



Protecting Migrant Children's Rights Project

Toolkit

Training and capacity building workshop

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<https://migrantchildren.org/>

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I. Migrant Children: an all-encompassing term*

According to UNICEF, more than 241,930 children sought asylum in Europe in 2016. These children were fleeing from war and hardship in their countries of origin ([UNICEF, Humanitarian Situation Report n°16, 14 October 2016](#)).

Article 1 of the Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

Since the beginning of this major displacement, back in the summer of 2015, different terms have been used in daily conversations, official documents, the media or on the internet, in relation to these children: “migrant children”, “migrating children”, “children on the move”, “refugee children”, and “asylum-seeking children”.

What is the exact meaning of these terms?

The terms “migrant children”, “migrating children”, “children on the move” are all-encompassing terms referring to all children who are outside their country of origin for whatever reason; the terms “refugee children” and “asylum-seeking children”, which are as well included in the three above-mentioned terms, have a specificity of their own and require further explanation.

The protection of refugees

In July 1951, the United Nations Conference of Plenipotentiaries adopted in Geneva [the Convention relating to the Status of Refugees](#), widely known as the Refugee Convention. Some years later, in 1967, the Convention was amended by the Protocol relating to the Status of Refugees or the 1967 Protocol, as it is commonly called.

* Original drafting by Dr Kyriaki Patsianta. Co-created with Dr Ana Beduschi.

The initial objective of the 1951 Refugee Convention was to protect the European refugees of the Second World War. However, the 1967 Protocol abolished geographical and temporal restrictions to the implementation of the Convention.

Article 1 A(2) of the Refugee Convention defines refugees as those individuals who have a well-founded fear of being persecuted in their country of origin or habitual residence, because of their race, religion, nationality, membership of a particular social group or political opinion. For these reasons, they are unable or, owing to such fear, they are unwilling to seek the protection of that country

Refugee children and asylum-seeking children

The definition given by the Refugee Convention does not impose age restrictions and, consequently, it includes children as well. Therefore, **the standards set by the 1951 Refugee Convention and the 1967 Protocol apply to children in the same way as to adults** ([UNHCR, Refugee Children: Guidelines on Protection and Care](#)).

Refugee children are children who have a well-founded fear of being persecuted in their country of origin or habitual residence, because of their race, religion, nationality, membership of a particular social group or political opinion, and, thus, they flee this country.

Moreover, **the keystone principle of the Refugee Convention, the principle of non-refoulement (article 33), equally applies to refugee children**; therefore, refugee children cannot be forced to return to a country where their life or freedom would be threatened.

Additionally, refugee children shall enjoy the **right to freedom of religion (article 4, Refugee Convention)**, the **right to access the courts (article 16, Refugee Convention)**, the **right to housing (article 21, Refugee Convention)**, the **right to education (article 22, Refugee Convention)**.

When a child is in the process of seeking asylum according to the legislation of a specific country so as to be recognized as a refugee, this child is an asylum-seeker enjoying a certain status of protection under this legislation for as long as his or her claim is being processed.

The asylum-seeker status is not equivalent to the refugee status; however, it provides the asylum-seeker with the necessary protection during the assessment of his or her asylum claim. In the European Union (EU), the domestic legislation on asylum of each Member State is determined in light of the Common European Asylum System (see list of key International and European instruments).

Non-Refugee Children

The protection afforded by the Refugee Convention relates only to refugee children. Accordingly, children who choose to leave their country of origin or residence for different reasons that are unrelated to a fear of persecution cannot be recognized as refugees.

Common reasons for migration include the willingness to find education or work opportunities in other countries or the willingness to be reunited with family members that have been already living abroad.

All migrant children, whether refugees or not, need to be treated with respect and dignity; their rights must be fully protected. The Convention on the Rights of the Child applies to every child without discrimination of any kind (article 2).

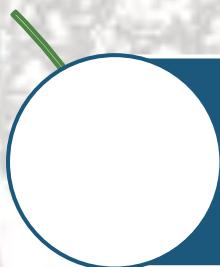
According to the European Network of Ombudspersons for Children (ENOC), there are no available statistics on children entering the EU not applying for asylum, which makes it difficult to know how many they are. Many of these children are at risk of abuse and exploitation, due to their vulnerability (ENOC, Safety and fundamental rights at stake for children on the move, 2016).

II. Migrant Children: unaccompanied, separated or migrating with their parents or guardians*

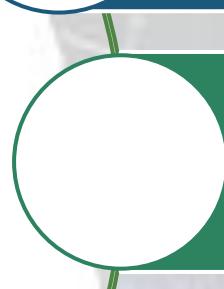
Migrant children may be migrating on their own or not. They may be accompanied by their parents or family relatives. Each situation is different and further clarification is needed.

Unaccompanied children

Unaccompanied children are those individuals below the age of 18 years “**who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.**” ([Committee on the Rights of the Child, General Comment N°6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#))

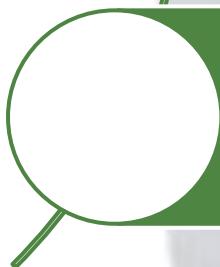


Youssef, aged 15, is migrating all alone from Syria to Italy.
He is an unaccompanied child.



Juliette, aged 10, has just arrived with her brother, Joseph, aged 15, in Lesvos.

Both children are unaccompanied. The fact that one of them is older than the other and they are siblings has no significance for their legal status; the fact that the little girl is travelling with her older brother has no significance either.



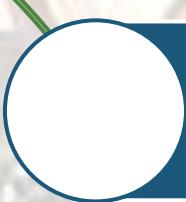
Peter, aged 16, Paul, aged 17 and Matt, aged 17, are friends migrating together towards Germany.

All children are unaccompanied. The fact that all of them are adolescents and boys has no significance for their legal status; the fact that all three are travelling together has no significance either.

* Original drafting by Dr Kyriaki Patsianta. Co-created with Dr Ana Beduschi.

