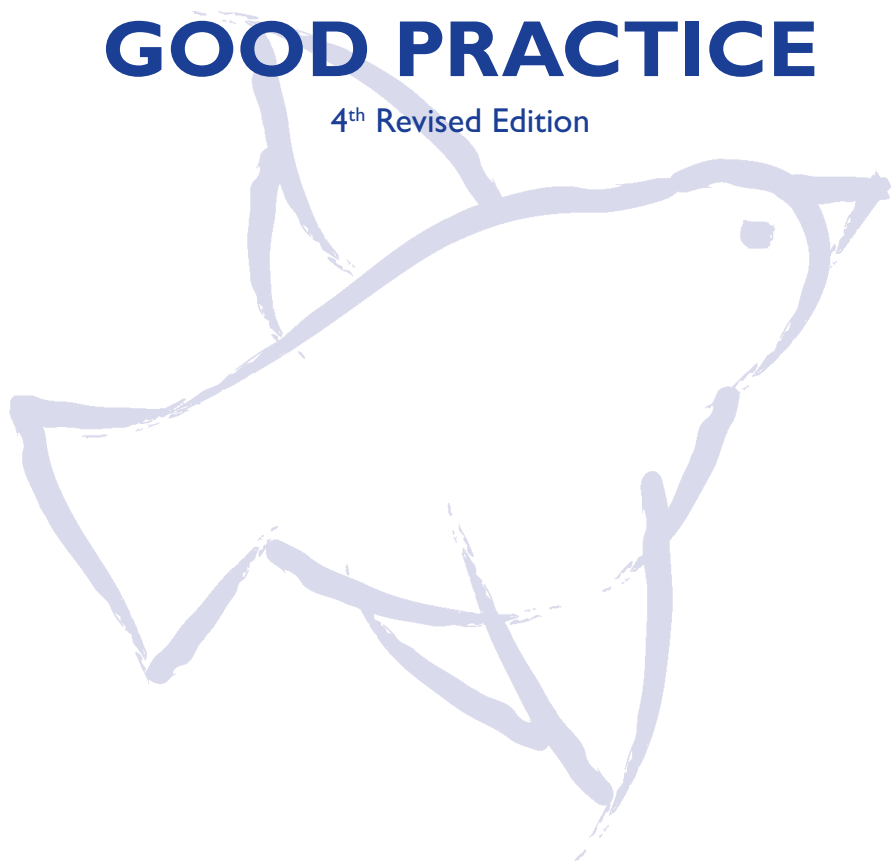


STATEMENT OF GOOD PRACTICE

4th Revised Edition



Separated Children in Europe Programme



Save the Children



UNHCR
The UN Refugee Agency

unicef 

The Separated Children in Europe Programme (SCEP) started as a joint initiative of some members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees (UNHCR). It has grown and evolved and is now comprised of many non-governmental partners throughout Europe who continue to work closely with UNHCR. The International Save the Children Alliance promotes the full realisation of the rights of all children. UNHCR's responsibility is to ensure the protection of refugees and those seeking asylum, including children. UNICEF cooperates closely with Save the Children, UNHCR and others to promote the rights of separated children and to ensure their protection. UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential.

Separated children are under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP, may be living with extended family members who are not necessarily their customary or primary caregivers. All such children are separated children and entitled to international protection under a broad range of international and regional instruments.

The Separated Children in Europe Programme aims to realise the rights and best interests of separated children who have come to, or through Europe, by establishing a shared policy and commitment to best practice at national and European levels. As part of this process the programme has an ongoing commitment to developing partnerships with organisations working with separated children in European countries.

The **Statement of Good Practice** sets out the policy and practice basis for the programme's work.

Statement of Good Practice

4th revised edition

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Separated Children in Europe Programme 2009

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www.separated-children-europe-programme.org



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A. INTRODUCTION

A1. The Separated Children in Europe Programme (SCEP)

The Separated Children in Europe Programme (SCEP) started as a joint initiative of some members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees (UNHCR). It has grown and evolved and is now comprised of many non-governmental partners throughout Europe¹ who continue to work closely with UNHCR. The International Save the Children Alliance promotes the full realisation of the rights of all children. UNHCR's responsibility is to ensure the protection of refugees and those seeking asylum, including children.

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The programme aims to realise the rights and best interests of separated children who have come to, or through Europe, by establishing a shared policy and commitment to best practice at national and European levels. As part of this process the programme has an ongoing commitment to developing partnerships with organisations working with separated children in European countries. The vision that drives the programme's work is that *'the rights of all separated children entering or travelling across Europe will be realised, in particular; they will be protected, their well-being and development will be promoted, they will have opportunities to develop their full potential and they will participate in a meaningful way in the development of policies and practices that impact upon their lives'*.

A2. Definition

Separated children are under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver. Some children are totally alone while others, who are also the concern

¹ For a current list of the Network of Non-Governmental Partners please go to www.separated-children-europe-programme.org

of the SCEP, may be living with extended family members who are not necessarily their customary or primary caregivers. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. The SCEP uses the word 'separated' rather than 'unaccompanied' because it more accurately defines the essential problem that such children face. Namely, that they lack the care and protection of their parents or primary caregiver and as a consequence suffer socially and psychologically from this separation.

While some separated children are 'accompanied' when they arrive in Europe, the accompanying adult(s) may not necessarily be able, or suitable, to assume responsibility for their care. Professionals working with this group of children should be aware that even though the child may have an identified carer they are effectively separated children and their needs might not be fully met.

Protection is necessary because separated children are deprived of the care of a parent or other primary caregiver. A durable and secure solution for them is likely to require attention and assessment of the situation in their home country and current country of domicile. Protection measures consistent with asylum and refugee determination legislation, international children's and human rights standards, international law and national legislation are therefore essential.

A3. Statement of Good Practice

The Statement of Good Practice aims to provide a clear and simple overview of the principles, policies and practices required to implement measures that will ensure the promotion and protection of the rights of separated children in Europe. It reflects the experience and practice of the SCEP's specialist Network of Non-Governmental Partners. The Statement of Good Practice is principally informed by the United Nations Convention on the Rights of the Child (CRC) and two other documents: the United Nations Committee on the Rights of the Child's General Comment Number 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 2005, here referred to as General Comment No 6 and UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997, here referred to

as the UNHCR Guidelines. Whilst the latter document has impacted significantly on the Statement of Good Practice it is important to affirm that the Statement of Good Practice is relevant to all separated children and not just those who are seeking asylum. Throughout the Statement of Good Practice there are references to the key informing documents.

This is the fourth edition of the SCEP Statement of Good Practice. It should be stressed that this is a living document, which reflects the dynamic progression of human rights protection and issues particularly affecting separated children. The Statement of Good Practice is not merely an exhaustive listing of standards and good practice, but rather a framework for action and advocacy that we may continue to build upon in the future. In this regard it is likely that new emerging issues will need to be addressed in future revisions of the Statement of Good Practice.

We encourage you to visit our website and our partners' web sites for more materials relating to these themes and the protection of the rights of separated children. We also welcome your feedback and comments on the Statement of Good Practice in order to strengthen the document and to advance our joint efforts in this field.

A4. Abbreviations and Acronyms used for References

CRC	United Nations Convention on the Rights of the Child, 1989
General Comment No 6	United Nations Committee on the Rights of the Child, General Comment No 6, on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 2005
UNHCR Guidelines	UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997

B. FIRST PRINCIPLES

These are the principles that underpin the Statement of Good Practice and should be borne in mind at all stages of identification, care, decision making and service provision for separated children.

Please note that most references at their first appearance are accompanied by a text, which is only an extract or summary of the relevant article or paragraph. Those who wish to use articles of law or policy to advocate for the rights of separated children should refer to the complete text of these instruments.

BI. Best Interests

The best interests of the child must be a primary consideration in all actions concerning every separated child. Any determination² or assessment³ of best interests must be based on the individual circumstances of each child and must consider the child's family situation, the situation in their country of origin, their particular vulnerabilities, their safety and the risks they are exposed to and their protection needs, their level of integration in the host country, and their mental and physical health, education and socio-economic conditions. These considerations must be set within the context of the child's gender, nationality as well as their ethnic, cultural and linguistic background. The determination of a separated child's best interests must be a multi-disciplinary exercise involving relevant actors and undertaken by specialists and experts who work with children.

* CRC, Art. 3(1): In all actions concerning children ... the best interests of

² A best interests determination describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards. Such process should ensure adequate child participation without discrimination. It should also allow the views of the child to be given due weight in accordance with age and maturity. It involves decision-makers with relevant areas of expertise, and balances all relevant factors in order to assess the best option, UNHCR Guidelines on Determining the Best Interests of the Child, 2008.

³ A best interests assessment should be conducted systematically in many circumstances that occur between the moment a child is identified as separated or otherwise at risk, until a durable solution is implemented. It should be carried out, for example, prior to initiating tracing or to providing temporary care. The assessment can be done either alone or in consultation with others. It does not require the strict procedural safeguards of a formal determination, but staff should have the requisite skills and knowledge, UNHCR Guidelines on Determining the Best Interests of the Child, 2008.

children shall be a primary consideration.

- * CRC, Art. 20(1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
- * General Comment No 6, paragraphs 19 – 22: Best interests must be respected at all stages of the displacement cycle.
- * UNHCR Guidelines, paragraph 1.5: Reaffirms CRC, Art 3(1)

B2. Survival and Development

All separated children have the right to life and the right to seek international protection. The denial of a child's rights and the abuse of a child are never acceptable. Separated children must be provided with protection and assistance to ensure that they are adequately clothed, fed and accommodated and that their physical, mental, spiritual and emotional health needs are met. Separated children must be given opportunities to develop, learn and thrive and they must be supported and encouraged to achieve their full potential.

- * CRC, Art. 6(1): States Parties recognize that every child has the inherent right to life.
- * General Comment No 6, paragraphs 23 – 24: Separated children are vulnerable to various risks that affect their life, survival and development and measures must be taken to protect children from these risks.
- * UNHCR Guidelines, paragraph 7.1

B3. Non-discrimination

All separated children are entitled to the same treatment and rights as national children. They must be treated as children first and foremost whether or not they hold relevant travel, entry, or residence documents, or whether they are perceived to be in transit. All considerations relating to their immigration status must be secondary and anchored in the principles of child welfare.

- * CRC, Art. 2: The rights of the CRC apply to all children without discrimination of any kind and irrespective of their parents or their own race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- * CRC, Art. 22(1): Separated refugee and asylum seeking children are entitled to protection and assistance in order to enjoy the rights in the CRC and in other international human rights or humanitarian instruments to which the States are Parties.
- * CRC, Art. 22(2): Where a refugee child's parents or other family members cannot be found, the child shall be given the same protection as any other child permanently or temporarily deprived of his or her family environment.
- * General Comment No 6, paragraph 18: The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated children. In particular, it prohibits any discrimination on the basis of the status of a child being unaccompanied or separated, or as being a refugee, asylum seeker or migrant.

B4. Participation

The views and wishes of separated children must be sought and taken into account whenever decisions affecting them are being made. Measures must be put in place to facilitate their meaningful participation in line with their age and maturity. Appropriate safeguards must be put in place to ensure that consultations and interviews do not cause harm to the child. Cultural and linguistic factors, which may serve as a barrier to participation must be addressed. Separated children are entitled to be heard directly or via their legal representative or guardian in any legal procedure. Separated children should always be enabled and encouraged to voice their views, concerns and complaints regarding their care and guardianship, education, health services, legal representation and durable and secure solutions.

- * CRC, Art. 12: The views of children are to be given due weight in relation to

their age and maturity and children shall have opportunity to be heard in all proceedings affecting them.

- * CRC, Art. 25: Children who are placed in a care institution have the right to periodic reviews of their circumstances.
- * General Comment No 6, paragraph 25: With regard to separated children, the child's views and wishes should be taken into account.
- * UNHCR Guidelines, paragraphs 5.14 & 5.15

B5. Information

Separated children must be provided with accessible information in a language that they fully understand, on, for example, their rights and entitlements, support and services available to them, the asylum and other status determination processes, family tracing and the situation in their country of origin. They should also receive information about their responsibilities and the expectations of behaviour that are placed upon them. Information should be provided promptly, and regularly updated, and in a child appropriate way by knowledgeable and trained staff.

