the Convention on the Rights of the Child^{ix}. Additionally, Canada could support the adaptation and implementation of this training for law enforcement agencies in select other countries where human trafficking is a concern and where Canadian offenders concentrate their activities.

2. Multilateral and bilateral agreements

Canadian authorities can prosecute extraterritorial crimes free from mandated requirements of foreign cooperation. But in practice, extraterritorial law often requires cooperation with another jurisdiction (such as in the gathering of evidence or the extradition of offenders) and may be problematic unless a protocol is already in place to ensure there will be coordinated investigation, prosecution and mutual legal assistance (MLA). Establishing or strengthening multilateral and bilateral agreements with other countries can help coordinate law enforcement, extradition and prosecution of extraterritorial offences. In Indonesia's trafficking in persons law, reference is made to mutual legal assistance in criminal matters and/or other technical cooperation, and a number of countries have bilateral extradition treaties with selected countries (e.g., Laos has bilateral extradition treaties with Cambodia, China, Thailand and Vietnam).

Through international cooperation efforts, technical assistance can also be provided to strengthen the governance and child protection systems in selected countries, as outlined in Canada's *National Action Plan to Combat Human Trafficking*.^x Specifically, training for country partners focused on child-friendly approaches to the following practices would be beneficial, as outlined in the UNODC *International Framework for Action to Implement the Trafficking in Persons Protocol*. This Framework provides a series of tables that outline the Palermo Protocol obligations, and related implementation measures and indicators to assist with the effective application of the Protocol. Tables one through five on the topics of (1) Prosecution, (2) Protection/Assistance of Victims, (3) Prevention, (4) National Coordination/Cooperation, and (5) International Coordination/Cooperation outline examples of indicators for effective implementation and identify key areas where technical cooperation with partner countries would be beneficial:^{xi}

- Special investigation techniques
- Victim assistance
- Privacy protection of victims
- Participation in proceedings (special needs of children)
- Mutual legal assistance
- Joint investigations
- Effective approaches for international cooperation and enforcement
- The special needs and rights of children

Since Canada plans to develop an operational handbook on investigation and prosecution of human trafficking offences for Canadian police and prosecutors, and to work with the National Judicial Institute to promote education on human trafficking amongst the judiciary as part of its *National Action Plan to Combat Human Trafficking*, these efforts might also be extended to train law enforcement and the judiciary in other countries to increase capacity to promote the protection of children and enhance cooperation in cross-border investigations and prosecutions.

3. Protection for child victims and witnesses

Child victims and witnesses may be instrumental in prosecuting Canadians who offend, whether in Canada or overseas. Child victims and witnesses of trafficking should be provided with appropriate support and child-friendly mechanisms to facilitate their participation in the justice system. Under Canadian law it is possible for a child victim or witness to provide testimony via testimonial aids such as audio-video equipment and to be protected in other ways, such as through publication bans on their identity. In the application of extraterritorial law, victims tend to live in far away destinations and transporting them to Canada for a trial could be costly, logistically difficult and re-victimizing for the child. Child witnesses and victims who live outside of Canada, and who are involved in Canadian-related criminal proceedings, should be provided with the same access to child-friendly procedures provided to children within Canada who are involved in criminal court proceedings. Canada's treatment of national and non-national children involved in the criminal justice system, either as victims or witnesses of trafficking, should be aligned with international norms and standards. As set out in the UNODC *Model Law against Trafficking in Persons*:^{xii}

“All actions undertaken in relation to child victims and witnesses shall be based on the principles set out in the Convention on the Rights of the Child and the UN *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.^{xiii} In particular, the principle that the best interests of the child must be a primary consideration in all actions involving the child and the principle that the child's view must be considered and taken into account in all manners affecting him or her.”^{xiv}

“In addition to any other guarantees provided for:

- a) Child victims shall be given special care and protection;
- b) 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 treated as such, pending verification of his or her age;
- c) Assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care;
- d) Information may be provided to child victims through their legal guardian or, in case the legal guardian is the alleged offender, a support person;
- e) Child victims shall be provided with information in a language they can use and understand and in a manner that is understandable to them”^{xv}

These provisions address the special status of child victims, on the basis of article 3 c) and d) of the Palermo Protocol^{xvi}, as well as the Convention on the Rights of the Child. Another source of normative standards for the treatment of child victims and witnesses of crime, particularly in relation to trafficking, is the *Joint UN Commentary on the EU Directive – A Human Rights Based Approach: Prevent, Combat, Protect – Human Trafficking*.^{xvii}

In Canada, certain child-friendly provisions for child victims and witnesses of crime are outlined in the *Criminal Code*, and described in the Justice Canada publication, *Making it Easier for Young Victims and Witnesses to Testify*.^{xviii} The extent that these are systematically and consistently employed in Canada is unclear.^{xix} But both child victims of extraterritorial offences and of domestic offences may participate in domestic prosecution. Canada's *National Action Plan to Combat Human Trafficking* has as one of its four pillars “the protection of victims”.

