Action sheet 10
Ensuring family unity and the protection of separated and unaccompanied children

Key message

1. *The family is a natural and fundamental unit of society. As such, it helps to ensure basic protection standards at all levels, including at the emotional, material and physical level. The preservation of family unity is therefore extremely important for internally displaced persons, who have often lost any other means of protection and support. At the same time, the family is one of the first "victims" of internal displacement, due to the chaotic and spontaneous nature of displacement movements, where individuals are forced to flee without being able to take appropriate measures to ensure the unity of their families. The disruption of family unity can be also an unintended effect of an ill-defined protection intervention, such as the provision of shelter for children without catering for their adult relatives or care-takers.*

2. This action sheet gives an overview of the main issues to take into account to preserve family unity, as well as guidance on how we can support efforts for family reunification. Particular attention is given to the situation of separated and unaccompanied children, due to the need for specific and immediate protection interventions in their cases.

Family separation in the context of internal displacement

3. Family disruption impacts each family member differently:

   ▪ **Women** who are separated from the rest of their families or their male partners often require developing additional protection mechanisms to avoid sexual exploitation and other kinds of abuse and, in general, discriminatory access to basic rights vis a vis other members of the community.

   ▪ Young **men** who have been separated from their families may be suspected of political or military activities rendering them more susceptible to attacks or forced military recruitment.

   ▪ **Unaccompanied older persons** may have been used to rely on a network of relatives for their daily subsistence and may find it very difficult to access community networks or specialized services to support them in their locations of transit or resettlement.

   ▪ **Adults and children with disabilities**, because of their particular circumstances must be identified early to ensure proper protection and care as well as to minimize risks of family separation.

   ▪ **Children** can be exposed to **particularly grave protection risks** as a result of family separation; they may end up in situations of neglect, trafficking, exploitation for sexual or labour purposes, abuse or military recruitment.

Child categorization depending on the family situation
(Interagency Guiding Principles on Unaccompanied and Separated Children)

A *child* means any person under the age of 18, unless under the (national) law applicable to the child, majority is attained earlier.

- *Separated children* are those separated from both parents or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

- *Unaccompanied children* are those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law of custom, is responsible for doing so.

- *Orphans* are children, both of whose parents are known to be dead. In some countries, however, a child who has lost one parent is called an orphan.

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4. As a result of the above, a set of distinct protection activities needs to be developed to address the different needs of separated persons according to their age, sex and specific needs. In many cases, they will have already tried, with varying degrees of success, to develop their own protection mechanisms with the support of other family groups or the local community as such.

5. Moreover, knowing the fate and whereabouts of **missing relatives** provides psychological, legal and

protection benefits, including being able to exercise specific rights relating to **deceased** family members (such as inheriting, re-marrying, etc).

Defining the family for tracing and reunification purposes

In certain situations, it may be necessary to formulate or work with a particular definition of '*family*', or to provide proof of the relationship for reunification purposes. In such cases, it is recommended that:

(a) A practical, flexible and comprehensive definition of '*family*' be adopted, extending beyond the nuclear family in order to include relationships of dependency (emotional, financial) between other family members or individuals unrelated by blood.

(b) The definition of '*spouse*' or '*child*' should not be restricted in law or in practice only to persons in legal unions, but include *inter alia*, persons who have entered into a customary marriage, couples who have formed a household (situation of cohabitation), persons engaged to be married, and spouses in a polygamous marriage. No distinctions should be made between children born in and outside of marriage.

(c) Requirements concerning evidence of relationships (e.g. marriage, filiation of children) should be realistic and appropriate to the situation and conditions in the country. Where formal documentation is not available, a flexible approach and alternative means of demonstrating the relationship should be used.

