

Protecting the rights of unaccompanied and separated children*

The **extremely vulnerable situation** of unaccompanied and separated children calls for an adequate response 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

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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.

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.