

Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe: A Multidisciplinary Approach



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Table 1

Durable Solution

'a sustainable solution that ensures that any child on the move is able to develop into adulthood, in a safe and secure environment which will meet his or her needs and assert his or her rights as defined by the CRC and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for children on the move, it must consider the child's views and wishes and any decisions must be in their best interests. A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state.'¹



Bringing child welfare and immigration together

Children on the move are children first and foremost.

All needs and rights need to be assessed in order to determine the durable solution that is in the best interests of the child. Both their protection and immigration needs and their wider CRC rights need to be considered. Decisions should be made with the future development of the child in mind. Assessments must be carried out in respect of all options and in all geographical locations. **The BIC-Model** should be adapted as a best practice example of this type of assessment, bearing in mind the elements to consider identified in [Comment Number 14](#) and Safe & Sound outlined and expanded upon in Table 3.



The Durable Solution Process

Determining a durable solution should be seen as a *process* that involves many actors. This process may require periodic review and revision.



The [Convention on the Rights of the Child](#) and the [General Principles](#)

The Durable Solution Process is underscored by all the rights contained within the CRC, with a particular emphasis on the General Principles:

- [The best interest of the child](#) (Article 3)
- [Non-discrimination](#) (Article 2)
- [The right to life and survival and development](#) (Article 6)
- [The right to be heard](#) (Article 12)

1. Safe and Sound, p 22: <http://www.refworld.org/docid/5423da264.html>. (Insertions underlined were revisions to the definition provided by input from stakeholders and the project itself).

Table 2

Who is involved in the Durable Solution Process?

The Durable Solution Process should be holistic and adopt a [multidisciplinary approach](#). The following actors may be involved:



- [The child](#)
- [Independent legal guardians](#)
- Social workers
- Carers, including reception care staff and foster families
- [Legal professionals](#)
- External agencies ([IOM](#), [ISS](#), [ICRC](#))
- Medical professionals
- Educators
- Community workers and non-governmental organisations
- [Child specific country of origin information](#)

Allow sufficient time and provide sufficient resources for the establishment of trusting relationships

- Immigration and protection agencies

How can these professionals and individuals work together in the best interests of the child?



Ideally, the Durable Solution Process would be [multidisciplinary](#) and a decision would be taken by a qualified majority of professionals. However, where this is not possible, it is recommended that immigration and protection decision makers allow for submissions from persons working directly with the child. Information must be kept [confidential](#) where appropriate and information sharing should reflect national legislation on the topic. The [con-](#)
[sent](#) of the child should be obtained.

Table 3

What information is relevant for the Durable Solution Process?
Gathering Information



The voice of the child is at the fore in all decision making procedures



Risk analysis (immediate and longer term)

Risk of:

- Physical harm, abuse and neglect from the immediate family or others
- Psychological harm, abuse and neglect⁴
- Social or economic deprivation⁶
- Sexual or labour exploitation, including [trafficking](#)⁷
- [Going missing](#)⁹

The child

- Basic information relating to identity²
- Aspects of culture considered important
- Values that are of importance³
- Views, wishes and expectations⁵
- Individual and/or special needs
- [Physical and mental health needs](#) and any experiences of trauma⁸
- Migration plans¹⁰
- Journey and background
- [Goals, ambitions and plans](#)¹¹
- Level of education¹² and [future plans](#) for education & skills¹³
- Level of education and future plans for education & skills
- [resilience](#)
- Coping strategies and sources of support such as community, including religion
- Resources
- Strengths

2. [CRC](#) Art. 8 Right to preserve or obtain identity; [C6](#): 20, 31, 84, 93; [SGP](#): D4; [RCD](#) Art. 6, 21, 22; [APD](#) Preamble (22), Art. 25.5; [Anti-Trafficking Directive](#) Preamble (23); [Directive on Residence permits for victims of human trafficking](#) Art. 10(c); [UNHCR Guidelines](#), p.5.1-5.3, 5.6 and 5.8.

