

# STATEMENT OF GOOD PRACTICE

Second Edition  
October 2000

The **Separated Children in Europe Programme** is a joint initiative of some members the International Save the Children Alliance in Europe and the United Nations High Commissioner for Refugees. The programme is based on the complementary mandates and areas of expertise of the two organisations;

UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum; the International Save the Children Alliance is concerned to see the full realisation of the rights of all children.

Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. The programme aims to realise the rights and best interests of separated children who have come to or across Europe by establishing a shared policy and commitment to best practice at national and European levels. As part of this process the programme is developing partnerships with organisations working with separated children in European countries and working with European institutions.

This *Statement of Good Practice* sets out the policy and practice basis for the programme's work. The Statement was prepared by Wendy Ayotte acting as Consultant to the Save the Children members.

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Copies of this statement in English may be obtained from:

Sergio Daniel Kristensen, Save the Children, Rantzausgade 60, DK-2200 Copenhagen. Tel: +45 35 24 85 12 (d), +45 35 36 55 55 (switchboard), Fax: +45 35 39 11 19, E-mail: [sk@redbarnet.dk](mailto:sk@redbarnet.dk)

David Wright, Advisor, Save the Children, 23 The Mall, Old Town, Swindon SN1 4JA, UK. Fax: + 44 1793 4222 531, E-mail: [davidwright@dialin.net](mailto:davidwright@dialin.net)

Kate Halvorsen, UNHCR Senior Policy Advisor, 11b Rue van Eyck, 1050 Brussels, Belgium. Tel: +32 2 627 17 59 (d), +32 2 627 17 12 (switchboard), Fax: +32 2 627 17 32, E-mail: [halvorse@unhcr.ch](mailto:halvorse@unhcr.ch)

**Copies in other European languages are available from the programme's national partners.**

## **A. Introduction**

### **1. Separated Children in Europe Programme (SCE):**

The SCE project is a joint initiative of the International Save the Children Alliance and the United Nations High Commissioner for Refugees. The programme is based on the complementary mandates and areas of expertise of the two organisations;

UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum; the International Save the Children Alliance is concerned to see the full realisation of the rights of all children.

1.1 The programme aims to realise the rights and best interests of separated children who have come to or across Europe by establishing a shared policy and commitment to best practice at national and European levels. As part of this process the programme is developing partnerships with organisations working with separated children in European countries.

### **2. Definition:**

2.1 "Separated children" are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCE project, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.

(CRC, Arts. 1 & 22; Hague Convention for the Protection of Children, 1996, Art.6 ; UNHCR Guidelines, para.3.1; ECRE paras. 8 & 11; EU Resolution on Unaccompanied Minors., Art. 1(1))

2.2 The Separated Children in Europe Programme uses the word "separated" rather than "unaccompanied" because it better defines the essential problem that such children face. Namely, that they are without the care and protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation. While some separated children appear to be "accompanied" when they arrive in Europe, the accompanying adults are not necessarily able or suitable to assume responsibility for their care.

2.3 "International protection" is necessary because separated children have left their home community and country and have travelled into or across Europe. A solution to their situation is likely to require attention in their home country and current country of domicile. Protection through internationally agreed standards and under international law is therefore essential.

2.4 "Europe" for this programme includes: Austria, Baltic states, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

### 3.Statement of Good Practice:

The Statement aims to provide a straightforward account of the policies and practices required to implement and protect the rights of separated children in Europe. The Statement is principally informed by the UN Convention on the Rights of the Child (CRC) and two documents : UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum of February, 1997 here referred to as UNHCR Guidelines and the European Council on Refugees and Exiles Position on Refugee Children of November 1996, here referred to as ECRE.

Throughout the Statement are references to relevant international and regional law, policy and guidelines. These are listed in full in an appendix.

\*\* Please note that some references are accompanied by a short text. These are only summaries of the relevant article or paragraph and not the complete text. 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. \*\*

### Abbreviations Used Below

CRC	UN Convention on the Rights of the Child
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
ECRE	European Council on Refugees and Exiles: Position on Refugee Children
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU Res.	EU Resolution on Unaccompanied Minors Who are Nationals of Third Countries
UNHCR Guidelines	UNHCR <i>Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum</i>
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UNHCR	UN High Commissioner for Refugees
UNHCR <i>Handbook</i>	UNHCR <i>Handbook on Procedures and Criteria for Determining Refugee Status</i>

## B. First Principles

These are the principles that underpin the Statement of Good Practice and should be born in mind at all stages of care and provision for separated children.

