

Key recommendations

2022 Human Rights Council Annual Day on the Rights of the Child, related OHCHR report and resolution on the theme “rights of the child and family reunification”

Child Rights Connect Taskforce on child rights and family reunification¹ and UNICEF

October 2021

1. Children’s right to family life as the framework for prevention of family separation:

As stated by the Committee on the Rights of the Child (CRC) and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), every child should have their right to family life fully respected, protected and fulfilled without discrimination of any kind. Protection of the right to a family environment not only requires that States **refrain from taking actions that could result in family separation** or other arbitrary interference in the right to family life, but **also take positive measures to maintain the family unit, prevent separation, take action to reunify separated family members and to establish or maintain family contact when separation occurs**, in accordance with the UN Convention on the Rights of the Child (UNCRC), the UN Convention on the Rights of Persons with Disabilities, and the Guidelines for the Alternative Care of Children.²

Recommendations:

- 1.1. **Recall that several international and regional human rights instruments recognise children’s right to family life**, and, as far as possible, the right to know and be cared for by his or her parents or, where applicable, members of the extended family or community as provided by local custom.³
- 1.2. Recall the **State’s primary responsibility in promoting and supporting parental care, preventing unnecessary child-family separation, facilitating family-child reunification and reintegration** where separation has occurred, where appropriate; and in all matters ensuring the best interests of the child.⁴
- 1.3. Recall the child’s right to identity includes name, nationality and family relations.⁵ **By preventing unnecessary family separation, States are equally upholding the child’s right to identity in family relations** and by fulfilling the child’s right to identity and nationality, States are enabling establishment and maintenance of family links.
- 1.4. Call on States to **take the necessary measures to support children and their families and prevent unnecessary child-family separation, by addressing the drivers of separation** through programs that provide early and comprehensive information, services and support to children and their families in their caregiving role, especially families in vulnerable situations, by providing full protection of children’s civil, political, economic, social and cultural rights without discrimination of any kind; universal health coverage; free, safe, inclusive, equitable, and enabling learning opportunities and environments; robust, well-financed and integrated child welfare and child protection system; child-sensitive social protection policies and services; alternatives to detention for children and caregivers; and effective measures to prevent all forms of violence against children.⁶

¹Composed of: Better Care Network; Child Identity Protection; Child Rights Connect; Defence for Children International; Hope and Homes for Children; International Child Rights Center; Make Mothers Matter; QUINO; Railway Children Africa; Save the Children; SOS Children’s Villages International; Terre des Hommes; and Lumos.

² See CMW and CRC, Joint General Comment No. 4 and No. 23, para. 27.

³See *Key Recommendations for the 2019 UNGA Resolution on the Rights of the Child with a focus on children without parental care*, para.1.b), accessible at: <https://bettercarenetwork.org/key-recommendations2019UNGA-resolution-on-the-rights-of-the-child>

⁴ Ibid. para.1.l).

⁵ Article 8(1) UNCRC.

⁶ For further language see A/RES/64/142; A/RES/74/133.

- 1.5. Reaffirm that **financial and material poverty, or conditions directly and uniquely attributable to such poverty, should never be the sole justification for removing a child from parental care**, for receiving a child into alternative care or for preventing a child's social reintegration. States should provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, including by providing, parental education, social benefits and child allowances and other social support services regardless of the status of the parents or the child.⁷
- 1.6. Reaffirm that separation of a child from his or her parents based on the disability of the child or parents, or both, is discrimination and that States must ensure that parents with disabilities and parents of children with disabilities have the necessary support in the community to care for their children.⁸
- 1.7. Recognize the harm of institutionalization and institutional care, including detention, to children's well-being and development across domains and throughout the life-course, including increased risk of violence, exploitation, and abuse. Note that most children in institutions have living parents and family members and encourage States to **replace institutionalization with appropriate measures to support family and community-based services** and, where the immediate family is unable to care for a child, undertake every effort to provide alternative care within the wider family and, failing that, within the community in a family setting, bearing in mind the best interests of the child and taking into account the child's will and preferences.⁹

2. The child as a right holder within the family and the diversity of families:

The preamble to the UNCRC refers to the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The family, as a group, is not in itself a subject of rights, therefore, States must guarantee the protection of individual rights of all members of the family, including children's rights as enshrined in the UNCRC, and all measures in support of the family unit should be aimed at upholding the rights of the individual family members in line with international human rights law.