Separated Children

Separated children are those individuals below the age of 18 years “**who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives**”; these may, therefore, include children accompanied by other adult family members. ([Committee on the Rights of the Child, General Comment N°6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#))



Mark and Arianne, aged 12 and 13 respectively, are migrating with their aunt Martha, aged 39, to Greece.

The children are separated. They are not travelling with their parents but with an adult family member, their aunt..



Aaron, aged 12, has arrived with his cousin, Askar, aged 19, to the United Kingdom.

The child is separated. He is travelling with an adult family member, his cousin.



Aaqila, aged 17, is migrating to Turkey with Jacob, aged 30, who is a family friend.

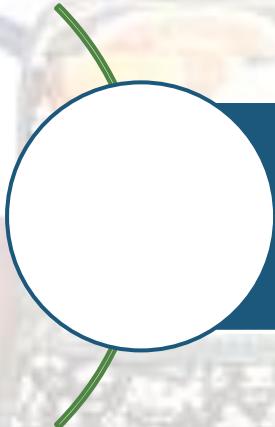
The child is unaccompanied. Jacob is not a family member.



Mariam, aged 16, started migrating alone from Syria to Germany. In Greece, she met with Malak, aged 25, and mother of two children. Malak would like to reach Germany as well; they decided to travel together. The child is unaccompanied. Malak is not a family member.

Children migrating with their parents or guardians

Migrant children can also be migrating with their parents or guardians. Note, a child cannot be considered as unaccompanied, even if he or she is being accompanied only by one of his or her parents.



Basra is being detained with her mother Cibaado in VIAL Hotspot, on the island of Chios, in Greece. Her father is waiting for them in Germany.

The child cannot be considered unaccompanied or separated just because she is not accompanied by both of her parents.

All migrant children, whether refugees or not, unaccompanied, separated or migrating with their parents or guardians, need to be treated with respect and dignity; their rights must be fully protected. The Convention on the Rights of the Child applies to every child without discrimination of any kind (article 2).

III. Migrant children and vulnerability in the legal context

There is **no current legal definition of vulnerability and this concept has no legal basis in international law**. However, **Human Rights Courts, such as the European Court of Human Rights, do recognise the vulnerability of migrant children** in their case-law.

The European Court of Human Rights takes into account the wider context of migration and the multiple risks to which children are particularly exposed to. It also acknowledges that the principle of best interest of the child play an important role in everything that relates to the protection of these migrant children's rights (see key decisions summaries).

Composite vulnerability

A composite form of vulnerability can be identified: migrant children are in a vulnerable situation not only because they are children, but also because they are aliens, sometimes in an irregular situation in a foreign country, sometimes not even accompanied by an adult. Unaccompanied or separated girls may be also exposed to a greater risk of sexual violence while migrating and when placed in detention camps. Disabled migrant children are also more frequently exposed to different forms of abuses.

That's why **their rights must be protected adequately and their composite form of vulnerability should be analysed in light of their specific situation**. Identifying their vulnerability can lead to a more tailored approach to protection and care. **It should not lead to stigmatisation of vulnerable groups. On the contrary, it should be a useful tool to recognise specific needs and to address their particular situation.**

More information

Ana Beduschi, "Reassessing the Concept of Vulnerability in the European Court of Human Rights' Jurisprudence: Implications for the Protection of Migrant Children's Rights" (2017, forthcoming – [more information here](#))

IV. The best interests of the child*

Article 3 of the Convention on the Rights of the Child provides that, in all actions concerning children, both in the public and private sphere, the best interests of the child shall be a primary consideration.

In its General Comment N°14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee on the Rights of the Child observes that the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.

According to the Committee on the Rights of the Child, the child's best interests is a threefold concept:

1. **A substantive right:** the right of the child to have his or her best interests assessed and taken as a primary consideration in situations that affect him or her.
2. **A fundamental, interpretative legal principle:** If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.
3. **A rule of procedure:** whenever a decision is to be made that will affect a child, the decision-making process must include an evaluation of the possible impact of the decision on the child concerned; in other words, the best interests of the child should be assessed and determined before the decision is taken.

The Committee also points out that the concept of the child's best interests is complex and its content must be determined on a case-by-case basis; it is a flexible and adaptable concept and should be adjusted and defined on the basis of the specific situation of the child concerned.

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In the case of migrant children, the principle of the best interests of the child must be respected during all stages of the displacement cycle.

The **determination of what is in the best interests of a migrant child** requires a clear and comprehensive assessment of the child's identity, including his or her nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs .

Regarding **unaccompanied or separated children** in particular, the appointment of a guardian as expeditiously as possible ensures that their best interests will be duly taken into consideration.

The principle of the best interests of the child **applies to all situations regarding migrant children** and to all plans aiming to ensure their well-being.



Committee on the Rights of the Child, General Comment N°6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin

V. Protecting the rights of children migrating with their parents or guardians*

There is a risk that the special needs of a child arriving with his or her parents or guardians are not identified by the authorities since they leave it to the parents or guardians to ensure that the child gets the assistance needed. The parents or guardians have the main obligation to secure the child's right to protection and support.

However, the parents or guardians might not know the child's rights to assistance in the hosting country, or could be traumatized and unable to identify that the child has special needs. It is necessary to have all decision-makers and officials, at all levels, from the school up to EU level, focus more on these children, ensuring that their rights are fulfilled.

Children migrating with their parents or guardians are often “invisible” and “forgotten” in discussions and actions taken by the authorities in order to respond to migrant children’s needs. ([European Network of Ombudspersons for Children \(ENOC\), Safety and fundamental rights at stake for children on the move, 2016](#)).

Consequently, without having the intention to diminish the extremely vulnerable situation of unaccompanied or separated children, it should be pointed out that **children accompanied by their parents have equally particular needs for protection and care, which should be duly taken into serious consideration.**

* Original drafting by Dr Kyriaki Patsianta. Co-created with Dr Ana Beduschi.