### 1. Best Interests:

“In all actions concerning children... the best interests of children shall be a primary consideration”. (CRC, Art.3(1))

- \* CRC, Art. 3
- \* ICCPR, Art. 24: Every child is entitled to measures of protection on the part of the family, society and the state, without discrimination.
- \* ICESCR, Art. 10(3): Special measures of protection are to be taken on behalf of children without discrimination.
- \* UNHCR Guidelines, para.1.5
- \* ECRE, para. 4

### 2. Non-discrimination:

Separated children are entitled to the same treatment and rights as national or resident children. They must be treated as children first and foremost. All considerations of their immigration status must be secondary.

- \* 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 children are entitled to protection and assistance in order to enjoy the rights of the CRC.
- \* ICCPR, Art. 24: See point B1
- \* ICESCR, Art. 10(3): See point B1
- \* CERD. The entire Convention contains measures to eliminate discrimination on the basis of race, colour, descent or national or ethnic origin.
- \* ECRE, paras. 5-7

### 3. Right to Participate:

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 participation in line with their age and maturity.

- \* CRC, Article 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.
- \* UNHCR Guidelines, paras. 5.14 - 5.15
- \* ECRE, paras. 25 & 26

### 4. Bi-culturalism:

It is vital that separated children be able to maintain their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education must reflect their cultural needs. Preservation of culture and language is also important should a child return to their home country.

- \* CRC, Art. 8: Children have the right to preserve or re-establish key elements of their identity.
- \* 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.
- \* ICCPR, Art. 27
- \* ECRE, para. 39

## **5. Interpretation:**

Separated children must be provided with suitable interpreters who speak their preferred language whenever they are interviewed or require access to services.

- \* CRC, Art. 12: See point B3.
- \* CRC, Art. 13: Children have the right to freedom of expression and to seek, receive and impart information.
- \* ICCPR, Art. 19
- \* UNHCR Guidelines, para. 5.13

## **6. Confidentiality:**

Care must be taken not to disclose information about a separated child that could endanger the child's family members in her or his home country. The permission of separated children must be sought in an age appropriate manner before sensitive information is disclosed to other organisations or individuals. Information must not be used inappropriately for purposes other than for that for which it was sought.

- \* CRC, Art. 16: Children have the right to protection from arbitrary or unlawful interference with their privacy, family, home and correspondence.
- \* ICCPR, Art. 17
- \* ECHR, Art. 8: "Everyone has the right to respect for his private and family life, his home and his correspondence."
- \* UNHCR Guidelines, para. 5.16 & 5.17
- \* EU Res., Art. 3(1)

## **7. Information :**

Separated children must be provided with accessible information about, for example, their entitlements, services available, the asylum process, family tracing and the situation in their country of origin.

- \* CRC, Art. 13. See point B5.
- \* 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.
- \* ECRE, para. 31

## **8. Inter-organisational Co-operation:**

Organisations, government departments and professionals involved in providing services to separated children must co-operate to ensure that the welfare and rights of separated children are enhanced and protected.

- \* CRC, Art. 22(2). See point B7
- \* UNHCR Guidelines, para. 12
- \* EU Res., Art. 5(3c&d)

## **9. Staff Training:**

Those working with separated children must receive appropriate training on the needs of separated children. Immigration or border police staff must 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.
- \* EU Res., Art. 4(5)
- \* UNHCR Guidelines, para. 11

## **10.Durability:**

Decisions that are taken regarding separated children should take account of , where ever possible, the long-term interests and welfare of the child.

\* CRC, Art. 3. See point C1.

\* CRC, Art. 22 (1): States will assist separated refugee children to enjoy the rights contained in the CRC and other international human rights or humanitarian instruments.

\* CRC, Art. 22(2): Where no parents or family members can be found a separated refugee child will be accorded the same protection as any other child deprived of his or her family.