The Committee on the Rights of the Child clarified that "the term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents, or, where applicable, the members of the extended family or community as provided for by local custom."¹⁰ Therefore 'family' means in fact "all forms of families in different contexts", including the full range of care-giving environments, kinship, non-nuclear families, same-sex-parented households, single-headed families, adoptive families, children-headed households and any other arrangements. All families should respect children's rights and best interests, and ensure provision of care, nurturance and development.

Recommendations:

- 2.1. Reaffirm that **all children, whether they live in a family environment or not, remain rights-holders whose rights cannot be overlooked**, limited or negated, because of the environment in which they live and that their rights must be fulfilled, and their best interests must be a primary consideration, even when they may conflict with the rights or interests of others, including their parents.
- 2.2. **Recognise the diversity of families and States' obligation to support and strengthen all forms of families in different contexts**, as well as family environments, without discrimination of any kind, so that the rights of children are fulfilled.¹¹ In the context of the resolution, reunification with the family must consider family in a broad sense, including siblings, the extended family and

⁷ CMW and CRC, Joint General Comment No. 4 and No. 23. Para. 30.

⁸ CRPD, General Comment No.6, paras. 61 and 62.

⁹ UN General Assembly resolution A/RES/74/133, paras. 26, 35(f), 35(g) and Human Rights Council resolution A/HRC/RES/40/14, OP.16.

¹⁰ CRC, General Comment No.14, para. 59.

¹¹ See GA Resolution 65/277 and HRC Resolution 7/29.

families created in the contexts of migration, displacement, armed conflict and other areas covered in the resolution.

3. The rights of the child and family reunification, including in cross-border situations.

The UNCRC addresses specifically family reunification of children who are, or whose parents are, in a cross-border situation and requires States to deal with family reunification “in a positive, humane and expeditious manner” (Art.10 UNCRC). Under this framework, family reunification is addressed in **the contexts of 1) migration and displacement; 2) armed conflict, national security, and terrorism; and 3) sale and trafficking of children.**

General recommendations:

- 3.1. Recognise that **children in all contexts must be treated first and foremost as children with all the rights that attach to that status.**¹²
- 3.2. **Recognise in law and in practice that all children are entitled to the enjoyment of all their rights without discrimination, including respect for family life and family reunification when in their best interests,** regardless of the children’s or their parents’, legal guardians’ or family members’ age, gender, gender identity or sexual orientation, ethnic or national origin, disability, religion, economic status, migration/documentation status, statelessness, race, colour, marital or family status, health status or other social conditions, activities, expressed opinions, or beliefs.¹³
- 3.3. **Recognise that children may be in a situation of double or multiple vulnerabilities** both as children, and as children affected by the above-mentioned contexts, due to their migration status in the country of origin, transit and destination; exposure to various forms of abuse, physical harm, psychological trauma, marginalization, discrimination, xenophobia, gender-based violence, sexual and economic exploitation, child labour, trafficking, immigration raids, and detention or criminal processing arising from those contexts; and the risks faced due to exclusion from and barriers to access child-sensitive and gender-responsive essential services, including but not limited to education, health care, child protection, and justice.¹⁴
- 3.4. Reaffirm that **all frameworks, legislation, policies, practices and other measures relating to children** in the above-mentioned contexts **must be guided by international human rights law, and where relevant international humanitarian law, and in particular the UNCRC and its general principles,** non-discrimination, the best interests of the child, participation, and the right to life, survival and development,¹⁵ including through the **establishment of comprehensive, inter-institutional policies between child protection and welfare authorities and other key bodies, adequate resourcing, and continuous and periodic training** of child protection, migration, justice, and other relevant officials on the rights of children, including intersectional discrimination.¹⁶
- 3.5. Express concern that children between 15 and 18 years tend to be provided much lower levels of protection and are sometimes considered as adults or left with an ambiguous status until they reach 18 years of age and urge States to **ensure that equal standards of protection are provided to every child, regardless of their age.**¹⁷

¹² CMW and CRC, Joint General Comment No. 3 and No. 22, paras. 11.