- * CRC, Art. 13
- * CRC, Art. 17: States shall ensure that children have access to information from a diversity of international and national sources.
- * CRC, Art. 22(2): States shall co-operate, as they consider appropriate, with efforts by the UN or other IGOs or NGOs in family tracing measures.
- * General Comment No 6, paragraph 24

B6. Interpretation

Whenever they are being interviewed, engaging with or requesting access to services or legal procedures, or involved in planning or review meetings, separated children must be provided with suitably trained interpreters who speak a language that they understand.

- * CRC, Art. 12
- * CRC, Art. 13: Children have the right to freedom of expression and to seek, receive and impart information.
- * General Comment No 6, paragraph 95
- * UNHCR Guidelines, paragraph 5.13

B7. Confidentiality

Care should be taken not to disclose information about a separated child that could endanger the child or family members in her or his home country regardless of whether or not the child has given permission. The informed consent of a separated child must be sought in an age appropriate manner before sensitive information is disclosed to other organisations or individuals. Information must not be used for purposes other than for those for which it was given. Confidentiality should only be compromised, on a need to know basis, when it is necessary to protect the child, or another person, from serious harm.

- * CRC, Art. 16: Children have the right to protection from arbitrary or unlawful interference with their privacy, family, home and correspondence.
- * General Comment No 6, paragraph 29: States parties must protect the confidentiality of information received in relation to an unaccompanied or refugee child.
- * General Comment No 6, paragraph 30: Particular care must be taken not to endanger the well-being of persons still within the child's country of origin.
- * UNHCR Guidelines, paragraphs 5.16 & 5.17

B8. Respect for Cultural Identity

Separated children must be supported in maintaining their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education should reflect their cultural needs. Care should be taken not to perpetuate those aspects of cultural traditions that are harmful to and

discriminate against children. Preservation of culture and language is also important should a child return to his or her home country.

- * CRC, Art. 8: Children have the right to preserve or re-establish key elements of their identity.
- * CRC, Art. 24: Children have the right to the highest attainable standard of health and to facilities for treatment and rehabilitation.
- * CRC, Art. 30: Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, practice their religion and use their language.

B9. Inter-organisational Co-operation

Organisations, government departments, national and local institutions and professionals involved in providing services to separated children have a duty to uphold the Convention on the Rights of the Child. They must co-operate at local, national and international level to ensure that the welfare and rights of separated children are enhanced and protected. A holistic approach should be adopted in trying to meet the interconnected needs of separated children.

- * CRC, Art. 22(2)
- * UNHCR Guidelines, paragraph 12

B10. Staff Training

All those working with separated children must receive appropriate and ongoing training. Such training should focus specifically on the rights and needs of separated children, but also on cultural factors and the development of the appropriate skills for communicating with them. Training should also be given to ensure that those working with separated children are culturally and gender sensitive and understand intercultural communication. Immigration or border police staff and other relevant actors should receive training in conducting child-friendly interviews.

- * CRC, Art. 3(3): States shall ensure that institutions and services providing protection or care for children meet established standards, inter alia, in the

suitability of their staff and competent supervision.

- * General Comment No 6, paragraph 75: Staff involved in status determination procedures of children should receive training on international and national refugee law.
- * General Comment No 6, paragraph 95: Particular attention should be paid to the training of officials working with separated children and dealing with their cases. Specialised training is equally important for legal representatives, guardians, interpreters and others dealing with separated children.
- * General Comment No 6, paragraph 96: Outlines key elements of training.
- * UNHCR Guidelines, paragraph 11

B11. Durability

Decisions that are taken regarding separated children must take into account, to the greatest extent possible, the long-term best interests and welfare of the child. Solutions should be concrete, secure and sustainable.

- * CRC, Art. 3(1)
- * CRC, Art. 22(1)
- * CRC, Art. 22(2)
- * General Comment No 6, paragraph 79: The ultimate aim in addressing the needs of separated children is to identify a durable solution that addresses all their protection needs.
- * UNHCR Guidelines, paragraph 9

B12. Timeliness

All decisions regarding separated children must be taken in a timely fashion taking into account the child's perception of time. Whilst all decisions should be given thorough consideration, delay shall be presumed to be prejudicial to the child. Perceptions that a child is merely in transit should not affect the duty

of officials to take appropriate steps to start any relevant procedures. Timely decisions are in the interests of all concerned parties.

* CRC Art. 3(1)

* UNHCR Guidelines, paragraphs 8.1 & 8.5

C. SEPARATED CHILDREN IN EUROPE

There are many reasons for the presence of separated children in Europe. Separated children may travel to, or within Europe, because they are seeking asylum owing to a fear of persecution or the lack of protection in their country of origin due to human rights violations, armed conflict or disturbances. Separated children may be seeking other forms of protection because they have been trafficked for sexual or other forms of exploitation, or because they have travelled to or within Europe to escape conditions of serious deprivation or to look for new opportunities and a better life. Some separated children may need to seek protection because they are fleeing from domestic violence and abuse within their family, or escaping gender-based discrimination or abuses, or because they may have been involved in armed combat or served the military in other ways - these children should not be perceived or treated as criminals, rather they should be seen primarily as child victims of violence. Some separated children arrive because they are seeking reunification with family members already present in Europe, where either the lack of regularisation programmes or restrictive reunification procedures do not allow for regularised reunification or reunification in a reasonable timescale. Some will not hold identity or residence documents and some may be in transit, passing through a country en route to a final destination. Some separated children will be European Union nationals who have travelled within Europe and others may have arrived in Europe as part of third country resettlement programmes and will thus hold residency documents upon arrival. All separated children should be entitled to make an asylum application or, including in the case of European Union nationals, to otherwise have their best interests determined. Furthermore separated children should be provided with free legal advice, a guardian and assistance in supporting them with such procedures⁴.

Although there is a broad range of categories of separated children most will fall under one of three main headings; those seeking protection (including asylum),

⁴(CRC, Arts. 1 & 22; Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996, Art.6; UNHCR Guidelines, paragraph 3.1; European Council on Refugees and Exiles Position on Refugee Children, November 1996 paragraphs 8 & 11; EU Resolution on Unaccompanied Minors, Art. 1(1); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Art. 2a & 3d; Protocol Against the Smuggling of Migrants by Land, Sea and Air, Art. 14 & 19).

those who have been trafficked and those who are migrants including those seeking family reunification or, economic or educational opportunities. It is important to recognise that these groups cannot be seen as mutually exclusive and that there can be, and is, considerable overlap and movement within these categories. Upon arrival it may not be obvious which, if any, of these groups the separated child fits into and it is precisely because of this that welfare needs must be addressed before the child's migration status is determined as the latter may take time to confirm.

All separated children should be perceived and treated as children first and foremost and their migration status must always be a secondary consideration. Migration concerns cannot be the basis for refusing a separated child permission to enter or remain in a country. The principles of child protection and welfare should be the paramount considerations in the treatment of all separated children by immigration officers, police, social workers and other practitioners. All separated children have common and particular rights and needs in relation to their reception and assistance. They should all have access to child welfare, protection, education and health services. The rehabilitation and recovery of separated children must be given due priority.

Moreover, processes must be in place to address the protection needs (including asylum) and a durable solution for each separated child taking the best interests of the child as a primary consideration. The SCEP believes that it would be in the interests of all concerned parties to develop formal procedures, safeguards and agreed criteria with which to ensure that the best interests of all separated children are assessed so that they are indeed a primary consideration in identifying the protection needs and a durable solution. Because of the diversity of each separated child's situation best interest determinations and assessments must always be based on the individual circumstances of each child.

Below we note some of the specific features of separated asylum seeking children, separated migrant children and separated trafficked children.

CI. Separated Asylum Seeking Children

CI.1 Some separated children travel to, or within Europe because they are fleeing persecution, forced conscription, conflict and upheaval. Such children, regardless of their age, country of origin, method and route of travel or whether they entered or moved within Europe legally or illegally must never be denied access to procedures which grant international protection, including, where relevant consideration of whether or not their circumstances meet the criteria set out in the 1951 Refugee Convention.

CI.2 Decision makers need to be aware that some forms of persecution are specific to children and that some human rights violations impact upon children more severely. Separated children must never be removed from the country without a thorough determination of their asylum application and their best interests, ensuring fundamental procedural safeguards, and the identification of a durable solution.

CI.3 Separated children must be exempt from accelerated asylum determination procedures based on assumptions about safe countries, and cases that are manifestly unfounded. Decisions must be made on a case by case basis that fully considers the child's individual circumstances. Separated children must not be fitted into procedures designed for adults and decision making bodies should design procedures that are appropriate to the needs of children and their levels of understanding.

- * CRC, Art 22(1)
- * General Comment No 6, paragraph 26: In affording proper treatment of separated children, States must fully respect non-refoulement obligations deriving from humanitarian and refugee law.
- * General Comment No 6, paragraphs 27 & 28: States should not return children to situations where there is a real risk of underage recruitment.
- * General Comment No 6, paragraphs 56 – 60: Child soldiers should be treated as victims of conflict and should be supported in their reintegration into non-military life. They should not generally be detained unless they pose a serious

threat and should not be returned if this would entail a risk of re-recruitment. Participation in hostilities may amount to persecution.

- * General Comment No 6, paragraph 66: Separated children, irrespective of age, shall enjoy access to asylum procedures and other mechanisms for providing international protection.

C2. Separated Migrant Children

Some separated children travel on their own as migrants seeking relief from situations of severe and persistent poverty, deprivation and hardship, or to seek opportunities for a better and secure future. Many of these will be children without valid identity or residence documents. Separated migrant children must never be removed from the country without a thorough determination of their best interests, which must include a due process and consideration of the situation in their country of origin. The determination of best interests and the assessment of the situation in the child's country of origin should be undertaken by an organisation well versed in children's rights.

- * CRC Art 2

C3. Separated Trafficked Children

C3.1 Children are trafficked⁵ into and within Europe for a variety of exploitative purposes, including prostitution, the production of child pornography, begging, theft and petty crime, and other forms of labour exploitation. States should take measures to prevent and stop trafficking by sharing information on trafficking with each other. States should also ensure that immigration officers and border police are alerted to this problem and that they are provided with training to help them identify children who may have been trafficked, and to make appropriate referrals to child protection agencies.

⁵ Article 3, subparagraph (a) of the Palermo Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children defines trafficking as: "Trafficking of persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of 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

C3.2 Trafficked children must not be perceived or treated as criminals and their protection, assistance and redress must be given due priority. They must never be coerced into giving evidence against those who have trafficked them by offers of residence permits. Decisions about temporary or long term residency must be made in line with the best interests of the child and must not be dependent upon co-operation with the authorities. They must be allowed sufficient time in which to reflect on their choices around testimony. They will need time to build trusting relationships with professional staff and to feel safe and secure. Interviews regarding their immigration status must not take place immediately upon arrival or immediately following identification as a victim of trafficking.

C3.3 Separated trafficked children must not be seen merely as passive recipients of assistance and their views and wishes must be sought and taken into account whenever decisions affecting them are being made, as this will also aid their recovery and empowerment. They must be provided with the details of any procedures and subsequent consequences, explained to them in a language that they understand.

- * CRC, Art. 34: States shall protect children from all forms of sexual exploitation and abuse.
- * CRC, Art. 35: States shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
- * CRC, Art. 36: States shall protect children from all other forms of exploitation prejudicial to their welfare.
- * CRC, Art. 37
- * General Comment No 6, paragraphs 23 & 24
- * General Comment No 6, paragraphs 50 – 53: Separated children are vulnerable to trafficking and States should take measures to prevent both trafficking and re-trafficking. Trafficked children should not be criminalised and they should not be returned to their country of origin unless this can be demonstrated to

be in the child's best interests.

* General Comment No 6, paragraph 95

D. GOOD PRACTICE

Phase I – Arrival, Reception and Interim Care

DI. Access to the Territory

DI.1 Separated children must never be refused entry to a territory or returned at the point of entry before a determination of their best interests and their need for protection has been undertaken by the competent authorities. They must never be detained for reasons of immigration policy and practice. Neither should they be subjected to detailed interviews or age assessment procedures by immigration authorities at the point of entry, see section D5 (below). Separated children should remain at the point of entry for the shortest possible period of time. At the point of entry it is only necessary to provisionally establish their identity and to allow appropriate referrals to be made for their immediate care. If further procedures are needed to establish the child's identity the child must be allowed entry into the State whilst these are undertaken.