Responsibility of the State

6. In situations of internal displacement, State authorities should:

   a) Allow family members wishing to remain together to do so, including in situations of internment or confinement to camps;

   b) Facilitate inquiries by family members and take all appropriate steps to reunite separated families as quickly as possible, particularly when children are involved

   c) Encourage and cooperate with humanitarian organisations involved in family reunification.

   d) Based on the right of IDPs to know the fate and location of **missing relatives**, authorities must also endeavor to establish these facts, cooperate with relevant international organisations and inform the family on the progress of the investigation.

   e) In the event of death, they are to work to collect, identify, protect and facilitate the return of the mortal remains of the **deceased** to their families.

7. While there is not necessarily a need for a dedicated unit within a Ministry, responsibilities for tracing and protection measures, relating to family unity, would usually be allocated to the different Ministries and, more specifically, Child Protection departments within any of these as well as within the Municipalities or regional administrative divisions.

8. Civil status registrars are relevant in aspects related to the registration of deaths and births, that may lead to identifying places of origin of separated and unaccompanied minors, as well as to confirm the death of particular relatives.

Role of human rights and humanitarian actors

In our work: We can undertake the following activities to prevent family separation, protect separated and unaccompanied children and work towards family reunification.

Coordination and Planning

➤ An **inter-agency** discussion should take place at the onset of an emergency or of the establishment of humanitarian presence. This discussion should aim to establish roles and responsibilities in supporting key community-based measures as well as the efforts of relevant national institutions.

➤ All humanitarian partners should gain awareness of concrete measures to ensure that their interventions do not inadvertently cause harm to family unity, for instance:

   - Ensuring that families with specific needs (such as large families, unemployment of one or both parents, single parent, those caring for other relatives, etc) receive the food and non-food items they are entitled to, so that they do not see themselves forced to leave their children behind in social institutions or with relatives.

   - Not moving separated children from the location where they are found unless it is in their best interest, since it can make tracing more difficult.

   - During assisted return or relocation movements, registering children individually before boarding transportation.

   - Immediately referring children found to be alone to child protection agencies.

➤ One key actor in this regard is the **International Committee for the Red Cross and the national Red Cross and**

- **Red Crescent societies.** Coupled with its very publicly recognized mandate, it has long-standing experience in family tracing, reunification and related activities. Humanitarian partners could agree on the lead role of the ICRC or the national Red Cross and Red Crescent societies with regard to family tracing and reunification activities.
- ➤ Concerning the protection of separated and unaccompanied children, **UNICEF and UNHCR** would normally be the lead agencies, depending on presence on the ground and coordination arrangements.
- ➤ All other agencies should align their services around the activities of those agencies and should discuss and agree on **referral mechanisms** for cases of family **reunification** as well as for the **protection** of separated and unaccompanied children.
- ➤ All agencies with responsibilities involving family tracing and reunification, and with a focus on human rights monitoring, protection or community mobilization should agree on the use of **one equal registration form,** in order to facilitate information exchange and eventual tracing for family reunion purposes.
- ➤ All humanitarian partners should have a **written data protection policy**, based on the principle of confidentiality. An obligation to uphold this policy should be written into staff contracts.

- ➤ In undertaking a protection assessment, it is vital to get acquainted with the actual **conditions in which separation tends to occur** with respect to the different age and gender groups. This is best done through participatory assessment and in-depth discussions with community members.
  - Map out community members who may be better acquainted with circumstances in which child separation occurs: these can include children, religious leaders, women´s groups, local and national authorities, teachers, soldiers, prison authorities, orphanage staff, local and international NGOs and UN staff. National staff are a very valuable source of information.
  - In your discussions with the different persons and groups, identify measures taken by the community:
    - To **prevent** family separation.
    - To **trace** and reunite separated family members, as well as
    - To **host** separated persons needing particular support, such as unaccompanied children or physically challenged persons.
  - Undertake an analysis with girls and boys (separately) on the protection risks they face.
- ➤ Separated family members aiming to reunite with relatives will be most often identified spontaneously, particularly through participatory assessments and general monitoring activities.
  - Child protection partners will undertake systematic monitoring for the identification of separated children.
  - Other partners should ensure that they make an effort to identify separated or unaccompanied children and refer them immediately to the ICRC or child protection agencies.
- ➤ Upon identification of a separated family member, immediate **registration and documentation** should take place. (see below under family reunification)
- ➤ Participatory assessment can be very useful to also find out the actual **impact** of such measures and the elements that have led to success and failure. Identification of children who reunified with their families will be relevant to this end.

