

Complementarity of the CRC and Hague Child related Conventions: Children Across Borders

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Background

An estimated 281 million people, approximately **3.6 per cent** of the world's population, currently live outside their country of origin.

At the end of 2023, of the 117.3 million forcibly displaced people, an estimated **47 million are children.**

Between 2018 and 2023, an average of **339,000** children were born as refugees per year.



Article 3

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.



Best interests of the child



Article 5

States Parties shall respect the responsibilities, rights and duties of **parents** or, where applicable, the members of the **extended family or community** as provided for by local custom, **legal guardians or other persons legally responsible for the child**, to provide, in a manner consistent with the **evolving capacities** of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.



Article 9

Children **should not be separated** from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for **the best interests of the child**.



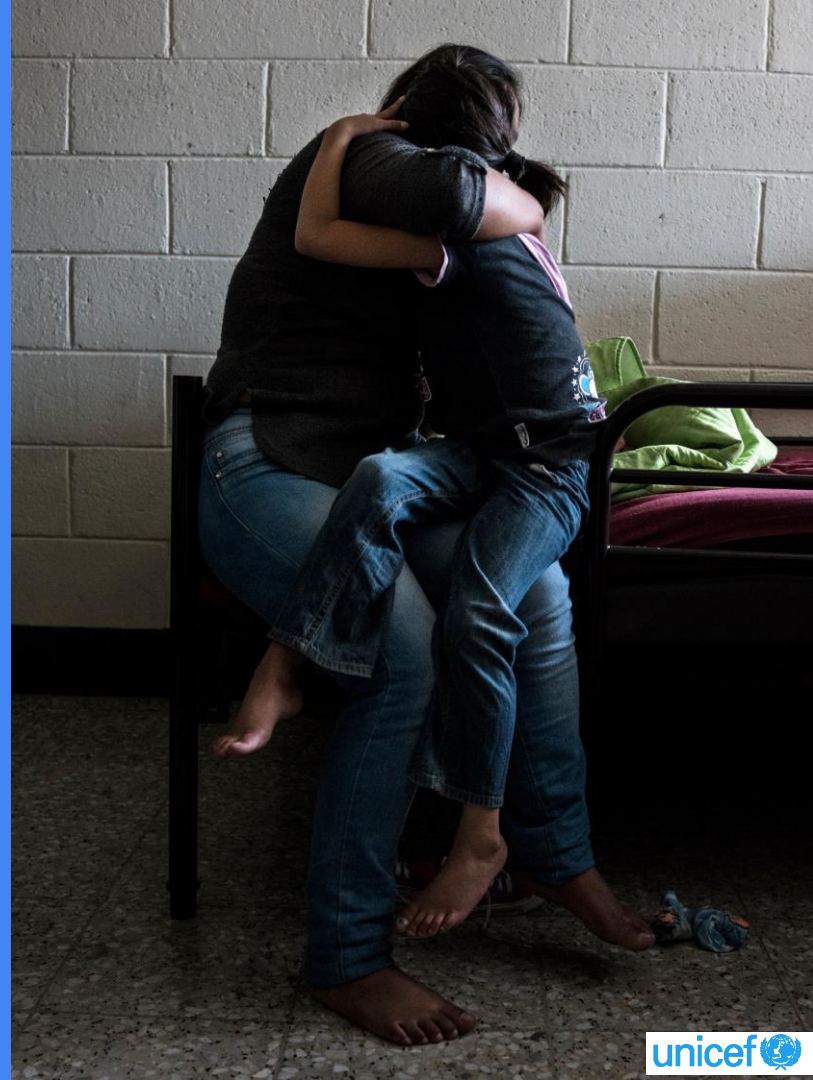


Article 10

- Applications by a child or his or her parents to enter or leave a State Party for the purpose of **family reunification** shall be dealt with by States Parties in a **positive, humane and expeditious manner**.
- A child whose parents reside in different States shall have the right to maintain on a **regular basis**, save in exceptional circumstances **personal relations and direct contacts with both parents....**

Article 11

- States Parties shall take measures to **combat the illicit transfer and non-return of children abroad.**
- To this end, States Parties shall promote the **bilateral or multilateral agreements or accession to existing agreements.**



Article 11

- Ratifying States have responsibilities to **prevent children from being wrongfully taken or from being retained outside their jurisdiction**, to secure that these children are recovered and to undertake that abducted children brought into their jurisdiction are returned.
- Article 11 is exclusively focused on children who are taken out of their country for **personal, like parental abductions or retentions**, rather than financial gain.

Article 18

- Balance of responsibilities between the child's parents and the State, and particularly emphasizes State support for parents in the performance of their responsibilities.
- Even when children go into the care of the State, this does not mean parents should automatically lose their legal rights and responsibilities.