DI.2 Separated children must never be the subject of a re-entry ban.

- * CRC, Art. 6(1): Every child has the inherent right to life.
- * CRC, Art. 37(b): Children shall not be deprived of their liberty arbitrarily or unlawfully; they shall be detained only as a measure of last resort and separately from adults.
- * General Comment No 6, paragraph 20
- * UNHCR Guidelines, paragraph 4.1

D2. Identification

At ports of entry and in-country immigration contact points, immigration authorities must put in place procedures to identify separated children and to refer such children to the appropriate child welfare authorities. Where an adult accompanies a child, it will be necessary to establish the nature of the relationship between the child and the adult in order to establish whether or not the adult is the child's primary caregiver. Since many separated children enter a

country without being identified as separated at ports of entry, organisations and professionals must share appropriate information in order to identify separated children and to ensure that they are given appropriate protection. Some children become separated after entry into a country, for example because of a breakdown of family situation, departure of caregiver etc. Children may give false information to different authorities due to misunderstandings or because they feel under duress or simply because they do not know the requested information. Should a child, for any reason, become separated after entry, immigration and refugee determination authorities must ensure that their procedures reflect this change of situation.

- * CRC, Art. 8
- * General Comment No 6, paragraph 31(1) Prioritised identification of a separated child as soon as their presence becomes known to the authorities.
- * UNHCR Guidelines, paragraphs 5.1 - 5.3 & Annex II

D3. Appointment of a Guardian

D3.1 Immediately a separated child is identified, or where an individual claims to be a separated child, regardless of whether further assessment of their age is required by the authorities, an independent guardian must be appointed to advise and protect them. The appointed guardian should be consulted and informed regarding all actions taken in relation to the child. Where the child, subject to their age and maturity, gives consent, the guardian should have the authority to represent the child in all planning and decision making processes. Their responsibilities should be to:

- ▶ Ensure that all decisions have the child's best interests as a primary consideration
- ▶ Ensure the child's views and opinions are considered in all decisions that affect them
- ▶ Ensure that the child has suitable care, accommodation, education, language support and health care provision and that they are able to practice their

religion

- ▶ Ensure the child has suitable legal representation to assist in procedures that will address protection claims and durable solutions
- ▶ Explore, together with the child, the possibility of family tracing and reunification
- ▶ Assist the child to keep in touch with his or her family where appropriate
- ▶ Contribute to a durable solution in the child's best interests
- ▶ Provide a link, and ensure transparency and cooperation between the child and the various organisations who may provide them with services
- ▶ Engage with the child's informal network of friends and peers
- ▶ Consult with and advise the child
- ▶ Advocate on the child's behalf

D3.2 Guardians should be appointed until a durable solution has been identified and implemented. This may extend beyond the child's 18th birthday. Where a durable solution is secured before the child turns 18 years old, consideration should be given to the continuation of the role up to the child's 18th birthday if this is appropriate.

D3.3 Procedures for the appointment of a guardian must not be less favourable than the existing national administrative or judicial procedures used for appointing guardians for national children. The individuals carrying out these responsibilities may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, guardians will require specialist skills in working with separated children and an understanding of the context of child migration. They must have relevant childcare expertise and an understanding of the special and cultural needs of separated children. They must receive on-going training and professional support, and undergo police or other appropriate reference checks. Guardians must not hold positions which could lead to a potential conflict of interest with the best interests of the child.

- * CRC, Art. 12
- * CRC, Art. 18(2): States shall assist legal guardians to carry out child-rearing responsibilities.
- * CRC, Art. 20(1): Children deprived of their families are entitled to special protection and assistance.
- * CRC, Art. 20(3): The care provided to children deprived of their families shall take account of their ethnic, religious, cultural and linguistic background.
- * General Comment No 6, paragraphs 21 & 24
- * General Comment No 6, paragraphs 33 – 38: States should appoint a guardian (or adviser) as soon as the separated child is identified.
- * General Comment No 6, paragraph 95
- * UNHCR Guidelines, paragraph 5.7

D4. Registration and Documentation

D4.1 Registration and documentation are essential to protect the long-term interests of separated children. This must be carried out by a child sensitive interview procedure. Immigration and border police officers must limit their initial interview to gathering basic information about the child's identity. Substantive interviews with immigration authorities must always be carried out in the presence of legal counsel, a guardian and where the child so desires, by other significant adults, for example, social worker, or relative.

D4.2 From the moment of identification until the implementation of a durable solution, a separated child must be considered as residing legally in the host country.

D4.3 A complete social history must be taken, drawing on all sources of information, by the competent child welfare authority or other designated organisation with care duties towards the child. This should cover:

- ▶ Family information (in the country of origin and elsewhere)
- ▶ Information on non-family members important to the child
- ▶ Circumstances when the child was found/identified
- ▶ Information concerning the child's separation from the family
- ▶ Information about the child's life before and since the separation
- ▶ Child's physical condition, health and past medical history
- ▶ Educational background (formal and informal)
- ▶ Religious, cultural and linguistic background
- ▶ Present care arrangements
- ▶ Child's wishes and plans for the future
- ▶ Preliminary assessment of the child's mental and emotional development and maturity

D4.4 All those interviewing separated children should have appropriate training and expertise in undertaking these interviews

- * CRC, Art. 8
- * General Comment No 6, paragraph 31(ii): Prompt registration and initial interview to collect biodata and social history to enable identification of the child.
- * General Comment No 6, paragraph 95
- * General Comment No 6, paragraph 99: The development of an integrated system of data collection on separated children is a prerequisite for the development of effective policies.
- * General Comment No 6, paragraph 100: Outlines the data that should be gathered regarding separated children.

* UNHCR Guidelines, paragraphs 5.6 & 5.8 - 5.10

D5. Age Assessment

D5.1 Age assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual's age. If an age assessment is thought to be necessary, informed consent must be gained and the procedure should be multi-disciplinary and undertaken by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background. They must balance physical, developmental, psychological, environmental and cultural factors. It is important to note that age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, individuals whose age is being assessed should be given the benefit of the doubt. Examinations must never be forced or culturally inappropriate. The least invasive option must always be followed and the individual's dignity must be respected at all times. Particular care must be taken to ensure assessments are gender appropriate and that an independent guardian has oversight of the procedure and should be present if requested to attend by the individual concerned.

D5.2 The procedure, outcome and the consequences of the assessment must be explained to the individual in a language that they understand. The outcome must also be presented in writing. There should be a procedure to appeal against the decision and the provision of the necessary support to do so.

D5.3 In cases of doubt the person claiming to be less than 18 years of age should provisionally be treated as such. An individual should be allowed to refuse to undergo an assessment of age where the specific procedure would be an affront to their dignity or where the procedure would be harmful to their physical or mental health. A refusal to agree to the procedure must not prejudice the assessment of age or the outcome of the application for protection.

- * General Comment No 6, paragraph 31(i): Age assessments should be safe, child and gender sensitive and the individual should be given the benefit of the doubt.
- * General Comment No 6, paragraph 95
- * UNHCR Guidelines, paragraph 5.11

D6. Exemption from Detention

D6.1 Separated children must never be detained for reasons related to their immigration status or illegal entry. This includes, whether temporary or otherwise, detention at the border or in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people. Judicial oversight must be exercised where it is deemed in a child's best interests to be placed in a closed centre.

D6.2 Decisions to detain separated children and processes to review or appeal decisions to detain in relation to non-immigration matters must follow the same judicial procedures, standards and safeguards that are followed and applied to national children. The decision whether or not to detain must be based on the specifics of the situation in relation to the child and not their immigration status. For example, it should consider whether the child has committed a serious offence, or whether they have a mental health problem that needs to be treated in a secure setting, etc. Detention must only be used as a measure of last resort and for the shortest appropriate period of time.

- * CRC, Art. 22(2)
- * CRC, Art. 37(a): Children shall not be subject to cruel, inhuman or degrading treatment.
- * CRC, Art. 37(b)
- * General Comment No 6, paragraphs 61 – 63: Separated children should not, as a general rule be detained, and illegal entry into a country may be justified according to general principles of law where such entry is the only way of

preventing a violation of a child's fundamental human rights. The best interests principle should govern the conditions of detention.

- * UNHCR Guidelines paragraph 7.6 & 7.7

D7. Family Tracing and Contact

Tracing of a separated child's parents and family needs to be undertaken as soon as possible, but this must only be done where it will not endanger the child, or members of the child's family. Tracing must only be undertaken on a confidential basis and with informed consent. States and other organisations undertaking tracing may seek assistance from specialised UN agencies, the International Committee of the Red Cross (ICRC), International Social Services (ISS) and relevant child protection authorities. Separated children need to be properly informed and consulted about the family tracing process and, where initiated, its progress. Their views must be taken into account at all stages. They should have the choice to decide with whom they will share the outcome of the tracing and must not be coerced to disclose this information against their will. Where appropriate, those responsible for a child's welfare must facilitate regular communication between the child and her or his family.

- * CRC, Art. 9(3): Children who are separated from their parents have the right to maintain contact with their parents.
- * CRC, Art. 10(1): Applications for family reunification shall be dealt with in a "positive, humane and expeditious manner".
- * CRC, Art. 10(2): Children whose parents reside in different countries have the right to maintain regular relations with their parents.
- * CRC, Art. 22(2)
- * General Comment No 6, paragraph 80: Tracing is an essential component in the search for a durable solution and should be prioritised unless this is not in the child's best interests or would endanger those being traced.
- * UNHCR Guidelines, paragraph 5.17

D8. Interim Care

D8.1 Care Placements

D8.1.1 Separated children must be found suitable care placements as soon as possible after arrival or identification. Good standards of provision must be prepared and adhered to by service providers. Where it is unclear which agency or local administrative body is responsible for providing care it is not acceptable for one party to refuse to take on the responsibility without securing the agreement of another appropriate party to provide care. Every separated child should have the opportunity to be placed within a family if it is in their best interests to do so. Care authorities must base placements on a careful assessment of their needs and changes in care arrangements should be kept to a minimum. Regular reviews of care arrangements must be carried out. Siblings should be kept together if it is in the best interest of the child. Where children live with or are placed with relatives, these relatives must be assessed for their ability to provide suitable care and undergo necessary recruitment checks. Separated children over 16 years of age who are not placed within families should be found appropriate residential placements and must not be treated as 'de facto' adults and placed in an adult hostel or reception centre settings.

D8.1.2 Whether they are placed in foster care or in residential settings separated children must be cared for by suitably trained professionals and foster carers who understand their cultural, linguistic and religious needs and who have an understanding of those issues that affect separated asylum seeking, trafficked and migrant children. Care workers should help a child develop links with their ethnic community whenever possible. Those working with separated children must be aware that children are entitled to privacy and to maintain a confidential relationship with their guardian and legal representative and any other advocate.

D8.1.3 Separated trafficked children must not be held in detention facilities in order to protect them from those who have trafficked or who wish to exploit them. Alternative secure measures such as safe houses should be developed

in conjunction with child welfare authorities. In order to establish safeguards, care workers in reception centres and residential homes need to be made aware of the problem of trafficking of children for the purposes of sexual or other forms of exploitation.

- * CRC, Arts. 3(3) & 13
- * CRC, Art. 14: Children have the right to freedom of thought, conscience and religion.
- * CRC, Art. 15: Children have the right to freedom of association.
- * CRC, Art. 16
- * CRC, Art. 19: States shall take all appropriate measures to protect children from all forms of physical and mental violence, abuse, negligence, maltreatment or exploitation.
- * CRC, Arts. 20(1), 20(3), & 25
- * CRC, Art. 26: Children have the right to benefit from social security and social insurance.
- * CRC, Art. 27: Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development.
- * CRC, Arts. 30, 34, 35 & 36
- * General Comment No 6, paragraph 40: Placements should offer continuity in a child's upbringing regarding their cultural and linguistic background. Changes of placements should be kept to a minimum and siblings should be placed together. Child headed families should receive effective protection and children should be informed about the plans that are being made for them.
- * General Comment No 6, paragraph 90: Once it is determined that a separated child will remain in the community an assessment should take place to determine appropriate long term arrangements. Separated children should have the same access to service rights as national children.