¹³ CMW and CRC, Joint General Comment No. 3 and No. 22, paras. 21.

¹⁴ Ibid. para. 40; UN Network on Migration, Guidance Note on Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability (July 2021).

¹⁵ CMW and CRC, Joint General Comment No. 3 and No. 22, para.13; HRC resolution 47/12.

¹⁶ CMW and CRC, Joint General Comment No. 3 and No. 22, paras. 13 and 18.

¹⁷ CMW and CRC, Joint General Comment No. 4 and No. 23. Para. 3.

- 3.6. Reaffirm that **age determination procedures should only be undertaken where there is a reasonable doubt about a person's age. States' laws and procedures should presume that a person who is required to undergo an age assessment is a child unless and until determined otherwise through an age assessment.** If doubts remain after completion of the age assessment procedure, the person should be considered a child. The age determination procedure should draw on a gender-sensitive, culturally appropriate, and multidisciplinary comprehensive assessment by independent and qualified professionals skilled in combining different aspects of development, conducted in a prompt, safe, age-appropriate and dignified manner, including the views of the child and, as appropriate, accompanying adults, in a language the child understands. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate and with wide margins of error. States should establish an appeal procedure by an independent body.¹⁸
- 3.7. Call on States to **address barriers to efficient and transparent family reunification procedures**, inter alia through **simplifying and speeding up procedures** without compromising human rights standards or child safeguards, including facilitating access to application processing capacities and consular services; providing accurate information quickly; allowing for flexibility on documentary requirements; and easing financial burdens.¹⁹ Where family reunification is not possible, if in the child's best interest, States should establish mechanisms to facilitate and maintain regular family contact.
- 3.8. **Family reunification and reintegration procedures should recognize that reintegration is not a single event but a longer process** requiring preparation, planning, support and follow-up measures that take into account the best interests of the child and the right of the child to be heard, reflect the child's age, needs, evolving capacities, the cause of separation, and past experiences or trauma, and update children and their caregivers on the process of and options for family tracing, reunification, and reintegration.²⁰
- 3.9. Reaffirm that **family reunification in the country of origin should not be pursued where there is a "reasonable risk" that such a return would lead to the violation of the human rights of the child**²¹ and when it has been determined not to be in the best interests of the child.
- 3.10. Call on States **to invest in robust cooperation mechanism to strengthen collaboration among relevant actors across borders**, internationally, regionally and bilaterally. Cross-border cooperation should cover: family tracing, assessment and reunification; ensuring appropriate provision of care, protection, support and access to services for all children between jurisdictions; establishing and strengthening case management across borders through individual assessments and case plans; developing and applying common standards; and exchanging good practices.²² These mechanisms should ensure that children's rights are protected by all relevant States, including the new state of habitual residence, and not discriminated against in this process due to children's status or that of their caregiver(s), and fully respect data protection as to avoid potential exposure of children to harm.
- 3.11. Call on States to take all necessary measures to ensure that **all children are immediately registered at birth and issued birth certificates, irrespective of their status or that of their parents or guardians**, removing all legal and practical obstacles to birth registration. States should ensure that civil registries are equipped to **provide children and their families with all civil status documents required to prove their legal identity**. States should further ensure that **civil registries cooperate with each other to ensure portability of civil status documents**,

¹⁸ For the full text see CMW and CRC, Joint General Comment No. 4 and No. 23. para. 4; and Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Global Migration Group (GMG), Principles and Guidelines on the human rights protection of migrants in vulnerable situations, Principle 10.4.

¹⁹ UNICEF WORKING PAPER: Family Unity in the Context of Migration, p.9.

²⁰ See Inter-agency Group on Reintegration (2016). Guidelines on Children's Reintegration.

²¹ CMW and CRC, Joint General Comment No. 4 and No. 23, para. 35.