The “victim-centred guidebook” for investigators to assist them in working with victims that the RCMP will develop as stated in Canada’s *National Action Plan to Combat Human Trafficking* should include a child-specific focus consistent with these international norms. Efforts could also be made to update the *Canadian Statement of Basic Principles of Justice for Victims of Crime (2003)*^{xx} to ensure that it is child-friendly and consistent with the international normative framework for child victims and witnesses of crime.

To promote policy coherence and to standardize existing good practices, national guidelines could be developed to support the protection of child victims of trafficking. The establishment of national guidelines could be based on the UNICEF *Guidelines for the Protection of Child Victims of Trafficking* and the European Reference Guide which was developed based on general Guidelines.^{xxi} These guidelines could address domestic offences including coordinating guardianship for minors, providing support to minors with their temporary residency permit applications, ensuring that there are no delays in receiving services and education, assisting with the best interests of the child (BIOC^{xxii}) determination for regularization of status, repatriation, and coordinating with local authorities, as needed. Guidelines could also address certain situations where children are victimized by extraterritorial offences such as work with national and local authorities to ensure the child’s safe return, protection and prevention of re-trafficking, and to address the protection of child victims and witnesses of crime. Such guidelines would go a long way to better ensure that the rights of children are protected and that their specific interests are fully integrated into Canada’s prevention, protection and prosecution efforts – and kept front of mind in Canada’s efforts related to international partnerships to counter human trafficking. As well, Canada could provide training to law enforcement agencies and the judiciary of selected other countries and bilateral assistance to support measures for the protection of child victims and witnesses of crime, specifically including child trafficking. If a country’s penal code does not allow for the child to testify via audio-video equipment, for example, not only could the child’s rights be violated, the likelihood of having the victim and witnesses provide testimony is hampered. Funds for the latter efforts on child protection could be drawn from Canada’s international assistance envelope.

Recommendation #2: Ensure that as part of the Government of Canada’s *National Action Plan to Combat Human Trafficking*, all training on human trafficking for Canadian officials (including law enforcement, border officials, legal professionals, visa officers and consular staff) and international partners working in the field of human trafficking includes a child-specific focus. Such training should set out, among other considerations, child-friendly mechanisms to support child victims and witnesses of trafficking, as outlined in the UNICEF *Guidelines for the Protection of Child Victims of Trafficking*, the UN *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*^{xxiii} and the *International Framework for Action to Implement the Trafficking in Persons Protocol*.

Recommendation #3: Increase official development assistance and multilateral/bilateral agreements directed to prevention, law enforcement, and legal and other responses to child trafficking, including programs related to strengthening the training of law enforcement officials and the judiciary, child-friendly mechanisms to support victims and witnesses of crime, and governance and child protection systems in low- and middle-income countries. Supporting the international community to adopt international normative standards will strengthen these efforts.

Recommendation #4: Ensure that child victims and witnesses of trafficking, in Canada and abroad, are fully able to access child-friendly mechanisms when they are involved in criminal proceedings (such as publication bans to protect the identify of victims and witnesses and the use of testimonial aids).

Recommendation #5: Conduct an audit of existing policies and practices pertaining to child victims and witnesses of trafficking, in Canada and abroad, to ensure that they are receiving levels of protection before, during and after criminal proceedings in a manner that is consistent with international norms.

Recommendation #6: Develop national guidelines for the protection of child victims of trafficking based on the UNICEF *Guidelines for the Protection of Child Victims of Trafficking* through the cooperation of federal, provincial and territorial governments, and ensure that they are applied consistently in Canada's efforts to address child trafficking in Canada and abroad.

Conclusion

Children are over-represented as victims of human trafficking, a worldwide crime that crosses all borders. Child trafficking results in major violations of children's rights – rights to life, survival and development, education and health; and rights to be protected from harm, including protection from harmful labour and sexual exploitation. Trafficking denies children their basic dignity and the opportunity to reach their full potential.

It is essential that efforts to address human trafficking fully integrate the specific rights and needs of children in Canada and elsewhere. Responses to trafficking, including prevention, legislation, protection and recovery are most effective when they adopt a children's rights-based perspective, and are based on international norms and standards. Responses should be informed by the principles of the best interests of the child and respect for the views of children. This child-centred perspective, in turn, will help ensure that child victims are fully supported in their recovery, which can go a long way to preventing re-trafficking and re-victimization.