\* UNHCR *Handbook*, para. 214. In the asylum process a legal guardian should be appointed to promote a decision that is in the best interests of a separated child.

\* UNHCR Guidelines, para.9

\* EU Res., Art.5

## **11.Timeliness:**

All decisions regarding separated children must be taken in a timely fashion.

\* UNHCR Guidelines, para. 8.1 & 8.5

## C. Good Practice

The following section sets out good practice with respect to separated children from the point of arrival up until the taking of a long-term decision on a child's future. Each section is accompanied by references to international and regional instruments (please see the note at A.3).

### 1. Access to the Territory:

1.1 Separated children seeking protection should never be refused entry or returned at the point of entry. They should never be detained for immigration reasons. Neither should they be subject to detailed interviews by immigration authorities at the point of entry. (see paragraph C. 4)

\* 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 are 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.

\* CRC, Art. 6(1): Every child has the inherent right to life.

\* 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.

\* ECHR, Art. 2(1): Everyone's right to life shall be protected by law.

\* Dublin Convention, Art. 9: Member States will admit asylum seekers to their asylum procedures on the basis of family or cultural reasons, at the request of another Member State.

\* UNHCR Guidelines, paras. 4.1 & 4.2

\* ECRE, paras. 14 & 15

\* EU Res., Art. 2(1&2)

### 1.2 Trafficking:

Trafficking in children for the purposes of prostitution, the production of child pornography and other forms of exploitation is a serious problem in Europe. As already agreed in the EU Joint Action, states should take counteractive measures by sharing information on trafficking with other states, and ensuring that immigration officers and border police are alerted to this problem, bearing in mind that trafficking routes are also being used by separated children seeking asylum. The purpose of any such advocated measures should be motivated by child protection principles, not migration or crime control measures.

\*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, sale or traffic in children.

\* CRC, Art. 36: States shall protect children from all other forms of exploitation prejudicial to their welfare.

\* 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.

\* ECHR, Art. 4: No one shall be held in slavery or servitude or subjected to forced labour.

\* Council of the EU: Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, 24 Feb. 1997

### 2. Identification

At ports of entry immigration authorities should put in place procedures to identify separated children. Where children are accompanied by an adult, it will be necessary to establish the nature of the relationship between the child and adult. Since many separated children enter a country without being identified as "separated" at ports of entry, organisations and professionals should share information in order to identify separated children and ensure they are given appropriate protection.

\* CRC, Art. 8: See point B4

\* UNHCR Guidelines, paras. 5.1 - 5.3 & Annex II

\* EU Res., Art. 3(1)

### 3. Family Tracing and Contact

Tracing for a child's parents and family needs to be undertaken as soon as possible, but this should only be done where it will not endanger members of a child's family in the country of origin. States and other organisations undertaking tracing should co-operate with UN agencies and the ICRC Central Tracing agency. Separated children need to be properly informed and consulted about the process. Where appropriate those responsible for a child's welfare should facilitate regular communication between the child and her or his family.

### 4. Appointment of Guardian or Adviser

3.1 As soon as a separated child is identified, a guardian or adviser should be appointed - in a long-term perspective - to advise and protect separated children. Regardless of the legal status of this person (eg. legal guardian, NGO worker) their responsibilities should be as follows:

- to ensure that all decisions taken are in the child's best interests
- to ensure that a separated child has suitable care, accommodation, education, language support and health care provision
- to ensure a child has suitable legal representation to deal with her or his immigration status or asylum claim
- to consult with and advise the child
- to contribute to a durable solution in the child's best interests
- to provide a link between the child and various organisations who may provide services to the child
- to advocate on the child's behalf where necessary
- to explore the possibility of family tracing and reunification with the child.

3.2 In order to ensure necessary protection for separated children, appointments of guardians/advisers should be made within one month of a child being notified to the relevant authorities.

3.3 The individuals carrying out these responsibilities may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, advisers or guardians must have relevant childcare expertise and an understanding of the special and cultural needs of separated children. They should receive training and professional support.

\* CRC

Art. 10(2): Children whose parents reside in different countries have the right to maintain regular relations with their parents.

Art. 9(3): Children who are separated from their parents have the right to maintain contact with their parents.

Art. 22(2): See point B7.

\* ICCPR, Art. 23(1): The family is entitled to protection by the state.

\* ECHR, Art. 8: See point B6.

\* UNHCR Guidelines, para. 5.17

\* ECRE, para. 32

\* EU Res., Art. 3(3)

\* 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.

\* Hague Convention for the Protection of Minors, 1961

\* 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. 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.

\* UNHCR *Handbook*, para. 214. See point B10.

\* UNHCR Guidelines, para. 5.7

\* ECRE, paras. 16-18.

\* EU Res., Art. 3(4&5)

## 5. Registration and Documentation

Registration and documentation are essential to protect the long-term interests of separated children. This should be carried out by a “twin-track” interview procedure once a guardian/adviser has been appointed. Immigration and border police officers should limit their interviews to gathering basic information about the child’s identity. A complete social history ( see appendix), should be taken by an organisation with care duties towards the child. All those interviewing separated children should have appropriate training or expertise.

- \* CRC, Art. 8: See point B4
- \* UNHCR Guidelines, paras. 5.6 & 5.8 - 5.10
- \* EU Res., Art. 3(1)

## 6. Age Assessment

If an age assessment is thought to be necessary, it should be carried out by an independent paediatrician with appropriate expertise and familiarity with the child’s ethnic/cultural background. In cases of doubt there should be a presumption that someone claiming to be under 18 years of age, will provisionally be treated as such. Examinations should never be forced or culturally inappropriate. It is important to note that age assessment is not an exact science and a considerable margin of error is called for . In making an age determination separated children must be given the benefit of the doubt.

- \* 1951 Refugee Convention, Art. 31: Penalties shall not be imposed on asylum seekers those who enter a country illegally if they can show good cause for their illegal entrance.
- \* UNHCR *Handbook*, paras. 196-197: Persons fleeing persecution may not have personal documents. If proof cannot be found then the benefit of the doubt should be given to credible applicants.
- \* UNHCR Guidelines, para. 5.11
- \* ECRE, para. 9
- \* EU Res., Art. 4(3)

## 7. Freedom from Detention

Separated children should never be detained for reasons related to their immigration status. This includes detention at the border, for example, in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people.

- \* CRC, Art. 37(a): Children shall not be subject to cruel, inhuman or degrading treatment.
- \* CRC, Art. 37(b): Children shall not be deprived of their liberty arbitrarily or unlawfully.
- \* ICCPR, Arts. 7 & 9
- \* ECHR, Arts.3 & 5
- \* UNHCR Guidelines para. 7.6
- \* ECRE, para. 20
- \* EU Res., Art. 2(3)

## 8. Right to Participate

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 participation in line with their age and maturity. Any interviews by immigration or police officers should be done in a child-appropriate manner by officials who have received training in interviewing children. Separated children are entitled to be heard directly or via a legal representative or guardian/adviser.

- \* CRC, Art. 12: See point B3
- \* UNHCR Guidelines, para. 5.14 & 5.15
- \* ECRE para. 25 & 26

## 9. Family Reunification in a European Country

Separated children seeking asylum or otherwise present in a European state sometimes have family member(s) in other European states. European states should positively facilitate family reunion for the child in the state where the child's best interests will be met in accordance with safeguards set out in paragraph 12.2.

\*CRC. Art. 10(1): Applications for family reunification shall be dealt with by states in a "positive, humane and expeditious manner."

\* ICCPR, Art. 23(1): See point C8

\* Dublin Convention:

Art.4: Separated children who have parent(s) who are recognised refugees living in another EU state will be entitled to have their asylum claim dealt with by that state.

Art.9: Member States will admit asylum seekers to their asylum procedures on the basis of family or cultural reasons, at the request of another Member State.

\* EU Resolution on harmonisation of national policies on family reunification, 3 June, 1993

\* UNHCR Guidelines, para. 5.5

\* ECRE, para.35

\* EU Res., Art. 5(3a)

## 10. Interim Care – Health – Education and Training

### 10.1 Interim Care:

Separated children should be found suitable care placements as soon as possible after arrival. Care authorities should conduct a careful assessment of their needs, and changes in care arrangements should be kept to a minimum. Siblings should be kept together. Where children live with or are placed with relatives, these relatives should be assessed for their ability to provide suitable care. Separated children over 16 years of age should not be treated as "defacto" adults and placed on their own, without adult support, in hostel or reception centre settings.

Whether they are placed in foster care or in residential settings separated children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs. Care workers should help a child develop links with their ethnic community where such exists. Regular reviews of care arrangements should be carried out.

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 prostitution or other forms of exploitation.

\* CRC:

Art. 13: Children have the right to freedom of expression

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: See point B6

Art. 19: States shall take all appropriate measures to protect children from all forms of physical and mental violence, abuse, negligence, maltreatment and exploitation.

Art. 20 (1): See point C3

Art. 20 (3): Care provided for children deprived of their family shall take account of their ethnic, religious, cultural and linguistic background.

Art. 25: Children who are placed in a care institution have the right to periodic reviews of their circumstances.

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.

Art. 30: See point B4

Arts. 34, 35 & 36: See point C1.2

\* ICCPR, Arts. 18(1), 19, 21, 22 & 24(1)

\* ICESCR, Arts. 9 & 11(1)

\* ECHR, Arts. 9, 10 & 11

\* UNHCR Guidelines, paras. 7.1 -7.5

\* ECRE, paras. 12 & 19

\* EU Res. Arts. 3(2,4&5) and 4(4)

## 10.2 Health

Separated children should have access to health care on an equal basis with national children. Particular attention should be paid to their health needs arising from previous physical deprivation and ill-health, disabilities, and from the psychological impact of violence, trauma and loss. For many separated children access to counselling 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.

Art. 24: Children have the right to the highest attainable standard of health.

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

\* ICESCR, Art. 12

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

\* UNHCR Guidelines, paras. 7.9 - 7.11

\* ECRE para. 36

\* EU Res., Art. 3(7)

## 10.3 Education, Language and Training

Separated children should 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. In order to preserve their cultural identity separated children should have access to mother-tongue teaching. Vocational and professional training should be available to separated children. It is likely to enhance their life chances if they return to their home country.

\* CRC

Art. 28: Children have the right to free and compulsory primary education. States shall encourage the development of 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, inter alia, to encourage respect of children's cultural identity, language and values.

Art. 30. See point B4

Art. 32: Children should be protected from economic exploitation and hazardous work.

\* European Social Charter, Arts. 7,9 &10.

\*UNHCR Guidelines, paras. 7.12 - 7.14

\* ECRE, paras. 37-39

\* EU Res., Art. 3(6)

## 11. The Asylum or Refugee Determination Process

11.1 Separated children, regardless of age, should never be denied access to the asylum process. Once admitted they should go through the normal procedures and be exempt from alternative procedures including those relating to ‘safe third country’ (admissibility), ‘manifestly unfounded’ (accelerated) and ‘safe country of origin’ and from any suspension of consideration of their asylum claim due to coming from a “country in upheaval”.

- \* UDHR, Art. 14(1): “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”
- \* 1951 Refugee Convention: Article I of the Convention makes no distinctions according to age. A person of any age can be recognised as a refugee.
- \* Protocol Relating to the Status of Refugees, 1967.
- \* Council of the EU:
  - Joint Position on the harmonised application of the definition of the term “refugee”. March, 1996
  - Resolution on minimum guarantees for asylum procedures, June 1995, paras. 26-27.
  - Resolution on manifestly unfounded applications for asylum, 1992
  - Resolution on a harmonised approach to questions concerning host third countries, 1992
  - Conclusions on countries in which there is generally no serious risk of persecution, 1992
- \* UNHCR Guidelines, para.4.1
- \* ECRE, para. 22 - 23
- \* EU Res., Art. 4(1)

11.2 At all stages of the asylum process, including any appeals or reviews, separated children should have a legal representative who will assist the child to make his or her claim for asylum. Legal representatives should be available at no cost to the child and, in addition to possessing expertise on the asylum process, they should be skilled in representing children and be aware of child-specific forms of persecution.

- \* CRC Art. 12: See point B3
- \* UNHCR Guidelines, para. 4.2 & 8.3
- \* ECRE, para. 24

### 11.3 Minimum Procedural Guarantees

Decisions on a child’s asylum application should be taken by a competent authority versed in asylum and refugee matters. Children who receive a negative first decision should have a right of appeal. Deadlines for appealing should be reasonable. Children’s applications should be identified and prioritised so they are not kept waiting for long periods of time.

- \* EU resolution on Minimum Guarantees for Asylum Procedures, 1995, paras. 26-27: “Additional safeguards for unaccompanied minors”
- \* UNHCR Guidelines, paras. 8.1, 8.2 & 8.5
- \* ECRE, paras. 22, 24 & 28
- \* EU Res., Art. 4(2)

11.4 It is desirable, particularly with younger children or children with a disability, that an independent expert person carry out an assessment of the child’s ability to articulate a well-founded fear of persecution.

- \* UNHCR *Handbook*, para. 214
- \* Council of the EU Resolution on Minimum Guarantees for Asylum Procedures, para.27.
- \* ECRE, para. 27

11.5 Where interviews are required they should be carried out in a child-friendly manner (breaks, non-threatening atmosphere) by officers trained in interviewing children. Children should always be accompanied at each interview by their legal representative and, where the child so desires, by a significant adult (social worker, relative etc).

- \* CRC, Art. 3.3: See point B9
- \* UNHCR Guidelines, paras. 4.2 & 8.4
- \* ECRE, para. 26-27
- \* EU Res., Art. 4(5)

## 11.6 Criteria for making a decision on a child's asylum application:

When making a decision about a separated child's asylum claim authorities should have regard to UNHCR guidelines as contained in the Handbook and the 1997 Guidelines, specifically:

- \* the age and maturity of a child and their stage of development
- \* the possibility that children may manifest their fears differently from adults
- \* the likelihood that children will have limited knowledge of conditions in their countries of origin
- \* child-specific forms of human rights violations, such as recruitment of children into armies, trafficking for prostitution, female genital mutilation and forced labour
- \* the situation of the child's family in their country of origin and, where known, the wishes of parents who have sent a child out of the country in order to protect her or him
- \* therefore, in the examination of their claims it may be necessary to have greater regard to certain objective factors, and to determine based upon these factors, whether a child may be presumed to have a well-founded fear of persecution

11.7 Separated children who become adults during the course of the asylum process (sometimes called "aged-out") should be treated in a generous fashion. In this regard states should eliminate unnecessary delays that can result in a child gaining maturity during the process.

## 12. Durable or Long-term Solutions

### 12.1 Remaining in a Host Country/Country of Asylum

12.1.1 A separated child may be allowed to remain in a host country for a number of reasons:

- \* she or he is recognised as a refugee or granted asylum
- \* she or he receives a defacto or humanitarian status because it is not safe to return to their country of origin due, for example, to armed conflict and/or the child's parents are not traceable and there is no suitable carer in the country of origin
- \* she or he is allowed to remain under some other immigration category or, for example, on compassionate grounds (eg. ill health)
- \* it is clearly in the child's best interests to do so.

12.1.2 Applications by a separated child, residing in a "host" country, for family reunion in that country should be dealt with in a "positive, humane and expeditious manner". (CRC, Art.10)

- \* CRC  
Art. 12: See point B3  
Art. 32: See point C10.3  
Arts. 34, 35, 36. See point C1.2  
Art. 38: States shall ensure that persons under the age of 15 do not take a direct part in armed conflict.
- \* Protocol 1 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 11 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.
- \* ICCPR, Art. 8. See point C1.2
- \* ICESCR, Art. 10(3). See point C1.2
- \* ECHR, Art. 4(1) and 4(2): See point C1.2
- \* UNHCR *Handbook*, paras. 203 & 213-219
- \* UNHCR Guidelines, paras. 8.6 - 8.10
- \* EU Res., Art. 4(6)

- \* ECRE, para. 30

- \* CRC, Art. 3
- \* UNHCR Guidelines, para. 9.1 & 9.4
- \* ECRE, para.42
- \* EU Res., Art. 5(2)

- \* CRC, Art.10. See point C8
- \* ECHR, Art. 8: See point B6.
- \* ICCPR Art. 23: See point C8.
- \* ECRE, para. 32

### 12.1.3 Integration

Once a separated child is allowed to remain, care/welfare authorities should conduct a careful assessment of the child's situation (taking into account her or his age, sex, 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 15/16 years of age be cared for in a foster family from their own culture. Older children may prefer/do well in a small group home environment. This should be staffed by adults aware of the separated children's cultural needs. Separated children who have left care should be offered support via an "after-care" programme, to assist their transition to living independently.