²² The Initiative for Child Rights in the Global Compacts, The Global Compact for Migration: Actionable Commitments for Children on the Move, page. 6, accessible at: https://www.childrenonthemove.org/wp-content/uploads/2017/12/Actionable-Commitments_01122017.pdf

including when children move across borders. Children's personal data, in particular biometric data, should only be used for child protection purposes, with strict enforcement of appropriate rules on collection, use and retention of, and access to, data.²³

- 3.12. Recognise that **family reunification facilitates the child's right to identity in family relations** and the States responsibility to speedily re-establish this identity, when separation occurs.²⁴ Family reunification further encourages a respect for the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.²⁵
- 3.13. Call on States to ensure that their legislation, policies, measures and practices guarantee **child-sensitive due process in all administrative and judicial proceedings relating to family life and family**, including access to appeal mechanisms.²⁶ If, in a cross-border context, the country of destination refuses family reunification to the child and/or to his/her family, **detailed information should be provided to the child, in a child-friendly and age-appropriate manner, on the reasons for the refusal and on the child's right to appeal.**²⁷
- 3.14. Call on States to ensure **standardized policies to guide authorities in offering free, quality legal advice and representation for children in all contexts**, including contexts of migration and displacement, armed conflict, national security, associated with terrorisms, and affected by sale and trafficking in persons.²⁸

1) Family reunification in relation to children in the context of international migration and displacement:

Although the right to family life should be respected and fulfilled in all contexts, migration and displacement frequently cause the separation of families, including for prolonged periods of time due to existing barriers to accessible channels for family reunification.

Recommendations:

Legal and policy frameworks for a children's rights approach to family reunification:

- 3.1.1. Welcome the **Joint general comment No. 3 (2017)** of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and **No. 22 (2017)** of the Committee on the Rights of the Child; the **Joint general comment No. 4 (2017)** of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and **No. 23 (2017)** of the Committee on the Rights of the Child; and **General Comment No. 6 (2005)** of the Committee on the Rights of the Child on **Treatment Of Unaccompanied And Separated Children Outside Their Country Of Origin**.
- 3.1.2. **Reaffirm that the authorities responsible for children's rights, child protection and welfare, should take primary responsibility and have decision-making power on policies, practices and decisions that affect the rights of children in the context of international migration** and comprehensive child protection systems should mainstream the situation of all children in the context of international migration, including in countries of origin, transit, destination, and return.²⁹
- 3.1.3. **Develop and put into practice**, with regard to unaccompanied children and children with families, **a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions**, including further integration and

²³ CMW and CRC, Joint General Comment No. 3 and No. 22, paras. 17; CMW and CRC, Joint General Comment No. 4 and No. 23. Para. 20-21; OHCHR and GMG, Principles and practical guidance on the human rights protection of migrants in vulnerable situations, Principle 10.9.

²⁴ Article 8(2) UNCRC.

²⁵ Article 20 (3) UNCRC.

²⁶ CMW and CRC, Joint General Comment No. 4 and No. 23. para. 15 and 17.

²⁷ CMW and CRC, Joint General Comment No. 3 and No. 22, para. 36.

²⁸ CMW and CRC, Joint General Comment No. 4 and No. 23. para.14-19.

²⁹ CMW and CRC, Joint General Comment No. 3 and No. 22, para. 14.

settlement in the country of current residence, repatriation to the country of origin or resettlement in a third country through a rights-based approach.³⁰

- 3.1.4. During **family reunification procedures**, States should **take into account the guidelines provided in the two Joint General Comments of the CRC and CMW and the 2021 UNHCR Best Interests Procedure Guidelines** in order to ensure that:
- applications for family reunification are dealt with in a positive, humane and expeditious manner in compliance with due process guarantees;
 - decisions are taken case-by-case considering the best interest of the child using a **robust best interests assessment and best interests determination processes** and finding child-centred solutions that take into account the preservation of the family unit;
 - children's views are listened to and taken into account in the process; and
 - include a sustainable reintegration plan where the child is guaranteed to participate in the process.³¹

Prevention of family separation, and maintaining family life and child's right to identity in family relations:

- 3.1.5. Call on States to expand **regular, safe and non-discriminatory pathways for families to migrate together**, including migrant workers, and providing options for refugees to seek protection as a family unit, allowing applications to be made from countries of origin, transit or destination,³² and removing barriers such as complex administrative requirements, restrictive eligibility criteria, heavy financial requirements, lack of information and support, as well as logistical barriers.
- 3.1.6. Urge States to take the **necessary measures to ensure that migrant families, regardless of their status, are not separated** inter alia during disembarkation and border controls, at reception or registration, or in the course of detention and deportation. Recognize that separating a family when considering returns or removing a family member from a State's territory, or otherwise refusing to allow a family member to enter or remain in the territory, should always take into account the best interest of the child, and may amount to arbitrary or unlawful interference with family life. To ensure family unity, families with children should be accommodated together in a safe and child-friendly environment.³³
- 3.1.7. Call on States to **provide clear, permanent, and accessible mechanisms for children and their families to access avenues for status regularization**, including long-term regular migration status or residency permits, **based on various grounds**, such as family unity, labour relations, social integration and others, such as length of residence, or when return to the parent's country of origin would be against the child's best interests.³⁴
- 3.1.8. Call on States to take into account **measures to maintain family unity as part of labour migration agreements**. Explore allowing family to move with the migrant workers. At a minimum, include provisions such as visa for family visits, and including family leave in migrant worker's labour contracts. When a temporary stay becomes long-term or permanent, migrants should have the option to reunify with their family. Similarly, where a stay becomes de-facto long-term, but is not recognised in visa categories, there should be an option to adjust the rights to family reunification.³⁵
- 3.1.9. Reaffirm that unaccompanied or separated children are **entitled to special protection** and assistance by the State including the provision of suitable and appropriate alternative care

³⁰ CMW and CRC, Joint General Comment No. 3 and No. 22, para. 32, j) and k).

³¹ Article 10 UNCRC; CMW and CRC, Joint General Comment No. 3 and No. 22, para. 32-34.; Working Paper, 2018, Family Unity on the Context of Migration, p.9, <https://www.unicef.org/documents/working-paper-family-unity-context-migration>

³² Ibid. p.9

³³ OHCHR and GMG, Principles and practical guidance on the human rights protection of migrants in vulnerable situations, Principle 9.1 and 9.6.

³⁴ CMW and CRC, Joint General Comment No. 4 and No. 23, para. 29.

³⁵ UNICEF Working Paper, 2018, Family Unity on the Context of Migration.

and accommodation in accordance with international human rights law and standards³⁶ such as the Guidelines for the Alternative Care of Children³⁷ and call on States to take all the **necessary measures to trace and reunite unaccompanied or separated children with their families**, taking into consideration the best interests of the child, noting that reunification in the country of origin may not always be in the child's best interests.³⁸

Alternatives to detention and prioritization of family life:

3.1.10. Reaffirm that **children should never be detained for immigration purposes**, even for short periods, whatever their status or the status of their parents, and call on States to prohibit by law and abolish in policy and practice child and family immigration detention. Prioritize the right to liberty and the right to family life of children by finding alternatives to detention for the whole family. Children whose parents or guardians are detained should never be detained for the purpose of preserving family unity.³⁹

2) Family reunification in the context of armed conflict, national security, terrorism, and counterterrorism, including child returnees:

Despite legal prohibitions under international human rights law and international humanitarian law, children continue to be recruited and used in various capacities by armed forces and armed groups, including those designated as terrorist groups. Provisions of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict (OPAC) that prohibit recruitment and use by armed forces or armed groups should be integrated into domestic legislation. In addition, legislation, policies, and practices countering violence by armed groups, including those designated as terrorist groups, must treat children first and foremost as victims, irrespective of any association with such groups, and provide solutions that uphold the rights of the child, including the best interest of the child, family life and family reunification.