Bill C-310 is a positive step towards enhanced child protection and a commendable step for Canada as a responsible member of the global community. It can be supported with an amendment to the proposed evidentiary aid that explicitly recognizes that child victims of trafficking have international rights to special treatment, and by ancillary measures to enforce the law, while protecting child victims and witnesses.

Submitted on behalf of UNICEF Canada by:

Marvin M. Bernstein, B.A., J.D., LL.M.
Chief Advisor, Advocacy
UNICEF Canada

APPENDIX 1: SUMMARY OF RECOMMENDATIONS

Recommendation #1: Amend the language in the proposed revisions to section 279.04 of the *Criminal Code* to make it clear that the provision of an evidentiary aid to demonstrate ‘means of exploitation’ for human trafficking is not required for purposes of establishing the offence of trafficking of a person under the age of eighteen years pursuant to subsection 279.011(1) of the *Criminal Code*. This proposed further amendment would ensure that there is full compliance with Canada’s obligations under the Palermo Protocol.

Recommendation #2: Ensure that as part of the Government of Canada’s *National Action Plan to Combat Human Trafficking*, all training on human trafficking for Canadian officials (including law enforcement, border officials, legal professionals, visa officers and consular staff) and international partners working in the field of human trafficking includes a child-specific focus. Such training should set out, among other considerations, child-friendly mechanisms to support child victims and witnesses of trafficking, as outlined in the UNICEF *Guidelines for the Protection of Child Victims of Trafficking*, the UN *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*^{xxiv} and the *International Framework for Action to Implement the Trafficking in Persons Protocol*.

Recommendation #3: Increase official development assistance and multilateral/bilateral agreements directed to prevention, law enforcement, and legal and other responses to child trafficking, including programs related to strengthening the training of law enforcement officials and the judiciary, child-friendly mechanisms to support victims and witnesses of crime, and governance and child protection systems in low- and middle-income countries. Supporting the international community to adopt international normative standards will strengthen these efforts.

Recommendation #4: Ensure that child victims and witnesses of trafficking, in Canada and abroad, are fully able to access child-friendly mechanisms when they are involved in criminal proceedings (such as publication bans to protect the identify of victims and witnesses and the use of testimonial aids).

Recommendation #5: Conduct an audit of existing policies and practices pertaining to child victims and witnesses of trafficking, in Canada and abroad, to ensure that they are receiving levels of protection before, during and after criminal proceedings in a manner that is consistent with international norms.

Recommendation #6: Develop national guidelines for the protection of child victims of trafficking based on the UNICEF *Guidelines for the Protection of Child Victims of Trafficking* through the cooperation of federal, provincial and territorial governments, and ensure that they are applied consistently in Canada’s efforts to address child trafficking in Canada and abroad.

APPENDIX 2: CONVENTION ON THE RIGHTS OF THE CHILD: PROVISIONS MOST RELEVANT TO CHILD TRAFFICKING

- 1. Definition of a child (article 1):** A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.
- 2. Non-discrimination (article 2):** All rights apply to all children, and children shall be protected from all forms of discrimination, regardless of the child's status.
- 3. Best interests of the Child (article 3):** All actions concerning the child shall take full account of his or her best interests, and consider these a priority in all decisions affecting a child or children collectively.
- 4. Implementation of Rights (article 4):** The State must do all it can to implement the rights contained in the Convention. This includes putting in place particular processes to "govern" well for children, such as independent ombudspersons/advocates, legal protections, and Child Rights Impact assessments.
- 5. Survival and Development (article 6):** Every child has the right to life, and the State has an obligation to ensure the child's optimal survival and development.
- 6. Illicit transfer and non-return (article 11(1)):** States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
- 7. The child's opinion (article 12):** Children have the right to express their opinions freely, and have their opinions taken into account in matters that affect them.
- 8. The right to privacy (article 16):** 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. The child has the right to the protection of the law against such interference or attacks.
- 9. Protection from abuse and neglect (article 19):** Children shall be protected from abuse and neglect, whether in or out of care. States shall provide programs for the prevention of abuse and treatment of those who have suffered abuse.
- 10. Health and health services (article 24):** Children have the right to the highest possible standard of health and access to health and medical services.
- 11. Right to education (article 28):** Children have the right to education. Primary education should be free. Secondary education should be accessible to every child. Higher education should be available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity.
- 12. The right to play and to recreational activities (article 31):** State Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities... and to participate freely in cultural life and the arts.
- 13. Sale, trafficking and abduction (Article 35):** 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.
- 14. The right to legal help and protection of privacy (article 40):** State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a

manner consistent with the promotion of the child's sense of dignity and worth... and to have his or her privacy fully respected at all stages of the proceedings.

