

Joint Panel 3 – Best Interests

Question 1

In what ways do current practices or policies give primary consideration to the best interest of children who have been displaced across borders? What different understandings of 'best interests' do you see?

- Policies and practices are diverse, and dispersed amongst different institutions.
- Focus on UK (England and Wales), governmental, UK insists that the best interests of the child is reflected in legislation/policy (general).
- Legislation/policy on asylum provides recognition of best interests principle; often substituted/conflated with welfare.
- Best interests features most significantly as a rule of procedure.
- In practice: best interests somewhat *isolated* from the Convention, *alienated* from children's rights.

Question 2

Is there a gap between intention and practice in terms of prioritizing the best interests of displaced children, and if so, why?

- May depend on what is understood to be the objective of policy.

Best interest as a rule of procedure

- Best interest is established as part of the framework for decision-making in asylum cases involving displaced children.

Best interests as a substantive right

- In practice, best interests fails to ensure 'the full and effective enjoyment of all the rights recognized in the Convention...'.
 - To be treated as a child and receive their rights (Article 1 and Article 2).
 - An adequate standard of living (Article 27).
 - Access to basic services such as health (Article 24).
 - Education (Article 28).
 - Safety (Article 6).

Question 3

If you could identify two key aspects of policy or practice that need to be changed to ensure that primary consideration is given to the best interests of displaced children, what would you recommend and why?

Recommendations:

Guidance on the determination of best interests in asylum procedures should include a requirement to take account of the impact of any decision on Convention rights.

Any asylum decision affecting a child should prioritize Article 6 and Article 27 as overriding considerations in any determination of what is in the best interests of the child.

Why?

Best interests is a vehicle to ensure the full realization of rights, this is undermined where there is limited reference to rights in the decision-making process.

Asylum seeking children are at extreme risk, including of death or serious harm through lack of basic provision: Article 6 and Article 27 guarantee the most basic of entitlements fundamental to survival.

Question 4

If you could identify one critical question that future research should investigate to address challenges to prioritizing the best interests of displaced children, what would that be, and why?

Question

Does best interests add value to the way in which asylum seeking children are treated, and if so, how: if not, what are the risks of best interests in the asylum process?

Why?

It is now assumed that the best interests principle benefits children. This assumption may itself present a risk where there is an incomplete or mistaken understanding of best interests (as a procedural or substantive right).