Recommendations:⁴⁰

Legal and policy frameworks for a child's right approach to family reunification:

- 3.2.1. **Welcome the Paris principles and guidelines** on children associated with armed forces or armed groups (Paris Principles)⁴¹ and **Paris commitments** to protect children from unlawful recruitment or use by armed forces or armed groups (Paris Commitments) and urge States that have not already done so to endorse the Paris Principles and Paris Commitments.⁴²
- 3.2.2. Call on **States to criminalise the recruitment and use of children by armed forces and armed groups, including by armed groups designated as terrorist groups, consistent with OPAC**, and to take steps to investigate and prosecute those responsible for such violations.⁴³
- 3.2.3. **Reaffirm that children recruited** by armed forces and armed groups, including designated terrorist groups, **are recognised as victims of grave human rights abuses**, have the same rights

³⁶ For more information see Committee on the Rights of the Child, general comment No. 6, paras. 39-40.

³⁷ A/RES/64/142

³⁸ OHCHR and GMG, Principles and practical guidance on the human rights protection of migrants in vulnerable situations, Principle 9.3.

³⁹ CMW and CRC, Joint General Comment No. 4 and No. 23. para. 5-13; OHCHR and GMG, Principles and practical guidance on the human rights protection of migrants in vulnerable situations, Principle 8.4.

⁴⁰ See Recommendations from Child Justice Advocacy Group, *Bringing Children Home: A children's rights approach to returning from ISIL (Jan 2020)*, accessible at: <https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/5e2eff4dd8d299147ca07280/1580138318883/Child+Returnees+Position+Paper+%28Final+Janv.+2020%29.pdf>

⁴¹ See [https://www.icrc.org/en/doc/assets/files/other/parisprinciples_en\[1\].pdf](https://www.icrc.org/en/doc/assets/files/other/parisprinciples_en[1].pdf)

⁴² See https://www.icrc.org/en/doc/assets/files/other/pariscommitments_en.pdf

⁴³ Article 4 OPAC.

and protections as all children and that they have a right to reintegration that all States have an obligation to fulfil.⁴⁴

- 3.2.4. Call on States to **explicitly state that national counterterrorism and national security legislation does not apply to children.**⁴⁵ The treatment and handling of children should be provided through national and international child welfare, social service and child justice laws, frameworks, and standards, outside of security and counterterrorism frameworks which can result in further stigmatization and the securitization of critical social services for children.
- 3.2.5. Calls on States to **invest in measures to decrease stigma and discrimination for children associated or allegedly associated with non-state armed groups and terrorism.** Labelling or stigmatising certain groups of children as national security threats or as terrorists within public discourse or policy discussions based on an abstract danger that they are seen to represent diminishes their human dignity and human rights. In both the short and long-term, stigmatisation leaves this group of children vulnerable to discrimination, exploitation, abuse, and exclusion.
- 3.2.6. **States should pay particular attention to the treatment of children associated or allegedly associated with non-state armed groups,** including those that commit acts of terrorism, and **establish standard operating procedures** for the rapid handover of children who are found, rescued or otherwise encountered by security personnel during the course of military operations, to civilian child protection actors for the provision of age-sensitive and gender-responsive protection, legal, medical social, and other services to promote their recovery and reintegration.⁴⁶
- 3.2.7. Call on States to ensure that **all children are able to access health, education and other services while in displacement camps or while deprived of their liberty,** irrespective of any actual or alleged association with a designated terrorist group.⁴⁷

Prevention of family separation, maintaining family life and child's right to identity in family relations:

- 3.2.8. Reaffirm that **States must never deprive a child of their identity or nationality,** even if they have been recruited or used by a terrorist group, lived under the control of a terrorist group, or come from a family that is believed or proven to have ties to a terrorist group. States must accept responsibility for children who are their citizens, enabling them to return to their country and reunite with their families and not take any steps that will render children stateless.
- 3.2.9. Call on States not to separate children from their parents unless it is in the child's best interests. To minimize family separation, **States must consider repatriating parents and children, including sibling groups, together.**⁴⁸
- 3.2.10. Call on States to **develop quality interim alternative care options that allows children to live in a family setting within a community and reintegration services for children affected by armed conflict, child survivors of recruitment and use, and for child returnees,** including health, mental health and psychosocial support, education, vocational and social support that takes account of an individual child's gender, age and cultural background.