- * UNHCR Guidelines, paragraphs 7.1 - 7.5

D8.2 Health

Separated children must have access to preventative, remedial and emergency health care provision on an equal basis with national children. Particular attention must be paid to their physical and mental health needs arising from previous physical deprivation and ill health, disabilities, and from the psychological impact of violence, trauma and loss as well as the effects of racism and xenophobia that may be experienced in the host or transit country. For some separated children access to counselling or therapy is vital to assist their recovery.

- * CRC, Art. 23: Children with disabilities have the right to enjoy a full and decent life and have the right to special care.
- * CRC, Art. 24
- * CRC, Art. 39: States shall take measures to promote the physical and psychological recovery and social re-integration of child victims.
- * General Comment No 6, paragraphs 46 – 49: Separated children should have the same access to health services as national children and states must address the particular vulnerabilities of separated children and the impact of these on a child's health. Rehabilitation should be provided.
- * General Comment No 6, paragraph 90
- * UNHCR Guidelines, paragraphs 7.9 - 7.11

D8.3 Education, Language and Training

Separated children must have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide second language support. An individual education plan should be prepared for each separated child and efforts should be made to ensure regular school attendance. Education authorities must be vigilant concerning peer violence and bullying towards separated children and measures

put in place to prevent its occurrence. In order to preserve their cultural identity separated children should also have access to mother tongue teaching. Vocational and professional training should be available to older separated children as it is likely to enhance their life chances.

- * CRC, Art. 28: Children have the right to free primary education. States shall encourage different forms of secondary education and make them available to all children. Educational and vocational guidance shall be available to all children.
- * CRC, Art. 29(1c): The aims of education should encourage respect of children's cultural identity, language and values.
- * CRC, Art. 30
- * CRC, Art. 32: Children should be protected from economic exploitation and hazardous work.
- * General Comment No 6, paragraph 41: States should ensure that access to education is maintained during all phases of the displacement cycle.
- * General Comment No 6, paragraph 42
- * General Comment No 6, paragraph 90
- * UNHCR Guidelines, paragraphs 7.12 - 7.14

D8.4 Social Assistance

D8.4.1 Some separated children may need social and financial assistance. For example, they may have received a residence permit but are unable to find work or want to study, and are old enough and wish to live independently. It may be that they are cared for by the child welfare agencies but because their age enables them to apply for financial state support this agency seeks this route as a means to cover the costs of support.

D8.4.2 Separated children must be entitled to access financial support and housing in the same way as national children. Access must be consistent with domestic age restrictions and all administrative procedures must be applied

in the same manner as for national children. Financial assistance should be provided at the same rate as would apply to national children.

- * CRC, Art. 26: Every child has the right to benefit from social security.
- * CRC, Art. 27: Children should have a standard of living adequate for their physical, mental, spiritual, moral and social development.
- * General Comment No 6, paragraph 44: Children should receive material support
- * UNHCR Guidelines, paragraph 10.9

D8.5 Employment

D8.5.1 Upon receiving a residence permit or other permission to remain in the host country some older separated children may be allowed to work and some may wish to seek employment rather than continue with their education. Separated children wanting to find employment should receive careers guidance and support from their social worker/carer to help them consider their options and gain an understanding of the context of employment in the host country. It is desirable that before finding employment separated children should feel orientated into their new situation and they should not enter the labour market immediately upon arrival. Care should be taken to ensure that there is no coercion or pressure being put on the young person to work and those working with separated children must ensure that the conditions of employment are reasonable and that working conditions are not exploitative.

D8.5.2 Separated children must be allowed access to the labour market on the same terms as national children. Access must be consistent with domestic age restrictions, minimum levels of remuneration, health and safety regulations and any other relevant safeguards as outlined in States' domestic legislation. Separated children in employment must be registered with the relevant administrative department and all administrative procedures must be applied in the same manner as for national children.

- * General Comment No 6, paragraph 90

Phase 2 - Durable, Concrete and Secure Solutions - Determination of Best Interests

Processes must be in place to address the protection needs (including asylum) and a durable solution for each separated child, taking the best interests of the child as a primary consideration.

Consequently, for all separated children there must be a procedure to determine the child's best interests, which will in turn serve as a primary consideration in identifying the protection needs and durable solution for each child. This determination will need to consider the child's need for protection and the impact of remaining in the host country or of being reunited with family or carers in either the country of origin or a third country see DI5 (below). In cases where there has been an asylum determination procedure, the outcome of this procedure will inform the durable solution. The durable solution is unlikely to be durable if it is based on a decision to allow the child only to remain up to their 18th birthday see DI4.7 (below).

When looking at durable solutions, a detailed process for determining best interests should be followed, which involves multiple agencies as well as the child's independent guardian and seeks the views of the child.

D9. Access to the Best Interests Determination Process

D9.1 Separated children, regardless of age, must never be denied prompt access to a process for determining their best interests. For separated children seeking asylum the outcome of the asylum determination procedure will be a necessary part of a best interests determination.

D9.2 Separated children who become adults during the course of the determination process, sometimes referred to as 'aged-out' should continue to benefit from the same special determination procedures as those who are under 18 years of age. However States should eliminate unnecessary delays that can result in a child reaching the age of majority during the process.

* CRC, Art. 22

- * UNHCR Guidelines, paragraphs 4.1, 5.4 & 10.1

DI0. Legal Representation and Assistance

In all legal proceedings, including any appeals or reviews, separated children must have legal assistance and a legal representative who will assist them to make their claim for protection and the implementation of any ensuing durable solutions. Legal representatives must be available at no cost to the child and, in addition to possessing expertise on areas of migration law, the asylum process, and instruments to protect victims of trafficking. They should be skilled in representing children, be gender-sensitive and be aware of child-specific forms of persecution and the exploitation of children in an international context.

- * CRC, Art. 12
- * CRC, Art. 22
- * General Comment No 6, paragraph 69: Separated children should have free access to legal representation.
- * UNHCR Guidelines, paragraphs 4.2 & 8.3

DII. Minimum Procedural Guarantees

DII.1 Decisions on a child's application for protection must be taken by a competent authority fully versed in asylum, refugee, trafficking, and other relevant protection matters and also in all legal instruments relating to children's rights. Children who receive a negative first decision must have a right of appeal to a judicial authority. Deadlines for appealing should be reasonable. Children's applications must be identified and prioritised to minimise delay and to ensure they are not kept waiting for long periods of time.

DII.2 Where interviews are required they must be carried out in a child-friendly manner with breaks and in a non-threatening atmosphere, by officers trained in interviewing children. Children must be accompanied at each interview by their legal representative and where the child so desires, by other significant adults, for example, social worker, relative, guardian etc. There must be a

written record of the interview. Decisions made at the interview should be documented and provided to the child and their guardian. Separated children should be able to provide testimony through a number of different means. These include oral testimony, drawings and writings, audio and video recorded interviews with independent experts and testimony via video-link.

DI1.3 It is desirable, particularly with younger children, children with a disability or those suffering from psychological trauma, that an independent expert carries out an assessment of the child's ability to articulate their need for protection or a well-founded fear of persecution and also to identify any difficulties a child may have in recounting painful incidents or disclosing sensitive information.

- * CRC, Art. 3(3)
- * General Comment No 6, paragraph 71: Applications should be determined by competent authorities.
- * General Comment No 6, paragraph 95
- * UNHCR Guidelines, paragraphs 4.2, 8.1, 8.2, 8.4 & 8.5

DI2. Criteria for Making a Decision on a Child's International Protection Needs and a Durable Solution

DI2.1 Separated children must never be refused or granted permission to remain within the host country solely on the basis of their age. In ensuring protection and seeking durable solutions the best interests of the child must be a primary consideration. Careful attention must be paid to the child's right to family unity within their best interests. Authorities should specifically consider the:

- ▶ Age and maturity of the child and their stage of development
- ▶ Possibility that the child may manifest their fears and experiences differently from adults
- ▶ Possibility that the child will have limited knowledge of conditions in their country of origin

- ▶ Existence of child-specific forms of human rights violations, such as, but not limited to, recruitment of children into armies, trafficking for sexual exploitation, female genital mutilation and forced labour
- ▶ Situation of the child's family in their country of origin and, where known, the wishes of parents or primary caregivers who may have sent the child out of the country in order to protect them
- ▶ Harmful actions which might be considered as harassment or discrimination when applied to an adult, may constitute persecution when applied to a child

DI2.2 Therefore, in the examination of the protection needs of a separated child it may be necessary to have greater regard to certain objective factors, and to take those into account when making determinations about whether a child may be at risk of harm or presumed to have a well-founded fear of persecution based upon these. A liberal application of the benefit of doubt should be applied when making determinations on the international protection needs of separated children.

- * CRC, Arts. 3, 12, 22, 32, 34, 35, 36 & 37
- * CRC, Art. 38: States shall ensure that persons under the age of 15 do not take a direct part in armed conflict.
- * General Comment No 6, paragraph 72: Assessment should comprise a case-by-case examination of the unique combination of factors presented by each child.
- * General Comment No 6, paragraph 74: When assessing refugee claims states shall take into account the particular motivations for and manifestations of persecution experienced by children.
- * UNHCR Guidelines, paragraphs 8.6 - 8.10, 9.7 & 10.4

Following the determination of best interests the ensuing durable solution will likely take the form of either; reuniting the child with their family, either in the host country, country of origin or a third country; the child remaining in the host

country without the care of family members; or, exceptionally, the child returning to their country of origin to be cared for by non family members. See D.13 and D.15 below for the guarantees that need to be taken into account regarding return to country of origin and family reunification.

D13. Family Reunification

D13.1 In any situation regarding a separated child, States must positively and proactively facilitate family reunion for the child in the State where the child's best interests will be met.

D13.2 If it is determined to be in the best interests of the child that family reunification should take place in the host country, entry and residence authorisation should be granted to the child's family members. Such an application by a child or parent should be dealt with in a positive, humane and expeditious manner.

D 13.3 If family reunification should take place in the child's country of origin or in a third country the reunification must be in accordance with the safeguards set out in section D15 (below). Where a separated child has a family member in any third country and both the child and family member wish to be reunited in that country, the child welfare authority in the country where the family member is living (whether temporary or otherwise) must carry out a careful assessment of the suitability of the family member to provide care for the child.

- * CRC, Art. 10(1)
- * General Comment No 6, paragraph 81: All efforts should be made to return a separated child to his or her parents except where further separation is necessary for the best interests of the child.
- * General Comment No 6, paragraph 83: Applications by a child to have his or her parents enter a State for the purpose of family reunification shall be dealt with humanely and quickly.
- * UNHCR Guidelines, paragraphs 5.5, 10.5 & 10.11

DI4. Remaining and Integration in a Host Country

DI4.1 A separated child must be allowed to remain legally in a host country if it is determined to be in their best interests to do so. This is likely to be if one or more of the following conditions apply:

- ▶ They are a refugee or otherwise in need of international protection or asylum
- ▶ There are humanitarian, medical or compassionate reasons why they should stay
- ▶ They are a trafficked child and it is not safe to return to their country of origin
- ▶ It is not safe for the child to return to their country of origin, for example, due to armed conflict, upheaval, civil unrest etc
- ▶ The child's parents or carers are unable to provide concrete and secure care arrangements, or they are not traceable and it is not possible to identify or locate another previous legal, or customary primary carer in the country of origin

DI4.2 When considering integration in the host country, welfare authorities must conduct a careful assessment of the child's situation taking into account their age, gender, religion, culture and language care history, mental and physical health, education and family situation in the country of origin. In consultation with the child, a long-term placement in the community should then be arranged. This may of course be a continuation of the interim care placement. It is generally desirable that children under 16 years of age be cared for in a foster family reflecting their own culture. Older children may prefer and benefit from a placement in a small group home environment. These placements should be staffed by properly trained care workers who are aware of the separated child's cultural needs.

DI4.3 As a matter of principle, siblings should be kept together in the same placement unless they wish otherwise or it is not in their best interests. If a sibling group is living independently, with the oldest taking responsibility, then they must be provided with appropriate support and advice.

DI4.4 Adoption is rarely a suitable option for a separated child. Before adoption can be considered viable or desirable, a rigorous assessment, conducted by an authorised and specialised organisation, of the child's family circumstances in the country of origin is essential. Clear procedures are outlined in the recommendation of the Hague Conference on Private International Law.