The right to be registered at birth, the right to a name and the right to acquire a nationality

According to [article 7 of the Convention on the Rights of the Child](#), the child shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire a nationality.

Article 7 is particularly relevant for new-born babies of migrant parents. As [UNICEF](#) reports, birth registration is the official recording of a child's birth by the competent authorities of the country in which he or she is born; it establishes the existence of the child under law and provides the foundation for safeguarding the child's civil, political, economic, social and cultural rights.

The Committee on the Rights of the Child has highlighted as well the importance of birth registration in its [General Comment no. 7 \(2005\) regarding the implementation of child rights in early childhood](#). Hence, children born to migrant parents in hosting countries should fully enjoy this right.

[Article 8 of the Convention on the Rights of the Child](#) provides that **the right of the child to preserve his or her identity, including nationality and name, shall be respected**.

Children born to migrant parents have a right to a name. More specifically, they should be able to be registered under their full name as chosen by their parents, which will include both their last and first name; they should also be able to make use of this name.

Children born to migrant parents have the right to acquire a nationality. Special attention should be paid to this aspect as there is an [increasing number of stateless children arriving in the European Union](#). As the [European Network of Ombudspersons for Children \(ENOC\), Safety and fundamental rights at stake for children on the move, 2016](#) underlines, in some countries, including Syria, the citizenship of a new-born child is based on the father; as many Syrians are fleeing their country, a lot of children of Syrian mothers are born outside of Syria and, thus, it is often difficult for the mothers to prove the fatherhood – because, for example, the father has already left to seek asylum in Europe or has been killed – and therefore the child is left without citizenship. States shall ensure that this right is respected.

VI. Protecting the rights of unaccompanied and separated children*

The **extremely vulnerable situation** of unaccompanied and separated children calls for an adequate respond to their needs.

These children have to **face problems** relating to the deprivation of their liberty, care and accommodation arrangements, the appointment of a guardian for them, and age assessment procedures in case there are doubts about their minority.

KEY TEXT:

Committee on the Rights of the Child, General Comment N°6 (2005)
Treatment of Unaccompanied and Separated Children outside their country of origin

Right to special protection and care

According to article 20 of the Convention on the Rights of the Child, children temporarily or permanently deprived of their family environment, such as unaccompanied and separated children, shall be entitled to special protection and assistance provided by States.

Moreover, article 19 of the Convention on the Rights of the Child stresses that States shall take all appropriate measures to protect children from all forms of physical, mental or sexual abuse, while article 36 of the Convention on the Rights of the Child notes that States shall protect them against all forms of exploitation.

Furthermore, article 34 of the Convention on the Rights of the Child emphasizes that children should be protected from all forms of sexual exploitation and sexual abuse, while article 35 of the Convention on the Rights of the Child underlines that States shall take all appropriate measures to prevent the abduction, sale or traffic of children.

* Original drafting by Dr Kyriaki Patsianta. Co-created with Dr Ana Beduschi.

Additionally, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, aims at protecting children against these practices.

All these provisions apply even more intensely to the case of unaccompanied and separated children who are away from their family. It should be especially emphasized that girls travelling alone may be exposed to greater risks such as falling victims of traffickers or sexual exploitation.

Prevention of deprivation of liberty

Unaccompanied or separated children are being very often detained.

However, as the Committee on the Rights of the Child observes, in application of article 37 of the Convention on the Rights of the Child and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained; detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack of this status.

The Committee points out that where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention on the Rights of the Child that requires detention to conform to the law of the relevant country and **only to be used as a measure of last resort and for the shortest appropriate period of time**; all efforts should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

In the exceptional case of detention, conditions of detention must be governed by the best interests of the child, special arrangements must be made for facilities that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so; in general, the underlying approach to such a programme should be "care" and not "detention".

Care and accommodation arrangements

The Committee on the Rights of the Child emphasizes that **mechanisms established under national law in order to ensure alternative care for children temporarily or permanently deprived of their family environment shall also cover unaccompanied and separated children.** The Committee also observes that when putting in place care and accommodation arrangements for unaccompanied or separated children, **the particular vulnerabilities of these children, not only having lost connection with their family environment, but further finding themselves outside their country of origin, as well as their age, gender, ethnic, religious, cultural and linguistic background, should be taken into consideration.**

Moreover, according to the Committee, irrespective of the care and accommodation arrangements made for unaccompanied and separated children, **regular supervision and assessment ought to be maintained by qualified persons in order to ensure the children's well-being.** It equally adds that, **in large-scale emergencies, interim care must be provided for the shortest time appropriate for the children.**

[Committee on the Rights of the Child, General Comment N°6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#)

Appointment of a guardian

[Article 18 \(1\) of the Convention on the Rights of the Child](#) provides that, **when a child is away from his or her family, legal guardians have the primary responsibility for his or her upbringing and development.** [Article 18 \(2\) of the Convention on the Rights of the Child](#) underlines that **States shall render appropriate assistance to legal guardians in the performance of their child-rearing responsibilities.**

The [Committee on the Rights of the Child, General Comment N°6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#) specifies that:

- States are required to create the legal framework and take necessary measures to secure proper representation of an unaccompanied or separated child's best interests.
- States should appoint a guardian as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left their territory.

- The legal guardian should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately addressed.
- In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child.
- Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being adequately taken into account.
- In cases where the children are involved in asylum procedures or administrative or judicial proceedings, States should, in addition to the appointment of a guardian, provide legal representation.
- In large-scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and the best interests of unaccompanied and separated children should be safeguarded and promoted by States and organizations working on behalf of these children.

Age assessment procedures

According to the [Committee on the Rights of the Child, General Comment N°6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#), age assessment should not only take into account the physical appearance of the individual concerned, but also his or her psychological maturity; it must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; it should be giving due respect to human dignity; and, in the event of remaining uncertainty, it should accord the individual concerned the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.

VII. Protecting the rights of all migrant children*

Vulnerability

A **composite form of vulnerability** can be identified regarding migrant children ([Beduschi, 2017](#)). First and foremost, they are children and as such they need special treatment; additionally, they are migrants and as such they have specific needs and experiences.