Children in contact with the justice system:

- 3.2.11. Call on States to **ensure that children accused of national security offenses, terrorists acts or other conduct under anti-terrorism legislation be dealt with exclusively in the child justice system**⁴⁹. Child justice systems should always be used for children, including in the case of

⁴⁴ See Article 7 OPAC; Paris Principles 3.6; UN Security Council resolution S/RES/2427 (2018) on children and armed conflict, OP.20; UN General Assembly resolution A/RES/74/133 (2019) on the Rights of the Child, OP.18.

⁴⁵ UN Global Study on Children Deprived of Liberty, p.652

⁴⁶ Based on UN Security Council resolution S/RES/2427 (2018) on children and armed conflict, OP.19.

⁴⁷ UN Security Council resolution S/RES/2427 (2018) on children and armed conflict, OP.14.

⁴⁸ See Open Society Justice Initiative, *European States' Obligations to Repatriate the Children Detained in Camps in Northeast Syria (July 2021)*, pp. 80-86

⁴⁹ UN Global Study on Children Deprived of Liberty, p.652

terrorism or national security offenses. Where such systems are not developed or available, children's cases should be handled by civilian authorities responsible for and trained in child-friendly child justice processes, rather than military, intelligence, national security or similar special courts, and should be supported by child protection actors.

- 3.2.12. **Children below the minimum age of criminal responsibility should be excluded from criminal or juvenile justice processing.** Children above the minimum age of criminal responsibility at the time of any alleged offense, including offenses allegedly committed while associated with an armed force or group, may be held accountable consistent with international law and with the application of the full guarantees and protections of a specialised child justice system in accordance with International Juvenile Justice Standards and fair trial standards, with a focus on recovery, specialized diversion and restorative justice practices to assist children's physical, psychological and social integration.
- 3.2.13. **Children should not be deprived of their liberty, investigated, prosecuted or punished for the mere fact of their association, including association with a designated terrorist group, or for activities that would not otherwise be criminal** such as cooking, cleaning, or driving.⁵⁰
- 3.2.14. **Children whose parent, caregiver or family members are alleged to be 'terrorist fighter(s)' or to be otherwise associated with a designated terrorist group shall not be deprived of their liberty, prosecuted, or held accountable for the actions of their relatives,** nor shall they be excluded from measures or services that promote their physical and psychosocial recovery or reintegration.

Alternatives to detention and prioritization of family life:

- 3.2.15. Call on States to **provide children and families who have been separated or detained with access to legal aid and due process of law**, and to swiftly establish and maintain contact between the detained child and his or her family members.⁵¹
- 3.2.16. Reaffirm that **detention should only be used as a last resort for the shortest period and that children should never be subjected to preventive or administrative detention for national security or counter-terrorism purposes; community-based and non-custodial alternatives to detention should always be prioritized.**⁵²

3) Family reunification in the context of children affected by sale, trafficking, and other forms of exploitation:

Family separation can be both a consequence and a driver of children being exposed to sale, trafficking, and other forms of exploitation. Under the UNCRC and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), children who are victims of sale, trafficking and other forms of exploitation are afforded special protection measures and States must take all necessary measures to prevent and protect children from such forms of exploitation (Articles 32-36 UNCRC), including through prevention of family separation and promotion of family reunification when in the best interests of the child.

In addition, the 2019 UNGA Resolution on the Rights of the Child recognises the link between orphanage volunteering and tourism and child trafficking and exploitation and calls on Member States to take appropriate measures to prevent and address the harms related to these practices. It also more broadly encourages Member States to protect children who are victims of trafficking and are deprived of parental care, enact and enforce legislation to prevent and combat the trafficking and exploitation of children in care facilities, and support children in returning to their families and in

⁵⁰ Paris Principles, 8.7.