Article 20

- 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.
- States Parties shall in accordance with their national laws ensure **alternative care** for such a child.
- Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the **desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.**



Article 22

- States shall take appropriate measure to ensure that a child who is seeking **refugee status** shall receive protection and assistance and enjoy the rights set out in the Convention.
- State parties shall **cooperate** to protect and assist the child and conduct **family tracing to obtain information necessary for reunification**



Article 27(4)

- State Parties shall take all appropriate measures to secure the **recovery of maintenance for the child from the parents or other persons having financial responsibility** for the child, both within the State Party and from abroad.
- Includes the accession to **international agreements** when the person having financial responsibility for the child lives in a different State.





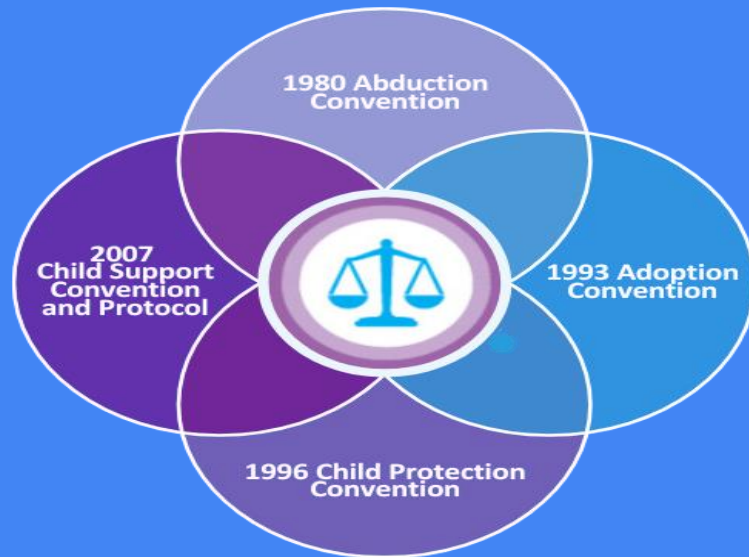
Article 35

- States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the in children for any purpose or in any form. **abduction of, the sale of or traffic**

Complemented by:

- ILO convention 182 on the Worst Forms of Child Labour
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Hague conventions

Hague child related conventions



Connections with 1980 Child Abduction Convention

- Protect children from **the harmful effects of their wrongful removal or retention** across international boundaries, ensure their **prompt return to the State of their habitual residence**, and protect rights of access.
- **Process** through which a parent can seek to have their child **returned to the country of the child's habitual residence**.
- Protects family relationships that are already protected through **parental responsibilities** acquired in the State of the child's habitual residence
- Gives effect to the right of the child to maintain **personal relations and direct contact with both parents on a regular basis** unless contrary to their best interests when the child is separated from one or both parents (CRC, Article 9(3))
- Including where the child's parents reside in **different States** (Article 10(2)).
- Gives effect to States required to take measures to **combat the illicit transfer and non-return of children abroad (Art. 11)**

Connection with 1993 Adoption Convention

- Protection measure when **in-country care** for a child who cannot remain with his or her family is **not available**
- Protect children and their families from **illegal, irregular, premature or ill-prepared adoptions** abroad.
- Gives effect to **Articles 3 and 21** of the CRC by setting out minimum substantive safeguards to ensure that the **best interests of the child is the paramount** consideration in adoption
- Develops the principle of **subsidiarity** as set out in **Article 21** of the CRC, establishing that ICA may only be considered as an alternative means of care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.

1996 Child Protection Convention

- Principal global instrument governing **cross-border protection** of children (up to 18 years) under civil law which establishes:
 - which State has **jurisdiction** to take measures to protect a child or his or her property
 - which **applicable law** for exercising jurisdiction
 - which law applies to **parental responsibility**
 - Protection measures are **recognised and enforced** in all Contracting States
 - **Cooperation** between signatory countries through Central Authorities designated by each Contracting State.

Connections with 1996 Child Protection Convention

- Co-operation in locating the child
- Inter-State co-operation for exchange of information and to institute necessary protective measures
- Provides for exchange of information between authorities in different countries
- Part of the framework for a global child protection system at State level, which benefits many categories of children at-risk including UASC, migrant and asylum-seeking children (CRC Art.22 and 35)

Connection with 2007 Maintenance Convention

- Establish a modern, efficient and accessible international system for the cross-border recovery of child support and other forms of family maintenance.
- Applies to all children, regardless of whether they are born in or out of wedlock.
- Survival, development of the child
- Parental responsibility
- Non discrimination
- Article 27(4)

What can be done?

- Ratify the four Hague Children's Convention
- Build capacity around the Hague Conventions especially of Central authorities
- Criminalise the removal or attempted removal of a child
- Enhance recognition and enforcement as well as judicial and administrative cooperation
- Continue Malta process
- Reduce judicial delays in parental abduction cases and promote ADR
- Conclude bilateral agreements concerning abduction
- Combat illegal ICA and ensure it takes place in the best interests of the child and with respect for fundamental rights:



Thank you