APPENDIX 3: SELECTED COUNTRY EXAMPLES OF EXTRATERRITORIAL LEGISLATION IMPLEMENTING ARTICLE 10 OF THE COUNCIL FRAMEWORK DECISION OF 19 JULY 2002 ON COMBATING TRAFFICKING IN HUMAN BEINGS (2006)

Following are brief examples of the incorporation of extraterritoriality provisions in criminal law in selected industrialized nations to implement Article 10 of the Council of Europe Framework Decision on combating trafficking in human beings (dealing with jurisdiction):

Country	Description
Denmark	The Danish penal authority covers actions carried out outside the Danish state by a Danish national or resident, under the conditions set out in Section 7 of the Criminal Code (i.e. essentially double criminality). This provision also applies to nationals and residents of other Scandinavian countries if they currently reside in Denmark. Section 8 extends jurisdiction to certain actions carried out abroad, irrespective of where the offender comes from. It also applies to cases where extradition is refused, provided the act is punishable in the other country and could be punished with more than 1 year of imprisonment under Danish law.
Finland	Chapter 127 of the Finnish Penal Law, Section 7 on international offences, applies to an offence committed outside of Finland. The provisions therein make specific reference to human trafficking. Article 11 of Chapter 1 of the Penal Law provides for the condition of double incrimination.
Italy	Article 7 of the Code extends Italian jurisdiction to acts committed abroad that constitute crimes against the personality of the Italian State. This could cover some of the offences established by the Framework Decision. Pursuant to Article 6 of the Code, an Italian citizen may also be punished for offences committed abroad, provided he is arrested on Italian territory. Pursuant to Article 9 an Italian citizen may be punished for offences committed abroad.
France	French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic (Article 113-6). It is applicable to misdemeanours committed by French nationals outside the territory of the French Republic if the conduct is punishable under the legislation of the country in which it was committed.
Germany	In Germany Article 6 of the Criminal Code establishes jurisdiction for offences committed abroad.
Belgium	According to Article 10 of the Belgium Criminal Procedure Code, Belgian citizens can be prosecuted for crimes committed abroad if the conduct is punishable in both Belgium and the country in which the crimes were committed.
Sweden	The Swedish Criminal Code provides for extraterritorial jurisdiction when the offender is a Swedish national or resident, or has become one after committing the offence.
United Kingdom	In the United Kingdom, jurisdiction over the trafficking offences set out in the 2003 Act, Criminal Justice Act (Scotland) 2003 and the 2004 Act covers anything done in the UK or outside the UK by British citizens (and certain other categories of persons who have links with the UK), and outside the UK by a body incorporated under the law of a part of the UK.
Netherlands	Under the amended Article 5(a), Dutch criminal law applies to persons who have a fixed residence or abode and who have committed human trafficking outside the Netherlands.

Source: **Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2006)**

<http://ec.europa.eu/anti-trafficking/section.action?sectionId=7251dba0-e392-4bd9-92e8-d99869acf8ec§ionType=WEIGHTED>

[EC Report on combating child pornography 2007 716 en.pdf](#)

[COM 2006 187 Report from Commission on Article 10 CFD en.pdf](#)

[Sec 2006 525 Annex to Report on Article 10 en.pdf](#)

Association of South East Asian Nations (ASEAN) legislative guidelines address extradition, victims of crime and mutual legal assistance provisions:

Excerpts:

C. International Legal / Judicial Co-operation - Extradition

1. The conclusion and effective implementation of bilateral extradition treaties will be an important step forward in ending impunity for traffickers.
2. Where extradition is not possible because of the absence of a treaty, alternative means, such as the use of the UN Convention against Transnational Organized Crime, where applicable, or other arrangements at the international, regional or bi-lateral level and on a case-by-case basis, could be considered.
3. In appropriate transnational cases where traffickers could be prosecuted in two or more States, alternative means at the international, regional or bilateral levels could be considered to assess and coordinate criminal proceedings and, where appropriate, consider the transfer of criminal proceedings to the most appropriate State in the interests of the proper administration of justice.
4. Consideration should be given, where appropriate, to the development of specific legal provisions to facilitate the transfer of criminal proceedings in cross-border cases in the ASEAN region.