This **composite form of vulnerability is further demonstrated by the fact that every child may have to face a different range of specific issues while being on the move**: a migrant child might be traveling alone, without being accompanied by an adult; a migrant child might be travelling together with his or her parents but who, for various reasons, may not be able to address his or her needs; a girl travelling alone may be exposed to greater risks such as falling victim of traffickers or sexual exploitation.

The vulnerabilities of all migrant children – unaccompanied and separated children, children accompanied by their parents, girls and boys – should be taken into proper consideration in order to ensure their wellbeing and the adequate protection of their rights.

Non-discrimination

[Article 2 of the Convention on the Rights of the Child](#) establishes the principle of non-discrimination, according to which States shall respect and ensure the rights enshrined by the Convention to each child within their jurisdiction without discrimination of any kind.

Therefore, the enjoyment of these rights is not limited to children who are citizens of the State concerned and must also be available to migrant children ([Committee on the Rights of the Child, General Comment N°6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#)).

* Original drafting by Dr Kyriaki Patsianta. Co-created with Dr Ana Beduschi.

Any discrimination relating to the child's status (as migrant, refugee, asylum-seeker, unaccompanied or separated, accompanied by his or her parents), race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, or birth is prohibited.

The right to life, survival and development

Article 6 of the Convention on the Rights of the Child refers to the inherent right to life that every child has and provides that States shall ensure to the maximum extent possible his or her survival and development.

Therefore, according to article 6, **migrant children should be protected from violence and exploitation** such as trafficking or involvement in criminal activities which could harm them or even lead them to death. (Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin)

Moreover, **measures should be taken in order to ensure adequate nutrition for migrant children of every age, from babies to adolescents, and deal with preventable diseases**; however, even if ensuring survival and physical health are priorities, States should never forget that **article 6 CRC encompasses all aspects of development and that a migrant child's health and psychosocial wellbeing are interdependent**; both may be put at risk by adverse living conditions, neglect and abusive treatment.

Furthermore, it should be pointed out that the **migrant children's right to survival and development can only be implemented in a holistic manner**, through the enforcement of all the other provisions of the Convention (Committee on the Rights of the Child, General Comment No 7 (2005) Implementing child rights in early childhood).

The right to be heard

Article 12 of the Convention on the Rights of the Child provides that States shall assure to the child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting him or her; these views should be taken into consideration in accordance with the age and the maturity of the child.

Article 12 further specifies that **the child shall be provided the opportunity to be heard in any judicial or administrative proceedings affecting him or her**.

In its Committee on the Rights of the Child, **General Comment No 12 (2009) The right of the child to be heard**, the Committee on the Rights of the Child observes that:

- Migrant children are in a particularly vulnerable situation and, for this reason, it is urgent to fully implement their right to express their views on all aspects of the immigration and asylum proceedings
- Migrant children have to be heard on their educational expectations and health conditions in order to integrate them into school and health services
- In the case of an asylum claim, the children must additionally have the opportunity to present their reasons leading to the asylum claim

Consequently, while adopting measures regarding migrant children, their views and wishes should be elicited and taken into account. **To allow for a well-informed expression of such views and wishes, it is necessary that the children are provided with all relevant information, in their own language, on their entitlements and services available, including the immigration and asylum process.** As participation is dependent on reliable communication, **where necessary, interpreters should be made available**. According to the Committee, particular assistance may be needed for **children formerly involved in armed conflict** to allow them to pronounce their needs.

Rights of children seeking refugee status or that are considered to be refugees

Article 22 of the Convention on the Rights of the Child focuses on the children who are seeking refugee status, or who are considered to be refugees.

These children, whether unaccompanied or accompanied by their parents or by any other person, should receive appropriate protection and humanitarian assistance:

- States should contribute to the tracing of the parents or other family members of any refugee child in order to obtain information necessary for reunification with his or her family;
- In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child deprived of his or her family environment for whatever reason.

Family reunification

Article 10 of the Convention on the Rights of the Child underlines that applications by a child or his or her parents to enter or leave a particular country for the purpose of family reunification **shall be dealt with in a positive, humane and expeditious manner**.

Right to privacy

Article 16 of the Convention on the Rights of the Child guarantees the right of the child to privacy.

In order to safeguard the right of migrant children to privacy:

- States must protect the confidentiality of information received in relation to the children.
- This obligation applies in all settings, including health and social welfare.
- Care must be also taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another.

Prevention of deprivation of liberty

In the Committee on the Rights of the Child, General Comment N°6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin, it is clear that:

- In application of article 37 of the Convention on the Rights of the Child and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained
- Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack of this status
- Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention:
 - To conform to the law of the relevant country
 - And only to be used as a measure of last resort and for the shortest appropriate period of time.

Unfortunately, very often, not only unaccompanied or separated children are being detained, but also children accompanied by their parents. These children are detained together with their parents. **Detention is an absolutely unsuitable method of addressing the children's needs.**

Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health

Article 24 of the Convention on the Rights of the Child protects the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. When implementing this right:

- States should ensure that migrant children have the same access to health care as children who are nationals
- States must take into consideration the vulnerabilities of these children
- States should take into account that many migrant children, in particular those who are refugees, have experienced violence and stress associated with a country afflicted by war; additionally, girls are particularly vulnerable and many may have experienced gender-based violence in the context of armed conflict

(Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

Article 39 of the Convention on the Rights of the Child provides that States shall provide physical and psychological recovery and social integration services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or punishment, armed conflicts. These services should be provided to migrant children in a culturally appropriate and gender-sensitive context.

Article 23 of the Convention on the Rights of the Child, protects the rights of mentally or physically disabled children which is also applicable to migrant children (**Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin**).