3. [CRC](#) Art. 8, 24, 30, 31; [C6](#): 42, 72, 59; [SGP](#): B8; [RCD](#) Art. 11.2, 23.3; [Return Directive](#) Art 17.3

4. [CRC](#) Art. 9.1, 19; [Recast RCD](#) Art. 19, 23.4, 25.1; [QD](#) Preamble (40), (46), Art. 30, 30.2; [Anti-Trafficking Directive](#) Preamble (18), (22), Art 11.5, 13,14,17; [Directive on Residence permits for victims of human trafficking](#) Art 6.1, 7, 9.

5. [CRC](#) Art.s 9.2, 12; [SGP](#): B11,12; [RCD](#) Art 23.2; [APD](#) Art 34.1; [QD](#) Preamble (18); [Dublin III](#) Art. 5 [Anti-Trafficking Directive](#) Art. 15; [FRD](#) Art 5.2.

6. [CRC](#) Art. 27.

7. [CRC](#) Art. 32.1, 34, 35, 36; [C6](#): 23,24, 50-56; [SGP](#): C3.

8. [CRC](#) Art. 24, 39; General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (C15); [RCD](#) Art. 19, 23.4, 25.1; [QD](#) Preamble (40), (46), Art. 30, 30.2; [Anti-Trafficking Directive](#) Preamble (18), (22), Art 11.5, 13,14,17; [Directive on Residence permits for victims of human trafficking](#) Art 6.1, 7, 9.

9. (ie to try to join family members in another jurisdiction, risk of trafficking or irregular labour)

10. [SGP](#): C2

11. [FRA Handbook](#) S. 6.2 & [Life Projects](#).

12. See [FRA Handbook](#) S. 6.2.

13. [SGP](#) D8.3.

Family/Community:¹⁴

- Family situation pre-arrival and post-arrival (in host country and abroad)¹⁵
- Relationship between child and family
- Assessment of non-familial supportive relationships¹⁶
- Views and wishes of immediate family¹⁷
- Views and wishes of extended family¹⁸
- Possible need of support for the family to be able to care for their child

Family should only be contacted when it is safe to do so and in the best interests of the child



Environment (host, origin or third countries)

- Security and stability of country
- Access to child-specific rights in the country¹⁹
- Developmental opportunities: inter alia education and skills, [leisure activities](#),²⁰ religious and spiritual activities or communities and future work prospects
- [Risks, including child specific forms or manifestations of persecution & other forms of persecution which are not child specific, but have a disproportionate impact on children](#)



Information should be gathered by professionals, ideally an [independent guardian](#) where available, working directly with the child (social workers, educators, schools, carers) in the host country and in the country of origin and/or third country.²¹ Information should not be gathered at the expense of the child's safety.

14. ISS, Guide 15: ISS Guidelines: Unaccompanied and Separated Children from ISS Manual, p. 76 - 81.

15. [C6](#) Art. 8; [C6](#): 93, 95, 99, 100.

16. [CRC Preamble the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding; UN Guidelines on Alternative Care II.A.4](#): 'Every child and young person should live in a supportive, protective and caring environment that promotes his/her full potential'; [C6](#): 93; [Recast RCD](#) Art 24.3; [QD](#) art 31.5; [Directive on Residence permits for victims of human trafficking](#) Art 10(c); [FRD](#) Preambles (9), (12), Arts 4, 10.3; [Return Directive](#) Arts 5, 10.2.

17. [CRC](#) Arts. 9(3); 10(1); 10(2); [C6](#): 81, 83.

18. [CRC](#) Art. 9.2, 5; [UNHCR Guidelines](#), paragraphs 5.6 & 5.8 - 5.10

19. [CRC](#) Art. 22; [C6](#): 31, 59, 66; [SGP](#): C11-C13.

20. General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (C17).

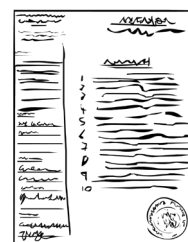
21. [CRC](#) Art. 32.1, 34, 35, 36; [C6](#): 23,24, 50-56; [SGP](#): C3.