⁵¹ See UN Global Study on Children Deprived of Liberty, p.652

⁵² See Report by the Independent Expert leading the global study on children deprived of liberty A/74/136 (2019), para.140; accessible at: <https://undocs.org/A/74/136>

receiving appropriate victim-centred and trauma-informed mental health and psychological assistance.⁵³

Recommendations:

- 3.3.1. **Take appropriate measures to protect children who are victims of sale, trafficking and other forms of exploitation** who may be deprived of family care, as well as enact and enforce legislation to prevent and combat the trafficking in and exploitation of children.⁵⁴
- 3.3.2. **Establish family reunification and reintegration channels for children who are victims of sale, trafficking and other forms of exploitation, that consider their specific situation of vulnerability and follows a best interest determination procedure** that takes into account the views of the child, and that provides children with appropriate mental health and psychological assistance that is victim-centred and trauma-informed.⁵⁵
- 3.3.3. Recognise that reintegration into the child's family should be a key objective in the child's recovery. This could be in the country of origin or destination, in line with the best interest of the child. However, it should be **acknowledged that some children do not have families, cannot be reunited with their families due to an unsafe environment within the home, or face a potential risk of being re-trafficked**. In situations where the safe reunification of the child with their family is not possible, it is important to establish care arrangements that respect the rights, best interests and preferences of the child and that favour family-type settings.⁵⁶ In particular, (re-)placing child victims of trafficking in institutions, a common response which places them at heightened risk of re-trafficking among other harmful outcomes,⁵⁷ must be avoided.
- 3.3.4. Call on States to **recognize the harms of orphanage volunteering and its links to child trafficking and exploitation and to take appropriate measures to prevent and address the harms related to volunteering programmes in orphanages, including in the context of tourism**.⁵⁸
- 3.3.5. Call on States to **reaffirm that children who have been recruited or used by terrorist groups may also be victims of trafficking and therefore be entitled to special protection under international law**. As acknowledged in UN Security Council Resolution S/RES/2331, victims of trafficking in this context should be considered victims of terrorism and eligible for support, recognition, and redress available to these victims as well as access to national relief and reparations programmes.⁵⁹
- 3.3.6. Call on States to **promptly and systematically appoint a qualified guardian for all unaccompanied or separated children as to prevent but also detect trafficking**.⁶⁰
- 3.3.7. Call on **States to refrain from detaining child who are victims of trafficking**⁶¹. As in the case of child immigration detention more broadly, States may claim that they are detaining children in order to protect them, ostensibly using detention to prevent trafficking, smuggling or exploitation. However, detention is not a form of child protection and in fact can facilitate recruitment by human traffickers.⁶²

⁵³ General Assembly resolution A/RES/74/133 on the rights of the child (2019), paragraph 35 (t).

⁵⁴ Ibid.

⁵⁵ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, p.11.

⁵⁶ ECPAT, *Explanatory report to the Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, prostitution and child pornography* (2019), p.96.

⁵⁷ Lumos (2020) *Cracks in the system: child trafficking in the context of institutional care in Europe*, accessible: <https://www.wearelumos.org/resources/cracks-system/>

⁵⁸ General Assembly resolution A/RES/74/133 on the rights of the child (2019), paragraph 35 (t).

⁵⁹ UN Security Council Resolution S/RES/2331, para. 10.

⁶⁰ ICAT, Issue Brief 6, Trafficking in children, p.3, <https://www.unicef.nl/files/ICAT-IB-06-Trafficking%20in%20Children.pdf>

⁶¹ Special Rapporteur on trafficking in persons, especially women and children report to the General Assembly, A/75/169.

⁶² UN Global Study on Children Deprived of Liberty, pp441-442 <https://childrendeprivedofliberty.info/wp-content/uploads/2020/09/Full-Global-Study-Revised-Version.pdf>

List of signatories as of 15 November 2021:

1. Better Care Network
2. Child Rights Connect
3. Child Identity Protection (CHIP)
4. Defence for Children International (DCI)
5. Grupo de Iniciativa Nacional por los Derechos de los Niños, Perú (GIN)
6. Hope and Homes for Children
7. Lumos
8. Make Mothers Matter (MMM)
9. Railway Children Africa
10. Save the Children
11. SOS Children's Villages
12. Terre des Hommes International Federation
13. United Nations Children's Fund (UNICEF)