In its **General Comment No 9 The rights of children with disabilities**, the Committee on the Rights of the Child observes that **migrant children with disabilities are vulnerable to multiple forms of discrimination**, particularly girls with disabilities, who are more often than boys subject to abuse; the Committee emphasizes that **migrant children with disabilities should be given high priority for special assistance and access to adequate health services**.

Right to education

Article 28 of the Convention on the Rights of the Child guarantees the right of the child to education.

Article 29 (1) (c) of the Convention on the Rights of the Child specifies that the education of the child shall be directed to the development of respect for his or her parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

Article 30 of the Convention on the Rights of the Child provides that a child belonging to an ethnic, religious or linguistic minority shall not be denied the right to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Furthermore, according to **article 32 of the Convention on the Rights of the Child**, States should guarantee the right of the child to be protected from economic exploitation and from performing any work that is likely to impede his or her education.

Every migrant child shall have full access to education during all phases of the displacement cycle in line with the Convention on the Rights of the Child. Girls, in particular, shall have equal access to education. Access to quality education should also be ensured for children with disabilities. All migrant children should be allowed and encouraged to maintain their cultural identity, values and native language. **If detained, during the detention period migrant children should enjoy their right to education** and this should ideally take place outside the detention premises in order to facilitate the continuation of their education upon release (**Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin**).

Right to an adequate standard of living

According to [article 27 of the Convention on the Rights of the Child](#), every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. It is further stressed that States shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Therefore, appropriate measures should be taken in order to secure an adequate standard of living for migrant children ([Committee on the Rights of the Child, General Comment No 6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#)).

Right of the child to rest, leisure, play, recreational activities, cultural life and the arts

[Article 31 of the Convention on the Rights of the Child](#) guarantees the right of the child to rest and leisure, to play and recreation, to cultural life and the arts.

Migrant children should be able to enjoy this right during all phases of the displacement cycle, even when they are being detained ([Committee on the Rights of the Child, General Comment No 6 \(2005\) Treatment of Unaccompanied and Separated Children outside their country of origin](#)).

- Migrant children face profound challenges in realizing their rights under article 31 as they often experience both dislocation from their own traditions and culture, and exclusion from the culture of the host country.
- Efforts must be made to ensure that these children have equal opportunities with children from the host country to enjoy the rights provided for in article 31 CRC.

- Migrant children **should be allowed to preserve and practice their own recreational, cultural and artistic traditions**
- Opportunities for rest, leisure, playful, recreational and cultural activities can have a significant therapeutic and rehabilitative role in **helping migrant children recover a sense of normality and joy after their experience of loss, dislocation and trauma, helping them to overcome emotional pain and regain control over their lives**
- **Special attention should be paid to girls**, as a combination of significant burdens of domestic responsibilities, siblings and family care, protective concerns on the part of parents and cultural assumptions imposing limitations on their behaviour can result in diminishing their opportunities to enjoy the rights guaranteed by article 31 CRC.
- Similarly, **migrant children with disabilities should be protected**, as cultural attitudes and negative stereotypes are hostile to these children. Detention facilities and hosting structures are usually not friendly to migrant children with disabilities. Communication barriers, failure to provide interpretation and lack of accessible transport may create extra obstacles to their access to play and recreational activities.



Committee on the Rights of the Child, General Comment No 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31).

Prevention of trafficking, sexual exploitation and other forms of abuse

Article 19 of the Convention on the Rights of the Child provides that States shall take all appropriate measures to protect children from all forms of physical, mental or sexual abuse

Article 36 of the Convention on the Rights of the Child imposes that States shall protect children against all forms of exploitation.

Article 34 of the Convention on the Rights of the Child emphasizes that **children should be protected from all forms of sexual exploitation and sexual abuse.**

Article 35 of the Convention on the Rights of the Child underlines that **States shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children.**

Additionally, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, aims at protecting children from these practices.

Migrant children are particularly vulnerable to exploitation and abuse; girls are at particular risk of being trafficked, including for purposes of sexual exploitation. There is also a high risk of trafficking and exploitation for unaccompanied and separated children.

Child soldiers

European countries may have to address the needs of migrant children who might have served as child soldiers in armed conflicts (for example the so-called Islamic State recruits children into its armed forces). If some of these children manage to somehow arrive in Europe, they will be in need of special protection and assistance.

Article 38 of the Convention on the Rights of the Child provides that **States shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.**

Article 39 of the Convention on the Rights of the Child underlines that **States shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of armed conflicts.**

Additionally, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, aims at fighting against the phenomenon of child soldiers.

- Specific measures shall be taken in order to **prevent the re-recruitment of children who had served as child soldiers in armed conflicts**. Child soldiers should be considered primarily as victims of armed conflict.
- Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life; such children shall be identified on a priority basis during any identification operation.
- Migrant children who had served as child soldiers should benefit from special protection and assistance measures.
- Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity, such as providing sexual services or being forcibly married to the military.

(Committee on the Rights of the Child, General Comment No 6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin).

The right to freedom of religion and the right to preserve one's identity

Article 14 of the Convention on the Rights of the Child protects the right of the child to freedom of religion.

Article 30 of the Convention on the Rights of the Child establishes that children belonging to religious minorities shall enjoy the right to profess and practice their own religion.

Article 8 of the Convention on the Rights of the Child guarantees the right of the child to preserve his or her identity.

According to these articles, **all migrant children should be able to practice their religion**. The practice of religious and ritual activities can help the children stay in contact with their culture and maintain their identity. **The importance of such activities to children's mental health should not be underestimated** (**UNCHR Refugee Children: Guidelines on Protection and Care**).

VIII. Yazidi children: migrant children in need of special assistance and support*

The Sinjar region of northern Iraq is very close to the Syrian border. It is home to the majority of the world's Yazidis, a distinct religious community whose beliefs and practice span thousands of years, and whose adherents the so-called Islamic State (ISIS) publicly reviles as infidels ([Independent International Commission of Inquiry on the Syrian Arab Republic, “They came to destroy”: ISIS Crimes Against the Yazidis, 16 June 2016](#)).