Table 4

The Durable Solution Process

Gather information

Make a proposal for the durable solutions **hearing** within 6 months of the child's arrival or as soon as possible in line with their best interests



Interagency case conference or hearing



Analysis of different options

Decision by qualified majority of **professionals** on a multidisciplinary panel with expertise in, inter alia, 'child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner'

Where this is not possible, submissions from all actors should be enshrined in policy and law, see Table 2.



Best Practice
Binding decision before 18 years of age (within 6 months) where possible and where it is in the best interest of the child.
The decision must be durable beyond 18.

DURABLE
The aim of a durable solution before the child turns 18 (or indeed as soon as possible) is to promote positive development and access to rights through:

- Ensuring access to education and reducing the likelihood that it will be interrupted
- Ensuring access to immediate and on-going medical and mental health services
- Ensuring continuity of care
- Facilitating family reunification (where possible and in the best interests of the child) & reducing the time spent separated from family
- Ensuring that young people can plan for their futures and be supported to do so
- Re-establishing normality

Table 5

Procedural safeguards

The Durable Solution Process relates to the rights children hold regarding care and development and their rights regarding migration as they are inextricably linked.

Due to their young age, dependency and relative immaturity, children should enjoy specific procedural and evidentiary safeguards to ensure that fair decisions are reached.



- Any decisions relating to the durable solution must:
 - Be written down
 - Be open to [independent appeal](#)
 - Carry the option of [suspensive appeal](#)
 - Provide an effective remedy
 - Require that the [burden of proof is shared](#)
 - Apply the [benefit of the doubt](#) principle



- Appointment of a [legal and independent guardian](#) who:
 - Is accessible
 - Has relevant competencies
 - Is free of potential conflicts of interest²²

Independent guardians should also be present in meetings between the child and the legal representative



- Appointment of an [independent legal representative with experience working with children](#) at no cost²³



- [Interpreters should be made available](#). They should be:
 - Accessible
 - Trained in child specific interpretation
 - Free



- Case conference or hearing should be [adapted](#) to the age and maturity of the child, allowing for meaningful participation



- The process should begin as soon as possible after the child is identified and should conclude within 6 months depending on the best interests of the child.



Decisions should be in a reasonable time to decrease uncertainty acknowledging that [time Perception 'Delays in or prolonged decision-making have particularly adverse effects on children as they evolve'](#).

22. [CRC](#) Art. 3 (3), 18 (2), 19, 20; [C6](#): 33, 95–97; [C12](#): 7, 34, 36, 49, 134 (g), 135 (competences); SGP: B10, D3.3; [C6](#): 55 (conflict of interest); [EC Child Protection Principle 6, 8, 9](#).

23. [CRC](#) Art. 18.2, 20.1; [C6](#): 36, 37; [C14](#): 96.

- Analysis: must be multidisciplinary
- Decision: must be [reasoned](#) and presented in a child friendly way
- There must be an [option of an effective appeal](#)
- [Due process](#) must be applied in the same way as to adults, including mechanisms to revise or review
- [Access to independent and effective complaints mechanisms](#) in respect of care and migration needs (including guardianship, carers, legal representatives etc)²⁴
- [Monitoring](#) of all institutions, representatives and procedures
- [Child Protection Systems have transnational and cross-border mechanisms in place](#)
- Information should be provided in a way that is accessible to children²⁵

24. [C12](#): 46, 47

25. C6: 31, 52; [UNHCR Child Asylum Claims](#): para 65 Due to their young age, dependency and relative immaturity, children should enjoy specific procedural and evidentiary safeguards to ensure that fair refugee status determination decisions are reached with respect to their claims.

Table 6

Review and Revision of a Durable Solution



Revision is possible if it is in line with the best interests, wishes and views of the child. The durable solution is comprised of many factors, including health and education. Therefore, some elements of the Durable Solution may be reviewed.



A decision to overturn an immigration or protection decision must have the consent of the child, the parents and the guardians and it must be in the best interests of the child.