To ensure that **family unity is preserved** or that relatives will be easily traced in the event of separation, a number of proactive measures can be taken, such as:
- ➤ Work with all levels of government to **prevent loss of legal identity** that could prevent from successful tracing, by:
  - (a) ensuring documentation and registration of changes in civil status (e.g. birth, marriage and divorce certification etc).
  - (b) Where a specific legal status (and documentation) and related set of rights or restrictions are imposed on IDPs, ensure these measures do not impede family unity or reunification (i.e. encampment policies) if wide-scale separation of children is anticipated.
- ➤ Work with the local government, community representatives and community-based organisations to **devise and disseminate messages** to the local community regarding ways of **preventing separation**, such as:
  - Sensitizing parents about the disadvantages of placing their children in public care institutions, including the possible difficulties to trace them again in case of an emergency and displacement as well as a number of protection concerns with regard to the children's physical and mental wellbeing.
  - Informing about organizations and programmes to assist families with specific needs, particularly those who are in dire need for support so that they can keep their children with them.
  - Identifying support for child-headed households to enable siblings to remain under one roof.
  - Ensuring that children in foster care, particularly young children and babies, are not moved from the location where they are found (to enable tracing), unless protection conditions indicate that it is in the child's best interest to do so.
  - Highlighting ways to keep children together with their families during displacement, such as by putting identification bracelets on children, teaching them their full names and that of their parents, establishing *rendez vous points* in the event of flight, etc.
- ➤ Ensure **child-care arrangements during distributions of food and non-food items.** Experience shows that such situations pose a great risk to family unity as parents focus on the distribution, often a hectic process, losing sight of their small children, who may inadvertently be abducted for trafficking purposes, or simply get lost in the crowds.
- ➤ Find **ways to support families at risk,** to avoid their being forced to leave their children in foster care (i.e. ensure that such families are prioritized for emergency assistance, particularly food; refer them to specialised agencies)
- ➤ **Identify families** who are in **dire need of support** so that they can keep their children with them. Amongst these, priority should be given to identifying families with disabled children. Ensure that they are **urgently referred** to national institutions or organizations where they receive adequate support.

<table>
<tr><td rowspan="1">Protection of separated or unaccompanied children pending reunification</td><td>

➢ Separated or unaccompanied children who are additionally internally displaced often face serious protection risks while in displacement, which need to be immediately identified through an **immediate protection risk assessment** to ensure that children have their basic needs met (i.e. protection, assistance and care).

➢ At the same time family tracing activities must **kick-start immediately**.

➢ Children should ideally be **interviewed by trained staff,** in order to make them feel secure and comfortable. The interviewer must try to figure out what the child wishes in terms of solutions to its current situation.

➢ When **monitoring a child's foster arrangement, the following elements should be observed:**
- There is good "**bonding**" between child and the caregiver: they appear to be relaxed with each other and there are indications that the child's emotional needs are being met.
- The child is not **treated differently** from other children in the family: s/he is taken to a health worker when sick, attends school daily, is fed adequately, has school books (if appropriate in the circumstances), etc.
- The family is receiving the **assistance** to which it is entitled and support from appropriate services to meet its needs.