Since the 3rd of August 2014 ISIS fighters have invaded the region of Sinjar. They have committed many atrocities against all members of the Yazidi community.

According to the [Independent International Commission of Inquiry on the Syrian Arab Republic:](#)

- Men have been separated from women and children
- Men have been killed or forced to convert to Islam

* Original drafting by Dr Kyriaki Patsianta. Co-created with Dr Ana Beduschi.

- Women have been sold as sex slaves
- Children have been victims of ill-treatment and separated from their families:
 - Girls aged nine and above have been sold at market and held in sexual slavery by ISIS fighters
 - Boys aged twelve and above have been taken away from their families and forced into ISIS training camps
- Children held with their mothers are often aware of their mothers' being the victims of prolonged and intense violence
- Children suffer poor living conditions including lack of food and water, and, during winter, sleeping in unheated rooms

Yazidi children who fled this atrocious situation and have arrived in Europe have an important need of special assistance and care. Identifying these children, addressing properly their needs and ensuring the full respect of their rights is of primary importance.

IX. United Nations Committee on the Rights of the Child – General Comments (extracts)*

General Comment no. 6 - Treatment of Unaccompanied and Separated Children outside their Country of Origin -CRC/GC/2005/6

This is the most comprehensive and specifically directed General Comment of the CRC in respect of asylum seeking and migrant children and provides detailed guidance on matters of definition, procedural and substantive rights in legal and administrative procedures relating to status and duties of care for all unaccompanied and separated children from arrival in the host country throughout their stay in that country and plans for future integration, family reunification, developmental and rehabilitative measures, guardianship, pastoral and legal representation. It extends over 100 paragraphs and 27 pages and is too long and detailed to make a short précis of the key elements but some of the most important aspects of the guidance are highlighted below. As with all the General Comments, they should be read together and cross-referred. The CRC rights are indivisible from each other, whether as a separated child or on account of any status.

1. The objective of this general comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child (the “Convention”), with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.

3. The issuing of the general comment is further motivated by the Committee’s identification of a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of, inter alia, sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and

* Document created by Syd Bolton. Full version of this document available on the website: <https://migrantchildren.org/>

detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender-based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender-sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status, which ends when they turn 18, and there are few effective return programmes.

5. This general comment applies to unaccompanied and separated children who find themselves outside their country of nationality (consistent with article 7) or, if stateless, outside their country of habitual residence. The general comment applies to all such children irrespective of their residence status and reasons for being abroad, and whether they are unaccompanied or separated. However, it does not apply to children who have not crossed an international border...

7. “Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

8. “Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

12. State obligations ... apply to each child within the State’s territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally ... Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State’s jurisdiction while attempting to enter the country’s territory. ... not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children -

including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.

13. Obligations ... apply to all branches of government (executive, legislative and judicial). ... Such legal obligations are both negative and positive in nature, requiring States not only to refrain from measures infringing on such children's rights, but also to take measures to ensure the enjoyment of these rights without discrimination. ... The positive aspect of these protection obligations also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border, to carry out tracing activities and, where possible and if in the child's best interest, to reunify separated and unaccompanied children with their families as soon as possible.

19. ... “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.

21. ... appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In ... asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

24. ... practical measures should be taken at all levels to protect children ...Such measures could include: priority procedures for child victims of trafficking...

25. Pursuant to article 12 of the Convention...To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of

communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22 (2)). In guardianship, care and accommodation arrangements, and legal representation, children's views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.

27. ... States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. ... The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.

29. States parties must protect the confidentiality of information received in relation to an unaccompanied or separated child ... Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another.

30. Confidentiality concerns also involve respect for the rights of others. For example, in obtaining, sharing and preserving the information collected in respect of unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members. Furthermore, information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the "best interests" of the child.

(a) Initial assessment and measures

31. The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children. This necessary initial assessment process, in particular, entails the following:

Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of

the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such;

iv Unaccompanied and separated children should be provided with their own personal identity documentation as soon as possible;

v Tracing of family members to be commenced as early as possible...

(b) Appointment of a guardian or adviser and legal representative (arts. 18 (2) and 20 (1))

33. ... States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State.... The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role.

36. In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.

(c) Care and accommodation arrangements...

40. Mechanisms established under national law in order to ensure alternative care for such children in accordance with article 22 of the Convention, shall also cover unaccompanied or separated children outside their country of origin

– In accordance with the principle of family unity, siblings should be kept together;

A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interests of the child.

regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child's physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities;

- Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration.

(d) Full access to education ...

41. States should ensure that access to education is maintained during all phases of the displacement cycle. ...Such access should be granted without discrimination ... separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

42. The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning

(e) Right to an adequate standard of living

44. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in article 27 (2) of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

(f) Right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health

46. ... to ensure that unaccompanied and separated children have the same access to health care as children who are ... nationals ...

47. ...They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss,

trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war.

48. The obligation under article 39 of the Convention sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts. In order to facilitate such recovery and reintegration, culturally appropriate and gender-sensitive mental health care should be developed and qualified psychosocial counselling provided.

(g) Prevention of trafficking and of sexual and other forms of exploitation, abuse and violence

52. ... Trafficking in children is a threat to the fulfilment of their right to life, survival and development... Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child...

53. Risks are also great for a child who has already been a victim of trafficking, ...Such children should not be penalized and should receive assistance as victims of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention... and States should ensure...access to asylum procedures. Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken. States should consider complementary forms of protection for trafficked children when return is not in their best interests.

Former child soldiers

56. Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling.

(i) Prevention of deprivation of liberty

Detention cannot be justified solely on the basis of the child being unaccompanied or separated
...

...only to be used as a measure of last resort and for the shortest appropriate period of time...

62. ... States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country.

63. In the exceptional case of detention, conditions of detention must be governed by the best interests of the child ... Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a programme should be "care" and not "detention". Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release. They also have the right to recreation and play as provided for in article 31 of the Convention. In order to effectively secure the rights provided by article 37 (d) of the Convention, unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.