DI4.5 Separated children, who are found to be stateless, should be assisted in acquiring nationality.

DI4.6 The rights of separated children to education and training, health care, language support, social assistance and employment as outlined at section D8 (above) should continue on the same basis as that which is available to national children and according to national laws.

DI4.7 Temporary residency is not a durable solution and must not be granted merely as an administrative response that will be ended abruptly upon the child turning 18. The process of finding a durable solution must be started immediately. Individuals who arrived as children and were allowed to remain for humanitarian or compassionate reasons or who received any other kind of temporary status expiring at the age of 18, should be treated in a generous manner when they reach the age of majority and full regard should be given to their potential vulnerability. They should not receive lesser treatment than national children leaving care and should be offered support via an after-care programme, to assist them in their transition to living independently.

- * CRC, Arts. 2, 3, 13, 14, 15, 16, 19, 20, 23 – 28, 29(1c), 30 & 39
- * CRC, Art. 7(1): Children have the right to acquire a nationality.
- * CRC, Art. 21: States obligations with regard to inter-country adoption.
- * CRC, Art. 31: States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts; State Parties shall respect and promote these rights and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.

- * General Comment No 6, paragraph 77: Separated children shall benefit from available forms of complimentary protection.
- * General Comment No 6, paragraph 82: Family reunification in the country of origin is not in the child's best interest when there is a reasonable risk that return would lead to a violation of the child's fundamental human rights.
- * General Comment No 6, paragraph 89: Integration is the primary option if return is not possible and should be based on a secure legal status.
- * General Comment No 6, paragraph 91: Adoption of a separated child should only be considered if it has been established that the child is in a position to be adopted; adoptions should not take place in haste; the adoption must be in the child's best interests and carried out under applicable law; the views of the child must be sought and priority must be given to adoption by relatives in their country of residence. Adoption should not take place unless all feasible steps have been taken to trace the child's parents or other family members and it has been established that there is no reasonable hope of tracing the child's family; the child does not want to be adopted or there is the possibility of voluntary repatriation under conditions of safety and dignity.
- * UNHCR Guidelines, paragraphs 9.1 & 9.4, 10.2 - 10.4 & 10.6 - 10.10

D15. Return to Country of Origin or Third Country Resettlement or Transfer

D15.1 In case of a decision that a separated child is to be returned or resettled under the provision of any form of return, transfer (for example, the 'Dublin Regulation'), re-entry or resettlement agreements or directives, steps must be taken to establish that such a course of action is in the best interests of the child. A separated child must never be returned or resettled simply because they do not have a legal right to remain in the host country or because they fit into an administrative return, transfer, re-entry or resettlement procedure. In any event a separated child should only return to their country of origin, or be transferred to, or resettled in a third country when that is considered to be in their best interests.

D15.2 The best way for returns, transfers and resettlement to be carried out is on a voluntary basis if this is in the best interests of the child. Children must be fully informed, consulted and their views taken into account at all stages of the process. The length of time a child has been absent from their country of origin or their connection to the country where it is proposed to resettle or transfer them and their age are important factors to consider in this process.

D15.3 Before a separated child can return to their country of origin, or be resettled in, or transferred to, a third country a best interests determination must be undertaken. This must be multi- disciplinary in nature involving a range of relevant agencies. The outcome of this determination must, as a minimum, be informed by the following:

- ▶ A careful determination of whether it is safe to return the child to their home country or to the proposed transfer or resettlement country, taking into consideration risks of persecution, of being involved in armed conflicts, of violence and abuse, and of being exploited
- ▶ The child's carer or guardian in the host country agree that return, transfer or resettlement is in the child's best interests
- ▶ A careful social assessment is made of the family situation in the home country or proposed country of resettlement or transfer. Parents or carers must prove their identity and it will be necessary to investigate the willingness and ability of the child's family (parents or other family members) or other carers to provide appropriate care
- ▶ A careful assessment is undertaken concerning access to food, housing, health care, education, vocational training and employment opportunities in the country of origin or proposed country of resettlement or transfer
- ▶ The child's parents, relatives or other adult carers agree to provide long-term care upon the child's arrival in the country of origin or country of resettlement or transfer

- ▶ The family's views on the child's return, resettlement or transfer, must be investigated and taken into consideration
- ▶ The child is fully informed and consulted at all stages and is provided with appropriate counselling and support. The child's views on return, resettlement and transfer must be taken into consideration, in accordance with their age and maturity
- ▶ Prior to the return, resettlement or transfer, regular contact between the child and their family is facilitated
- ▶ A reintegration plan is drawn up in collaboration with child welfare services in the country of origin, resettlement or transfer

D15.4 Separated trafficked children must never be returned to their country of origin, or resettled or transferred to a third country without a thorough assessment of the family context and the potential risks of reprisal or re-trafficking, thus ensuring that the child is returning or moving to a safe environment. Further, particular attention must be paid to the risk of stigmatisation and social exclusion that trafficked children, especially those exploited in the sex industry, may experience upon return to their country of origin or in a third country.

D15.5 Where a best interests determination results in a decision to return, transfer or resettle a separated child they must be properly accompanied during their journey by a person with whom they have a trusting relationship, for example a guardian or social worker. Mechanisms must be established to effectively monitor the ongoing wellbeing of the child.

D15.6 Residential care is the least preferred form of substitute care for any separated child because it fails to recreate the normal conditions in which children should grow up and develop. Return to a child welfare institution in the country of origin or a third country must only take place if it is part of an agreed plan to reunite with family in a timely fashion or there are exceptional reasons why it is in an individual child's best interests. Parents or carers must prove their identity and guarantees must be secured that the child will be safe

and protected. Mechanisms must also be established to effectively monitor the ongoing wellbeing of the child.

D15.7 Separated children who arrived as minors but who have reached the age of 18 and have not been allowed to remain in the receiving country must be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin or resettlement in, or transfer to, a third country.

D15.8 Separated children must never be returned to 'transit' countries unless a careful assessment (as outlined above) has been made on the impact of return upon the child and it is clear that return will be in the best interests of the child. In particular there must be no risk of subsequent return to a place where they may face persecution, harm or ill-treatment.

- * CRC, Art. 3
- * CRC, Art. 5: States shall respect the rights and duties of parents or the extended family to provide the child appropriate direction and guidance
- * CRC, Arts. 6, 12, 19, 20, 24, 27, 28, 34, 35, 36, 37(a), 38 & 39
- * General Comment No 6, paragraph 84: Return to country of origin is not an option if there is a reasonable risk that return will result in a violation of the child's fundamental human rights. Return should only take place if it is in the best interests of the child.
- * General Comment No 6, paragraph 85: Concrete care arrangements and custodial responsibilities must be in place prior to return.
- * UNHCR Guidelines, paragraphs 9.4, 9.5, & 10 – 12

ANNEX I – References

Abbreviations and Acronyms used for References

1951 Refugee Convention

United Nations Convention Relating to the Status of Refugees, 1951
www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf

Cape Town Principles

Cape Town principles and best practice on the prevention of recruitment of children into the armed forces and demobilisation and social reintegration of child soldiers in Africa (UNICEF 1997)
[www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf)

CAT

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
[www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a3bd1b89d20ea373c1257046004c1479/\\$FILE/G0542837.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a3bd1b89d20ea373c1257046004c1479/$FILE/G0542837.pdf)

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Convention Against Discrimination in Education, 1960
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CEDAW

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CERD

International Convention on the Elimination of All Forms of Racial Discrimination, 1965
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CFREU

Charter of Fundamental Rights of the European Union (2000/C 364/01)
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CoE

Council of Europe
www.coe.int/

CoE Ministers 91

Committee of Ministers Recommendation No R (91) II Concerning Sexual Exploitation, Pornography and Prostitution of, and Trafficking in Children and Young Adults
www.coe.int/t/dghl/standardsetting/victims/recR_91_IIe.pdf

CoE Ministers 2000

Committee of Ministers Recommendation No R (2000) II on action against trafficking in human beings for the purpose of sexual exploitation
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CoE Rec. Airports

Council of Europe Parliamentary Assembly Recommendation No 1475 (2000) on arrival of asylum seekers at European airports
assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/ERECI475.htm

CoE Rec. On expulsion

Council of Europe Parliamentary Assembly Recommendation No 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity
assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERECI547.htm

CoE Rec. Training of Officials

Council of Europe Parliamentary Assembly Recommendation No 1309 (1996) on the training of officials receiving asylum-seekers at border points
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CoE Trafficking

Council of Europe Convention on Action Against Trafficking in Human Beings, 2005
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CoE Young Migrants

Council of Europe Parliamentary Assembly Recommendation No 1596 (2003) on the situation of young migrants in Europe
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CRC

United Nations Convention on the Rights of the Child, 1989
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CRS

Convention on the Reduction of Statelessness, 1961
untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf

Dublin II

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ECHR

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ECRE (Children)

European Council on Refugees and Exiles: Position on Refugee Children, 1996
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ECRE (Integration)

European Council on Refugees and Exiles: Position on the Integration of Refugees in Europe, December 2002
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Council Directive 2003/86/EC on the right to family reunification
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EU Dir. Procedures

Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

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EU Dir. Qualifications

Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

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EU Dir. Reception

Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.

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EU Dir. Returns

Council Directive 2008/115/EC of the European Parliament and of the European Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

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EU Res.

EU Resolution on Unaccompanied Minors who are Nationals of Third Countries, 1997

www.childoneurope.org/activities/unaccompanied/b/pdf/B%201.1.4.pdf

EU Res. Minimum

Council of the EU Resolution on Minimum Guarantees for Asylum Procedures, 1995

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Communication of the European Commission towards an EU strategy on the Rights of the Child
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General Comment No 6

United Nations Committee on the Rights of the Child, General Comment No 6, on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 2005
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Hague 1993

Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993
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ICCPR

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www2.ohchr.org/english/law/ccpr.htm

ICESCR

International Covenant on Economic, Social and Cultural Rights, 1966
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ICRMW

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990
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ILO C182

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO C182, 1999
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OSCE Action Plan to Combat Trafficking in Human Beings, Maastricht Ministerial Meeting, 2003
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Protocol 2 to CRC

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Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, 2000
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Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
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RSICC

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www.un.org/icc/romestat.htm

UDHR

Universal Declaration of Human Rights, 1948
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UN Guidelines on HR & Trafficking

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UNHCR Guidelines

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UNHCR Handbook

UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1992
www.unhcr.org/publ/PUBL/3d58e13b4.pdf

B FIRST PRINCIPLES

BI. Best Interests

- * CRC, Art. 3(1): In all actions concerning children ... the best interests of children shall be a primary consideration.
Art. 20(1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
- * General Comment No 6, paragraphs 19 – 22: Best interests must be respected at all stages of the displacement cycle.
- * UNHCR Guidelines, paragraph 1.5: Reaffirms CRC, Art 3(1).
- * CFREU, Art. 24(2): In all actions undertaken by public bodies and private institutions the child's best interests shall be a primary consideration.
- * ECRE (Children), paragraph 4
- * EU Dir. Procedures, Preamble (14): The best interests of the child should be a primary consideration for Member States.
- * EU Dir. Qualifications Art. 20(5): The best interests of the child shall be a primary consideration for member states when assessing the need for international protection.
- * EU Dir. Returns, Art. 5(a): When implementing this directive Member States shall take due account of the best interests of the child.
- * ICESCR, Art. 10(3): Special measures of protection are to be taken on behalf of children without discrimination.
- * UNHCR Bid, Introduction: National child protection systems usually include strict procedural safeguards to identify the best interests of the child before taking certain major decisions.
Annex 9: Factors that determine a child's 'best interests' checklist.
- * UNHCR Handbook, paragraph 14

B2. Survival and Development

- * CRC, Art. 6(1): States Parties recognize that every child has the inherent right to life.

- * General Comment No 6, paragraphs 23 – 24: Separated children are vulnerable to various risks that affect their life, survival and development and measures must be taken to protect children from these risks.
- * UNHCR Guidelines, paragraph 7.1:
- * CFREU, Art. 2(1): Everyone has the right to life.