As a matter of principle, siblings should be kept together in the same placement unless they wish otherwise. If a sibling group is living independently, with the oldest taking responsibility, then he or she should be provided with particular support and advice.

The rights of separated children to education and training, health care, language support (as per paragraph 10) should continue on the same basis as available to national children.

### 12.1.4 Adoption

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

### 12.1.5 Identity and Nationality

Separated children who are found to be stateless, should be assisted to acquire nationality.

\* CRC, Arts. 13, 14, 15, 16, 19, 20, 25, 26, 27 & 30 . See points B4, B5, B6, C3 & C10(1).

\* 1951 Refugee Convention

Art. 21: Housing provision for recognised refugees

Art. 23: Provision of "public relief" for recognised refugees

Art. 24: Working conditions and social security provisions for recognised refugees

\* UNHCR Guidelines, paras. 10.6 - 10.9

\* ECRE, para. 19

\* EU Res., Art. 4(7)

\* CRC, Arts. 23, 24, 28, 29(1c), 30, 39: see points C10.2 & C10.3

\* 1951 Refugee Convention

Art. 22: Education rights of recognised refugees.

\* UNHCR Guidelines, para. 10.10

\* ECRE, paras. 36 - 41

\* CRC, Art. 21: States obligations with regard to intercountry adoption.

\* Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993

\* "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

\* CRC, Art. 7(1): Children have the right to acquire a nationality.

\* ICCPR, Art. 24(3)

\* 1951 Refugee Convention

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.

\* Council of Europe: Recommendations 564 & 984.

## 12.2 Return to Country of Origin

12.2.1 This is a complex area and detailed guidance is required on the implementation of good practice. The best way for family reunification and returns to be carried out is on a voluntary basis. Children and should be fully consulted at all stages of the process.

12.2.2 (a) Before a separated child can be returned to a country of origin the following must be in place:

- \* it is safe to return the child to his or her home country;
- \* the child's carer and guardian/adviser in the host country agree it is in the child's best interests to return;
- \* a careful assessment is made of the family situation in the home country and whether it is safe to return a child to that country. It will be necessary to investigate the ability of the child's family (parents or other family members) to provide appropriate care. In the absence of parents or other family members, the suitability of child-care agencies in the country of origin should be investigated;
- \* this investigation should be carried out by a professional and independent organisation (that is different from the body or person(s) making the initial determination) or person(s) and should be objective, non-political and take into consideration the best interests of the child in each case;
- \* the child's parents, relatives, other adult care-taker or government child-care agency agree to provide immediate and long-term care upon the child's arrival in the country of origin;
- \* the child is fully informed at all stages and is provided with appropriate counselling and support;
- \* prior to the return contact between the child and his or her family is facilitated;
- \* during the return the child is properly accompanied;
- \* after the return the wellbeing of the child should be effectively monitored by appropriate authorities or agencies.

12.2.2 (b) Separated children who arrived as minors but who have reached the age of 18 should be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin.

## 12.3 Settlement in a Third Country

When a child has a family member in another European state who is willing and able to care for the child then family reunification should be expedited as per paragraph 9.

Where she or he has a family member in a non-European third country the opportunity for family reunification should be explored but to the same standards as indicated in paragraph 12.2. Care must be taken in order to ensure that the third country is a safe place for the child.

\* UNHCR : Refugee Children: Guidelines on Protection and Care, 1994, page 138.

\* CRC Art. 19, 37(a), 38 & 39: See point C10.1, C10.2 & C11.6

\* 1951 Refugee Convention

Art. 32(1): States shall not expel a refugee lawfully in their territory.

Art. 33. See point C1.1

\* CAT, Art. 3: See point C1.1

\* UNHCR Guidelines, paras. 9.4, 9.5, 10.5, 10.12 - 10.14

\* ECRE, paras. 33 & 42

\* EU Res., Art. 5

\* CRC, Art. 10(1): See point C9.