Vi. Access To The Asylum Procedure, Legal Safeguards And Rights In Asylum

(b) Access to asylum procedures, regardless of age

66. ...Asylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age... In the case that facts become known during the identification and registration process which indicate that ... the child may objectively be at risk of persecution ...such a child should be referred to the asylum procedure...

(c) Procedural safeguards and support measures

69. An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests... in all cases, be given access, free of charge, to a qualified legal representative.

70. Refugee status applications filed by unaccompanied and separated children shall be given priority and every effort should be made to render a decision promptly and fairly.

71. Minimum procedural guarantees should include that the application will be determined by a competent authority fully qualified in asylum and refugee matters. Where the age and maturity of the child permits, the opportunity for a personal interview with a qualified official should be granted before any final decision is made. Wherever the child is unable to communicate directly with the qualified official in a common language, the assistance of a qualified interpreter should be sought. Moreover, the child should be given the “benefit of the doubt”, should there be credibility concerns relating to his or her story as well as a possibility to appeal for a formal review of the decision.

72. The interviews should be conducted by representatives of the refugee determination authority ... The assessment process should comprise a case-by-case examination of the unique combination of factors presented by each child, including the child's personal, family and cultural background. The guardian and the legal representative should be present during all interviews.

(d) Child-sensitive assessment of protection needs, taking into account persecution of a child-specific nature

74. ... shall take into account the ... relationship between, international human rights and refugee law, including positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention. In particular, the refugee definition in that Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status...

75. Staff involved in status-determination procedures of children, in particular those who are unaccompanied or separated, should receive training on adopting an application of international and national refugee law that is child, cultural, and gender-sensitive. To properly assess asylum claims of children, information on the situation of children, including those belonging to minorities or marginalized groups, should be included in government efforts to collect country-of-origin information.

(f) Children to benefit from complementary forms of protection

77. In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children shall benefit from available forms of complementary protection to the extent determined by their protection needs.

Vii. Family Reunification, Return And Other Forms Of Durable Solutions

79. ...Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated. .. commences with analysing the possibility of family reunification.

80. Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure...

(b) Family reunification

81. .. a child shall not be separated from his or her parents against their will, all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, ...

82. Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a “reasonable risk” that such a return would lead to the violation of fundamental human rights of the child. ...

83. Whenever family reunification in the country of origin is not possible, ... “applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner” and “shall entail no adverse consequences for the applicants and for the members of their family”

(c) Return to the country of origin

84. Return to the country of origin is not an option if it would lead to a “reasonable risk” that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child.

85. In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure

and concrete arrangements of care and custodial responsibilities upon return to the country of origin.

86. Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations, if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations.

(f) Resettlement in a third country

92. Resettlement to a third country may offer a durable solution for an accompanied or separated child who cannot return to the country of origin and for whom no durable solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs.

**General Comment no. 7 - Implementing Child Rights In Early Childhood -
CRC/C/GC/7/REV.1**

1. Through this general comment, the Committee wishes to encourage recognition that young children are holders of all rights enshrined in the Convention and that early childhood is a critical period for the realization of these rights. The Committee's working definition of "early childhood" is all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school

2. (f) To emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being;

3. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights.

4. **Definition of early childhood.** ...the Committee proposes as an appropriate working definition of early childhood the period below the age of 8 years;

6. **Features of early childhood.** Early childhood is a critical period for realizing children's rights. During this period:

-
- (a) Young children experience the most rapid period of growth and change during the human lifespan, in terms of their maturing bodies and nervous systems, increasing mobility, communication skills and intellectual capacities, and rapid shifts in their interests and abilities;
- (b) Young children form strong emotional attachments to their parents or other caregivers, from whom they seek and require nurturance, care, guidance and protection, in ways that are respectful of their individuality and growing capacities;
- (c) Young children establish their own important relationships with children of the same age, as well as with younger and older children. Through these relationships they learn to negotiate and coordinate shared activities, resolve conflicts, keep agreements and accept responsibility for others;
- (d) Young children actively make sense of the physical, social and cultural dimensions of the world they inhabit, learning progressively from their activities and their interactions with others, children as well as adults;
- (e) Young children's earliest years are the foundation for their physical and mental health, emotional security, cultural and personal identity, and developing competencies;
- (f) Young children's experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organization, care arrangements and education systems;
- (g) Young children's experiences of growth and development are powerfully shaped by cultural beliefs about their needs and proper treatment, and about their active role in family and community.

7. Respecting the distinctive interests, experiences and challenges facing every young child is the starting point for realizing their rights during this crucial phase of their lives.

11. **Right to non-discrimination.** Article 2 ensures rights to every child, without discrimination of any kind. The Committee urges States parties to identify the implications of this principle for realizing rights in early childhood:

- (a) ... young children in general must not be discriminated against on any grounds, for example where laws fail to offer equal protection against violence for all children, including young children. Young children are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights;

Respect for the young child's agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children's need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child"

24. **Access to services, especially for the most vulnerable.** The Committee calls on States parties to ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2). This includes girls, children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children from migrant families, children who are orphaned or lack parental care for other reasons, children living in institutions, children living with mothers in prison, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents...

25 ... the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth.

26. **Standard of living and social security.** Young children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development...

27. **Health-care provision.** States parties should ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life (art. 24). In particular:

(a) ... access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment. ...

(b) ...children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation. Priority should also be given to the provision of appropriate prenatal and post-natal health care

for mothers and infants in order to foster healthy family-child relationships, especially between a child and his or her mother (or other primary caregiver)...

(c) All necessary steps should be taken to: (i) prevent infection of parents and young children, especially by intervening in chains of transmission, especially between father and mother and from mother to baby; (ii) provide accurate diagnoses, effective treatment and other forms of support for both parents and young children who are infected by the virus (including antiretroviral therapies); and (iii) ensure adequate alternative care for children who have lost parents or other primary caregivers due to HIV/AIDS, including healthy and infected orphans.