B3. Non-discrimination

- * CRC, Art. 2: The rights of the CRC apply to all children without discrimination of any kind and irrespective of their parents or their own race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
Art. 22(1): Separated refugee and asylum seeking children are entitled to protection and assistance in order to enjoy the rights in the CRC and in other international human rights or humanitarian instruments to which the States are Parties.
Art. 22(2): Where a refugee child's parents or other family members cannot be found, the child shall be given the same protection as any other child permanently or temporarily deprived of his or her family environment.
- * General Comment No 6, paragraph 18: The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated children. In particular, it prohibits any discrimination on the basis of the status of a child being unaccompanied or separated, or as being a refugee, asylum seeker or migrant.
- * CEDAW: This Convention sets out measures to eliminate all forms of discrimination against women and girls.
- * CERD
- * CFREU, Art. 21(1): Any discrimination shall be prohibited.
- * CoE Trafficking, Preamble: all actions against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child rights approach.
Art.3: the convention will be implemented without discrimination
- * ECHR, Art.14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or

social origin, association with a national minority, property, birth or other status.

- * ECRE (Children), paragraphs 5 - 7
- * EU Strategy, paragraph III.I (7): the European Union will continue to pay particular attention to the rights of girls and children belonging to minorities.
- * ICCPR, Art. 24(1): Every child, without any discrimination, is entitled to measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- * ICESCR, Art. 10(3)
- * ICRMW, Art. 18(1): Migrant workers and members of their families shall have the right to equality with nationals of a State before the courts and tribunals.
- * Protocol on Smuggling, Art. 19(2): Measures shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol.
- * Protocol on Trafficking, Art. 14(2): Measures shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons.

B4. Participation

- * CRC, Art. 12: The views of children are to be given due weight in relation to their age and maturity and children shall have opportunity to be heard in all proceedings affecting them.
Art. 25: Children who are placed in a care institution have the right to periodic reviews of their circumstances.
- * General Comment No 6, paragraph 25: With regard to separated children, the child's views and wishes should be taken into account.
- * UNHCR Guidelines, paragraphs 5.14 & 5.15
- * CFREU, Art. 24(1): Children may express their views freely and in line with their age and maturity should be taken into consideration.
- * ECRE (Children), paragraphs 25 & 26
- * UNHCR-AP, Part III, Goal 6(2): States, UNHCR and partners should set

in place measures to ensure that refugee children participate equitably in decision-making in all areas of refugee life, as well as in the implementation of such decisions.

- * UNHCR Handbook, paragraph 41

B5. Information

- * CRC, Art. 13: Children have the right to freedom of expression and to seek, receive and impart information.
Art. 17: States shall ensure that children have access to information from a diversity of international and national sources.
Art. 22(2): States shall co-operate, as they consider appropriate, with efforts by the UN or other IGOs or NGOs in family tracing measures.
- * General Comment No 6, paragraph 24
- * ECRE (Children), paragraph 31
- * ICRMW, Art. 33(1) (b): Migrant workers and members of their families have the right to be informed of the conditions of their admission and their rights and obligations.

B6. Interpretation

- * CRC, Arts. 12 & 13
- * General Comment No 6, paragraph 95
- * UNHCR Guidelines, paragraph 5.13
- * ICCPR, Art. 19: Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression.
- * UNHCR Bid, chapter 3(1.6): Persons working as interpreters in the best interests determination process should have access to specific training. In addition to their language skills interpreters should be aware of the impartiality of their role, respect confidentiality and show sensitivity to gender, age and cultural matters.

B7. Confidentiality

- * CRC, Art. 16: Children have the right to protection from arbitrary or unlawful interference with their privacy, family, home and correspondence.

- * General Comment No 6, Paragraph 29: States parties must protect the confidentiality of information received in relation to an unaccompanied or refugee child. Paragraph 30: Particular care must be taken not to endanger the well-being of persons still within the child's country of origin
- * UNHCR Guidelines, paragraphs 5.16 & 5.17
- * CFREU, Art. 8(1): everyone has the right to protection of personal data concerning him or her
- * ECHR, Art. 8: Everyone has the right to respect for his private and family life, his home and his correspondence.
- * EU Res., Art. 3(1): Information on the minor's identity and situation can be obtained by various means, in particular by means of an appropriate interview, to be conducted as soon as possible and in a manner in keeping with his age. In requesting, receiving, forwarding and storing information obtained particular care and confidentiality should be exercised in order to protect both the minor and the members of his family.
- * ICCPR, Art. 17: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- * ICRMW, Art. 14: No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications.

B8. Respect for Cultural Identity

- * CRC, Art. 8: Children have the right to preserve or re-establish key elements of their identity.
 Art. 24: Children have the right to the highest attainable standard of health and to facilities for treatment and rehabilitation.
 Art. 30: Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, practice their religion and use their language.
- * ECRE (Children), paragraph 39
- * ICCPR, Art. 27: In States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right to profess and practice their own religion, or to use their own language.
- * ICRMW, Art. 12(1): Migrant workers and members of their families shall

have the right to freedom of thought, conscience and religion.

Art. 31: States shall ensure respect for the cultural identity of migrant workers and their families and shall not prevent them from maintaining their cultural links with their State of origin.

B9. Inter-organisational Co-operation

- * CRC, Art. 22(2)
- * UNHCR Guidelines, paragraph 12
- * EU Res., Art. 5(3c&d): The authorities should, with a view to a minor's return, co-operate with international organisations such as UNHCR or UNICEF and, where appropriate, with non-governmental organisations in order to ascertain the availability of reception and care facilities in the country to which the minor will be returned.

B10. Staff Training

- * CRC, Art. 3(3): States shall ensure that institutions and services providing protection or care for children meet established standards, inter alia, in the suitability of their staff and competent supervision.
- * General Comment No 6, Paragraph 95: Particular attention should be paid to the training of officials working with separated children and dealing with their cases. Specialised training is equally important for legal representatives, guardians, interpreters and others dealing with separated children.
Paragraph 96: Outlines key elements of training.
Paragraph 75: Staff involved in status determination procedures of children should receive training on international and national refugee law.
- * UNHCR Guidelines, paragraph 11
- * CoE Rec. Training of Officials, paragraphs 3 & 4
- * EU Dir. Qualifications Art. 30(5): Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs.
- * EU Dir. Reception, Art. 19(4): Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.
- * EU Res., Art. 4(5): The interview should be conducted by officers who have the necessary experience or training. The importance of appropriate training

for officers interviewing unaccompanied minor asylum-seekers should be duly recognised.

- * UNHCR Bid, chapter 3(1.6): Persons working as interpreters in the best interests determination process should have access to specific training.

B11. Durability

- * CRC, Arts. 3(1), 22(1) & 22(2)
- * General Comment No 6, paragraph 79: The ultimate aim in addressing the needs of separated children is to identify a durable solution that addresses all their protection needs.
- * UNHCR Guidelines, paragraph 9
- * EU Res., Art. 5: Where a minor is not allowed to prolong his stay, the Member State concerned may only return the minor to his country of origin or a third country prepared to accept him, if on arrival therein adequate reception and care are available.
- * UNHCR Handbook, paragraph 214

B12. Timeliness

- * CRC Art. 3(1)
- * UNHCR Guidelines, paragraphs 8.1 & 8.5

C. SEPARATED CHILDREN IN EUROPE

CI. Separated Asylum Seeking Children

- * CRC, Art 22 (1)
- * General Comment No 6, Paragraph 26: In affording proper treatment of separated children, States must fully respect non-refoulement obligations deriving from humanitarian and refugee law.
Paragraphs 27 & 28: States should not return children to situations where there is a real risk of underage recruitment.
Paragraphs 56 – 60: Child soldiers should be treated as victims of conflict and should be supported in their reintegration into non-military life.
They should not generally be detained unless they pose a serious threat and should not be returned if this would entail a risk of re-recruitment.
Participation in hostilities amounts to persecution.
- * Cape Town Principles: Definitions and paragraphs 1 - 43
- * CFREU, Art. 18: The right of asylum shall be guaranteed with respect to the 1951 Refugee Convention.

C2. Separated Migrant Children

- * CRC Art 2

C3. Separated Trafficked Children

- * CRC, Art. 34: States shall protect children from all forms of sexual exploitation and abuse.
Art. 35: States shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
Art. 36: States shall protect children from all other forms of exploitation prejudicial to their welfare.
Art. 37: Children shall not be deprived of their liberty arbitrarily or unlawfully; they shall be detained only as a measure of last resort and separated from adults.
- * General Comment No 6, Paragraphs 23 & 24
Paragraphs 50 – 53: Separated children are vulnerable to trafficking and states should take measures to prevent both trafficking and re-trafficking.
Trafficked children should not be criminalised and they should not be

returned to their country of origin unless this can be demonstrated to be in the child's best interests.

Paragraph 95

- * CEDAW, Art. 6: State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and the sexual exploitation of women (and girls).
- * CoE Ministers 91
- * CoE Ministers 2000
- * CoE Trafficking Art. 1(c): A purpose of the Convention is to promote international cooperation in combating the trafficking of human beings.
Art. 4(c): Where a child has consented to the exploitation they shall still be perceived as a victim of trafficking.
Art. 5: States shall take measures to reduce children's vulnerability to trafficking.
Art. 7(1): States shall strengthen border controls to prevent and detect trafficking.
Art. 10(1): Competent authorities should be trained in identifying and helping victims, including children.
Art. 10(3): Where age is disputed the benefit of the doubt should go with the victim.
Art. 10(4): A separated trafficked child should be appointed a guardian and steps should be taken to identify them and locate their family when in the best interests of the child.
Art. 11(2): States should adopt measures to ensure that the identity of child victims of trafficking is not revealed.
Art. 12: Trafficked children should have access to education and receive assistance with their physical and psychological recovery.
Art. 13: There will be a 30-day reflection period to allow victims time to consider an informed decision on cooperation with the competent authorities.
Art. 14: Residence permits should be issued to victims of trafficking if necessary for their safety or to aid cooperation with the competent authorities. Where the victim is a child residence permits will be issued if in their best interests.
Art. 16(7): Child victims will not be returned if there are indications that return is not in the child's best interests.

Art. 28(3): A child victim shall be afforded special protection that takes their best interests into account.

Art. 30: Legislative and judicial proceedings shall take care of children's needs and ensure their right to special protection.

- * CoE Young Migrants, paragraph 8
- * Council of the EU: Brussels Declaration on Preventing and Combating Trafficking in Human Beings, May 2003: paragraphs 9, 12 & 13
- * Council of the EU: Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, 24 Feb. 1997
- * ECHR, Art. 4: No one shall be held in slavery or servitude or subjected to forced labour.
- * ICCPR, Art. 8: No one shall be held in slavery or servitude or forced to perform compulsory labour.
- * ICESCR, Art. 10(3): Children should be protected from economic and social exploitation.
- * ILO CI82, Art. 3: The definition of "the worst forms of child labour" includes the sale and trafficking of children.
- * OSCE
- * Protocol I to CRC, Art. 3: Requires the criminalisation of sexual exploitation of children and trafficking of children for any purpose (organ transplant, adoption, prostitution, child labour).
Art. 8(1): States shall adopt appropriate measures to protect the best interests of children who are victims of sexual exploitation and trafficking.
- * Protocol on Smuggling, Art. 19
- * Protocol on Trafficking in Persons, Art. 3(a): Trafficking in persons means 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.

Art. 3(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.

Art. 6: States shall provide assistance and protection to victims of trafficking.

Art. 7: Each State Party shall consider permitting victims of trafficking to stay in its territory, temporarily or permanently, in appropriate cases.

Art. 9: States shall take various measures to prevent human trafficking and protect victims.

Art. 10: Law enforcement, immigration and other authorities shall co-operate by exchanging information regarding trafficking. States shall provide and strengthen training of relevant authorities.

Art. 14(2)

- * UN Guidelines on HR & Trafficking, Guideline 8
- * UNHCR-AP, Part III, Goal 2(2): States should ensure that their own asylum processes are open to receiving claims from individual trafficked persons, including women and girls.

