

Regional Guidelines for Responding to the Rights and Needs of Unaccompanied and Separated Children (UASC)

Institute of Human Rights and Peace Studies, Mahidol University

ECPAT International

The Research and Education for Peace, University Sains Malaysia

The Centre for Southeast Asia Social Studies, Gadjah Mada University, Indonesia



Institute of Human Rights
and Peace Studies



Universitas
Gadjah Mada



Commissioned by: **United Nations High Commissioner for Refugees (UNHCR)**

Funded in the 2012-13 Financial Year by:

Australian Government Department of Immigration and Citizenship

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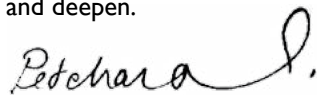
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PREFACE

In September 2012, the Institute of Human Rights and Peace Studies (IHRP), Mahidol University (Thailand) and ECPAT International, in collaboration with The Research and Education for Peace University of Sains Malaysia (REPUSM) and the Centre for Southeast Asia Social Studies, Gadjah Mada University (Indonesia) began implementing a regional research project to map and analyse the protection situation of unaccompanied and separated children (UASC) in Southeast Asia. The project had two main general objectives: a) map and analyse the situation and treatment of the mixed flows of unaccompanied and separated children who move irregularly into Indonesia, Malaysia and Thailand; and b) make recommendations for improvements in governmental and organisational responses including through the development of regional guidelines that could lead to a more harmonised approach towards UASC.

The overall project was jointly led by Dr. Sriprapha Petchamesree (IHRP, Mahidol University) and Mark Capaldi (ECPAT International). Researchers were drawn from the three target countries namely Indonesia, Malaysia and Thailand. In Thailand, the team was able to collate data from child migrant workers, refugees, stateless persons, street children and child trafficked victims. The research team in Indonesia confirmed that UASC are mainly from the refugee/asylum seekers category. The other groups of UASC (such as foreign migrant workers and child trafficking victims) were not found in Indonesia. While a mixture of data from refugee, stateless, irregular migrants, and asylum seeker children was accessed in the state of Sabah in Malaysia by the research team, their study was generally limited to refugee children.

This publication is the product of the second key objective of the research project which was to develop regional guidelines for governments and service providers that deal with profiling, registration, documentation, guardianship and care arrangements as well as the search for durable solutions for UASC. It has taken almost nine months to prepare these guidelines. These guidelines were drafted as a follow-up to the evidence-based research conducted in Indonesia, Malaysia and Thailand on foreign UASC. They respond to a key finding that emerged from all three research reports that the concept of “unaccompanied and separated children” is not widely known, used or well understood in the region, despite the fact that there is a growing presence of UASC in need of protection. The conditions and issues affecting unaccompanied and separated children are diverse and complex and there is great potential for overlap between these three established categories of UASC (refugee/asylum seekers, child migrants on the move, child trafficking victims) as a child can easily move from one category to another. The regional guidelines therefore seek to highlight the protection concerns relevant across the three categories in order to protect children who may otherwise fall within the gaps. This publication seeks to practically assist governments, international organisations and NGOs as well as other service providers working directly with UASC and should be viewed as an evolving document that can be strengthened and developed as policy and practice debates and learning in addressing the rights and protection concerns of UASC in the region advance and deepen.



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TABLE OF CONTENTS

Acknowledgements	iii
Research Project Team Members	iv
Preface	v
List of Acronyms	vii
Section I: Introduction.....	1
Section II: Schema for Identifying UASC.....	7
Section III: UASC Lexicon	19
Section IV: International Guiding Principles & Regional Guidelines on UASC.....	25
1. Access to the Territory.....	26
2. Identification and Referral to Appropriate Authorities	27
3. Registration and Documentation.....	30
4. Age Assessment.....	32
5. Appointment of a Guardian	33
6. Exemption from Detention	34
7. Family Tracing and Contact.....	35
8. Family Reunification.....	37
9. Interim Care.....	38
10. Access to the Best Interests Determination Process.....	43
11. Legal Representation and Assistance.....	45
12. Minimum Procedural Guarantees	46
13. Remaining and Integration in the Host Country	48
14. Return to Country of Origin or Third Country Resettlement.....	50
Section V: Further Resources	53
Endnotes	60

LIST OF ACRONYMS

ASEAN	Association of Southeast Asian Nations
BIC	Best Interests of the Child
BID	Best Interests Determination
CCSDPT	Committee for Coordination of Services to Displaced Persons in Thailand
COERR	Catholic Office for Emergency Relief and Refugees
CPA	Child Protection Act
CRC	Convention on the Rights of the Child 1989
CSW	Community Social Workers
FOCUS	Foundation of Child Understanding
ICRC	International Committee of the Red Cross
IDC	Immigration Detention Centre
ILO	International Labour Organization
ILO-IPEC	ILO's International Programme on the Elimination of Child Labour
IOM	International Organization for Migration
ISS	International Social Services
MAPO	Council of Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MOE	Ministry of Education
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOL	Ministry of Labour
MOU	Memorandum of Understanding
MSDHS	Ministry of Social Development and Human Security
NGOs	Non-Governmental Organisations
NV	Nationality Verification
SMF	Somaly Mam Foundation
SOPs	Standard Operating Procedures
TICSA	Trafficking in Children for Labour and Sexual Exploitation
TICW Project	Mekong Project to Combat Trafficking in Children and Women
THALACC	Thai-Lao Cross Border Collaboration on Tracing Missing Trafficked Victims in Thailand
TRAFCORD	Anti-Trafficking Coordination Unit Northern Thailand
UASC	Unaccompanied and Separated Children
UNIAP	United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Programme
WVI	World Vision International

SECTION I: INTRODUCTION

INTRODUCTION TO GUIDELINES

Background

Children who are separated from their parents or families and who find themselves crossing international borders due to conflict, natural disasters, human rights violations, trafficking, poverty, or lack of educational or economic opportunities, are particularly vulnerable. These children are generally undocumented and move irregularly across borders, leaving them particularly susceptible to coercion, deception, abuse and exploitation. A lack of legal protection, the risk of being criminalised, and the absence of appropriate policies and programmes to respond to their situation has a significant impact on the ability of these children to enjoy these rights.

The complexity of the contexts in which children become separated from their families calls for a diverse and comprehensive response from a range of professionals and organisations. Unaccompanied and separated children must be protected in line with international standards of children's rights, international human rights, humanitarian law and refugee law. A range of stakeholders should be involved to ensure that the best interests of the child is a primary consideration and that the range of skills and expertise required for the protection and welfare of unaccompanied and separated children are available for their rights to be realised.

Southeast Asia Regional Context

The conditions and issues affecting unaccompanied and separated children (UASC) who find themselves outside their countries of origin are diverse and complex. No matter where in the world these children reside, they face common challenges and risks. In past decades, the Southeast Asian region has experienced intense and violent conflicts which have resulted in the displacement of large populations of people, both internally and internationally. The conflict in Myanmar, marked by consistent insurgency and fights between the different ethnic groups within the country against the military regime, has caused massive internal and international displacement of populations. Also, the prolonged civil unrest that accompanied and followed East-Timor's process of independence from Indonesia left several thousand children separated from their relatives and often crossing international borders.¹

Since 2009, Indonesia has seen a surge of Afghan asylum-seekers, many of whom are UASC. This is in part due to the political instability and increased military activity in Afghanistan that has heightened children's vulnerability to violence and exploitation. In May 2013, there were 734 UASC in Indonesia out of whom 577 were from Afghanistan. Some seek international protection, others leave due to socio-economic concerns. Many use Indonesia as a transit country on their way to Australia as their final destination.²

In addition, there is a significant number of stateless populations living within Southeast Asia. Some stateless children travel across international frontiers, often irregularly. Many of these children should be considered as refugees and provided with international protection as such; however, a small number will not be refugees but are nonetheless stateless. Statelessness can also arise in the context of migration where nationality laws provide that nationality is lost after long residence abroad.³

Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone "who is not considered to be a national by any State under the operation of its law." The International Law Commission has concluded that the definition has become customary international law and therefore binds all States.⁴ Stateless UASC who are not refugees nonetheless have high protection needs in that they are not able to receive the protection of the country where they originate from, yet the procedures to access legal status in the hosting countries may appear equally difficult.

Only one country in the region has ratified the 1954 Convention on the Status of Stateless Persons and none have ratified the 1961 Convention on the Reduction of Statelessness. However, a degree of protection for stateless UASC can be afforded through national mechanisms, some of which are already in place in some countries in the region.

The strong economies and the geographic locations of Thailand, Malaysia and Indonesia in particular, have rendered these three countries key transit and destination points for irregular child migrants and children seeking international protection. In 2007, it was estimated that 5.3 million migrants circulated within the Association of Southeast Asian Nations (ASEAN) and that child migrants represented between 20-40% of the total number of migrants.⁵ Among the heterogeneous group of UASC within the region, many face severe violations of human rights and become victims of human trafficking, for sexual commercial purposes as well as forced labour. Few countries in ASEAN have signed or ratified the key international human rights instruments that are particularly relevant to the protection of UASC, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (see table at the end of the Introduction section), and as a result, national legislation and policy falls short of the necessary standards, institutional mechanisms, capacity and implementation needed to ensure that UASC's rights are protected and enforced.

The Regional Guidelines

In response to evidence-based research conducted in Thailand, Indonesia and Malaysia on UASC who have crossed international borders, these guidelines make recommendations for improvements in governmental and organisational responses with respect to these children. They describe the *international guiding principles*⁶ relevant across the three key categories of UASC, namely asylum-seeking/refugee children, trafficked children and child migrants on the move as part of mixed population flows, and are based on international human rights instruments, standards and norms that are common to the target countries in the region. These guidelines were drafted following inception and review during two regional consultations organised by Mahidol University and ECPAT International in February 2013 and May 2013. A regional synthesis report was also completed which describes in more detail the project's research methods, the different contexts of UASC in each country involved, international legal standards regarding the protection of UASC, existing regional frameworks on migration and children, and recommendations for how to improve the situation of UASC, both in the region and at the national level.⁷

As there is great potential for overlap between these three established categories of UASC and because a child can easily move from one category to another, the regional guidelines seek to highlight the protection concerns relevant across the three categories in order to protect children who may otherwise fall within the gaps.

More particularly, these guidelines aim to address the protection concerns of UASC in a manner that is regionally specific and informed by current practices and challenges in order to improve the protection outcomes for this group by having a concrete impact on the ground. The guidelines seek to assist governments, international organisations and NGOs as well as other service providers working directly with UASC. They set out a baseline of standards, norms and principles for good practice and make recommendations for the protection of UASC from their initial identification up until the identification and realisation of a durable solution. They can also be employed as an advocacy tool for developing policies and practices within countries in the region in order to harmonise current practice with their obligations under international law.

These guidelines aim to draw attention to the movement of children, which, although significant, has largely been ignored in regional policy and practice debates. Such debates to date have tended to focus on either adult movement or issues related to child trafficking. Greater attention has been placed on the criminal aspects of cross border movement and regional efforts to suppress human smuggling and human trafficking. These guidelines seek to offer a contrasting perspective in addressing the rights and protection concerns of UASC.

The guidelines are comprised of five sections:

- **Section 1: Introduction** – This section explains the background and purpose of the regional guidelines, some of the regional context for UASC, and the need for regional level collaboration and cooperation. The benefit of these regional guidelines is that all international guiding principles are presented for each UASC category for the first time in one document as either cross-cutting to all three groups or those which are specific to each category.
- **Section 2: Schema** – Many stakeholders and practitioners working with vulnerable children are not necessarily familiar with the term ‘unaccompanied and separated children’ and they may find it challenging to understand some of the concepts associated with this terminology. The schema has been developed in conjunction with the guidelines as a useful tool for identifying UASC. The present schema sets forth a pathway indicating minimum considerations and actions to be taken for identification, protection and support of UASC that can help give effect to their rights. The schema is a tool to be used in a range of different circumstances, by staff from different specialised agencies, backgrounds and skills, to assist in identifying children that have moved across borders due to an array of reasons and under varying circumstances.
- **Section 3: Lexicon** – A comprehensive reference section that alphabetically lists and provides detailed explanations of relevant concepts and terms to assist in their interpretation and meanings.
- **Section 4: International Guiding Principles and Regional Guidelines on UASC** – This section is informed by the research undertaken in each country, as this is a unique aspect of this project. The left hand column of the matrix identifies the relevant international guiding principle emerging from the international human rights instruments, standards and norms relevant to the region. Each sub-heading starts with a collation of general regional challenges as identified from the country research reports. The right-hand column, ‘Specific Guidelines/Addressing the Gaps,’ is developed to give more detailed guidance on how to deal with these challenges.
- **Section 5: Additional Resources** – A list of additional resources has been included for further reference.

Regional Cooperation and Collaboration

In the present context of regionalisation in Southeast Asia and the growing influence of ASEAN, improving one country’s institutions and response mechanisms may not sufficiently tackle the issue of UASC. The cross-border nature of issues concerning UASC calls for the fostering of regional ownership, where cooperation and collaboration across borders can serve to maximise the protection of UASC and facilitate concrete results at the national level.

In an effort to address and increase cooperation and collaboration across borders, countries in the region including Indonesia, Malaysia, and Thailand, participate in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process).

The Bali Process raises regional awareness of the consequences of, *inter alia*, trafficking in persons, and develops and implements strategies and cooperation in response to irregular migration. In 2011, Bali Process Ministers, in consultation with the UNHCR and IOM, agreed to establish a Regional Cooperation Framework (RCF) to enable interested Bali Process members to “establish practical arrangements aimed at enhancing the region’s response to irregular movement through consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those not owed protection and targeting of people smuggling enterprises.” The Regional Support Office, opened in Bangkok in 2012, was subsequently established to facilitate implementation of the RCF.⁸

The guidelines seek to promote coordination and collaboration within and across key ministerial departments and sectors (e.g. welfare, health, education, labour, justice, migration) as well as between geographical areas (source, transit and destination countries) to address the protection and care of UASC. Countries in the region are encouraged to adopt a genuine collaborative approach that actively seeks and sustains the involvement of civil society groups, victim support agencies, international organisations and vulnerable communities, in the implementation of policies and programmes concerning UASC. In this way, these guidelines aim to strengthen links and understanding between countries that share common characteristics and provide guidance to State, civil and international institutional stakeholders across the region.

Key international human rights instruments particularly relevant to UASC in ASEAN

	Ratifying countries – without reservations	Ratifying countries – with reservations	Non-ratifying countries
2012 ASEAN Human Rights Declaration (AHRD)	All ASEAN countries.		
1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)	Cambodia, Indonesia, Laos, Philippines, Thailand, Vietnam.		Brunei, Malaysia, Myanmar, Singapore.
1966 International Covenant on Civil and Political Rights (ICCPR)	Cambodia, Indonesia, Philippines, Thailand, Vietnam.	Laos: reservation to article 22.	Brunei, Malaysia, Myanmar, Singapore.
1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Cambodia, Philippines.	Indonesia, Laos, Thailand. Indonesia: reservation to article 30. Laos: reservation to articles 20, 30. Thailand: reservation to article 30.	Brunei, Malaysia, Myanmar, Singapore, Vietnam.
1989 Convention on the Rights of the Child (CRC)	Cambodia, Indonesia, Laos, Myanmar, Philippines, Vietnam.	Brunei, Malaysia, Singapore, Thailand. Brunei: reservation to articles 14, 20, 21. Malaysia: reservation to articles 2, 7, 14, 28.1, 37. Singapore: reservation to articles 28.1, 32. Thailand: reservation to article 22.	
2000 Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC)	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand, Vietnam.	Laos: reservation to article 5.2.	Singapore.

	Ratifying countries – without reservations	Ratifying countries – with reservations	Non-ratifying countries
2000 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict	Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam.		Brunei, Myanmar.
2011 Optional Protocol to the CRC on a Communications Procedure	Thailand.		Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Vietnam.
2000 Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)	Cambodia, Philippines.	Indonesia, Laos, Malaysia, Myanmar, Vietnam. Indonesia: reservation to article 15.2. Laos: reservation to article 15.2. Malaysia: reservation to article 15.2. Myanmar: reservation to article 15. Vietnam: reservation to article 15.2.	Brunei, Singapore. Thailand: signed in 2001 but did not ratify yet.
1951 Refugee Convention	Cambodia, Philippines.		Brunei, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, Vietnam.
1967 Protocol to the Refugee Convention	Cambodia, Philippines.		Brunei, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, Vietnam.
1954 Convention Relating to the Status of Stateless Persons	Philippines.		Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, Vietnam.
1961 Convention on the Reduction of Statelessness			All ASEAN countries.
1957 ILO Convention on the Elimination of Forced Labor	Cambodia, Indonesia, Philippines, Thailand.		Brunei, Laos, Myanmar, Vietnam. Malaysia: denounced in 1990. Singapore: denounced in 1979.
1973 ILO Convention on the Minimum Age of Employment	Brunei: Minimum age = 16, Cambodia, Indonesia, Laos: Minimum age = 14, Malaysia, Philippines, Singapore, Thailand, Vietnam: Minimum age = 15.		Myanmar.
1999 ILO Convention on the Worst Forms of Child Labor	Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam.		Myanmar.
1990 Convention on the Protection of Migrant Workers and their Families	Indonesia, Philippines.		Brunei, Laos, Malaysia, Myanmar, Singapore, Thailand, Vietnam. Cambodia: signed in 2004 but did not ratify yet.

SECTION II: SCHEMA FOR IDENTIFYING UASC

SCHEMA FOR IDENTIFICATION, PROTECTION AND SUPPORT OF UNACCOMPANIED AND SEPARATED CHILDREN

A diversity of circumstances cause children to become separated from their legal or customary primary guardians or to move to new and unknown locations alone. Whether they are migrants, refugees, asylum seekers, or trafficking victims, children moving alone across borders have lost their link to the social-legal and service structures that otherwise exist to meet their needs and protect their rights. Ensuring the identification, protection and relevant support for UASC, based on the individual circumstances of each child, is therefore a difficult and urgent task.

The present schema sets forth a pathway indicating minimum considerations and actions to be taken for identification, protection and support of UASC that can help give effect to their rights. The schema is a tool to be used in a range of different circumstances, by staff from different specialised agencies, backgrounds and skills, to assist in identifying children that have moved across borders due to an array of reasons and under varying circumstances. This dimension of complexity brings challenges for ensuring coherence of practice. Nevertheless, the systematic application of child/human rights and humanitarian principles and their use as a key reference framework at each juncture and stage of the process can guide a rights-based practice. Such an approach can assist in balancing decisions on application of competing principles that emerge with concrete case situations and help in resolving difficult practical problems that arise in the process of promoting the best interest of UASC.

Key Guiding Principles for the Schema

The child as subject of rights

Every human being below the age of 18 years is recognised as a child under the Convention on the Rights of the Child (CRC), which delineates the special rights of the child.

Inalienable and indivisible rights

The CRC is unique in embracing the broad spectrum of children's human rights – civil, political, economic, social and cultural – in encompassing all the protection and developmental needs of the child; and in underscoring that all rights are equal.

Non-discrimination

States Parties shall respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁹

In relation to children who migrate, are asylum seekers or refugees, or are otherwise alone outside their country of origin (such as due to trafficking), the principle of non-discrimination establishes that the rights set out in the CRC apply regardless of jurisdiction. Thus it is incumbent on states to ensure that conditions for UASC, as for other children within their jurisdiction, are conducive to the realisation of their rights, and are independent of processes undertaken for determination of their immigration or refugee status.¹⁰

Best interests

In 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.¹¹

Capacity of the child to participate and the right to have his or her views listened to and taken into account

States Parties 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 the child. The views of the child shall be given due weight in accordance with the age and maturity of the child.¹²

Any actions taken on behalf of children by those responsible for safeguarding their rights must provide the opportunity for the child to participate and have his/her opinions taken into account, based on his/her evolving capacity. This right implies a responsibility to meaningfully consult unaccompanied and separated children on matters affecting them but also to support and build their capacity for independent decision-making and agency in constructing their futures.

Family

The family is widely recognised as the basic unit of society and the natural environment for the growth and well-being of the child.¹³

Prevention

Protective factors as well as risks exist within all communities reflecting specific beliefs, attitudes and practices that impact child protection. Reinforcing the protective capacity within families and communities can minimise the risk of unnecessary separation of children from families, which occurs for various reasons and can be exacerbated in crisis and emergency situations. Prevention strategies can include broad socio-legal initiatives as well as local community and family level actions.

States should take all appropriate measures to prevent the abduction, sale, or traffic of children for any purpose or in any form. Children should be protected from all other forms of exploitation prejudicial to their welfare.

Risk of separation	Preventive action
Abduction, recruitment, trafficking	Birth registration; school and community monitoring & reporting; peer and social group initiatives
Banishment, abandonment, migration due to poverty	Social services, cash transfer, food for education, work, micro credit
Family abuse and neglect	Social services, parenting & support, awareness and training

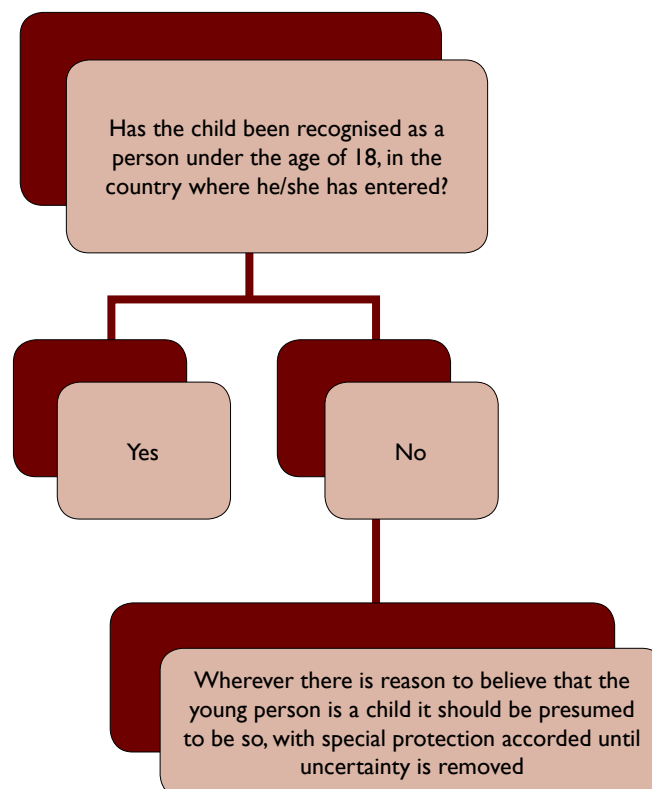
SCHEMA

STEP I: Age Assessment and Identification

Age assessment

National and international law provides special protections for children. These are reflected in differentiated policies and procedures to give effect to certain rights such as those relating to child asylum seekers and refugees as well as other categories of vulnerable children.¹⁴ To trigger these protections, authorities should undertake to establish that the person is a child, with important consequences for subsequent reception procedures and arrangements.

A large number of children are not registered at birth – or at all – and may lack birth certificates and other official documents attesting their age. Unaccompanied and separated children in particular may be unable to prove their age due to lack of relevant documentation. In cases where the age of an unaccompanied or separated child is in question or is disputed, relevant trained authorities may employ various age assessment methods. These can include interviews, visual evaluations, behavioural observations and others. In all instances where assessment is thought to be required, professionals with expertise should be involved ensuring a culturally appropriate and voluntary process. In light of the wide variations among individuals in the course of human development (physical and psycho-social) and the imprecision of these methods to capture these individual particularities,¹⁵ as a matter of practice, when in doubt, authorities should err in favour of protection, presuming the individual is a child.¹⁶

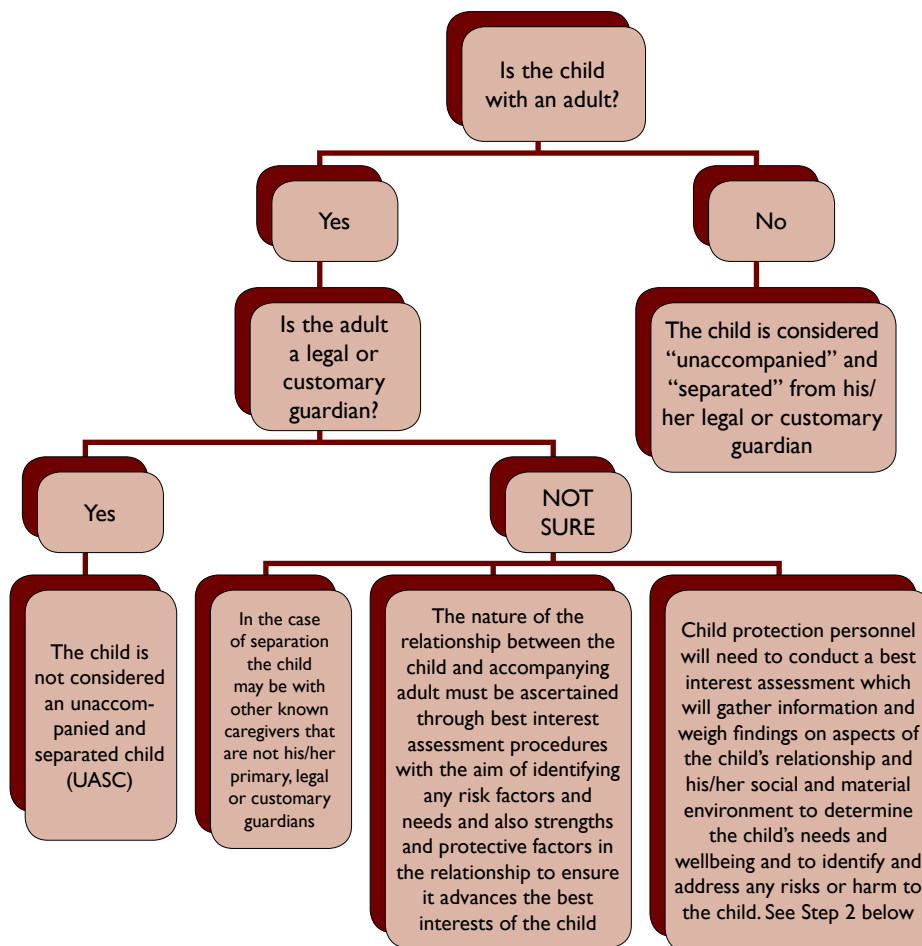


Identification

States control and regulate the entry and solutions provided for persons arriving to their territories.

On reception in a state other than their own, unaccompanied and separated children moving as part of mixed population flows may be apprehended and detained for immigration-related reasons such as unauthorised entry to a state without consideration of causes. Detention is a measure that is often used by states for immigration processing purposes, for example, for identity assessment, security checks, immigration and other status determination, or as a measure to prevent absconding, prior to deportation.¹⁷

Identification of unaccompanied and separated children, including their age, background and circumstances surrounding their separation is important for establishing specific measures and targeted interventions needed for their care and protection and ensuring these are in their best interests.



STEP 2: Best Interest Assessment and Assessing a Child's Social Unit

Best Interest Assessment (BIA)¹⁸/Child Protection Assessment/Risk and Harm Assessment

Assessment of the needs of an unaccompanied or separated child must take place immediately on identifying the vulnerable child and before any action that may affect the child is taken, such as family tracing, alternative care or reunification. The best interest assessment, also called a child protection assessment or risk and harm assessment, is generally conducted by trained staff through interviews with the child (and any caregivers) to establish the situation of the child and recommend care and protection interventions. Special template forms have been developed by UNHCR and INGO agencies for documentation while case management tools are also used to establish an accurate and on-going record that is used to monitor and follow up on the condition of the child and interventions being made.¹⁹ The child protection assessment/risk and harm assessment gathers information regarding living and care arrangements; access to health and medical care, food, water, sanitation, and education; as well as assessing the child's safety, psychosocial wellbeing and protection.²⁰ For UNHCR, the standard for case management is the formal Best Interests Procedure (covering BIA and best interest determination/BID) established by UNHCR for the protection of vulnerable asylum-seeking and refugee children, including UASC.

Assessment of the Immediate Social Unit providing Care for the Child

The social unit surrounding the unaccompanied and separated child, through which the child finds care and protection, can vary greatly. It may include responsible and caring adults that are not the legal or customary primary guardians of the child (distant family kin, friends, neighbours or other relationships depending on cultural context), older youth and children that have formed a group to which the child has been integrated with or without her/his siblings, among others.

A social unit can be composed of individuals that provide protection and care for the child or one where there is a coercive, abusive or exploitative relationship with the child. A key element of a **child protection/risk and harm assessment procedure**, particularly for children who are unaccompanied or separated and who are therefore more vulnerable to abuse and exploitation, will be to gather information about the child's immediate social unit and the persons within it responsible for the care of the child (akin to a family assessment). This will include examining risks and gaps as well as the motivations and competencies in the care-giving relationships of the child, addressing needs and supporting and reinforcing competencies. When the child is in interim or substitute care placement (usually a period of 12 weeks following which it is referred to as long-term temporary care),²¹ efforts for tracing and reunification with the child's legal or customary primary guardians may be initiated depending on what is deemed to be in the best interests of the child and in consultation with the child.

Assessment of the immediate social unit providing care for the child can involve, for example:

Assessing needs

Food, water, cooking fuel, clothes, shelter, health care, education

Assessing risks

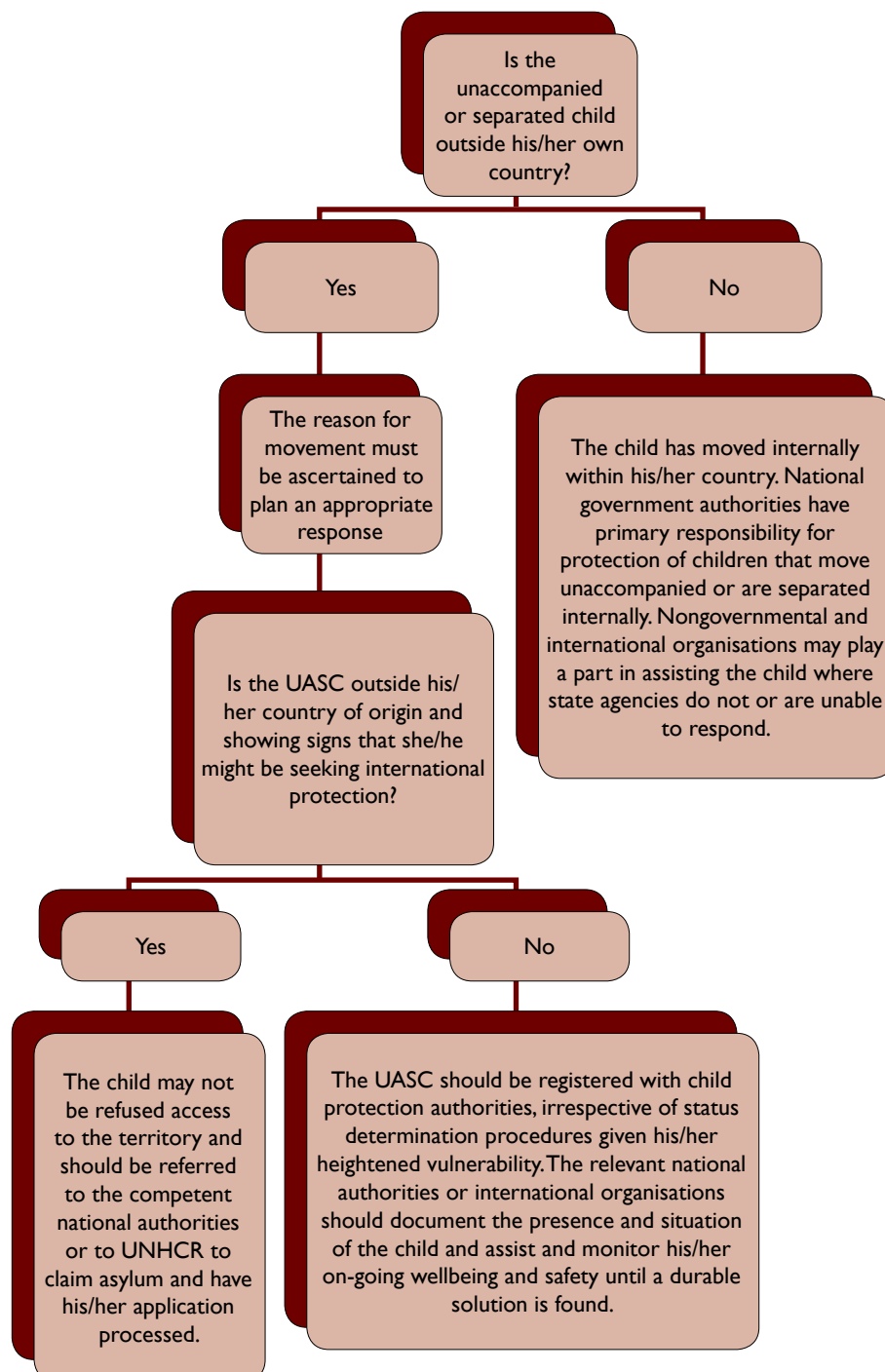
Level of care and protection the child receives through indicators of physical and psychological wellbeing; child's capacity for movement and participation including for play and interaction with other children; type and level of assigned responsibility within and outside the household; control over the child's interactions; gender and disability relative to care of the child.

*Assessing capacities and strengths*²²

Presence of supporting, teaching, positive, relating and caring behaviours; promotion of child's development and participation in social unit; survival skills and ability of caregivers to deal with stress and adversity; cultural and language competence; linkages of the social unit with the community creating social assets for the child.

Family Tracing

Recognising the family as the basic unit of society, States place responsibility and decisions regarding the child's welfare almost exclusively in the hands of parents.²³ This structure is reflected in legislative approaches at national and international levels.²⁴ Thus a primary strategy in cases where children are unaccompanied or separated from their legal or customary guardians is to undertake family tracing, as children have a right to be reunified with their families and to restore parental ties as a matter of priority.²⁵ Cooperation among countries in the region for this purpose is essential to ensure effectiveness of these measures. Nevertheless, individual assessments of the child's situation and causal factors for unaccompanied and separated movement must determine how best to achieve family reunification and ensure it is in the best interests of the child.

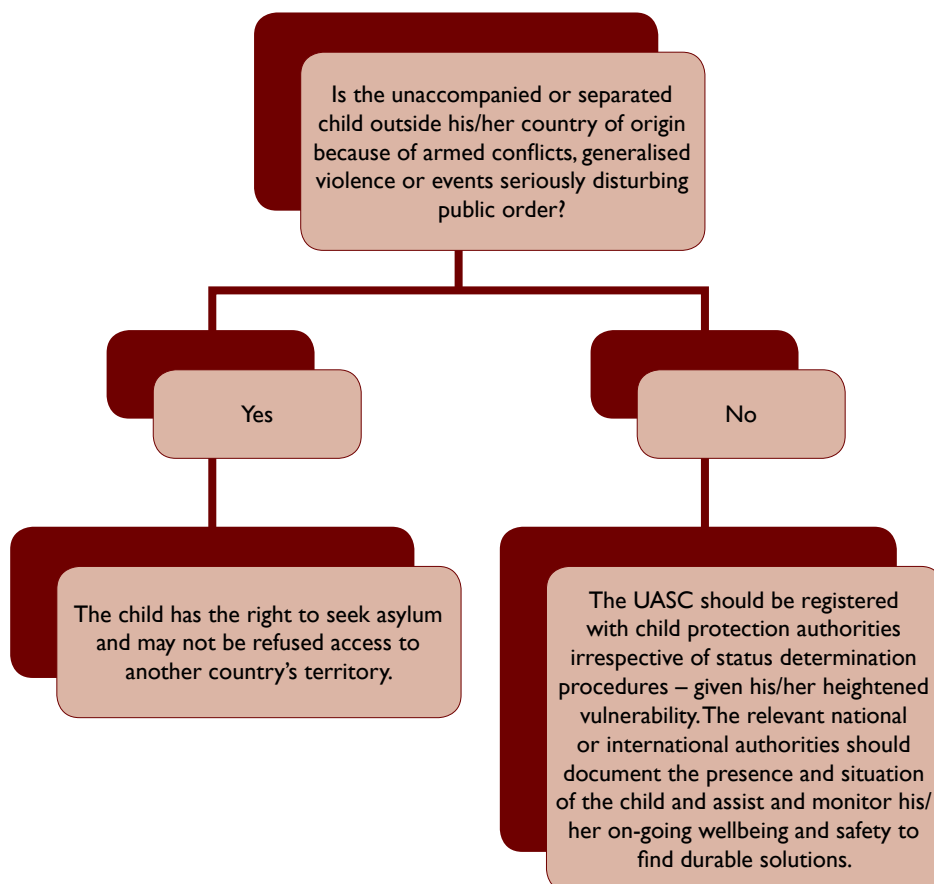


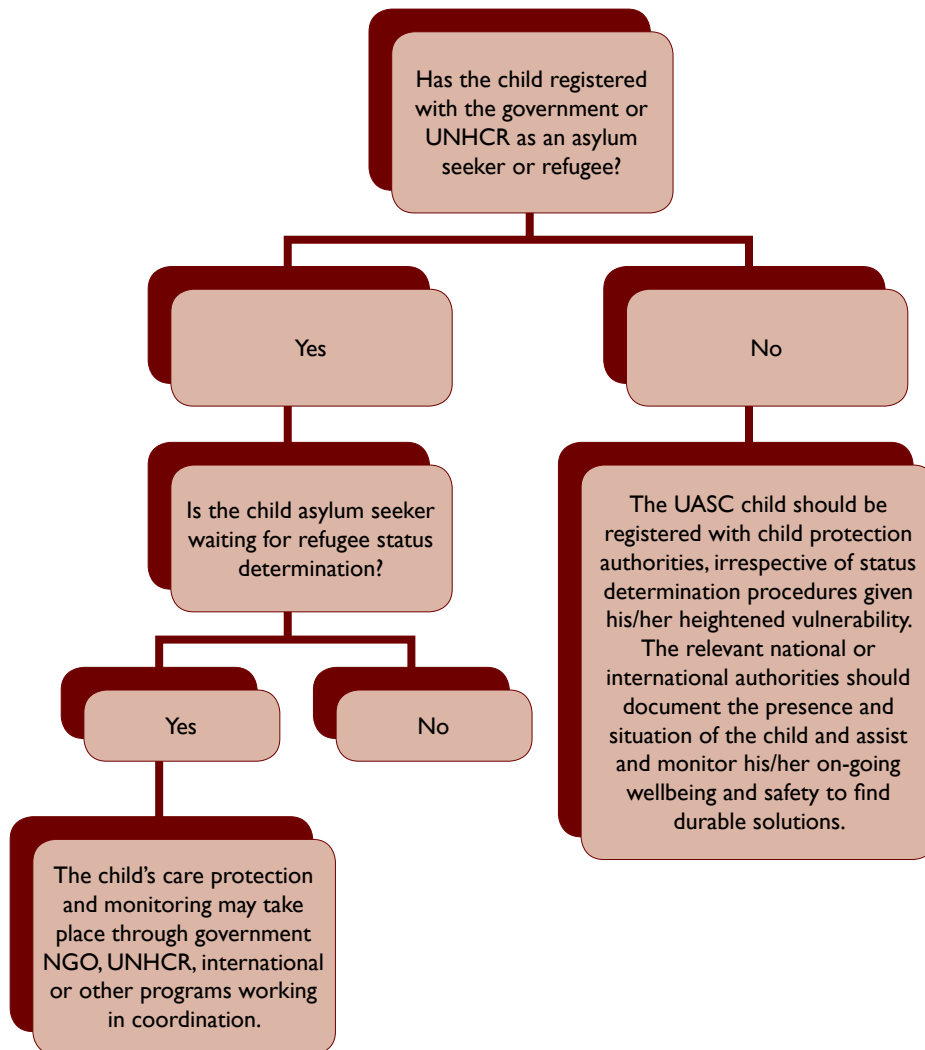
Identification of Children Seeking International Protection

A child who is showing the following signs could be an asylum seeker or a refugee:

- child claims to seek asylum, be a refugee or be a stateless person (or a person without a country)
- child asks to talk to the UN or UNHCR or enquires whether there is a UN Office in the country
- child claims to originate from a country that is at war or has suffered for years from systematic human rights abuses
- child claims that her/his family, parents, siblings or s/he have been imprisoned in the country of origin
- child carries fake travel document/has no documents and claims that s/he cannot go back to her/his country for fear for her/his life or for being imprisoned
- child does not want to answer questions and looks highly anxious/distressed
- child appears to have physical injuries or scars associated with conflict situations
- child indicates that he/she has family members in the country as refugees
- child indicates that he/she cannot return to his/her country

If any of the aforementioned signs are identified, the child should be referred to competent national authorities or UNHCR for registration and refugee status determination.





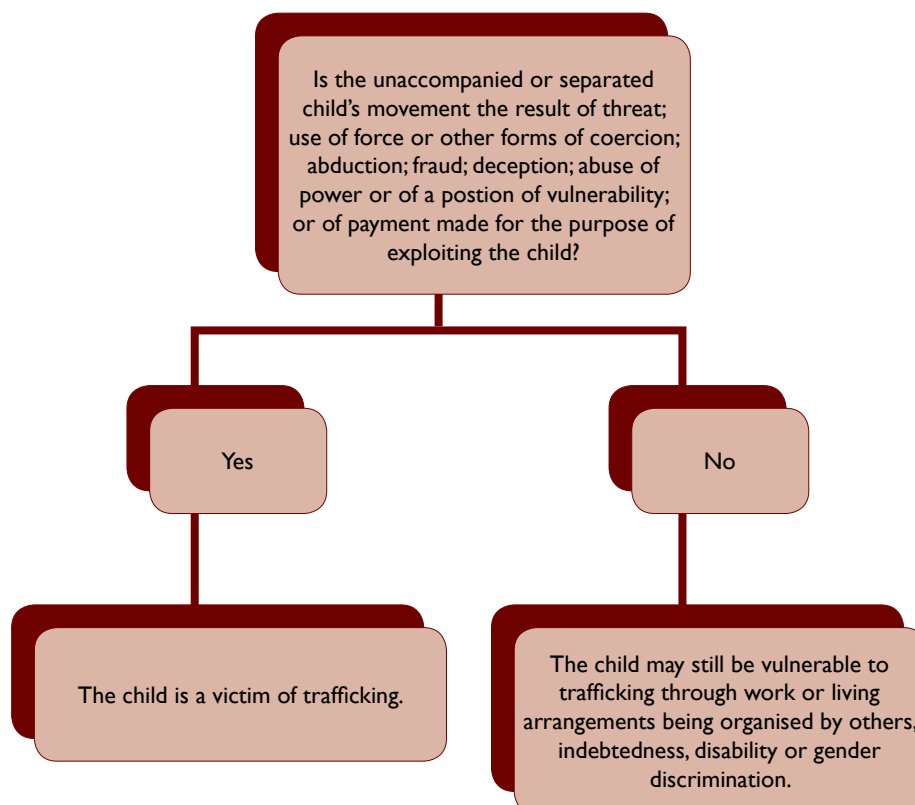
Risk and Harm Assessment in Situations of High Concern

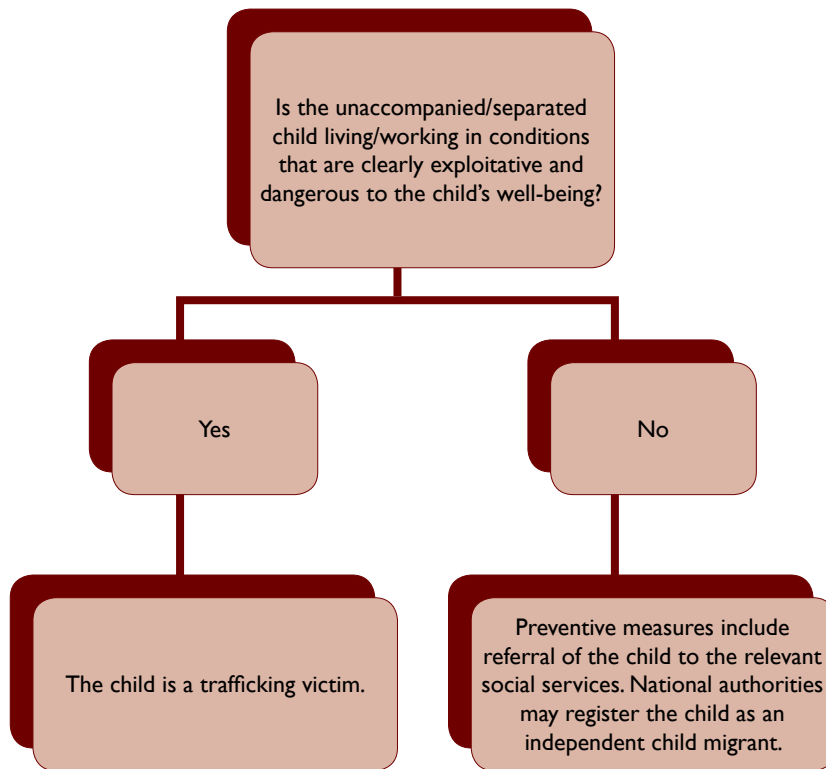
A bio-psycho-social assessment of the situation of the child may expose underlying threats to the child's safety or reveal serious violations. Further assessment, as is commonly employed by child protection workers in cases involving children believed to be highly vulnerable, at risk or in harmful situations, would need to be conducted as a priority to establish a safety response.²⁶

This type of assessment might, for example, be undertaken when there is reason to believe that a child may have been trafficked. UASC may be trafficking victims, just as those who are accompanied by guardians and living in crisis situations may become trafficking victims, as situations of crisis are volatile, change rapidly and create new vulnerabilities for children and their families and caregivers.

Further assessment may result in immediate interventions to protect the child from any present danger and/or serious harm as well as a long-term safety plan. Safety interventions should be undertaken by trained child protection personnel who are familiar with case management for children at risk or survivors of violence, abuse or exploitation. For example, persons trained and skilled in reducing any potential trauma for the child, should work with family or other immediate social units caring for the child as well as those experienced with negotiating and coordinating with the local social, legal and care systems.²⁷

When responding to cases involving child trafficking, those working with unaccompanied and separated children must coordinate with relevant national authorities. When reporting cases of child trafficking consideration is needed to ensure appropriate mechanisms are in place to offer the child assistance and protection and to enforce the law. The best interests of the child should determine decisions on involvement of different authorities, for example, in unstable or insecure environments there may be no experienced staff or enforcement structures and reporting may create greater risk for the child.





Overview Summary

Identification procedures for UASC should be established to (1) determine whether the child is unaccompanied or separated, (2) determine whether the child is an asylum seeker or other category of UASC that requires protection, (3) referral and access to appropriate procedures and mechanisms for protection and care.

- “Unaccompanied children” (also called unaccompanied minors) are children 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. “Separated children” are children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. A “child”, as defined in Article 1 of the Convention on the Rights of the Child, is anyone below the age of eighteen years.

Unaccompanied and separated children are entitled to guardianship and legal assistance, and all decisions should be informed by an assessment of their best interests.

- States should appoint a guardian as soon as the unaccompanied or separated child is identified. The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the necessary expertise in the field of child care, 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.
- 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.

Unaccompanied and 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 the child’s migratory or residence status, or lack thereof.

- Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with Article 37(b) of the Convention which 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.
- States must institute laws and policies that protect children from detention.

Unaccompanied and separated children need to be provided with protection and care to ensure that they are adequately clothed, fed and accommodated and that their physical, mental, spiritual, emotional health, and educational needs are met.

- This interim care includes care placements based on an assessment of the child’s needs, access to health care provisions, access to the same education as national children, and social assistance.

Unaccompanied and separated children should have their rights and well-being protected by enabling them to access durable solutions.

- Support family reunification if in the best interests of the child.
- Assist in local integration if the primary option of return to country of origin and/or reintegration is not possible.
- If the child is being locally integrated, ensure he/she is given legal or regular status.
- Monitor the child at the community level to ensure he/she does not fall into the UASC category again.

SECTION III:
UASC LEXICON

LEXICON

Alternatives to detention: Any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country or while waiting for a durable solution.²⁸

Assessment: The process of collecting information and making sense of it, in order to develop a plan to ensure that a child's needs and best interests are met.²⁹

Asylum seeker: An individual seeking international protection. In countries with individualised refugee status determination procedures, someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum seeker.³⁰ The definition on the UNHCR's website is as follows: Someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated.³¹

Best interests of the child:³² The concept of ensuring that what happens/what plans are made places the most importance on the needs of the child and his/her welfare.³³ It is the primary consideration for guiding decisions, actions and solutions taken to help UASC. This requires a comprehensive assessment of the child's background, particular vulnerabilities and protection needs. The assessment should be carried out in a child-sensitive manner, taking into account the child's own views under the safeguard of an appointed and competent guardian.³⁴

Care arrangements: An action plan that is developed following an assessment which identifies key tasks and responsibilities in order to ensure that the needs of the child are met.³⁵

(Primary) Caregiver/caretaker: A person 18 years old or above who seeks the best interests of the child concerned. The term "primary caretaker" stresses the bond between a child and his/her primary caretaker. The relationship between the primary caretaker and child is considered vital to the child's psychological wellbeing and successful passage through developmental stages. It can be an adult of the family but this is not necessarily a requirement. For example, a child can be with his/her grandfather but he might not be considered an appropriate primary caregiver if he does not provide good care for the child.

The caregiver has to provide the right care and attention to a child's needs, including food, a safe environment, and attention to a child's emotional needs including warmth, security and love. A lack of these things is likely to result in serious damage to the child's health and/or development. Some of the possible indicators that a child is not being well cared for could include the following:

- frequently going hungry
- frequently having to go to school in dirty clothes
- not being taken to the doctor when he/she is ill
- children who are often angry, aggressive or harmful to themselves
- children who have difficulties in concentrating and learning; have low self-esteem; are withdrawn, depressed or who have difficulty sleeping
- children who find it difficult to socialise with other children

Note: a primary caregiver may be very poor and struggle to provide for the physical needs of the child. However, this should not preclude the carer supporting the child's emotional needs so in this case, the child is not 'unaccompanied' and protection agencies should work to support the carer in providing for the physical needs of the child.

Case Management: A comprehensive and coordinated service delivery approach widely used in the human services sector as a way of achieving continuity of care for clients with varied complex needs. It ensures that service provision is 'client' rather than 'organisation' driven and involves an individualised, flexible and strengths-based model of care. Case managers are often social workers and welfare professionals, but are also people who are skilled and experienced in the particular sector where the case management approach is being used.³⁶

Child: As defined in Article 1 of the Convention on the Rights of the Child, means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."³⁷

Child Friendly Approach/Child Friendly Procedures: A way of working which ensures that services are provided in a manner which is suitable for children, taking into account the age and development of the child.³⁸

Child Protection: The protection of children who are either suffering or at risk of suffering from any forms of abuse and/or neglect. Measures and structures to prevent and respond to violence, exploitation and abuse against children, including: commercial sexual exploitation, trafficking, child labour and harmful traditional practices. It involves building a protective environment for children with eight essential components: (1) strengthening government commitment and capacity to fulfil child protection rights; (2) promoting the establishment and enforcement of adequate legislation; (3) addressing harmful attitudes, customs and practices; (4) encouraging open discussion of child protection issues; (5) developing children's life skills, knowledge and participation; (6) building the capacity of families and communities; (7) providing essential services for prevention, recovery and reintegration including basic health, education and protection; (8) establishing and implementing monitoring, reporting and oversight procedures.³⁹

Child Protection Mechanism: A protocol, procedure or way of working which may operate at a local or national level which is designed to prevent, identify and provide services to children who are at risk of abuse/suffering abuse.⁴⁰

Child Protection System: The legal and policy framework together with services operating in a coordinated way to ensure that children are protected and their welfare is promoted. This involves various stakeholders including social services, health, education and police, together with NGOs and community groups (depending upon the specific country contexts).⁴¹

Child Rights: Rights to which children are entitled to under the United Nations Convention on the Rights of the Child 1989, and which governments have committed to upholding and fulfilling.⁴²

Counselling: An umbrella term that refers to the process of emotionally and psychologically supporting a child. There are many different understandings of counselling, ranging from giving advice to helping a child recover from a traumatic or difficult experience.⁴³

Country of origin: The country of nationality or, in the case of a stateless child, the country of habitual residence.⁴⁴

Customary caregiver: Any adult (relative or not) who is a child's Primary Caregiver; he or she does not have a legal obligation/right to take care of the child but usually/regularly does it.

Detention: Confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory or be granted a legal right to remain.⁴⁵ The deprivation of liberty or confinement in a closed place where one is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.⁴⁶

Exploitation: Abusing a child for the benefit of a third party (another person) either in cash or in kind.⁴⁷ This covers situations of manipulation, misuse, abuse, victimisation, oppression or ill treatment. Exploitation occurs when “the human dignity of the child or the harmonious development of the child’s personality is not respected.”⁴⁸

Forced Labour: Work or service exacted from a person under threat or penalty, which includes penal sanctions and the loss of rights and privileges, where the person has not offered himself/herself voluntarily.⁴⁹

Guardian: The legally recognised relationship between a competent adult/organisation and a child or disadvantaged person who does not have the legal capacity to exercise some or all of her or his rights. A guardian has a range of powers, rights and duties, including exercising rights on behalf of the child and protecting the interests of the child.⁵⁰

Independent child migrant: Children who leave home and migrate without their parents, close family members or customary adult guardians. Children either travel alone or with strangers or friends.⁵¹

Interim Care: UASC must be able to live in a safe and protective environment where they are properly cared for. Interim care should provide UASC with the emotional and physical care that their parents would normally provide. This environment should also ensure that their health and educational needs are addressed. It is essential to continuously monitor these care arrangements to ensure the protection and well-being of the child and that his/her best interests are respected. This monitoring should include listening to the views of the child and a confidential reporting and response mechanism.⁵²

Irregular migrant: A migrant who does not fulfil or who no longer fulfils the conditions of entry, stay or residence within a state.⁵³

Non-discrimination:⁵⁴ One of the four core principles of the Convention on the Rights of the Child and a basic tenet of international human rights law, applying to all dealings with UASC. Indeed, this principle may even call for positive differentiation of the care and protection of UASC on the basis of identified needs, such as those deriving from the child’s age, gender and other context specific concerns.⁵⁵

Parent: The lawful (and/or biological) father or mother of a child.⁵⁶

Participation/the child’s opinion:⁵⁷ The principle of child participation derives from Article 12 of the Convention on the Rights of the Child, which provides for the right of all children to be heard. The Committee on the Rights of the Child considers this article as one of the four fundamental values of the Convention. The term “participation” is now widely used to describe continuous practices, which include information-sharing and discussion between children and adults based on mutual respect. From this participation, children can learn how their views and those of adults help shape the outcome of such processes.⁵⁸ This means that relevant child-friendly information must be made available to the child and that, where necessary, interpretation is provided during all stages of the provision of appropriate care and protection.⁵⁹

Principle of non-refoulement:⁶⁰ The principle of non-refoulement is a binding obligation under customary international law⁶¹ on all States including those which have not yet become party to the 1951 Refugee Convention and/or its Protocol. The principle of non-refoulement constitutes an essential component of asylum and international refugee protection, and international human rights law, stating that a State may not oblige a person to return to a territory where he may be exposed to a danger of persecution. The receiving State must respect its international obligations, in particular its non-refoulement obligation. It must not return a child to a country where there are substantial grounds for believing that there is a risk of cruel, inhuman or degrading treatment, a risk to life or irreparable harm to the child. 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.

Recovery: The stage following rescue from a situation of exploitation and/or abuse during which a child comes to terms with his/her experiences, works through his/her experiences and heals, and begins to learn new skills for life and ways of relating to others. This is often a very difficult time of adjustment for the child, and sometimes there is a temptation to return to situations of exploitation (which may place a child in very risky situations) as this is what feels 'safe' and known.⁶²

Refugee: Someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality, and is unable to, or owing to such fear, is unwilling to avail himself/herself of the protection of that country.⁶³

Reintegration: This implies a package of measures to restore family and community links and render assistance to UASC for whom return to their home location/country has been assessed to be in their best interests. As part of the assessment of whether return is in the best interests of the child, consideration needs to be given to the conditions of safety and socioeconomic security awaiting the child upon return, the preparation of care arrangements for the child, and consideration of the child's level of integration in the host location/country and the length of his or her absence from his/her original home.⁶⁴ Upon return, older children may need assistance transitioning to independent living as an adult. While reintegration can be considered the 'final step', it can also be the most challenging because there is a tendency to be very optimistic (especially if the child is returned home). However, without careful consideration about the situation that the child is being reintegrated into, and if there is no or little follow up support, there is a high risk that the placement will breakdown and the child will end up either being re-trafficked or exploited. The process of recovery and reintegration is often seen as being linear – in that one stage follows the other. However, this is partly a distinction which might be convenient for services and organisations to make, because in fact, the process is more circular.⁶⁵

Repatriation: In this context the term is used specifically to refer to the legal and administrative procedures which are associated with returning a child who has crossed international borders to their home country.⁶⁶

Rescue: The removal of a child from a situation of exploitation and abuse. This can be either through action by the police and/or child protection organisations or through the child seeking support (for example, a street child who may have been trafficked attending a drop-in centre).⁶⁷

Separated children: Children 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.⁶⁸

Social Welfare Department: A government department or ministry which is responsible for social care and child protection. Depending on the individual country, there may be one or more departments (or none) that have this responsibility. They can have various names such as Social Affairs, or Social Services.⁶⁹

Standard Operating Procedures (SOPs): SOPs are a detailed explanation of how a policy is to be implemented. They standardise the process and provide step-by-step instructions that enable anyone to perform the task in a consistent manner.⁷⁰ SOPs communicate who should perform the task, what materials are necessary, where the task will take place, when it should be performed and how the task will be executed.⁷¹ SOPs may include written documentation of best practices and provide a basis/foundation for performance review.

Stateless children: Article I of the 1954 Convention relating to the Status of Stateless Persons indicates that a person not considered a national by any State under the operation of its law is a stateless person. *De facto* stateless persons are those who are outside the country of their nationality and unable or, for valid reasons, unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.⁷²

Statelessness determination procedure: A formalised procedure based on specific legal provisions and having as an objective to establish whether or not a person is stateless.⁷³

Trafficking in persons: The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude or the removal of organs.⁷⁴

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in the above definition.⁷⁵

Unaccompanied children (also called unaccompanied minors): Children who have been separated from both parents and their legal or customary caregivers.⁷⁶ Unaccompanied children are completely alone or with minor siblings. If they are living or travelling with an adult, they will fall under another category such as "separated child."

SECTION IV: INTERNATIONAL
GUIDING PRINCIPLES &
REGIONAL GUIDELINES ON UASC

I. Access to the Territory

Regional challenges

- *The context of arrival of UASC very much depends upon if, where, and how they are intercepted when they cross a country's borders; if they are intercepted by police or immigration officers, they will often be viewed as 'illegal migrants' and detained in immigration detention centres.*
- *The diversity of economic development within the region and relatively porous borders means that there is significant child migration from the poorer to richer countries. This also means that the countries may be a mix of source, transit and destination countries for child migration and trafficking.*
- *Large scale movements of Rohingya refugees have been of particular concern in the region in recent times. Countries in the region are often transit points for refugees from the Middle East as well as West, South and Southeast Asia trying to reach emerging or developed economies in the region, including Australia.*
- *Within the region, cases of persons being forcibly returned without access to asylum or other procedures before reaching the shores of third countries have been reported.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>The non-refoulement obligation is a binding obligation under customary international law. The principle of non-refoulement constitutes an essential component of asylum and the international refugee protection regime, stating that a State may not oblige a person to return to a territory where he may be exposed to a risk of persecution.⁷⁷</p> <p>Due to their vulnerability, UASC should not be denied access to the territory and their situation should be assessed through referral to national or UNHCR asylum procedures as well as best interests determination procedures.</p> <p>UASC should not be subjected to detailed interviews or age assessment procedures by immigration authorities at the point of entry. If further procedures are needed to establish the child's identity the child must be allowed entry into the State while these are undertaken.⁷⁸</p> <p>Children should not be deprived of their liberty arbitrarily or unlawfully and if they do need to be detained it should be only as a measure of last resort and separately from adults.⁷⁹</p> <p>At ports of entry and in-country immigration contact points, immigration authorities should put in place procedures to identify UASC as early as possible and on a priority basis and to refer such children to the appropriate child welfare authorities.⁸⁰</p>	<p>All UASC seeking to access the territory (by whatever means) should be provided with immediate and expedited screening and referrals to appropriate interim assistance, including urgent medical care, legal advice, temporary shelter, and more in-depth assessment procedures and case management actions by authorised government or multi-disciplinary child protection entities.</p> <p>UASC should not be the subject of a re-entry ban.</p> <p>To avoid the risk of family separation, especially when infants and/or young children are found by authorities among mixed groups, expedited screening procedures should include the identification of family or caregiver affiliations.</p>

2. Identification and Referral to Appropriate Authorities

Regional challenges

- *There is no specific, all-encompassing definition of UASC used in the region by different stakeholders. These children may be referred to as “children”, “national children”, or “foreign children”; all of which fail to accurately denote their legal status and protection needs. In some countries, the legal framework only fully protects children who are citizens of that country.*
- *There is no systematic referral system or mechanism in place to inform a child migrant or a trafficked child about his or her right to claim asylum. Similarly, an asylum-seeking child may not be screened as a potential victim of trafficking. Finally, a migrant child may be vulnerable to being trafficked, but may not be correctly identified as being at risk and consequently miss out on necessary assistance.*
- *Migrant and trafficked children are often located in closed working environments (plantations, homes, fishing vessels, factories, saw mills, brothels and others) and are therefore difficult to access and cannot easily get help. UASC can also be found in jails for migration offenses, petty crimes, or other alleged offenses.*
- *There are gaps in determining which government agency is responsible for identifying, referring to appropriate procedures or providing protection and care to UASC.*
- *Children are trafficked into and within Southeast Asia for a variety of exploitative purposes, including prostitution, the production of child pornography, begging, theft and petty crime, and other forms of labour exploitation.*
- *Corruption remains widespread among law enforcement personnel in many countries in the region, creating additional challenges for UASC. This is particularly the case in relation to child victims of sex trafficking and forced labour. There have been credible reports of police officials protecting brothels and commercial sex venues, seafood factories and sweatshops from police inspections.*
- *UASC who are victims of trafficking may fear consequences from authorities or traffickers and so hesitate to communicate with police and government officials.*
- *The failure to implement a comprehensive approach to UASC can result in trafficked/smuggled children being dealt with under the same procedures as people smugglers and adult irregular migrants.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Identification procedures for UASC should be established to: (1) determine whether the child is unaccompanied or separated, and (2) determine whether the child is an asylum seeker or other category of UASC that requires referral to appropriate mechanisms and protection. If the child is identified as an asylum seeker, he/she should be referred to the competent national authority or to UNHCR for an assessment of his/her claim. If the child is identified as a trafficking victim, he/she should be referred to the relevant child protection agency. In all cases, the best interests of the child and the principle of non-discrimination should be considered.⁸¹</p> <p>Interviews with UASC to collect basic biographical and social history information should be conducted as early as possible, in an age appropriate manner, and by professionally qualified individuals who are trained in children's rights and child protection including communication with children; this includes an interpreter when necessary.⁸²</p> <p>Immigration and border police officers must limit their initial interview to gathering basic information about the child's identity.⁸³ They should be provided with training to help them identify children who may have been trafficked or might be seeking asylum and to make appropriate referrals to child protection agencies, the competent asylum agencies and UNHCR.⁸⁴</p> <p>The identification of whether a UASC might be stateless for the purpose of referral to appropriate mechanisms should involve consideration of whether he or she is a national of any State to which he/she has a relevant link (by birth, descent, marriage or habitual residence).⁸⁵</p> <p>As soon as the UASC is identified, a qualified guardian or adviser should be appointed to ensure the best interests of the child.⁸⁶</p>	<p>Agree on a definition of UASC (see schema at front of these guidelines) and disseminate guidance on how to identify UASC to the relevant stakeholders.</p> <p>A government agency should be assigned to facilitate the establishment of and lead in the implementation of joint multi-disciplinary (social welfare, police, health, justice, education, labour) assessment and referral mechanisms, composed of relevant government, non-government and international agencies.</p> <p>This assessment and referral mechanism should involve:</p> <ul style="list-style-type: none"> • clear delineation of responsibilities among different government agencies, civil society actors and international organisations; • agreed procedures for expedited screening at the point of initial contact with a child to identify vulnerabilities and document the family situation; and referral to appropriate response mechanisms of the country (government mechanisms and UNHCR for asylum seekers, anti-trafficking response structures, temporary care structures for orphans and separated children, shelters for abused and exploited children, juvenile protection systems); • agreed procedures for the appointment of an independent guardian or adviser of the child to ensure that there is someone who is able to build a more direct relationship with the child and can consistently advocate for the child's interests. <p>Procedures for in-depth assessments and decision-making on long term actions based on the child's best interest should be conducted under the remits of these response structures while still employing a joint multi-disciplinary approach.</p> <p>During the initial screening phase to establish if the child is unaccompanied or separated, and where an adult accompanies a child, it is necessary to establish the nature of the relationship between the child and the adult in order to determine whether or not the adult is the child's primary caregiver and whether their relationship is caring or abusive and exploitative.</p> <p>It is recommended that the national child protection authority is assigned the primary responsibility for the protection of all UASC; all UASC would be referred to this agency for overall case management/child protection activities. This ensures that service provision is "child" rather than "organisation" driven and involves an individualised and flexible model of care. Case managers should be skilled and experienced in child protection and welfare.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
	<p>Increasing awareness of issues concerning UASC among governments and the general public will mean UASC can be more readily identified and brought to the attention of authorities/ NGOs that are in a position to respond.⁸⁷</p> <p>Trainings should take place for law enforcement officers in order for them to have a better understanding of policies and procedures for identifying and referring UASC.</p> <p>Governments could implement specific trainings on child rights, child-friendly procedures and how to strengthen victim identification for all relevant stakeholders that are likely to be in contact with child victims of trafficking.⁸⁸</p> <p>Legal frameworks should be reviewed to ensure that the status of UASC is recognised and that children that have been trafficked are recognised as victims in need of protection and not as “illegal” migrants.</p> <p>States should also be conscious that there could be non-national/ foreign UASC in the justice system and mechanisms must be in place to provide them with legal aid and support required for their fair treatment and the protection of their rights.</p>

Identification: Good Practice Examples

1. In northern Thailand the ‘multi-disciplinary team approach’ is used to identify child trafficking victims. The team comprises of civil society members such as the NGO FOCUS/TRAFCORD which includes social workers, lawyers, and a strong network at the community level in the nine northern provinces. There are also state officials involved such as police officers, immigration officers, social workers from the state’s primary shelters, and doctors from the public hospital. The team primarily works according to the Anti-Trafficking in Persons Act B.E.2551, and its operation follows the “Memorandum of Understanding on Prevention, Suppression, and Solution for Human Trafficking Problem in 17 Northern Provinces B.E.2550”. The multi-disciplinary team approach is now applied nationwide.⁸⁹
2. In Thailand, the Immigration Bureau, in cooperation with the Bureau of Anti-Trafficking in Women and Children and the Department of Social Development and Welfare (DSDW), and with support from IOM, conduct joint victim identification and referral for potential victims and at risk groups in the Detention Centre in Suan Plu, Bangkok, so that they are transferred to DSDW shelters. They also set up a child-friendly investigation room (with IOM support) at Suvarnabhumi Airport to identify possible victims of trafficking.
3. The Malaysian Government has created the Council of Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) which facilitates discussion among the relevant agencies responsible for migrants and human trafficking issues.⁹⁰

3. Registration and Documentation

Regional challenges

- *UASC's legal statuses are sometimes determined according to their country of origin/citizenship and/or their immigration status as opposed to the set of rights that should be equally afforded to all children regardless of their background. Affording treatment below these standards is discriminatory and therefore in contravention of a violation of Article 2 of the CRC (prohibition of differentiated treatment).*
- *Within the region, unaccompanied children are more likely to be registered than separated children. This may have detrimental consequences with respect to care and services afforded to the separated children and determining the best interests of a separated child.*
- *Few countries in the region are signatories to the 1951 Convention Relating to the Status of Refugees. As a result, identity documents provided by UNHCR might often be overlooked by the national authorities, who claim they are not bound by international obligations to protect asylum-seeking or refugee children.*
- *Registering with UNHCR and being recognised as a refugee is a lengthy process; in the absence of adequate resources, there might be persons in need of international protection in a country who have not had an effective opportunity to register with or have their status recognised by UNHCR.*
- *Since there is no comprehensive and systematic approach to the registration, documentation and family tracing of UASC, independent migrant children may either be granted the same documentation as any accompanying adults or remain undocumented resulting in them being classified as "illegal migrants".*
- *The registration process of migrant workers can be bureaucratically demanding and often requires the cooperation of migrant workers' employers who may be unwilling to assist.*
- *Stateless children can be found among the three categories of asylum-seeking/refugee children, migrant and trafficked children. Stateless UASC have particularly high protection needs in that they are not able to receive the diplomatic or consular protection of the country where they originate from, yet the procedures to access legal status in the hosting country may appear equally difficult.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Registration and documentation are essential to respond to the needs of UASC and to protect their immediate and long-term interests. They should be carried out through a child-sensitive interview procedure.</p> <p>The registration of UASC should include a social history, compiled over time, which can accompany the child wherever he/she is transferred. In the case of asylum-seeking children, this would facilitate consideration of the best interests of the child at all stages of the refugee status determination procedure.⁹¹</p> <p>States should adopt a uniform format for registering information on UASC such as age, gender and country of origin, with a view to facilitating identification, family tracing, data comparability and information exchange with relevant agencies.</p> <p>Substantive interviews with immigration authorities should always be carried out in the presence of legal counsel, a guardian and – when the child so desires – other significant adults, such as a social worker or relative.</p> <p>Should a child, for any reason, become separated after entry, immigration and refugee-determination authorities should ensure that their data reflect this change of situation.⁹²</p>	<p>Initial interviews of UASC to collect bio-data and social history information should be done immediately after arrival, in an age-appropriate manner and be updated periodically by those trained in child-friendly interview techniques. (Note: The guidelines contained in UNHCR’s “Working with Unaccompanied Children: A Community-Based Approach” can be used as a guiding document in the data-gathering exercise. “Interviewing Applicants for Refugee Status” also provides useful guidance with regard to interviewing children.)⁹³</p> <p>The identification document issued to UASC should reflect their status as a child protected under the CRC. The document should be designed in a uniform way so as to ensure confidentiality and to avoid possible mistreatment, negative labelling, discrimination or any disclosure of information that might prejudice exercise of rights by UASC.</p> <p>Case files should be kept confidential and only accessible to trained professionals involved in decision making in the case management processes and the best interest determination procedures.</p> <p>Coordination between Immigration, other government agencies, UN agencies, and international and national NGOs within countries and across borders should be strengthened and streamlined in order to have a standardised mechanism for registration.⁹⁴ Procedures for information sharing in-country and between countries have to be formally agreed upon by governments and other engaged agencies to ensure confidentiality and the right to privacy. In the case of asylum-seeking and refugee UASC, no contact with the country of origin should be established unless in the context of voluntary repatriation following an assessment of the child’s best interests.</p> <p>Trafficked children’s cases should be documented, archived and remain available to the police and administrative services as reference documents in identifying trends and key characteristics of trafficking victims for the purpose of prevention as well as for the purpose of prosecution of traffickers.</p>

Registration and Documentation: Good Practice Example

In Thailand, the ILO-IPEC works in collaboration with the Mirror Foundation to establish an in-depth information database on cases of forced labour and trafficking. Information was obtained through field-based research and surveys on the situation of children working in Thailand’s fishing and seafood industry and on Thai deep-sea fishing boats in particular.⁹⁵

4. Age Assessment

Regional challenges

- Stakeholders report that the majority of UASC do not have identification documents available that can confirm the children's ages.
- Children have often been taught to lie about their age for fear of being in further trouble with the authorities or because they wish to avoid being placed in care.

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Detailed age assessment procedures (such as medical and dental examinations) should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches (such as interviews) have failed.⁹⁶</p> <p>In applying age criteria, the guiding principle should be whether an individual demonstrates a level of “immaturity” and vulnerability that may require more sensitive treatment.⁹⁷</p> <p>The procedure, outcome and consequences of the assessment must be explained to the presumed child in a language that they understand. The outcome must also be presented in writing. There should be a procedure to appeal against the decision and the provision of the necessary support to do so.⁹⁸</p> <p>In the case of asylum-seeking UASC, a refusal to undergo an age assessment procedure must not prejudice the outcome of the refugee status determination process.⁹⁹</p>	<p>Age assessment procedures should balance physical, developmental, psychological, environmental and cultural factors. Age assessment is not an exact science and a considerable margin of uncertainty remains inherent in any procedure.</p> <p>When making an age assessment, individuals whose age is being assessed should be given the benefit of the doubt. Examinations should not be forced but be undertaken on the basis of informed consent and be culturally appropriate.</p> <p>The least invasive option should be followed to ensure that the individual's dignity is respected at all times.</p> <p>Procedures should be multi-disciplinary and undertaken by independent professionals with appropriate care, expertise and familiarity with the child's ethnic and cultural background and gender.¹⁰⁰</p> <p>In cases of doubt, the person claiming to be less than 18 years of age should provisionally be treated as such. Age and relationship verifications could be part of a BID interview in a child-friendly manner.</p> <p>Where nationalities of UASC not seeking asylum have been verified, embassies and other government counterparts in the country of origin can assist in determining the actual age of the UASC during the family tracing. The authorities in the country of reception should refrain from initiating any contact with the embassy or other government counterparts in the country of origin of asylum-seeking or refugee UASC for the purpose of age assessment.</p>

5. Appointment of a Guardian

Regional challenges

- Some countries do not have a formal or systemised process by which guardians are appointed.
- UASC may not be adequately informed of their right to contribute to the decision making process of appointing a guardian.
- In the absence of adequate government-run residential centres and non-government organisations running shelter programmes, UASC are often assigned a guardian who comes from the same background. For example, an orphan refugee child is appointed an asylum-seeking/refugee guardian. Such a decision may be detrimental to the child, whose vulnerability could be perpetuated by the vulnerability of his or her guardian(s).

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>A guardian should be appointed to an UASC as soon as a State has identified a person as a child without an adult guardian.</p> <p>Procedures for the appointment of a guardian should not be less favourable than the existing national administrative or judicial procedures used for appointing guardians for national children. Guardians should not hold positions which could lead to a potential conflict of interest with the best interests of the child.</p> <p>UASC are entitled to be heard directly or via their legal representative or guardian in any legal procedure.¹⁰¹</p>	<p>Prior to a comprehensive age assessment process being undertaken, unaccompanied persons claiming to be children must be allocated an independent guardian to advocate for their best interests.</p> <p>The appointment of a guardian needs to be monitored by specific rules allowing for the protection of the UASC in accordance with established standards.</p> <p>The individuals carrying out these responsibilities may be drawn from a range of specialist backgrounds. They should have relevant childcare expertise to ensure that the child's legal, social, medical and psychological needs are being met during the determination procedure by serving as a link between the child and those organisations that provide protection and a continuum of care required by the child.¹⁰² They should receive on-going training and professional support, undergo police or other appropriate reference checks and be monitored by relevant authorities.</p> <p>UASC should be afforded the possibility, through a determined, easily accessible and confidential procedure, to express their views regarding their welfare and the appointment of a guardian.¹⁰³</p> <p>Care homes and children's shelters can be awarded the status of guardianship for UASC.</p>

6. Exemption from Detention

Regional challenges

- UASC in the region may easily find themselves placed in immigration detention centres (IDCs) which are often ‘prison-like’.
- The average period of time an UASC spends in immigration detention is often between three and nine months. IDCs are not designed to accommodate children, they often do not have separate facilities from adults, and there are generally no standard operating procedures in place.
- Children living in IDCs have no access to education.
- Children in immigration detention might face psychological and physical violence at the hands of IDC officers and fellow detainees. In most detention centres, these children are not separated from adults, they have poor access to basic needs, and the conditions do not meet international minimum standards and norms.
- UASC are often unnecessarily detained because there are no provisions in law or policy that provide that detention should be used as a measure of last resort, and which allow for alternatives to detention for UASC. UASC might be held in detention due to lack of available alternative care structures to enable release.

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>UASC should never be detained for reasons related to their immigration status or illegal entry or stay or because of their status as unaccompanied or separated children. This includes, whether temporary or otherwise, detention at the border or in international zones, in detention centres, in police cells, in prisons, or in any other special detention centres for young people.</p> <p>Judicial oversight must be exercised where it is deemed in a child’s best interests to be placed in a closed centre. In all other cases, UASC should be able to live in a community setting alone, or with an adult, on the basis of an assessment of their best interests. Overall, an ethic of care and not enforcement needs to govern interactions with UASC.</p> <p>Decisions to detain UASC and processes to review or appeal decisions to detain in relation to non-immigration matters must follow the same judicial procedures, standards and safeguards that are followed and applied to national children.</p> <p>Children who are detained should benefit from the same minimum procedural guarantees as adults, but these should be tailored to their particular needs. An independent and qualified guardian as well as a legal adviser should be appointed for unaccompanied or separated children.</p> <p>During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play, including with other children, which is essential to a child’s mental development and will help to alleviate stress and trauma.¹⁰⁴</p>	<p>Measures should be in place to ensure that children are not detained during health, security or identity screening or in order to prevent them from absconding or for removal purposes. In those situations where UASC are placed in detention, all efforts should be made to allow for their immediate release from detention and their placement in other forms of appropriate accommodation.¹⁰⁷</p> <p>Steps should be taken to prevent children from becoming separated from their parents/primary carers during the exercise of law enforcement measures. To that end, thorough investigations should be conducted on the backgrounds of those arrested and detained for immigration offenses in order to establish their family composition and prevent children becoming separated from their family.</p> <p>In order to ensure that UASC are not inadvertently detained, a dedicated officer should be assigned at each of the detention centres who would be responsible for identifying UASC, and informing the management of the detention facility, who in turn would liaise with service providers. S/he should be trained in child protection in a cross-cultural context.</p> <p>Clear protocols should be in place for all IDC staff (see endnote for more detail).¹⁰⁸</p> <p>Working partnerships between NGOs should be strengthened in order to allow for the provision of alternative, appropriate care and support for UASC in a community setting.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Child victims of trafficking should neither be detained in police custody nor subjected to penalties for their involvement under compulsion in unlawful activities.¹⁰⁵</p> <p>Stateless children including UASC are uniquely vulnerable to prolonged detention and States should respect the rights of stateless persons to be free from arbitrary detention as a result of their stateless status.¹⁰⁶</p>	<p>Immigration laws should be amended to ensure that UASC are not subject to criminalisation based only on their immigration status. Trainings for law enforcement officers should take place so as to ensure the effective implementation of national laws and child protection safeguards.¹⁰⁹</p>

Exemption from Detention: Good Practice Example

In Thailand, the UNHCR, in cooperation with COERR (local NGO), have established procedures to arrange for the release of minors who are arrested while working outside the border camps and placed in detention centres, to be safely returned to the camps.¹¹⁰

7. Family Tracing and Contact

Regional challenges

- *In general, family tracing and monitoring mechanisms are not well implemented within the region due to a lack of available resources, cooperation and networks.*
- *The majority of family tracing is undertaken by the National Red Cross/Red Crescent Societies (such as the Thai Red Cross, or the Malaysian Red Crescent) with the support (technical, financial) of the ICRC.*
- *In cases where UASC are asylum-seeking or refugee children from conflict-affected countries, voluntary repatriation in conditions of safety and dignity is usually not an option.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Children who are separated from their parents or their primary caregiver by law or custom have the right to maintain contact with their parents.</p> <p>Family tracing must only be undertaken on a confidential basis, with informed consent and only when it is considered to be in the best interests of the child and would not endanger members of the child's family. Decisions on family tracing need to be taken as part of the overall assessment to determine what options are in the best interests of an UASC.</p>	<p>Upon assessing that it is in the best interests of the child, family tracing should be carried out for all UASC at the earliest possible time, preferably right after the cases are referred to responsible interim care authorities.</p> <p>Steps should be taken to ensure UASC are properly informed and consulted with respect to the family tracing process. This could be achieved through assigning each UASC a caseworker who is specifically charged with the responsibility of coordinating the tracing process, liaising with assisting UN agencies and having regular meetings with the child.¹¹³</p> <p>States, with participation of government agencies responsible, the UN, and the civil society groups involved in child protection, are encouraged to establish formal coordination procedures for cross-border family tracing and family assessment procedures. Embassies of perceived countries of origin can support the process of family tracing and nationality verification, as well as the return process in the case of UASC not in need of international protection when this is in the best interests of the child and would not endanger the child or his/her family.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>States and other organisations undertaking family tracing may seek assistance from specialised UN agencies, the International Committee of the Red Cross (ICRC), International Social Services (ISS) and relevant child protection agencies.¹¹¹</p> <p>States (in cooperation with UN agencies and INGOs as necessary) should assist UASC to trace the parents or other members of their family in order to obtain information necessary for reunification with the UASC's family.¹¹²</p>	<p>Where no formal State to State agreements are in place, tracing methods may vary and can be flexible, as long as their first priority is to protect the child.</p> <p>Authorities might undertake to explore informal cross-border and in-country tracing networks and consider partnering with an NGO or community-based organisation to work with these networks towards ensuring systematic tracing for all UASC who need it.</p> <p>Systems should be in place to ensure greater information exchange between various law enforcement agencies and government departments, particularly where multiple countries may be involved.</p> <p>Efforts should be strengthened to foster good relationships between border camp staff and asylum-seeking/refugee inhabitants in order to maximise their knowledge and connections to facilitate tracing for families of asylum-seeking/refugee UASC.</p> <p>Tracing should not be abandoned unless all reasonable efforts to locate family members have failed.¹¹⁴</p> <p>If it is not possible to identify the country or place of origin, the UASC should receive the necessary protection and basic care in accordance with the provisions of national law and on the same basis as child nationals of the host State.¹¹⁵</p>

Family Tracing and Contact: Good Practice Examples

1. In Indonesia, ICRC has been doing family tracing for UASC in East Timor following the previous conflict. However, they have expressed willingness to support UNHCR or IOM to do family tracing if there is a special request submitted by the respective organisations.¹¹⁶ ICRC also conducts family tracing in Malaysia where NGOs work together with refugee-led community-based organisations.¹¹⁷
2. In Thailand, family tracing has been assisted with a bilateral MoU and SOP on Victim Protection that Thailand has developed with Laos, Myanmar and Vietnam. Trainings were supported by IOM, Save the Children, WVI and UNIAP.¹¹⁸

8. Family Reunification

Regional challenges

- *Children often lose their right to family reunification when they become of age. However, due to the delays in determining their status and rights, they can be minors upon arrival, but might have attained majority by the time they are eligible for family reunification.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>States should facilitate family reunification of UASC taking into account each child's best interests.</p> <p>Verification needs to be carried out for every child. The national legal framework for the reunification of children including UASC with their families should reflect international human rights standards – in particular the Convention on the Rights of the Child – and international humanitarian law.</p> <p>Ideally, reunification will be with one or both parents. If it is not possible to reunite the child with his/her parents, reunification with other family members would usually be the preferred alternative.¹¹⁹</p> <p>Where a separated child has a family member in a third country and both the child and family member wish to be reunited in that country, the child welfare authority in the country where the family member is living should carry out a careful assessment of the family member's suitability to provide care for the child.¹²⁰</p>	<p>The age to determine the right to family reunification should be the age upon arrival in the host country (even though the host country might be a transit country before the resettlement of the child elsewhere).</p> <p>After long separation, if the child is attached to his or her caregiver and/or has no recollection of his or her family, family reunification may be difficult.</p> <p>Preparations for a reunification should minimise possible renewed emotional distress to the child, and risks of stigma and re-victimisation should be taken into consideration. In some cases reunification will not be possible or in the best interests of the child, and alternative solutions should be identified.¹²¹</p> <p>If it is determined to be in the best interests of the child that family reunification should take place in the host country, entry and residence authorisation should be granted to the child's family members.¹²²</p> <p>Once decided it is in the best interests of the child, reintegration of the child in his/her family should be designed as a gradual and supervised process, accompanied by follow-up and support measures taking into account the child's age, needs and evolving capacities, as well as the cause of the separation.</p> <p>Where a child victim of trafficking is reunified with his or her family, follow up monitoring visits should be made by a trusted, local, competent authority to the family until such a time when there is confidence in the stability of the situation of the child.¹²³ Vulnerable families should be referred to local programmes for development support or for strengthening protection in the family.</p>

Family Reunification: Good Practice Example

In Thailand, when a case of family reunification is brought to the attention of UNHCR, the relationship between the adult and child is verified by observing their interactions together and asking questions regarding their separation.¹²⁴

9. Interim Care

Regional challenges

- *Initial observations suggest the interim care provided for UASC across the region is poor, given that few agencies provide temporary care services. This is partly due to the lack of a formal legal and policy framework to address the needs of UASC and also inadequate support provided in children's shelters.*
- *Where available services in refugee camps are weak or insufficient, children's access to education, social services and health care is limited. As a result, many unaccompanied children seek to avoid the camps, and instead migrate to the cities where they become engaged in hazardous labour or sex work.*
- *The mental health needs of UASC are largely unaddressed due to a lack of mental health professionals and the absence of psychosocial support services for vulnerable children with specific needs. Access to services is also a challenge.*
- *High incidences of rape of children are reported in border camps. There are reports of different forms of gender-based violence incidents including domestic violence in border camps and urban settings.*
- *To attend school, the child may be required to cover the costs of uniforms, transportation, stationery and food which may be costly for UASC guardians.*
- *UASC rarely have access to state schools or vocational training programmes. In many situations, if a child's birth certificate has "foreigner" written on it or if the child does not have a birth certificate, he/she is unable to enrol.*
- *Some UASC may need social and financial assistance. For example, they may have received a residence permit but are unable to find work or wish to study; similarly, they may be old enough and wish to live independently.¹²⁵*
- *Children living on the streets may be forced into prostitution or other illegal activities in order to receive an income, food, or other necessities. The legal status of these children may be determined with reference to these activities. They may be viewed as illegal workers rather than victims of trafficking or other forms of exploitation, and may be deported for this reason.*
- *Factories that employ UASC can be prosecuted and child victims should, in theory, be supported in seeking compensation from these employers, regardless of their nationality. However, these provisions are not effectively implemented, as those who work illegally are vulnerable to exploitation and face significant challenges in accessing justice in the event of labour rights violations.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Every child has the inherent right to life and development. While in interim care – whether it be in a foster home, another form of community-based care, or, as a last resort, institutional care – UASC must be, in principle, provided with protection and care at the same level as national children in the country concerned to ensure that they are adequately clothed, fed and accommodated and that their physical, mental, spiritual and emotional health needs are met, including the need for affection and safety.</p> <p>UASC should be given opportunities to develop, learn and thrive, and they must be supported and encouraged to achieve their full potential.</p> <p>Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, practice their religion and use their language.¹²⁶ In determining appropriate care provision, the diversity and disparity of unaccompanied or separated children (such as their ethnic and migratory background or cultural and religious diversity) should be taken into consideration on a case by case basis.¹²⁷</p>	<p>Policies and procedures need to be put in place to improve the standard of care provided in government and community-run shelters to ensure UASC interim care is of at least the same quality as the care afforded to national children.</p> <p>During the time they remain separated from their families or caregivers, children need to be able to live in a safe and protective environment where they are properly cared for.</p> <p>Interim care should provide UASC with the emotional and physical care that their parents would normally provide. This environment should also ensure that their health and educational needs are addressed and all other rights of special pertinence to their situation are safeguarded, including the right to identity, freedom of religion or belief, and language.¹²⁸</p> <p>It is essential that care arrangements for UASC are regularly monitored to ensure the protection and well-being of the child and that his/her best interests are respected. This monitoring should include listening to the views of the child and establishing a confidential reporting and response mechanism.¹²⁹</p> <p>Arrangements should be in place to ensure that staff are properly trained and qualified and that they receive adequate support. It is important to ensure that UASC are not “detained” in residential care facilities, under lock-down with no freedom of movement.</p> <p>Within residential care facilities, steps should be taken to ensure that children are informed about their rights in the shelter and can use available procedures for registering complaints.</p> <p>UASC should be supported in maintaining their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education should reflect their cultural needs.</p> <p>Children should be provided with the opportunity to remain in contact with their family in the country of origin/ third countries.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>9.1 Care Placements</p> <p>Institutions, services and facilities responsible for the care or protection of UASC should meet standards established by the state, particularly in the areas of safety, health and staff capacity.</p> <p>Children must be provided with suitable care placements as soon as possible after arrival or identification. Ideally, UASC should have the opportunity to be placed within a family if it is in their best interests to do so.</p> <p>Whether in foster care or in residential settings, UASC must be cared for by suitably trained professionals and foster care workers who understand their cultural, linguistic and religious needs and who have an understanding of those issues that affect separated asylum-seeking, refugee, trafficked and migrant children.</p> <p>Care workers should help a child develop links with their ethnic community whenever possible.</p> <p>A child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, should be entitled to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.¹³⁰</p>	<p>Care authorities should base placements on a careful assessment of each individual UASC's needs while taking into account the views and best interests of the child.</p> <p>Changes in care arrangements should be kept to a minimum and regular reviews of care arrangements should be carried out by UNHCR for asylum-seeking and refugee children and/or other relevant partners and agencies for other categories of children.</p> <p>Siblings should be kept together where possible if it is in the children's best interests. All efforts should be made for family unity to be preserved.</p> <p>Where children live with or are placed with relatives or community members, a socio-economic assessment needs to be undertaken of the family the UASC is to be placed with.</p>
<p>9.2 Health</p> <p>UASC should have access to preventative, remedial and emergency health care provisions in the same way as national children. Particular attention must be paid to their physical and mental health needs arising from their experiences as UASC.¹³¹</p> <p>UASC who are victims of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts should be provided with recovery and rehabilitation services.¹³²</p>	<p>Existing laws concerning children's health need to be amended to treat all children equally without discrimination and regardless of their status.</p> <p>UASC should be provided with free access to counselling or therapy which is vital to assist in their recovery and reintegration and which would then assist with expediting the processing of their cases.</p> <p>States without the capacity to provide for refugee, asylum seeker and irregular migrant children's basic material needs should engage with the international community, including UN agencies and NGOs, to assist in ensuring that such needs can be met.</p> <p>Law enforcement officers should be present in the border camps in order to protect UASC from sexual violence within the camps.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>9.3 Education, Language and Training</p> <p>UASC should have access to the same statutory education as national children and should be able to attend regularly.</p> <p>In order to preserve their cultural identity UASC should also have access to learning in their mother tongue. Older UASC should have access to vocational training.¹³³</p>	<p>Steps must be taken to accommodate UASC in public schools and provide for the needs of foreign children from all ethnic and cultural backgrounds.</p> <p>Costs associated with UASC attending school should be covered by state governments, or alternatively through sponsorship by local businesses or community-based organisations – particularly in cases where an UASC’s guardian has limited financial capacity.</p> <p>All children who attend school should be issued with some form of documentation which allows them to change schools when necessary.</p>
<p>9.4 Social Assistance</p> <p>Every child has the right to benefit from social security.</p> <p>Children should have a standard of living adequate for their physical, mental, spiritual, moral and social development.</p> <p>States should provide refugees, asylum seekers and irregular migrant children with resources and support to meet their basic material rights.¹³⁴</p>	<p>UASC should be able to access financial support and housing in the same way as national children under special protection measures. Access should be consistent with domestic age restrictions and all administrative procedures should be applied in the same manner as for national children.</p>
<p>9.5 Employment</p> <p>Upon receiving a residence permit or other permission to remain in the host country, older UASC could be allowed to work if they wish. However, this employment should be consistent with the national child protection legal framework and the national child labour laws.</p> <p>UASC should be provided access to apprentice programmes, vocation training, informal education and skills development to facilitate their economic integration in the host country or reintegration in the country of origin in the case of eventual return.</p> <p>Children should be protected from economic exploitation and hazardous work.¹³⁵</p>	<p>UASC of working age wanting to find employment should receive career guidance and support from their guardian/carer/case manager to help them consider their options and gain an understanding of the context of employment in the host country.</p> <p>Care should be taken to ensure that there is no coercion or pressure being put on the young person to work.</p> <p>State governments should take steps to legalise the employment of unregistered asylum seekers/refugees and migrants, in order to protect those who do work, including UASC.</p> <p>There is a need to improve labour inspection standards and procedures to better detect workplace violations, including instances of trafficking or children engaged in forced labour.</p> <p>Safeguard mechanisms need to be put in place to ensure transparency and avoid corruption and collusion between government employees/law enforcement officials and employers in industries that employ children.</p> <p>Steps should be taken to ensure that legislation also covers the protection of children in illegal industries such as the sex industry or those exploited through trafficking.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
	<p>Measures to support access of workers, including UASC, to legal status, should be set in place to reduce vulnerability of workers to abuse and exploitation as a result of their irregular status. These measures should include incentives for legitimate employers to register their workers.</p> <p>UASC and other undocumented migrants found working in illicit trades (child prostitution, drug dealing, etc.) or those under duress from employers must be exempt from criminal responsibility and should be given protection when asked to serve as witnesses. UASC workers who are victims of abuse and exploitation in these trades have the right to the full range of effective remedies.</p> <p>Measures should be put in place to ensure sufficient ration allowances are provided within refugee border camps (particularly for children) so that UASC are under less pressure to seek alternative income outside the camps where they are vulnerable to exploitation.</p>

Interim Care: Good Practice Examples

1. The Rumah Perlindungan Sosial Anak Center in Indonesia is child-friendly and spacious, with good facilities and sufficient private space for the children. It works very closely with a network of organisations that provide referral, recovery, reintegration and legal protection services. This comprehensive approach is in line with nationally defined priorities to strengthen child welfare and protection.¹³⁶
2. NurSalam, an NGO working with children in Malaysia, offers direct assistance to stateless children, including education and health services, food and clothing, counselling and job placement assistance, and a peer mentoring programme.¹³⁷
3. Vietnam is trying to improve victim support services through the Shelter Self-Improvement Project. This project builds the capacity of shelter staff to maintain uniform standards for victim care and support nation-wide. In 2010, shelter staff underwent an intensive programme of training. In addition to technical training, participants have engaged in shelter cross-assessments where teams of shelter staff visit the shelters run by their colleagues to assess conditions and make recommendations.¹³⁸
4. Some states in the ASEAN region have adopted flexible practices to allow children to enrol in primary school even if they do not have identity documentation. Several States allow non-nationals to receive primary education in the public system. Thailand adopted this Universal Education policy in 2005 and allows all children in the country, irrespective of status or access to documentation, to enrol in public education free of charge for 15 years. Coupled with Thailand's establishment of universal birth registration, its education policy has greatly increased the protection of UASC.
5. The Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT) addresses protection and social welfare related issues concerning UASC. The Committee holds monthly Protection Working Group meetings at a provincial level involving NGOs, UNHCR staff and community organisations. Meetings also involve the Prevention of Sexual Abuse and Exploitation Steering Committee.¹³⁹

10. Access to the Best Interests Determination Process

Regional challenges

- *Due to the large numbers of UASC refugee children identified in border camps, the widespread locations of the camps, and limited resources, Best Interests Determination (BID) assessments are often only carried out in the case of refugee children when a refugee child is being considered for resettlement.*
- *There are not enough trained NGO and government authorities to lead and facilitate BID procedures.*
- *BID procedures are not well defined in most official guidelines and procedures on child protection in most countries, and are known to be used only for cases of refugees and asylum seekers.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>The best interests of the child must be a primary consideration in all actions concerning every child and UASC in particular.¹⁴⁰</p> <p>A best interests determination (BID) describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards. Such processes should:</p> <ul style="list-style-type: none"> • ensure adequate child participation without discrimination; • allow the views of the child to be given due weight in accordance with age and maturity; • involve decision-makers with relevant areas of expertise; • balance all relevant factors in order to assess the best option. <p>When stateless persons are simultaneously refugees (for example, if they cross an international border to escape persecution) they should be treated as such and afforded the same protections.¹⁴¹</p> <p>States may consider combining statelessness and refugee determination in the same procedure, as long as confidentiality requirements for applications by asylum seekers and refugees are respected.¹⁴²</p>	<p>In addition to a best interests assessment, a thorough evaluation of the situation of the child and the options available for the child should be carried out to recommend what is in the best interests of the child. In the case of refugee children, a best interests determination process should be carried out in the following situations: (1) the identification of durable solutions for UASC; (2) temporary care arrangements for UASC in exceptional situations; and (3) possible separation of a child from his/her parents or person holding custody rights by law or custom against his/her will; (4) identification of durable solutions or decisions on care arrangements in situations where the custody situation remains unresolved and the national authorities are unable or unwilling to adjudicate on custody; (5) in complex cases prior to family reunification.¹⁴³</p> <p>In the case of migrant children, specific procedures should be set up to determine their best interests. The BID process developed for asylum-seeking and refugee children could serve as a model for the development of such procedures.</p> <p>The best interests determination process should ensure that specific protection and care are provided to the child and that decisions are in line with the CRC. The perspectives and the opinions of the child must be duly heard and taken into consideration in the process.¹⁴⁴</p> <p>Decision making for the child through a BID panel should be set in place after the assessment is made and the views and preferences of the child in question have been duly heard, so that decisions are agreed upon collectively by agencies and individuals responsible for the child.</p> <p>Best interests determination processes, whenever possible, should be developed within an existing national child protection system.¹⁴⁵</p> <p>Staff conducting the BID assessments should use child-friendly techniques and have the requisite skills and knowledge. A multi-stakeholder approach should be used. Confidentiality should be respected at all times.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
	<p>The BID assessment must be based on the individual circumstances of each child. The following should be considered: the child's family situation; the situation in his or her country of origin; particular vulnerabilities; safety and the risks he or she is exposed to and his or her protection needs; level of integration in the host country; and the child's mental and physical health, education and socio-economic conditions. It is important to obtain the views of the child on his/her current care arrangement and long-term or durable solutions.</p> <p>These considerations must be reviewed in light of the child's gender and nationality, as well as his or her ethnic, cultural and linguistic background. Due consideration must be given to age and maturity levels.</p> <p>For UASC who are not asylum seekers or refugees, where the country of origin is identified and where there is a possibility of coordination among government and NGOs across borders to support the child, BID procedures are best done with representatives of both countries present, or if deemed most appropriate, led by the country of origin where the child is potentially returning.</p> <p>The decisions concerning UASC should take into account both short and long-term best interests and welfare of the child, ensure his or her protection and seek durable solutions. The priority is the child's right to family unity.¹⁴⁶</p> <p>The decision making process should involve full consultation at all stages with the child, according to his or her evolving capacities.</p>

BID processes: Good Practice Examples

1. In Thailand there are a number of informal processes in place which afford UASC some increased protection. For example, within the nine border camps, child refugees/asylum seekers are recognised as “displaced persons fleeing fighting” on a *prima facie* basis. Similarly, when conducting BID interviews with children, extra time is allowed to conduct the interview and reports indicate children are frequently given the benefit of the doubt if there is uncertainty regarding the credibility of his or her story. This is related to the fact that the determination of a child refugee's status and of his or her best interests must be done as quickly as possible to avoid the physical and psychological trauma associated with a prolonged stay in a refugee camp.¹⁴⁷
2. Article 33 of the Anti-Trafficking Act 2008 in Thailand states that “the opinion of trafficked person is to be sought” which applies to the BID process. Trainings, guidelines and information materials have been implemented to support this legislation.¹⁴⁸

I I. Legal Representation and Assistance

Regional challenges

- *At government shelters, children often reportedly have limited access to legal assistance.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>States should provide UASC with free, independent legal assistance and advice and, when necessary, interpreters who can speak a language they can understand, to enable the children to engage most effectively in any processes concerning their welfare and protection.¹⁴⁹</p>	<p>Legal assistance should be made available at no cost to the child. Legal representatives for UASC should possess the relevant knowledge and skills for representing children as well as have adequate knowledge on areas of migration law, the asylum process, protection of victims of trafficking and other forms of abuse and exploitation. Where nationalities of UASC who are not seeking asylum can be ascertained or where nationality verification with the perceived country of origin is in progress, embassies of the country of origin should provide legal assistance, language and other assistance to the UASC.</p> <p>Access to legal representation for asylum-seeking and refugee UASC is particularly important in the process of refugee status determination. As part of this process, consideration would need to be given to child-specific forms of persecution.</p> <p>It is important that victims of child trafficking and forced child labour, as well as other forms of abuse and exploitation, are supported including through the provision of legal representation in filing cases against their traffickers and exploiters and are protected in the process. The resolution of these cases should not only result in jail sentences and fines for the offenders, but also provide for just compensation, protection and security, and support for return and reintegration of the victims.</p> <p>State authorities should put in place mechanisms to support all migrant workers, including independent migrant children, to exercise their rights at the work place, and educate them about their employers' obligations and the legal recourse options available in the case of exploitation.</p>

Legal Representation: Good Practice Examples

1. The Indonesian government's Ministry of Woman and Child Empowerment provides legal assistance to women and children who are victims of violence; UASC could potentially fall within this category.
2. With respect to asylum-seeking/refugee UASC in Thailand, each Karen camp has established a Sexual and Gender-Based Violence Committee to respond in cases of sexual abuse and work to prevent its occurrence. These Committees also seek to ensure that child victims are provided with access to legal services.¹⁵⁰
3. Malaysia's High Court made a landmark decision in dealing with a child refugee by allowing an officer from the United Nations High Commissioner for Refugees (UNHCR) to be present in court during the proceedings pursuant to s. 12(3)(b) of the Child Act 2001. The officer was classified as a person "directly concerned" in the case within the meaning of s. 12(3)(b) of the 2001 Act and could thus advocate on behalf of the child. This overturned the decision made by the Magistrates Court in *ISKANDAR ABDUL HAMID v. PP* [2005] 6 CLJ 505.¹⁵¹
4. UNHCR Indonesia allows Jakarta Legal Aid Institution (LBH Jakarta) to assist asylum seekers in the refugee status determination interview.¹⁵²

12. Minimum Procedural Guarantees

Regional challenges

- *Special child-friendly measures or guidelines are rarely in place to inform the interview process when children are involved.*
- *Staff are not trained in how to interview children and, as a result, child-friendly interviewing techniques are not adopted.*
- *Authorities often fail to take adequate steps to separate child victims of trafficking from their traffickers. This may result in threats to the victims and their families if they cooperate with police and prosecutors. Initial response mechanisms are inadequate.*
- *Allowing space and time to encourage disclosure is not currently possible due to bureaucratic procedures.*
- *At present, there is no possibility of an appeal to an independent judicial authority if the child receives a negative decision to an asylum claim given that refugee status determination (RSD) is conducted by UNHCR (under its mandate to conduct the RSD process where national asylum systems are not functioning properly) in the three countries under review. Rejected applicants have the right to appeal a negative RSD decision with the appeal determined by a UNHCR Officer other than the Officer who heard the claim in the first instance.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Decisions on a child's asylum claim should be made by the competent national authority or UNHCR in the absence of a designated competent authority. Children who receive a negative first decision should have a right of appeal to a judicial authority and have their case decided within a reasonable timeframe.</p> <p>UASC should be accompanied at each interview by their guardian and the children should be allowed to give testimony through child-sensitive means. There should be a written record of the interview.</p> <p>Special assessment of younger children, children with a disability or those suffering from psychological trauma should be carried out by an independent expert in order to evaluate the child's ability to articulate his or her need for protection or a well-founded fear of persecution and also to identify any difficulties a child may have in recounting painful incidents or disclosing sensitive information.¹⁵³</p> <p>Stateless UASC who meet the criteria of a "refugee" under the Refugee Convention, should be afforded all necessary protection under the Convention. States should consider combining statelessness and refugee determination in the same procedure.</p>	<p>Practical standard operating procedures (SOPs) on child-sensitive interviewing skills should be made for use on the ground by the officers at the borders or by the UNHCR staff.</p> <p>Special trainings should take place for officials, officers at the border (immigration officers, customs officers, etc.), embassy officials and the personnel of the UNHCR and other NGOs involved with children. These trainings should support the SOPs made beforehand and be focused on child-sensitive interviewing skills. Every officer/staff member should undertake these trainings.</p> <p>Methods for UASC to provide testimony can include oral testimony, drawings and writings, audio and video recorded interviews with independent child-friendly experts, and testimony via video-link.</p> <p>A list of independent experts and qualified/trained interpreters should be prepared by the government in association with the relevant NGOs and international organisations in order to act quickly and have an expert ready to interview children with special needs at any moment.</p> <p>UASC should not be fitted into procedures designed for adults and decision-making bodies should design procedures that are appropriate to the needs of children and their levels of understanding.¹⁵⁴</p> <p>The best interests assessment of the situation of the child should be done jointly by two or more of the specialised agencies adopting an inter-agency cooperative approach (multi-agency/multi-disciplinary approach) in order to provide a strong, coordinated response. In cases where joint assessments are not possible, findings should be shared between concerned agencies.¹⁵⁵</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>States are encouraged to establish procedures for determining the nationality of non-refugee stateless UASC and mechanisms for providing such children with legal status and protection in the receiving state while long-term care interventions and durable solutions are being determined.</p> <p>Procedures for determining nationality entail cooperation with neighbouring countries and with perceived countries of origin. States are encouraged to establish bilateral agreements with countries of perceived origin of significant numbers of stateless children on procedures for establishing the nationality for these individuals.</p> <p>Nationality determination should be followed up by an in-depth assessment of the child's situation by a multi-disciplinary team to recommend immediate and long-term care and protection interventions for the child.</p> <p>States receiving verified stateless UASC, especially young children and infants, are encouraged to extend citizenship to these children and protect these children from continuing exploitation, neglect and abuse brought about by their stateless status.</p>	<p>Decisions concerning the status of the child should be timely and well-documented, and clear reasons for the various decisions should be provided to the child and his or her guardian. Officers should also be trained in giving clear reasons to children in a manner that they can understand dependent upon their age and maturity.</p> <p>The right to appeal decisions regarding the status of asylum seekers is very important, especially for children. They need to understand the reasons for their situation and what can be done for them. Therefore, the decision should be given in person to the child in a way that s/he understands. The child can then give more information to the officer if needed.</p> <p>Governments should take steps to ensure that UASC trafficking victims are protected from threats and punishment related to acts committed as a result of being trafficked.¹⁵⁶</p> <p>All the stakeholders involved should continue strengthening cross-border and internal cooperation of law enforcement officials, for example by establishing coordinating units with a mandate to issue clear guidelines for child-centred investigations of child trafficking cases and for treating trafficked children as victims rather than criminals. Moreover, they should enhance ongoing efforts to identify victims of trafficking among vulnerable populations, in particular migrant communities.¹⁵⁷</p>

Minimal Procedural Guarantees: Good Practice Examples

1. In 2010, Cambodia developed and implemented a national training programme on combating human trafficking. The training was developed by adapting the COMMIT Regional Training Programme to the Cambodian context, translating it into Khmer and then incorporating national policies and mechanisms into the curriculum. This provided a tailored approach, while still being consistent with the international standards of COMMIT.¹⁵⁸
2. In Thailand, there is close cooperation between NGOs and the government through a multi-disciplinary team approach. Once identified as trafficking victims by the immigration officers, children are sent to the police and then to a government-run shelter "Children and Family Home" for two months to help them adjust. During the stay, they are encouraged to enter a vocational training programme and receive non-formal education by the Ministry of Education.¹⁵⁹
3. In 2009, the law enforcement agencies of Thailand and Myanmar initiated some meetings for cross-border cooperation which successfully continued in 2010 between specialist trafficking units. The Myanmar Police Force (MPF) and the Thai Department of Special Investigation (DSI) were the main agencies involved in the discussions. The aim was to create systems encouraging the flow of information and to improve the time taken for cases to reach the prosecution process. This information allowed the MPF to investigate trafficking networks within Myanmar and take appropriate action. One particularly beneficial outcome was the improved timeliness in the delivery of information to the MPF. This allowed for action to be taken against traffickers before the victims returned home, which helped to ensure their safety and successful reintegration.¹⁶⁰

13. Remaining and Integration in the Host Country

Regional challenges

- *The length and circumstances of stay, as well as the reasons for being present in a territory, may not necessarily be considered as reasons to grant citizenship to foreign children.*
- *Some governments in the region view any incoming refugees/asylum seekers/stateless migrants as “illegal immigrants”; as a result, the government places them in detention centres and eventually deports them. Those who are not placed in detention can live under the threat of expulsion and may often be denied economic and social benefits as well as being subjected to hazardous/exploitative abuse.*

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Local integration is the primary option if return is not possible and should be based on a secure legal status and an assessment of the the best interests of the child. The child’s level of integration in the host country must be a consideration in the BID prior to recommending local integration.¹⁶¹</p> <p>Local integration of trafficked children should be considered from a durable and long-term perspective and not be limited to the time the victim is a child. By the age of majority, if no other kind of residence permit can be issued under the conditions laid down in national law (e.g. for employment or study reasons), full regard should be given to their vulnerable status and they should be allowed to remain in the host country with a secure status.¹⁶²</p> <p>Long-term placement of UASC should be decided based on the best interests of the child and institutional care should serve only as a last resort. When determining placements for UASC, factors such as the child’s age, sex, emotional state, family background, continuity/discontinuity of care, possibilities of family reunion, reasons for flight, and educational background should be taken into consideration.</p> <p>UASC should have the same access to rights such as education, training, employment and health care as national children.¹⁶³</p>	<p>UASC should be allowed to remain legally in a host country if it is determined to be in their best interests to do so following a careful assessment of the child’s situation taking into account their age, gender, religion, culture, language, care history, mental and physical health, education and family situation in the country of origin.¹⁶⁴</p> <p>Siblings should be kept together in the same placement unless they wish otherwise or it is not in their best interests. If a sibling group is living independently, with the oldest taking responsibility, then they must be provided with appropriate support and advice and a secure immigration status.¹⁶⁵</p> <p>Long-term placement should ideally be within the community to which the child belongs. If, however, children are obliged to remain outside their own community, efforts should be made at least to keep them in touch with their own culture, for example by placing them in a family from their region of origin.¹⁶⁶</p> <p>Adoption is only an option for a separated child following a formal legal process. Before adoption can be considered viable or desirable, a rigorous assessment, conducted by an authorised and specialised organisation, of the child’s family circumstances in the country of origin is essential. Family tracing is also required. The views of the child must be sought and priority must be given to adoption by relatives in their country of residence.</p> <p>Temporary residency is not a durable solution and should not be ended abruptly upon the child turning 18.¹⁶⁷</p> <p>Regarding refugee children, the states involved must facilitate the fulfilment of UNHCR’s protection mandate and must seek its cooperation in adoption cases involving refugee children.¹⁶⁸</p> <p>Legislation could be passed and implemented stating that those children born in a country (and who are not born a citizen of any other country) are automatically entitled to citizenship of that country.</p> <p>To secure the legal status of UASC, states should promote the regularisation of migrant children.</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
	<p>A trafficked child should be allowed to remain legally in a host country if it is determined to be in his or her best interests to do so, especially if it is not safe to return to his or her country of origin.</p> <p>Governments should seek to provide psychological consultation services and reintegration support specifically tailored to victims of child trafficking.¹⁶⁹</p> <p>For stateless children, mechanisms and procedures should be developed which enable the acquisition of a nationality as this is the most critical element of a durable solution for a stateless child.¹⁷⁰</p> <p>Foundlings found abandoned in a State should be protected against statelessness.¹⁷¹</p>

Integration in the Host Country: Good Practice Examples

1. Vietnam's 2008 reformed nationality law facilitated the naturalisation for long-term stateless residents (stateless people who had resided in the country for over 20 years). The application for naturalisation was free of charge for these long-term stateless residents, they were exempt from the requirement of a Vietnamese language certificate, and they did not need to provide evidence that they had renounced their previous nationality.¹⁷²
2. In Thailand, since the 1990s, irregular migrants and their employers have taken advantage of an almost yearly amnesty programme initiated by the government. In addition to the periodic registrations, the Government of Thailand established formal recruitment schemes from Cambodia, Lao PDR, and Myanmar, based on a series of bilateral Memoranda of Understanding (MOUs), signed in 2002 and 2003 (although actual implementation has proved challenging).
3. A second scheme developed by the Thai government to address irregular migrants is the national verification process, which aims to regularise the irregular but registered migrants by allowing them to acquire legal status through the issuance of temporary passports of up to six years in validity. Upon completion of the national verification process, migrants should receive basic rights and services.¹⁷³

14. Return to Country of Origin or Third Country Resettlement

Regional challenges

- Upon determination of “best interests”, many countries do not have the funds to support the deportation or assisted voluntary return and reintegration of UASC found not to be in need of international protection, resulting in these children remaining in detention.
- Children may become separated from their parents during a deportation process and children of migrants often enter the country where their family is presumed to reside in search of their parents.
- Deportation remains a sanction for those who breach the Immigration Acts in many countries in the region. This means foreign UASC who are categorised as “illegal” migrants face insecurity and legal uncertainty within the country.

International Guiding Principles	Specific Guidelines/Addressing the Gaps
<p>Children must be fully informed and their views taken into account at all stages of the repatriation and resettlement process.</p> <p>An adult such as a social worker should accompany the child during the travel.</p> <p>Young unaccompanied or separated persons who arrived as minors but who have reached the age of 18 and have not been allowed to remain in the receiving country must be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin or resettlement in, or transfer to, a third country.</p> <p>UASC must never be returned to “transit” countries unless a careful assessment has been made of the impact of return upon the child and it is clear that return will be in the best interests of the child.¹⁷⁴</p>	<p>A trained social worker should facilitate an in-depth consultation with the child to assist the child in understanding the options available for him/her and to help the child reflect on what his/her own preferences are and have these communicated to the BID panel in person or through the social worker.</p> <p>A decision that UASC are to be returned or resettled must be in the best interests of the child.¹⁷⁵ UASC must never be returned or resettled simply because they do not have a legal right to remain in the host country or because of procedure. Return to the country of origin should only be arranged if it is in the best interests of the child (see footnote for recommended criteria).¹⁷⁶</p> <p>Child protection and resettlement procedures/SOPs should be known and respected by all the stakeholders in order to ensure a systematic and uniform way of handling the UASC resettlement processes.</p> <p>The length of time a child has been absent from his or her country of origin or his or her connection to the country where it is proposed to resettle or transfer the child, as well as his or her age, are important factors to consider through a multi-disciplinary determination process involving a range of relevant agencies.¹⁷⁷</p> <p>Residential care is the least preferred form of substitute care because it fails to recreate the normal conditions in which children should grow up and develop. Return to a child welfare institution in the country of origin or a third country must only take place if it is part of an agreed plan to reunite with family in a timely fashion or there are exceptional reasons why it is in an individual child’s best interests. Mechanisms must also be established to effectively monitor the ongoing wellbeing of the child.¹⁷⁸</p>

International Guiding Principles	Specific Guidelines/Addressing the Gaps
	<p>UASC trafficking victims must never be returned to their country of origin, or resettled or transferred to a third country without a thorough assessment of the family context and the potential risks of reprisal or re-trafficking, thus ensuring that the child is returning or moving to a safe environment. Particular attention must be paid to the risk of stigmatisation and social exclusion that trafficked children, especially those exploited in the sex industry, may experience upon return to their country of origin or in a third country.¹⁷⁹</p> <p>Especially in the ASEAN region where most country borders are porous, durable solutions for UASC often depend on coordination and cooperation among neighbouring countries. It is recommended that ASEAN develops an agreement on treatment of UASC in the region that guarantees full protection of children within the region regardless of their migration and nationality status. Border-sharing countries should develop bilateral agreements on specific procedures ensuring that UASC are protected and are supported in finding durable solutions.</p>

SECTION V:
FURTHER RESOURCES

STANDARD OPERATING PROCEDURES AND GUIDELINES FOR ADDRESSING UNACCOMPANIED AND SEPARATED CHILDREN

All categories of UASC

IOM. 2011. Unaccompanied Children on the Move.

http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_614.pdf

- Pages 18-19 outline the principles and protection measures pertinent to children on the move. Issues related to the measures preventing separation are highlighted, such as aspects of the initial assessment, specific protection needs and best interests determination.
- Pages 47-62 provide an explanation of the IOM Guidelines on the Protection of Unaccompanied and Separated Children. This addendum is useful in defining relevant terms and outlining the law in various UN treaties.

UNHCR. Differentiated Processes and Procedures. Chapter 6.

<http://www.unhcr.org/50a4c1517.pdf>

The document outlines best practice examples from around the world on child protection systems, family tracing, procedures for identifying at-risk girls, procedures to protect trafficked persons, and asylum procedures. The examples also flag important operational tools such as bilateral agreements and guiding principles on UASC.

FRA. April 2010. Separated, asylum-seeking children in European Union Member States: Summary Report.

<http://www.statewatch.org/news/2010/apr/fra-separated-asylum-seekers.pdf>

The document outlines the various UN rights related to separated asylum-seeking children. However, it brings to the table rights related to the living conditions of these children – rights rarely explored in other documents. The rights are relevant to all UASC. It also illustrates how these rights have been breached or upheld across 12 EU states.

IOM. 2008. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of Best Practices and Recommendations.

http://www.iomvienna.at/images/stories/FINAL_MANUAL.pdf

The document outlines the international and regional rights related to unaccompanied minors and subsequently assesses the application of these rights in various EU states.

UNHCR. 2007. Refugee Protection and Mixed Migration: A 10-Point Plan of Action.

<http://www.unhcr.org/4742a30b4.html>

Annexes I and II are useful in understanding the technical and practical operations that relate to refugee UASC protection. These would qualify as SOPs. A checklist is provided outlining the duties of the UNHCR staff on the ground while the flow chart illustrates the operation of the profiling and referral mechanism. These procedures are largely relevant to all UASC.

UNHCR. 2008. UNHCR Guidelines on Best Interests of the Child.

<http://www.unhcr.org/4566b16b2.pdf>

- The first part of the document defines and analyses best interests determination (BID). From page 29 onwards the specific BID procedures of the UNHCR are detailed. This information could be relevant to all UASC.
- The document could qualify as SOPs.

UNHCR. UNHCR inputs to the OHCHR report on the protection of the rights of the child in migration contexts.

<https://www.google.co.th/>

Short document on UASC issue stating the main guidelines and training tools used in this list. It also gives a summary of good practices in different contexts.

ICRC, IRC, Save the Children UK, UNICEF, UNHCR, World Vision International. 2004. Inter-agency Guiding Principles on Unaccompanied and Separated Children.

http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf

- More of a document of guiding principles rather than SOPs.
- The document reinforces the rights and procedures related to UASC already guaranteed in pre-existing documents. It makes reference to circumstances under which children become separated, such as armed conflict, mass population displacements, natural disasters and other crises.
- Demonstrates concerted efforts to address UASC rights.

Committee on the Rights of the Child. 2005. General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin.

<http://www2.ohchr.org/english/bodies/crc/comments.htm>

- Guidance document that serves to assist in the interpretation of the CRC and its applicability to UASC.
- The document expanded the concept of UASC to include victims of persecution or international conflict and civil war, and introduced the problem of trafficking in various contexts and forms and the child's search for better economic opportunities.

Trafficked Children

UNODC, Government of India. 2008. Standard Operating Procedures on Investigation of Crimes of Trafficking for Forced Labour.

http://www.unodc.org/pdf/india/SOP_Investigation_Forced_Labour.pdf

Good example of SOP, guiding the police officers and others agencies step by step in addressing cases of trafficking for forced labour. There is quite general advice on how to proceed, but it's highlighted by case examples.

UNICEF. Guidelines on the Protection of Child Victims of Trafficking, Technical Notes.

http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

General guidelines aimed at assisting States to protect children victims of trafficking. These guidelines are based on conventions and guidelines in the area of trafficking, comments from the Committee on the Rights of the Child and the Inter-agency Guiding Principles on Unaccompanied and Separated Children.

Government of the Republic of Macedonia, National Commission for Combating Trafficking in Human Beings and Illegal Migration. Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings.

<http://legislationline.org/topics/country/31/topic/14>

Very practical SOP, it can be used by State actors as well as NGOs. It provides a step by step approach with forms ready to fill in (like a practice manual).

IOM, UNHCR. 2009. Developing Standard Operating Procedures to Facilitate the Protection of Trafficked Persons.

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- The document sets out the framework for cooperation in the identification of victims of trafficking as well as a protection solutions framework. Step by step procedures are outlined to guarantee the protection needs of these victims.
- The document qualifies as SOPs.

Asia ACTs Against Child Trafficking. 2007. Protecting the rights and dignity of the trafficked children in Southeast Asia.

The Guidelines comprehensively provide the steps that states, in particular, should take to solve the problems of trafficked children. It gives the general principles under which children victims of trafficking should be addressed.

Refugees and asylum seekers

UNHCR. Procedural Standards for Refugee Status Determination under UNHCR's mandate.

<http://www.unhcr.org/4317223c9.pdf>

Practice manual for UNHCR staff with forms ready to fill in for the determination of the refugee status process only.

UNHCR. 1994. Refugee Children: Guidelines on Protection and Care.

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3470>

Guidelines for UNHCR field staff, State actors and NGOs. It sets out the general principles of protection for refugee children.

UNHCR. 1997. Guidelines on Policies and Procedures in Dealing with unaccompanied children seeking asylum.

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3360>

General guidelines aimed at assisting States to protect Unaccompanied Children Seeking Asylum.

Statelessness

UNHCR. 20 February 2012. Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons. HCR/GS/12/01.

<http://www.refworld.org/docid/4f4371b82.html>

Guidelines on the definition of a stateless person in international law.

UNHCR. 5 April 2012. Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person. HCR/GS/12/02.

<http://www.refworld.org/docid/4f4371b82.html>

Guidelines on statelessness determination procedures.

UNHCR. 17 July 2012. Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level. HCR/GS/12/03.

<http://www.refworld.org/docid/5005520f2.html>

Guidelines on the legal status that stateless persons ought to receive.

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- 108 In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and must pay full respect to article 37(a) and (c) of the Convention and other international obligations. 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 ideally ought 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.
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- 126 CRC, Article 6(1): States Parties recognise that every child has the inherent right to life; *General Comment No 6*, paragraphs 23 – 24: Separated children are vulnerable to various risks that affect their life, survival and development and measures must be taken to protect children from these risks; CRC, Article 8: Children have the right to preserve or re-establish key elements of their identity; CRC, Article 24: Children have the right to the highest attainable standard of health and to facilities for treatment and rehabilitation; CRC, Article 30: Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, practice their religion and use their language; Separated Children in Europe Programme. *SCEP Statement of Good Practice (4th ed.)*. March 2010; UNHCR and International Protection. *A protection induction programme*. Compiled by UNHCR. Geneva. 2006. pg. 59-69. UN General Assembly. *Guidelines for the Alternative Care of Children: resolution/adopted by the General Assembly. A/RES/64/142*. 24 February 2010.
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- 128 UN General Assembly. *Guidelines for the Alternative Care of Children. A/hrc/11/L.13*. 15 June 2009.
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- 130 CRC, Article 3(3): States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision; CRC, Article 25: States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement; CRC, Article 26: Children have the right to benefit from social security and social insurance; CRC, Article 27: Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development; Committee on the Rights of the Child. *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*. Geneva. 2005. para. 40: Placements should offer continuity in a child's upbringing regarding their cultural and linguistic background. Changes of placements should be kept to a minimum and siblings should be placed together. Child headed families should receive effective protection and children should be informed about the plans that are being made for them; Separated Children in Europe Programme. *SCEP Statement of Good Practice (4th ed.)*. March 2010.
- 131 CRC, Article 23: Children with disabilities have the right to enjoy a full and decent life and have the right to special care; CRC, Article 24; CRC, Article 39: States shall take measures to promote the physical and psychological recovery and social re-integration of child victims; *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*. Geneva. 2005. paras. 46-49: Separated children should have the same access to health services as national children and States must address the particular vulnerabilities of separated children and the impact of these vulnerabilities on a child's health. Rehabilitation should be provided; Separated Children in Europe Programme. *SCEP Statement of Good Practice (4th ed.)*. March 2010.
- 132 UN High Commissioner for Refugees. *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*. February 1997.
- 133 CRC, Article 28: Children have the right to free primary education. States shall encourage different forms of secondary education and make them available to all children. Educational and vocational guidance shall be available to all children; CRC, Article 29(1c): The aims of education should encourage respect of children's cultural identity, language and values; *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*. Geneva. 2005. para. 41: States should ensure that access to education is maintained during all phases of the displacement cycle; Separated Children in Europe Programme. *SCEP Statement of Good Practice (4th ed.)*. March 2010.
- 134 Separated Children in Europe Programme. *SCEP Statement of Good Practice (4th ed.)*. March 2010; CRC, Article 26: Every child has the right to benefit from social security; CRC, Article 27: Children should have a standard of living adequate for their physical, mental, spiritual, moral and social development; *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*. Geneva. 2005. para. 44: Children should receive material support.

- 135 CRC, Article 32: Children should be protected from economic exploitation and hazardous work; Separated Children in Europe Programme. *SCEP Statement of Good Practice* (4th ed.). March 2010.
- 136 ILO Regional Office for Asia and the Pacific. *Regional Project on Combating Child Trafficking for Labour and Sexual Exploitation* (TICSA II). 2006. Bangkok; as cited in *Quality Standards for Protecting Child Victims of Commercial Sexual Exploitation*. Accessed on 14 October 2013 from: <https://www.giz.de/Themen/en/dokumente/en-qualitystandards-study-2007.pdf>.
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- 138 See UNIAP website at: http://www.no-trafficking.org/init_shelter.html.
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- 140 UNHCR. *Guidelines on Determining the Best Interests of the Child*. Geneva. May 2008; CRC, Article 3(1): In 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; CRC, Article 20(1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State; *General Comment No 6*, paragraphs 19 – 22: Best interests must be respected at all stages of the displacement cycle; *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*. Geneva. 2005. para. 79: The ultimate aim in addressing the needs of separated children is to identify a durable solution that addresses all their protection needs.
- 141 UN Secretary-General (UNSG). *Guidance Note of the Secretary General: The United Nations and Statelessness*. June 2011.
- 142 UNHCR. *Guidelines on Statelessness No. 2 : Procedures for Determining whether an Individual is a Stateless Person*. 2012. Accessed from: <http://www.unhcr.org/refworld/pdfid/4f7dafb52.pdf>.
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- See also: UN Committee on the Rights of the Child (CRC). *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*. 29 May 2013. CRC/C/GC/14. Accessed from: <http://www.refworld.org/docid/51a84b5e4.html>. Also UNHCR Field Handbook for the Implementation of the UNHCR BID Guidelines.
- 144 UNHCR. *Guidelines on Determining the Best Interests of the Child*. Geneva. May 2008.
- 145 UNHCR. *Guidelines on Determining the Best Interests of the Child*. Geneva. May 2008.
- 146 Authorities should specifically consider the: age and maturity of the child and his or her stage of development; possibility that the child may manifest his or her fears and experiences differently from adults; possibility that the child will have limited knowledge of conditions in his or her country of origin; existence of child-specific forms of human rights violations, such as trafficking for sexual exploitation, forced labour and recruitment by armed forces; situation of the child's family in his or her country of origin and, when known, the wishes of parents or primary caregivers who may have sent the child out of the country in order to protect him or her; harmful actions which might be considered as harassment or discrimination when applied to an adult may constitute persecution when applied to a child. Separated Children in Europe Programme. *SCEP Statement of Good Practice* (4th ed.). March 2010.
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- 150 The Thailand Border Consortium (TBBC). *Camp Locations*. Accessed on 2 September 2013 from <http://www.tbbc.org/camps/camps.htm>.
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- 157 Separated Children in Europe Programme. *SCEP Statement of Good Practice* (4th ed.). March 2010.
- 158 See: www.unodc.org/.../cambodia/...training/story.html.
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- 164 This is likely to be the case if one or more of the following conditions apply: The child is a refugee or otherwise in need of international protection or asylum; there are humanitarian, medical or compassionate reasons why he or she should stay; he or she is a trafficked child and it is not safe to return to his or her country of origin; it is not safe for the child to return to his or her country of origin, for example, due to armed conflict, upheaval, civil unrest, etc.; the child's parents or caregivers are unable to provide concrete and secure care arrangements, or they are not traceable and it is not possible to identify or locate another previous legal, or customary primary caregiver in the country of origin. Separated Children in Europe Programme. *SCEP Statement of Good Practice* (4th ed.). March 2010.
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- 175 A best interests assessment regarding the decision to resettle UASC should take into account: ongoing international and other protection needs; the duration of legal or other obstacles to a child's return to his or her home country; the child's right to preserve his or her identity, including nationality and name; the child's age, sex, emotional state, educational and family background; continuity/discontinuity of care in the host country; the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background; the right of the child to preserve his or her family relations; and related short, medium and long-term possibilities of family reunion either in the home, host, or resettlement country. *General Comment No 6 Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. September 2005.
- 176 Return to the Country of Origin: 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. Such a determination shall *inter alia* take into account the:
1. Safety, security and conditions, including socio-economic conditions awaiting the child upon return including through home study, where appropriate, conducted by social network organisations.
 2. Availability of care arrangements for that particular child.
 3. Views of the child expressed in exercise of his or her right to do so under Article 12 and those of the caretakers.
 4. The child's level of integration in the host country and the duration of absence from the home country.
 5. The child's right "to preserve his or her identity, including nationality, name and family relations" (Article 8).
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Article 20). *General Comment No 6 Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. September 2005.

- 177 The relevant agencies should assess, *inter alia*: the safety of the child to return to his or her home country or to the proposed transfer or resettlement country, taking into consideration risks of persecution, of being involved in armed conflicts, of violence, abuse, and exploitation; the agreement of the child's caregiver or guardian in the host country that return, transfer or resettlement is in the child's best interests, and the agreement of the child's parents, relatives or other adult caregivers to provide long-term care upon the child's arrival; the family situation in the home country or proposed country (parents or caregivers must prove their identity and it will be necessary to investigate the willingness and ability to provide appropriate care); the access to food, housing, health care, education, vocational training and employment opportunities in the country of origin or proposed country; the information, consultation and counselling of the child at all stages; the facilitation of regular contact between the child and his or her family; a reintegration plan in collaboration with child welfare services in the country of origin, resettlement or transfer. Separated Children in Europe Programme. *SCEP Statement of Good Practice* (4th ed.). March 2010.
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