

## Tool 2

### International Legal Framework Relating to Interim Care

#### **The Convention on the Rights of the Child (CRC), 1989**

The CRC is the most widely ratified convention relating to the rights of children. It offers the highest standards of protection and assistance for children on issues relating to their care and protection. It is applicable to all children at all times, with additional clauses relating to the rights of children who are refugees. The principal rights relating to the interim care of children in emergencies are as follows:

- The right to have all actions based on the child's best interests (article 3)
- The right to adequate alternative care where necessary (article 20)
- The right to birth registration, and to know and be cared for by his or her parents (article 7)
- The right to have his or her identity preserved (article 8)
- The right to live with his or her parents unless this is deemed incompatible with the child's best interests (article 9)
- The right to maintain contact with both parents if separated from one or both (article 9)
- The right to family reunification, including the right of children and their parents to leave or enter a State Party for purposes of reunion or the maintenance of the child-parent relationship (article 10)
- The right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child. (article 12)
- The right of parents, legal guardians and others responsible for the child to have support in fulfilling their child-rearing responsibilities and in ensuring living conditions are adequate for the child's physical, mental, spiritual, moral and social development.(article 18, 27)
- The right to protection from abuse, neglect, and exploitation by parents or others responsible for the care of the child (articles 19, 32, 33, 34, 35, 36)
- The right to physical and psychological recovery and social reintegration for child survivors of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts (article 19, 20, 39).
- The right for adoption to be carried out in accordance with the child's best interests, and then only with the authorization of competent authorities, and safeguards for the child (article 21)
- The right to regular evaluation of the child's care placement (article 25)
- The right to education and access to leisure, play and recreational facilities appropriate to the age of the child (article 28, 29, 31)

#### **The Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption (THC), 1993**

The Hague Convention is the international regulation that sets standards for how adoption should be carried out between countries. It provides the framework for international cooperation to ensure that inter-country adoptions take place in the best interest of a child and with respect to his or her fundamental rights. These safeguards are intended to prevent the abduction, sale, trafficking or other abuse of children placed in adoption.

### **The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996**

This treaty has special relevance to situations where children are in need of alternative care by virtue of being outside their country of habitual residence.

### **Guidelines for the Alternative Care of Children, United Nations, 2009**

The guiding principles for quality care are outlined in the Guidelines for the Alternative Care for Children. These guidelines stipulate that emergency and interim care provision must adhere to the following core principles, namely:

- Children should not be placed in alternative care unnecessarily
- Efforts should primarily be directed at enabling children to remain in, or return to the care of their parents, or where necessary, of other close family members
- The removal of a child from his family should be considered an option of last resort and for the shortest possible duration
- Only where the family is unable, even with appropriate support, to provide adequate care for the child, the State is responsible, for ensuring appropriate alternative care
- Any alternative care placement should be decided and provided on a case-by-case basis, by qualified professionals, and should respond to the best interests of the child concerned, in consultation with the child

### **Interagency Guiding Principles on Unaccompanied and Separated Children, ICRC, IRC, Save the Children UK, UNICEF, UNHCR, World Vision. Geneva, 2004**

This set of guidelines outlines a framework and set of principles intended to ensure that the rights and needs of separated children are effectively addressed. It addresses all aspects of an emergency from preventing separations, to family tracing and reunification through to long-term solutions and encourages the pooling of complementary skills and expertise. It specifies that:

- All children are entitled to emergency care and provision for their basic subsistence
- Assistance for separated children must adequately meet their basic needs at a standard comparable to the surrounding community and should be provided in a way that preserves family unity, keeps children with their relatives or other care-givers and does not lead to separation
- In emergencies, interim care must be provided for children separated from their families until they are reunited, placed with foster parents or other long-term arrangements for care are made. This may include fostering, other forms of community-based care, or institutional care
- For separated children, community-based care is preferable to institutional care as it keeps the child within his or her community and provides continuity in socialization and development