➢ In the event where separated or unaccompanied children are in a **grave protection situation** and immediate reunification is not possible, it is **vital** to ensure their **care and protection**. In such cases children should be **referred to specialised agencies**, preferably ICRC or UNICEF, who ensure the protection of the child through a variety of arrangements including:

▪ **Fostering**:
- When a separated or unaccompanied child is spontaneously taken in by a family from the **same community** as the child. Often the best option.
- The **views of the child** should always be taken into account when selecting alternative foster care.
- In any case it is **essential to establish a monitoring system** of children under such arrangements to ensure appropriate care and assistance. Informal monitoring systems should be encouraged, **involving friends, teachers and neighbours.**
- **Ideally**, children should be placed with **extended family members or previous care-givers** to maximize the possibility for the child to rapidly be taken into the care of someone he/she knows;

▪ **Child-headed households and adolescents on their own when fostering is not available,** (because unwillingness on the part of the members of the community or the adolescent children) other options can be:
- **Self-selected fostering: a child or group of children identify a family in the vicinity** who are willing to be the children's "sponsors" or "god-parents". At a minimum they should ensure that children attend school, get medical treatment, access food and are included in some of the family's social gatherings. They must also be seen by the community as the children's protectors, particularly to prevent abuse.
- **Supported accommodation:** for older boys when no family can be found, small group homes under the regular supervision of an animator/social worker.

▪ **Institutional care (i.e. orphanages)**: although this solution could appear to have short-term benefits (ensure immediate food and material security) such institutions usually have a negative impact on children:
- **They are detrimental** to the children's emotional well-being and social development
- **Abuse and/or neglect** which can occur in any care setting, is common in residential care, where it usually goes un-detected because children are kept away from families and communities.

➥ **TO BE AVOIDED IN ANY CASE: Any measure that could hamper possibilities for eventual family reunification, even at a later stage, such as: adoption at any stage of an emergency, change of name or relocation to places far from the family's likely location. Emergency evacuations of children should always take place in the company of one or both parents.**

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<tr><td rowspan="3">Restoring family unity</td><td>Identification</td><td>

➢ **Early identification** of separated/unaccompanied children is vital to enable easier tracing activities, if needed, or to ensure an appropriate protection environment otherwise.

➢ The fact that separated children could nonetheless be **in the company of adult relatives or care-takers** should be no reason not to identify and register them immediately, since tracing activities should start without delay and a proper assessment of their protection situation needs to be done.

➢ It is vital to **explain clearly the reasons for identifying separated children and emphasize the focus on family reunification**, rather than special assistance.

➢ **Always keep in mind** that identification is a sensitive process, as it **risks disrupting existing adequate care arrangements**:
- Families may think that special assistance will follow the identification and registration interview and claim their own children as unaccompanied.
- When no assistance follows, some may reject the separated child they had taken in.
- Conversely, some families may fear that separated children will be taken away from them.
- - For reasons ranging from love for and attachment to the children, to exploitation, carers may declare unrelated children as their own.

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<tr><td>Registration and documentation</td><td>

➢ **Registration** consists of the compilation of key personal data (name, photograph, date and place of birth, name of parents, former address and present location) for the purpose of establishing the identity of the person for family reunification purposes.

➢ It is important to ensure that related forms are kept with the concerned child/adult and the

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	concerned agency, record any change of location, and make sure it is easily accessible.
	➤ **Documentation** is collecting all the information that can be useful for tracing and verifying family ties. To this end, different interviews should be held with persons who are close to children, including neighbors, teachers, etc. A separate interview should be held with the child[1]. During these interviews, it is vital to undertake a brief protection and care assessment.[2]
	➤ **If registration has to be rushed for security or other reasons:**
	  - Give priority to infants and very young children who may be less able to remember important information or are too young to talk, as well as children with disabilities.
	  - The second priority is unaccompanied children, who are particularly vulnerable and less likely to be with adults who have information on their families.
	  - - CAUTION: The above prioritization sometimes leads to neglecting "separated" children. It is essential to assess, in any case, their protection and care situation to prevent possible instances of abuse.
		Restoring family unity, continued

Tracing and verification	➤ Tracing is the process of searching for family members for the purposes of reunification.
	➤ Once an unaccompanied child is identified, the ideal is to reunite him or her with one or both parents.
	➤ Only a few agencies, often only one, will be tasked with formal "tracing". Whether or not you are involved in a tracing program, you should support tracing activities for all children who have become separated from their families.
	➤ **Tracing methods that have proven successful (*also in the cases of older persons and persons with disabilities*):**
	  ▪ **ICRC, Red Cross – Red Crescent Societies Messages**
	  ▪ **Mass tracing:** Displaying and disseminating lists and/or photos of separated children. The current location of the child must **NOT** be disclosed.
	  ▪ **Radio broadcasting**: broadcasting the name/sex/age of the child and name of parents/siblings as well as any identifying marks or possessions, but **not the current location of the child.**
	  ▪ **Photo tracing:** reproducing the children's photos with an identification agency address **but no names or current addresses.**
	  ▪ **Cross referencing** children's records with others in a list or database.
	  ▪ **Case by case tracing:** when individual families are sought-after one at a time. Useful for a small caseload or when some families have proven difficult to trace.
	➤ Maintain contact between the child and his/her her family until reunification has taken place. The world-wide Red Cross and Red Crescent family news network can be used where there is no access to regular means of communication.
	➤ Even when immediate reunification is not possible, family tracing must be carried out for every child to at least restore contact with family members; experience of the last 20 years shows that **most of the separated children, for whom family tracing started within months of the separation, were reunited.**	

Reunification	➤ **Reunification is bringing together separated relatives after the family relationship has been verified.**
	➤ **Prior to reunification, a best interest assessment should be undertaken:**
	  ▪ Each case should be considered individually and in its own context. In every case, the views of the child must be taken into serious consideration.
	  ▪ The cause of separation must be an element in the assessment. Yet, it cannot be assumed that the original triggering factors (such as poverty) are still present.
	  ▪ Poverty should never be a reason not to reunify a child with parents. If the assessment leads to the belief that the parents would have difficulties in reuniting with their child, it is important to seek all possible ways of overcoming such obstacles (i.e. through targeted assistance and support, etc.).
	➤ **A formal *Best interest determination procedure*[3] needs to be undertaken:**
	  ▪ When initial best interest assessment suggests that reunification is against the interest of the child
	  ▪ When tracing is unsuccessful and other alternatives need to be explored.
	  ▪ In very complex cases, such as when children are associated with armed forces.
	  ▪ The decision not to proceed with reunification should only be taken under extremely exceptional circumstances, after a formal BID process and when there are serious reasons to believe that reunification would cause harm to the child.
	➤ **In cases of children, families and children will require preparation before reunification** (by short visits, thorough explanation of the process and what different family members may have gone through during the separation, etc.).	

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[1] Interviewing should be undertaken by specialised staff. Detailed guidelines are provided in XXX (quote IASC guidelines, *the lost ones* publication and the "Child Protection in emergencies Training and Resource CD".

[2] See previous section on *protection of separated and unaccompanied children pending reunification.*

[3] See UNHCR Guidelines on Formal Determination of the Best Interests of the Child, Provisional Release, 2006

Restoring family unity, continued	Follow up	➢ **Follow up**: is always required after family reunification and involves various activities to facilitate the reintegration process: ▪ Adjusting family services: the camp management team and relevant agencies must liaise immediately upon reunification in order to ensure all services provided to the family are adjusted to take into account the child's needs (e.g. food rations, non-food items, shelter and other services). ▪ Systematic monitoring of reunified families to prevent repeated separation[4] ▪ Establishing community support groups by putting in contact several reunified families, setting up community support structures, such as rotational day-care arrangements between reunified families, etc.

LEGAL BASIS OF FAMILY UNITY / REUNIFICATION ACTIVITIES

9. The right to family life stems from the **universal recognition of the family as the fundamental group unit of society.** It is entrenched in **international** and **regional** human rights[5] instruments, as well as **international humanitarian law[6]**, and foresees protection and assistance measures for the family as well as guarantees against unlawful or arbitrary interference in family life.[7]

10. Specialised human rights instruments provide additional and specific guarantees to different groups on an age and gender basis with regard to family life.[8] Relevant provisions in these instruments have in certain instances also been *interpreted* (e.g. by the Human Rights Committee) in a manner which supports the rights of internally displaced persons. [9]

11. The **Guiding Principles[10]** reflect these standards and detail more specifically some of the rights of particular relevance to displaced persons. They also outline the obligations of state authorities to enable IDPs to fully realise those rights.

LEGAL FRAMEWORK FOR THE PROTECTION OF SEPARATED OR UNACCOMPANIED CHILDREN

12. All children are entitled to protection, care and development under several national, regional and international instruments. Separated Children are highly vulnerable to having their legal rights violated since they are without the protection of their legal guardians. Separated children who are also internally displaced refugees face additional risks.

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[4] See guidance on how to identify care situation of children, under the section *"Protection of separated and unaccompanied children pending reunification"*

[5] In the Americas: the American Convention on Human Rights (arts. 11, 17); the American Declaration (arts. V, VI); and the San Salvador Protocol (art. 15), which contain provisions relating to the right to marry and found a family, and provide particular protection to the family unit. In the Africa region, related rights are provided in article 18 of the African Charter (ACHPR), and articles XXIII and XXV of the African Charter on the Rights and Welfare of the Child (1990). Within Europe, article 8 of the ECHR which provides that [e]veryone has the respect and family life, his home and his correspondence" and contains guarantees against unlawful interference in this right, is of particular relevance.

[6] **International instruments** with relevant provisions include: the Universal Declaration (art. 12); the ICCPR (art. 17); and the Additional Protocol 1 of 1977 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War 1949 (art. 74).
Regional human rights instruments include: in the **Americas** - the American Convention on Human Rights (arts. 11, 17); the American Declaration (arts. V, VI); and the San Salvador Protocol (art. 15), which contain provisions relating to the right to marry and found a family, and provide particular protection to the family unit. In **Africa**, related rights are provided in article 18 of the African Charter (ACHPR), and articles XXIII and XXV of the African Charter on the Rights and Welfare of the Child (1990). In **Europe**, article 8 of the ECHR which provides that [e]veryone has the respect and family life, his home and his correspondence" and contains guarantees against unlawful interference in this right, is of particular relevance.

[7] See, for example, art.17(1) of the ICCPR, art. 8 of the ECHR, and art.11 of the American Convention on Human Rights, as well as art. V of the American Declaration.

[8] The CRC includes specific guarantees with regard to the best interests of the child and the child's right to family life, as well as in relation to applications for the purpose of family reunification with his or her parents – specifying that these are to be dealt with in a positive, humane and expeditious manner. See in particular arts. 8-10 and 22 of the CRC. The rights of women are protected in CEDAW and include, *inter alia,* the rights of women to non-discrimination in the area of marriage and family life (during marriage and at its dissolution), as well as in relation to their children.

[9] For example, in its General Comment on article 23 of the ICCPR, the Human Rights Committee stated that "[t]he right to found a family implies, in principle, the possibility to procreate and live together...[T]he possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in co-operation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons." Human Rights Committee, General Comment No. 19 of 1990 (on art. 23), at para.5.

[10] Principles 16 and 17.

13. The Guiding Principles 4, 11, 13, 17 and 23 highlight the specific protection needs and rights of children during displacement (e.g. protection from forced recruitment and child labour, right to an education, importance of staying with their families and/or being reunited).

14. The CRC offers the highest standards of protection and assistance for children of any international instrument. The articles which are particularly relevant for separated children include: 3, 5, 7, 8, 9, 10, 12, 18-22, 25, 35, and 37.

Key Partners

15. To be completed

Resources

16. To be completed