D. International Legal / Judicial Co-operation - Mutual Legal Assistance in Criminal Matters

1. The Treaty on Assistance Matters among Like-Minded ASEAN Member Countries (MLAT) is a major step forward in ending impunity for traffickers and should be ratified by all ASEAN Member States as soon as possible.
2. All practitioners are encouraged to accept and utilise the MLAT templates as published on the website of the Treaty Secretariat and there should be closer and quicker communication between Central Authorities and prosecutors in trafficking cases involving mutual legal assistance requests.
3. Where possible, States are encouraged to enable the use and admissibility of video conference evidence in court and courts so enabled should be fully equipped and resourced for

the use of video evidence.

http://www.artipproject.org/artip-tip-cjs/resources/guides_standards/ASEAN-PG_Web_English_Final.pdf

ENDNOTES

ⁱ “Children” are defined as all human beings below the age of 18.

ⁱⁱ UN Global Initiative to Fight Human Trafficking (UN.GIFT), *Human Trafficking: The Facts*, http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf

ⁱⁱⁱ For more information about child trafficking and UNICEF’s global efforts to address it, please see: http://www.unicef.org/protection/57929_58005.html

^{iv} For an expanded list of articles in the UN Convention on the Rights of the Child related to child trafficking, please see Appendix 2.

^v United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (the “Palermo Protocol”), (2004)

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

^{vi} Inter-Parliamentary Union and UNICEF, *Handbook for Parliamentarians: Combating Child Trafficking*, page 11 (2005) http://www.unicef.org/lac/Contra_la_trata_ing.pdf

^{vii} UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol*, page 21 (2009) http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

^{viii} Inspector Harold Van Gelder, Amsterdam Anti-Human Trafficking Team (presentation at the National Conference, *Moving Forward Together: An Integrated Response to Human Trafficking*), Ottawa, Ontario, March 30, 2011.

^{ix} UN Convention on the Rights of the Child, <http://www2.ohchr.org/english/law/crc.htm>

^x <http://www.publicsafety.gc.ca/media/nr/2012/nr20120606-eng.aspx>

^{xi} UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol*, pages 15 – 52 (2009) http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

^{xii} UN Office on Drugs and Crime (UNODC), *Model Law against Trafficking in Persons*, page 47 (2009) http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

^{xiii} UNICEF *Guidelines on the Protection of Child Victims of Trafficking* (2006) http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

^{xiv} UN Office on Drugs and Crime (UNODC), *Model Law against Trafficking in Persons*, page 47 (2009) http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

^{xv} UNODC, *Model Law against Trafficking in Persons*, page 47 - 48 (2009) http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

^{xvi} Article 3 c) and d) of the Palermo Protocol states:

3c) 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

^{xvii} *Prevent, Combat, Protect: Human Trafficking - Joint UN Commentary on the EU Directive – A Human Rights-Based Approach* (2001), is a joint initiative by is a joint UNHCR, OHCHR, UNICEF, UNODC, ILO and UN Women <http://www.unwomen.org/publications/prevent-combat-protect-human-trafficking/>

^{xviii} Justice Canada, *Making it Easier for Young Victims and Witnesses to Testify* <http://canada.justice.gc.ca/eng/pi/pcvi-cpcv/pub2.html#crim>

^{xix} For example, in the *A.B.* case., a 15 year old Nova Scotia female student was unsuccessful in her application in the Nova Scotia Supreme Court to pursue a defamation action on an anonymous basis after discovering that someone had created a false Facebook page using her identity, with contrived details relating to her physical appearance, weight and alleged sexual activity of a private and intimate nature. Recognizing the serious (and sometimes life threatening effects) of cyberbullying, and the right of child victims to protect their identities, UNICEF Canada has intervened in this case before the Supreme Court of Canada. UNICEF Canada has emphasized the importance of A.B.’s right to access justice, as a victim of cyberbullying, in a manner that respects her rights under the UN Convention on the Rights of the Child. Examples such as these demonstrate the need to be vigilant in training officers of the court on Canada’s specific obligations related to children’s rights, as defined by the UN Convention on the Rights of the Child.

^{xx} <http://www.justice.gc.ca/eng/pi/pcvi-cpcv/pub/03/princ.html>

^{xxi} UNICEF, *European Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe* (2006) http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf

^{xxii} Best interests of the child, as outlined in article 3 of the UN Convention on the Rights of the Child.

^{xxiii} UN *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (2004)

http://ibcr.org/editor/assets/thematic_report/2/2004_un_resolution_en.pdf

^{xxiv} UN *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (2004)

http://ibcr.org/editor/assets/thematic_report/2/2004_un_resolution_en.pdf