34. **Right to rest, leisure and play**

...the Convention, ...guarantees “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”. Play is one of the most distinctive features of early childhood

36. **Young children’s vulnerability to risks ...**Young children are especially vulnerable to the harm caused by unreliable, inconsistent relationships with parents and caregivers, or growing up in extreme poverty and deprivation, or being surrounded by conflict and violence or displaced from their homes as refugees, or any number of other adversities prejudicial to their well-being. Young children are less able to comprehend these adversities or resist harmful effects on their health, or physical, mental, spiritual, moral or social development. They are especially at risk where parents or other caregivers are unable to offer adequate protection, whether due to illness, or death, or due to disruption to families or communities. Whatever the difficult circumstances, young children require particular consideration because of the rapid developmental changes they are experiencing; they are more vulnerable to disease, trauma, and distorted or disturbed development, and they are relatively powerless to avoid or resist difficulties and are dependent on others to offer protection and promote their best interests.

(c) *Refugees (art. 22).* Young children who are refugees are most likely to be disoriented, having lost much that is familiar in their everyday surroundings and relationships. They and their parents are entitled to equal access to health care, education and other services. Children who are unaccompanied or separated from their families are especially at risk. ...

General Comment no. 9 - The rights of children with disabilities - CRC/C/GC/9

Children with disabilities cannot be viewed as having any lesser rights than any other child. Non-discrimination provisions demand that measures are implemented to ensure that they have equality of treatment in accordance with their particular needs, for support and for protection from harm. In some states, discriminatory and harmful policies and practices against children with disabilities may also amount to persecution contrary to the Refugee Convention and other human rights instruments. This General Comment assists in better understanding the particular vulnerabilities of children with physical and psychological disabilities, the need to identify and deliver the measures required to prevent discrimination, enable their best interests to be met and right to be heard ensured, as children including in asylum decision-making, care and protection contexts.

Extracts:**B. Definition**

1. According to article 1, paragraph 2, of the draft convention on the rights of persons with disabilities, "*Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*" (A/AC.265/2006/4, Annex II)¹
8. Children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination - based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on - increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article. Discrimination takes place – often de facto – in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears,

¹ The UN Convention on the Rights of Persons with Disabilities was formally adopted and later came into force in 2008 – This definition is now to be found at Article 1 of the Convention

overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities

2. In general, States parties in their efforts to prevent and eliminate all forms of discrimination against children with disabilities should take the following measures:

(a) Include explicitly disability as a forbidden ground for discrimination in constitutional provisions on non-discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions.

(b) Provide for effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to children with disabilities and their parents and/or others caring for the child.

14. Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training, health care services, recovery services, preparation for employment and recreation opportunities.

Article 3 - Best interests of the child

30 The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets.

Article 6 - Right to life, survival and development

31. ... In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may “tarnish the family pedigree” and, accordingly, a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States parties are urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment to all those who directly or indirectly violate the right to life, survival and development of children with disabilities.

Article 12 - Respect for the views of the child

32 More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. ... It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities...

B. Violence, abuse and neglect

42 Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse, and they are also particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family. In addition, the lack of access to a functional complaint receiving and monitoring mechanism is conducive to systematic and continuing abuse. School bullying is a particular form of violence that children are exposed to and more often than not, this form of abuse targets children with disabilities. Their particular vulnerability may be explained inter alia by the following main reasons:

- (a) Their inability to hear, move, and dress, toilet, and bathe independently increases their vulnerability to intrusive personal care or abuse;
- (b) Living in isolation from parents, siblings, extended family and friends increases the likelihood of abuse;
- (c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse;
- (d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse;
- (e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and, therefore, they can be targets of abusive people, particularly those who base abuse on sexuality.

D. Institutions

The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of lack of identified standards or lack of implementation and monitoring of these standards. Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment (see paragraphs 42-44 above). The Committee therefore urges States parties to use the placement in institution only as a measure of last resort, when it is absolutely necessary and in the best interests of the child. It recommends that the States parties prevent the use of placement in institution merely with the goal of limiting the child's liberty or freedom of movement. In addition, attention should be paid to transforming existing institutions, with a focus on small residential care facilities organized around the rights and needs of the child, to developing national standards for care in institutions, and to establishing rigorous screening and monitoring procedures to ensure effective implementation of these standards.

49 In addressing institutionalization, States parties are therefore urged to set up programmes for de-institutionalization of children with disabilities, re-placing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment.

E. Periodic review of placement

50 Whatever form of placement chosen for children with disabilities by the competent authorities, it is essential that a periodic review of the treatment provided to the child, and all other circumstances relevant to his or her placement, is carried out to monitor his or her well-being.

D. Inclusive education

66 Inclusive education should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system.

71 Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

IX. Special protection measures

74 (a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard

(b) ...Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;

(c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems

75 Children with disabilities are particularly vulnerable to different forms of economic exploitation, including the worst forms of child labour as well as drug trafficking and begging.

76 Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child.

78 ...armed conflicts are a major cause of disabilities whether children are actually involved in the conflict or are victims of combat... Special attention should be paid to the recovery and social re-integration of children who suffer disabilities as a result of armed conflicts. Furthermore, the Committee recommends that States parties explicitly exclude children with disabilities from recruitment in armed forces and take the necessary legislative and other measures to fully implement that prohibition.

F. Refugee and internally displaced children, children belonging to minorities and indigenous children

Certain disabilities result directly from the conditions that have led some individuals to become refugees or internally displaced persons, such as human-caused or natural disasters. For example, landmines and unexploded ordnance kill and injure refugee, internally displaced and resident children long after armed conflicts have ceased. Refugee and internally displaced children with disabilities are vulnerable to multiple forms of discrimination, particularly refugee and internally displaced girls with disabilities, who are more often than boys subject to abuse, including sexual abuse, neglect and exploitation. The Committee strongly emphasizes that refugee and internally displaced children with disabilities should be given high priority for special assistance, including preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration.