



UNDERSTANDING THE BEST INTERESTS OF THE CHILD

Asylum and subsidiary protection
and Article 24 of the Charter and
the UNCRC.

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BEST INTERESTS PRINCIPLE

- Article 24 of Charter and Art 3 of UNCRC indicates that a child's best interests must be a primary consideration in all actions
- General Comment No. 14 states that it is in a child's best interests to have the full and effective enjoyment of all the rights in the UNCRC

Three Fold Concept

- General Comment No. 14 also states that a State must take into account Article 3 as:
 - (a) a substantive right;
 - (b) a fundamental interpretative legal principle
 - (c) a rule of procedure



PRACTICAL APPLICATION

- This approach should underpin applications for asylum and other international protection made by children and any subsequent appeals
- This should compensate for fact that the Refugee Convention does not specifically provide for applications from children

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DIFFICULTIES FACED BY ASYLUM SEEKING CHILDREN

- Lack of legal standing
- No provision of a legal guardian
- No child appropriate burden and standard of proof
- Lack of country information about situation of children



ENHANCED APPROACH BASED ON UNCRC

- A more appropriate approach can be based on Article 24 of the Charter and the UNCRC
- Will ensure that child appropriate risks are highlighted
- Children's rights underpin legal decision making and
- Procedures will assist children make their cases

SUBSTANTIVE RIGHTS

- Article 6 – right to development and survival
- Article 8 – right to identity and nationality
- Article 14 – right to freedom of conscience and religion
- Article 19 – protection from physical and mental violence
- Article 22 – right to asylum

FURTHER RIGHTS

- Article 32 – protection from economic exploitation
- Article 34 – protection from sexual exploitation and abuse
- Article 35 – protection from child trafficking
- Article 38 – prohibition on recruitment of child soldiers



RANGE OF PROTECTION

- Refugee Convention
- Statelessness Convention
- Council of Europe Convention on Action against Trafficking in Human Beings
- EU Anti-Trafficking Directive

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FUNDAMENTAL LEGAL PRINCIPLES

- UNCRC rights are absolute
- Its rights are indivisible and interdependent
- Article 2 prohibits any form of discrimination
- Legal principles should be interpreted in the manner which best serves the best interests of the child

A RULE OF PROCEDURE

- Child appropriate application forms
- Objective and country evidence appropriate to situation of children
- Greater reliance on objective and expert evidence
- Consideration of durable solutions

PROCEDURAL BARRIERS

- Age disputes
- Culture of disbelief
- Failure to consider child specific persecution
- Failure to distinguish between smuggling and human trafficking



ARTICLE 12 OF THE UNCRC

- Provides the right for children to participate in decisions of relevance to them
- Not just a right to be heard
- Often undermined by lawyers and the court
- Not just a procedural right



RIGHT TO REMAIN UNDER UNCRC

- Refugee status or other subsidiary protection only meets some of a child's rights under UNCRC
- Child first and migrant second approach
- Approach advocated to combat child trafficking
- Can right to remain derive from UNCRC





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