\* ECHR, Art. 8: See point B6.

\* UNHCR Guidelines, para. 10.11

\* ECRE, para. 34

## **APPENDIX**

Re: paragraph C4 above: the following information should be gathered about a child by an organisation with responsibility for caring for the child:

1. Family information (in the country of origin and elsewhere)
2. Information on non-family members important to the child
3. Circumstances when the child was found/identified
4. Information concerning the child's separation from the family
5. Information about the child's life before and since the separation
6. Child's physical condition, health and past medical history
7. Educational background (formal and informal)
8. Present care arrangements
9. Child's wishes and plans for the future
10. Preliminary assessment of the child's mental and emotional development and maturity
11. Age assessment

(UNHCR Guidelines, para. 5.9)

## INTERNATIONAL AND REGIONAL “INSTRUMENTS”

### 1. Refugee Instruments and UNHCR Executive Committee Conclusions

- 1951 UN Convention relating to the Status of Refugees.
- 1967 Protocol relating to the Status of Refugees
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness

### 2. General International Human Rights and Humanitarian Law Instruments

- Universal Declaration of Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966 ( and Optional Protocol).
- International Covenant on Economic, Social and Cultural Rights, 1966.
- International Convention against Torture, 1984.
- International Convention on the Elimination of all Forms of Racial Discrimination (1965).
- Convention Relating to the Status of Stateless Persons, 1954.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 8 June 1977, Arts. 77 and 78.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol 11), 8 June 1977, Art. 4.

### 3. Children - International and Regional Instruments

- UN Convention on the Rights of the Child, 1989 and its
- Optional Protocol on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000
- UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990
- UN Standard Minimum Rules for the Administration of Juvenile Justice (*the Beijing Rules*) 1985
- Hague Conference on Private International Law:
- Convention for the Protection of Minors, 1961
- Convention on the Civil Aspects of International Child Abduction, 1980
- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 and the associated “*Recommendation on the Application of the Convention to Refugee Children*”
- Convention on Jurisdiction, Applicable Law, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996 (not in force yet)

### 4. Europe

- European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols), 1950.
- The Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Community (Dublin Convention), 1990.
- European Convention on the Gradual Abolition of Controls at the Common Frontiers (*Schengen Agreement*), 1985
- Schengen Implementation Convention, 1990
- European Convention on the Adoption of Children of 24/04/67
- European Convention on the Legal Status of Children Born out of Wedlock of 15/10/75
- European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children of 20/05/80
- European Convention on the Exercise of Children’s rights of 25/01/96

#### Resolutions and Recommendations:

- Joint Position on the harmonised application of the definition of the term “refugee” in Article 1 of the 1951 Geneva Convention relating to the status of refugees, Council of the EU, March 1996
- Resolution on Minimum Guarantees for Asylum Procedures, June 1995
- Resolution on the harmonisation of national polices on family reunification, I June 1993
- Resolution on manifestly unfounded applications for asylum, 1992
- Resolution on a harmonised approach to questions concerning host third countries, 1992
- Conclusions on countries in which there is generally no serious risk of persecution, 1992
- Recommendations 564 (1969) and 984 (1984)
- Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, Feb. 1997 (97/1 54/JHA)

- Resolution on unaccompanied minors who are nationals of third countries, June 1997 (97/C 221/03)

#### Council of Europe

- European Social Charter, 1961

#### **5. UNHCR Guidelines**

- The Handbook on Procedures and Criteria for Determining Refugee Status (Handbook).
- Refugee Children: Guidelines on Protection and Care, 1994.
- Working with Unaccompanied Children: A Community-based Approach, 1996.
- Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997.
- UNHCR Executive Committee Conclusion No. 47 (1987) on "**Refugee Children**"
- UNHCR Executive Committee Conclusion No. 59, (1989) on "**Refugee Children**"
- UNHCR Executive Committee Conclusion No. 84, (1997) on "**Refugee Children and adolescents**"
- UNHCR Executive Committee Conclusion No. 88, (1999) on "**Protection of the Refugee's Family**"