D. GOOD PRACTICE

Phase One – Arrival, Reception and Interim Care

DI. Access to the Territory

- * CRC, Art. 6(1): Every child has the inherent right to life.
Art. 37(b): Children shall not be deprived of their liberty arbitrarily or unlawfully; they shall be detained only as a measure of last resort and separated from adults.
- * General Comment No 6, paragraph 20
- * UNHCR Guidelines, paragraphs 4.1
- * 1951 Refugee Convention: Art. 31: States shall not penalise those who illegally enter or are present in a country if they arrive from a territory where they faced persecution as per Art. 1.
Art. 33: States shall not return a refugee to a country where his or her life or freedom is threatened as per Art.1.
- * CAT, Art. 3. No state shall return a person to a country where he or she is at risk of being tortured.
- * Dublin II Art. 3(1): Member States shall examine the asylum application of any third-country national who applies at the border or in their territory.
- * ECHR,
Art. 2(1): Everyone's right to life shall be protected by law.
Art. 3. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- * ECRE (Children), paragraphs 14 & 15
- * EU Res. Minimum, paragraph 1: Procedures will comply fully with Art. 1 of the 1951 Convention concerning definition of a refugee and Art. 33 relating to the principle of 'non-refoulement'.
- * ICCPR, Art. 6(1): Everyone has the inherent right to life, which should be protected by law, and no one shall be arbitrarily deprived of his or her life.

D2. Identification

- * CRC, Art. 8
- * General Comment No 6, paragraph 31(1): Prioritised identification of a separated child as soon as their presence becomes known to the authorities.
- * UNHCR Guidelines, paragraphs 5.1 - 5.3 & Annex II
- * EU Res., Art. 3(1)

D3. Appointment of a Guardian

- * CRC, Art. 12
Art. 18(2): States shall assist legal guardians to carry out child-rearing responsibilities.
Art. 20(1): Children deprived of their families are entitled to special protection and assistance.
Art. 20(3): The care provided to children deprived of their families shall take account of their ethnic, religious, cultural and linguistic background.
- * General Comment No 6, Paragraphs 21 & 24
Paragraphs 33 – 38: States should appoint a guardian (or adviser) as soon as the separated child is identified.
Paragraph 95
- * UNHCR Guidelines, paragraph 5.7
- * CoE Young Migrants, paragraph 4, vi.
- * ECRE (Children), paragraphs 16 - 18
- * EU Dir. Reception, Art. 19(1): Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.
- * EU Res., Art. 3(4&5): Member States should provide as soon as possible legal guardianship, or representation by an organisation which is responsible for the care and well-being of the minor, or other appropriate representation. The guardian should ensure that the minor's needs (for example, legal, social, medical or psychological) are duly met.

- * Hague Convention, 1993
- * Hague Convention, 1996, Art. 3: States where separated children have habitual residence can take measures of protection including guardianship or analogous institutions.
Art. 6: The Convention applies to separated children who are refugees or internationally displaced due to disturbance occurring in their own country.

D4. Registration and Documentation

- * CRC, Art. 8
- * General Comment No 6, Paragraph 31(ii): Prompt registration and initial interview to collect bio data and social history to enable identification of the child.
Paragraph 95
Paragraph 99: The development of an integrated system of data collection on separated children is a prerequisite for the development of effective policies.
Paragraph 100: Outlines the data that should be gathered regarding separated children.
- * UNHCR Guidelines, paragraphs 5.6 & 5.8 - 5.10
- * EU Res., Art. 3(1)

D5. Age Assessment

- * General Comment No 6, Paragraph 31(i): Age assessments should be safe, child and gender sensitive way and the individual should be given the benefit of the doubt.
Paragraph 95
- * UNHCR Guidelines, paragraph 5.11
- * 1951 Refugee Convention, Art. 31: Penalties shall not be imposed on asylum seekers who enter a country illegally if they can show good cause for their illegal entrance
- * CFREU, Art. 3(1): Everyone has the right to respect of his or her physical integrity.
- * CoE Trafficking, Art. 10(1)

- * ECRE (Children), paragraph 9
- * EU Dir. Procedures, Art. 17(5a): Unaccompanied minors are informed prior to the examination of their application for asylum and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination.
Art. 17(5b): Unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minor concerned.
Art. 17(5c): The decision to reject an application for asylum from an unaccompanied minor who refuse to undergo this medical examination shall not be based solely on that refusal.
- * EU Res., Art. 4(3): Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution.
- * UNHCR Handbook, paragraphs 196 & 197

D6. Exemption from Detention

- * CRC, Art. 37(a): Children shall not be subject to cruel, inhuman or degrading treatment.
Arts. 37(b) & 22(2)
- * General Comment No 6, paragraphs 61 – 63: Separated children should not, as a general rule be detained, and illegal entry into a country may be justified to prevent a violation of a child's fundamental human rights. The best interests' principle should govern the conditions of detention.
- * UNHCR Guidelines paragraph 7.6 & 7.7
- * ECHR, Art. 3
Art. 5: Everyone has the right to liberty and security of person.
- * ECRE (Children), paragraph 20
- * EU Dir. Returns, Art. 17(1): Unaccompanied minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

- * EU Res., Art. 2(3): Unaccompanied minors, who must remain at the border until a decision has been taken on their admission or return, should receive all necessary material support and care.
- * ICCPR, Art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
Art. 9: No one shall be subjected to arbitrary arrest or detention.
- * ICRMW, Art. 16(4): Migrant workers and members of their families should not be subjected individually or collectively to arbitrary arrest or detention.
- * UN Rules for the Protection of Juveniles Deprived of Their Liberty
- * UNHCR-AP, Part III, Goal 1(9)

D7. Family Tracing and Contact

- * CRC, Art. 9(3): Children who are separated from their parents have the right to maintain contact with their parents.
Art. 10(1): Applications for family reunification shall be dealt with in a “positive, humane and expeditious manner”.
Art. 10(2): Children whose parents reside in different countries have the right to maintain regular relations with their parents.
Art. 22(2)
- * General Comment No 6, paragraph 80: Tracing is an essential component in the search for a durable solution and should be prioritised unless this is not in the child's best interests or would jeopardise those being traced.
- * UNHCR Guidelines, paragraph 5.17
- * ECHR, Art. 8
- * ECRE (Children), paragraph 32
- * EU Dir. Qualifications Art. 30(5): Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information is undertaken on a confidential basis.
- * EU Dir. Reception, Art. 19(3): Member States, protecting the

unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives care must be taken to ensure that the collection, processing and circulation of information is undertaken on a confidential basis, so as to avoid jeopardising their safety.

- * EU Res., Art. 3(3): Member States should endeavour to trace the members of the family of an unaccompanied minor, or to identify the place of residence of the members of the family, regardless of their legal status and without prejudging the merits of any application for residence. Unaccompanied minors may also be encouraged and assisted in contacting the International Committee of the Red Cross, national Red Cross organisations, or other organisations for tracing of their family members. Confidentiality should be duly respected in order to protect both the minor and the members of his or her family.
- * ICCPR, Art. 23(1): The family is entitled to protection by the state.
- * ICRMW, Art. 44(1): States shall take measures to ensure the protection of the unity of the families of migrant workers.
- * UNHCR Handbook, paragraph 218

D8. Interim Care

D8.1 Care Placements

- * CRC, Arts. 3(3) & 13
 - Art. 14: Children have the right to freedom of thought, conscience and religion.
 - Art. 15: Children have the right to freedom of association.
 - Art. 16: Children shall not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.
 - Art. 19: States shall take all appropriate measures to protect children from all forms of physical and mental violence, abuse, negligence, maltreatment or exploitation.
 - Arts. 20(1), 20(3) & 25
 - Art. 26: Children have the right to benefit from social security and social insurance.
 - Art. 27: Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development.

- * General Comment No 6, Paragraph 40: Placements should offer continuity in a child's upbringing regarding their cultural and linguistic background, changes of placements should be kept to a minimum and siblings should be placed together. Child headed families should receive effective protection and children should be informed about the plans that are being made for them.
Paragraph 90: Once it is determined that a separated child will remain in the community an assessment should take place to determine appropriate long term arrangements. Separated children should have the same access to service rights as national children.
- * UNHCR Guidelines, paragraphs 7.1 -7.5
- * ECHR, Art. 9: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.
Art. 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
Art. 11: Everyone has the right to freedom of peaceful assembly and to freedom of association with others
- * ECRE (Children), paragraphs 12 & 19
- * EU Dir. Qualifications, Art. 30(4): As far as possible, siblings shall be kept together, taking into account the best interest of the minor and his or her age and degree of maturity. Changes of residence shall be limited to a minimum.
- * EU Dir. Reception, Art. 19(2): As far as possible, siblings shall be kept together, taking into account the best interest of the minor and his or her age and degree of maturity. Changes of residence shall be limited to a minimum.
- * EU Res. Arts. 3(2, 4&5) and 4(4): Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law. Member States should normally place unaccompanied minors during the asylum procedure

with adult relatives, with a foster-family, in reception centres with special provisions for minors or in other accommodation with suitable provisions for minors.

- * ICCPR, Art. 18(1): Everyone shall have the right to freedom of thought, conscience and religion.

Art. 19

Art. 21: Everyone shall have the right to freedom of assembly with others.

Art. 22: Everyone shall have the right to freedom of association with others.

Art. 24(1)

- * ICESCR, Art. 9: The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

Art. 11(1): The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

D8.2 Health

- * CRC, Art. 23: Children with disabilities have the right to enjoy a full and decent life and have the right to special care.

Art. 24

Art. 39: States shall take measures to promote the physical and psychological recovery and social re-integration of child victims.

- * General Comment No 6, Paragraphs 46 – 49: Separated children should have the same access to health services as national children and states must address the particular vulnerabilities of separated children and the impact of these on a child's health. Rehabilitation should be provided.

Paragraph 90

- * UNHCR Guidelines, paragraphs 7.9 - 7.11

- * CAT, Art. 14: Victims of torture shall be able to obtain redress, compensation and rehabilitation.

- * CFREU, Art. 35: everyone has the right to health care and medical treatment.

- * ECRE (Children) paragraph 36

- * ECRE (Integration), paragraphs 120 - 133

- * EU Dir. Qualifications Art. 29(1) Member States shall ensure beneficiaries of refugee or subsidiary protection receive access to health care under the same conditions as Member State nationals.
- * EU Dir. Reception, Art. 13(2): Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that standard of living is met in the specific situation of persons who have special needs.
Art. 17(1): Member States shall take into account the specific situation of vulnerable persons such as minors and unaccompanied minors.
Art. 18(2): The best interest of the child shall be a primary consideration when implementing the provisions that involve minors.
- * EU Res., Art. 3(7): Unaccompanied minors should receive appropriate medical care. Special medical or other assistance should be provided for minors who have suffered any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.
- * ICESCR, Art. 12: The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- * ICRMW, Art. 28: Migrant workers and members of their families have the right to receive urgent medical care.

D8.3 Education, Language and Training

- * CRC, Art. 28: Children have the right to free and compulsory primary education. States shall encourage different forms of secondary education and make them available to all children. Educational and vocational guidance shall be available to all children.
Art. 29(1c): The aims of education shall be to encourage respect of children's cultural identity, language and values.
Art. 30
Art. 32: Children should be protected from economic exploitation and hazardous work.
- * General Comment No 6, Paragraph 41: States should ensure that access to education is maintained during all phases of the displacement cycle.

Paragraph 42

Paragraph 90

- * UNHCR Guidelines, paragraphs 7.12 - 7.14
- * CDE, Art. 3: States shall take immediate measures to eliminate and prevent discrimination in education.
- * CERD, Art. 5, e) V
- * CFREU, Art. 14(1): Everyone has the right to education and to have access to vocational and continuing training.
- * CoE Young Migrants, paragraph 6
- * ECRE (Children), paragraphs 37 - 39
- * EU Dir. Qualifications Art. 26(1) Member States shall ensure that activities such as vocational training are offered to beneficiaries of refugee status.
Art. 27(1) Member states shall grant full access to education to all children granted refugee or subsidiary protection.
- * EU Dir. Reception, Art. 10(2): Member States shall grant to minor asylum seekers access to the education system under similar conditions as nationals. Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.
Art. 10(2): Access to the education system shall not be postponed for more than three months from the date the application was lodged.
Art. 10(3): Where access to the education system is not possible due to the specific situation of the minor, the Member State may offer other education arrangements.
- * EU Res., Art. 3(6): When assumed that an unaccompanied minor of school age will be staying for a prolonged period, the minor should have access to general education facilities on the same basis as nationals.
- * European Social Charter, Part I (7): Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
Part I (9): Everyone has the right to appropriate facilities for vocational guidance.
- * ICESCR, Art. 13(1): Education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship

among all nations and all racial, ethnic or religious groups.

