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The principle of the best interests of the child

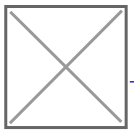
Irrespective of their migration or refugee status, unaccompanied children are first and foremost entitled to all the rights enshrined in the 1989 United Nations Convention on the Rights of the Child (CRC).Article 3 CRC states: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’ The Committee on the Rights of the Child has issued General Comments in order to provide authoritative guidance to States regarding the interpretation and implementation of the CRC.Relevant General Comments of the Committee on the Rights of the Child in relation to unaccompanied children with regard to the principle of the best interests of the child are, inter alia:

- **General Comment No.12 (2009) on the Child’s Right to be Heard;**
- **General Comment No.14 (2013) on the Best Interests of the Child;**
- **General Comment No.22 (2017) on the general principles regarding the human rights of children in the context of international migration** (8).

The principle of the best interests of the child also cuts across all legal instruments of the Common European Asylum System.According to Article 23 RCD, the best interests of the child shall be a primary consideration for MS when implementing those provisions of the RCD that involve children.Article 24 of the Charter of Fundamental Rights of the European Union (EU Charter) states that in ‘all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration’. Therefore, in applying the RCD, MS should seek to ensure full compliance with the principle of the best interests of the child, in accordance with the CRC and the EU Charter respectively (9).

(8) UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint General Comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; General Comment No.22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, available at: http://www.refworld.org/docid/5a1293a24.html.
(9) Recital 9 RCD.
(10) Article 23 RCD.
(11) For further guidance on the principle of the best interests of the child see: UNHCR, Safe

and Sound, 2014, available at http://www.refworld.org/docid/5423da264.html (accessed 25 April 2018); UNHCR/International Rescue Committee, Field Handbook for the Implementation of UNHCR BID Guidelines, 2011, available at http://www.refworld.org/pdfid/4e4a57d02.pdf; UNHCR, Guidelines on Determining the Best Interests of the Child, 2008, available at http://www.unhcr.org/4566b16b2.pdf.

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