- * ICRMW, Arts. 43 & 45: Members of the families of migrant workers shall enjoy equality of treatment with nationals in relation to access to education, vocational guidance and training.
- * UDHR, Art. 26: Everyone has the right to education.
- * UNHCR-AP, Part III, Goal 6(2): States should accord importance to primary and secondary education for refugees.

D8.4 Social Assistance

- * CRC, Art. 26: Every child has the right to benefit from social security.
Art. 27: children should have a standard of living adequate for their physical, mental, spiritual, moral and social development.
- * General Comment No 6, paragraph 44: Children should receive material support
- * UNHCR Guidelines, paragraph 10.9
- * CFREU, Art. 34(1): The European Union recognises and respects the entitlement to social security benefits.
- * EU Dir. Qualifications Art. 28(1) Member States shall ensure beneficiaries of refugee or subsidiary protection receive necessary social assistance.

D8.5 Employment

- * General Comment No 6, paragraph 90
- * CFREU, Art. 15(3): Nationals of third countries who are authorised to work in Member States are entitled to the same working conditions as citizens of the Union.
- * EU Dir. Qualifications Art. 26(1) Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities.

Phase two - Durable, Concrete and Secure Solutions - Assessment of Best Interests

D9. Access to the Best Interests Determination Process

- * CRC, Art. 22
- * General Comment No 6, paragraph 66: Separated children, irrespective of age, shall enjoy access to asylum procedures and other mechanisms for providing international protection
- * UNHCR Guidelines, paragraphs 4.1, 5.4 & 10.1
- * 1951 Refugee Convention: Art. 1: There are no distinctions according to age. A person of any age can be recognised as a refugee.
- * Council of the EU Conclusions on countries in which there is generally no serious risk of persecution, 1992
- * Council of the EU Joint Position on the harmonised application of the definition of the term "refugee". March, 1996
- * Council of the EU Resolution on a harmonised approach to questions concerning host third countries, 1992
- * Council of the EU Resolution on manifestly unfounded applications for asylum, 1992
- * ECRE (Children), paragraphs 22 - 23
- * EU Dir. Qualifications, Art. 9(2): Acts of persecution may be of a child specific nature.
- * EU Res., Art. 4(1): Every unaccompanied minor should have the right to apply for asylum.
- * EU Res. Minimum, paragraphs 26 - 27: Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed adult or institution. During the interview, unaccompanied minors may be accompanied by that adult or representatives of that institution. When an application from an unaccompanied minor is examined, his mental development and maturity will be taken into account.
- * Protocol Relating to the Status of Refugees, 1967
- * UDHR, Art. 14(1): "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

- * UNHCR-AP, Part II, Operative paragraph 6: State Parties to the 1951 Refugee Convention call upon all states to take measures to strengthen asylum, giving special attention to vulnerable groups, including women and children.

D10. Legal Representation and Assistance

- * CRC, Arts. 12 & 22
- * General Comment No 6, paragraph 69: Separated children should have free access to legal representation.
- * UNHCR Guidelines, paragraphs 4.2 & 8.3
- * ECRE (Children), paragraph 24
- * EU Dir. Procedures, Art 15 (2): Member States shall ensure free legal assistance to asylum applicants appealing a negative decision.

D11. Minimum Procedural Guarantees

- * CRC, Art. 3.3
- * General Comment No 6, Paragraph 71: Applications should be determined by competent authorities.
Paragraph 95
- * UNHCR Guidelines, paragraphs 4.2, 8.1, 8.2, 8.4 & 8.5
- * CoE Rec. Airports, paragraph 10(ii.b)
- * ECRE (Children), paragraphs 22, 24, 26 - 28
- * EU Dir. Procedures, Preamble (14): Specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability.
Art. 17 (1a): As soon as possible measures should be taken to provide unaccompanied minors with representation to assist with their application.
Art. 17 (4a): If an unaccompanied minor has a personal interview regarding their asylum application the interview shall be conducted by a person who has the necessary knowledge of the special needs of minors.
- * EU Res., Art. 4(2): Having regard to the particular needs of minors and their vulnerable situation, Member States should treat the processing of their application as a matter of urgency.
Art. 4(5)

- * EU Res. Minimum, paragraphs 26 - 27
- * UNHCR Handbook, paragraph 214

DI2. Criteria for Making a Decision on a Child's Protection Needs and a Durable Solution

- * CRC, Arts. 3, 12, 22, 32, 34, 35, 36 & 37
 Art. 38: States shall ensure that persons under the age of 15 do not take a direct part in armed conflict.
- * General Comment No 6, Paragraph 72: Assessment should comprise a case-by-case examination of the unique combination of factors presented by each child.
 Paragraph 74: When assessing refugee claims states shall take into account the particular motivations for and manifestations of persecution experienced by children.
- * UNHCR Guidelines, paragraphs 8.6 - 8.10, 9.7 & 10.4
- * CAT, Art. 1: The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- * ECHR, Art. 4(1) and 4(2) 2
- * EU Dir. Procedures, Art 17 (4b): An official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.
- * EU Res., Art. 4(6): When an application for asylum from an unaccompanied minor is examined, allowance should be made for a minor's age, maturity and mental development, and for the fact that he may have limited knowledge of conditions in the country of origin.
- * ICCPR, Art. 8
- * ICESCR, Art. 10(3)

- * ILO C182, Art. 3
- * Protocol I Additional to the Geneva Conventions of 12/8/1949, and Relating to the Protection of Victims of International Armed Conflicts:
Art. 77(2): Parties to conflicts must take all feasible measures to ensure that children under 14 do not take direct part in hostilities.
- * Protocol II Additional to the Geneva Conventions of 12/8/1949 Relating to the Protection of Victims of Non-International Armed Conflicts
Art. 4(3): Children under 15 shall not be recruited in the armed forces or allowed to take part in hostilities.
- * Protocol I to CRC
- * Protocol 2 to CRC
- * Protocol on Trafficking in Persons
- * Refugee Children: Guidelines on Protection and Care, Chapters 8 & 9
- * RSICC, Art. 8(2)(b)(xxv) and (e)(vii): Conscripting or enlisting children under the age of fifteen years into the national armed forces, armed forces or groups or using them to participate actively in hostilities constitutes a war crime.
- * UNHCR-AP, Part III, Goal 1(2): States and the UNHCR should work together to ensure that authorities take into account gender and age, including forms of persecution which have specific gender and age-related aspects.
- * UNHCR Bid, chapter 2(1.1): Identifying the most appropriate durable solution for an unaccompanied or separated refugee child generally requires carefully balancing many factors. Before taking such decisions best interests determination must be carried out to ensure sufficient focus on the child's rights.
- * UNHCR Handbook, paragraphs 203 & 213 - 219

D13. Family Reunification

- * CRC, Art. 10(1)
- * General Comment No 6, Paragraph 81: All efforts should be made to return a separated child to his or her parents except where further separation is necessary for the best interests of the child.

Paragraph 83: Applications by a child to have his or her parents enter a State for the purpose of family reunification shall be dealt with humanely and quickly.

- * UNHCR Guidelines, paragraphs 5.5, 10.5 & 10.11
- * CoE Young Migrants, paragraph 7 vii-ix.
- * Council of the EU Resolution on harmonisation of national policies on family reunification, 3 June, 1993
- * Dublin II, Art. 15(3): If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor.
- * ECHR, Art. 8.1.
- * ECRE (Children), paragraphs 32, 34 & 35
- * ECRE (Integration), paragraph 139
- * EU Dir. Family, Art. 10.3(a): If the refugee is an unaccompanied minor, the Member States shall authorise the entry and residence for the purposes of family reunification of first-degree relatives in the direct ascending line.
- * EU Res., Art. 5(3a): The competent authorities should co-operate in reuniting unaccompanied minors with other members of their family, either in the minor's country of origin or in the country where those family members are staying.
- * ICCPR, Art. 23(1)
- * ICRMW, Art. 44(1)
- * UNHCR-AP, Part III, Goal 1(2): States should introduce or enhance gender and age-specific safeguards in asylum procedures, with due weight being given to the principle of family unity.

DI4. Remaining and Integration in a Host Country

- * CRC, Arts. 2, 3, 13, 14, 15, 16, 19, 20, 23 – 28, 29(1c), 30 & 39
Art. 7(1): Children have the right to acquire a nationality.
Art. 21: States obligations with regard to inter-country adoption.
Art. 31: States Parties recognise the right of the child to rest and leisure,

to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts; State Parties shall respect and promote these rights and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.

- * General Comment No 6, Paragraph 77: Separated children shall benefit from available forms of complimentary protection.
Paragraph 82: Family reunification in the country of origin is not in the child's best interest when there is a reasonable risk that return would lead to a violation of the child's fundamental human rights.
Paragraph 89: Integration is the primary option if return is not possible and should be based on a secure legal status.
Paragraph 91: Adoption of a separated child should only be considered if it has been established that the child is in a position to be adopted; adoptions should not take place in haste; the adoption must be in the child's best interests and carried out under applicable law; the views of the child must be sought and priority must be given to adoption by relatives in their country of residence. Adoption should not take place unless all feasible steps have been taken to trace the child's parents or other family members and it has been established that there is no reasonable hope of tracing the child's family; the child does not want to be adopted or there is the possibility of voluntary repatriation under conditions of safety and dignity.
- * UNHCR Guidelines, paragraphs 5.4, 9.1 & 9.4, 10.1 - 10.4 & 10.6 - 10.10
- * 1951 Refugee Convention, Art. 21: Housing provision for recognised refugees.
Art. 22: Education rights of recognised refugees.
Art. 23: Provision of "public relief" for recognised refugees.
Art. 24: Working conditions and social security provisions for recognised refugees.
Art. 27 & 28: States shall issue identity papers and travel documents to recognised refugees.
Art. 34: States shall facilitate the naturalisation of refugees.
- * Convention Relating to the Status of Stateless Persons, 1954, Art. 32: States shall facilitate the naturalisation of stateless persons.
- * ECRE (Children), paragraph 19,30, 36, 41 & 42
- * ECRE (Integration), paragraphs 103 - 107

- * EU Res., Art. 4(7): As soon as an unaccompanied minor is granted refugee status or any other permanent right of residence, he or she should be provided with long-term arrangements for accommodation.
Art. 5(2): As long as return is not possible, Member States should make it possible for the minor to remain.
- * ICCPR, Art. 24(3): Every child has the right to acquire a nationality.
- * Hague Convention 1993
- * Protocol on Trafficking in Persons, Art 7
- * Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Oct. 1994
- * Refugee Children, Guidelines on Protection and Care

DI5. Return to Country of Origin or Third Country Resettlement or Transfer

- * CRC, Art. 3
Art. 5: States shall respect the rights and duties of parents or the extended family to provide the child appropriate direction and guidance
Arts. 6, 12, 19, 20, 24, 27, 28, 34, 35, 36, 37(a), 38 & 39
- * General Comment No 6, Paragraph 84: Return to country of origin is not an option if there is a reasonable risk that return will result in a violation of the child's fundamental human rights. Return should only take place if it is in the best interests of the child.
Paragraph 85: Concrete care arrangements and custodial responsibilities must be in place prior to return.
- * UNHCR Guidelines, paragraphs 9.4, 9.5, & 10 - 12
- * 1951 Refugee Convention, Art. 32(1): States shall not expel a refugee lawfully in their territory.
Art. 33
- * CAT, Art. 3
- * CoE Rec. on Expulsion, paragraph 13.v.h: unaccompanied minors must be treated in accordance with their age, and must immediately be taken charge of by a judge for minors, and have access to independent legal consultation and representation.

- * CoE Young Migrants, paragraph 7, x
- * ECRE (Children), paragraphs 33 & 42
- * EU Dir. Returns, Art. 10(1): Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.
Art. 10(2): Before removing a minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian, or adequate reception facilities in the State of return.
- * EU Res., Art. 5
- * Protocol on Trafficking in Persons Definition, Art. 8: States shall facilitate the repatriation of victims of trafficking.
- * Refugee Children: Guidelines on Protection and Care, UNHCR, 1994, p. 138-144
- * UNHCR-AP, Part III, Goal 2(7): States, working in consultation with relevant intergovernmental organisations, should develop strategies to promote return and readmission of persons not in need of international protection, in a humane manner and in full respect for their human rights and dignity, without resort to excessive force, and in the case of children, taking due account of their best interests.



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