

***Separated Children Seeking Asylum in Europe:
A Programme for Action***

by Sandy Ruxton

Contents

Acknowledgements	3
About the author	3
About the Programme	4
1 Executive Summary and Recommendations	5
2 Introduction and Background to the Report	20
3 Aims, Methodology and Structure of the Report	28
4 Key Findings	32
• The definition of a “separated child”	32
• Access to the territory	35
• Identification	41
• The appointment of a guardian or adviser	43
• Registration and documentation	48
• Age assessment	50
• Detention	54
• The right to participate	56
• Family tracing and contact	60
• Family reunification in a European country	62
• The asylum or refugee determination process	64
• Durable or long-term solutions	83
Appendices	103
References	119

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About the author

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About the Programme

The Separated Children in Europe Programme (SCEP) is a joint initiative of and partnership between some members of the International Save the Children Alliance in Europe and the United Nations High Commissioner for Refugees (UNHCR). The Programme partnership is based on the complementary mandates and areas of expertise of the two organisations: UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum; the International Save the Children Alliance is concerned to see the full realisation of the rights of all children.

Extending the original partnership, the Programme has set up a network of non-governmental organisations (NGOs) working with children, asylum-seekers and refugees in 17 Western European countries (the 15 Member States of the European Union [EU], and Norway and Switzerland). From 2000, the Programme is being extended to include a further eight countries in Central Europe and the three Baltic States.

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I Executive Summary and Recommendations

A central conclusion of this study is that, although there are examples of good practice nationally and locally, the particular needs and rights of separated children within asylum policy are generally little understood or acknowledged. At EU level, this lack of attention reflects the fact that issues affecting children remain relatively invisible within law and policy; as yet the legal basis for action in this area is weak and it was only in 1999 that the European Commission announced that it was intending to produce a first “Communication” (i.e. statement of policy) in relation to children (Ruxton, S., 1999).

This neglect is potentially very damaging for separated children – a highly vulnerable group of children. It is therefore essential that political will should be mobilised for positive action to be taken to assist them. This section provides an overview of key issues identified in this study, based on the national assessments undertaken in each country, and makes proposals for addressing the issues arising at EU and national levels. The areas covered are:

- the definition of a “separated child”
- the principle of the “best interests of the child”
- the child’s right to participate in decisions
- access to EU territory and to asylum procedures
- combating trafficking
- guardianship and legal representation
- age assessment
- the use of detention
- criteria for making a decision on a child’s application
- training for those working with separated children
- the return of a separated child
- data and research on separated children

The definition of a “separated child”

Separated children are children under 18 years of age outside their country of origin and without parents or guardians to care for and protect them, according to the SCEP definition. They suffer socially and psychologically from this separation. Although some appear to be ‘accompanied’ on arrival in Europe, the adults with them are not necessarily able or suitable to assume responsibility for them.

There are variations in how states define a “separated child” (or the more commonly used “unaccompanied child” or “unaccompanied minor”). Some use a relatively broad definition (e.g. Norway), largely in line with the approach adopted in the SCEP Statement of Good Practice (see page 32 below). Some apply a similar definition in practice, although it is not set out in asylum or child law (e.g. Finland, Ireland). But there are other countries where a more restrictive definition is used. For example, in Belgium, the Netherlands and Portugal a “separated child” is not regarded as including a child who travels with a relative. And in Greece, definitions vary between agencies, with potentially damaging consequences for children.

In order to ensure that the needs and rights of separated children are fully recognised, it is essential that states should develop a common definition. The term “separated child” should also be defined in the EU Directive on Asylum Procedures and all other relevant EU instruments, in line with the SCEP *Statement of Good Practice*.

The principle of the “best interests of the child”

The principle of the child’s “best interests”, derived from Article 3 of the United Nations Convention on the Rights of the Child (CRC), is applicable to state asylum policies. It requires that the impact on children of the development, administration and resourcing of government policy must be assessed and the interests of children must be “a primary consideration”.

It also applies to decisions about the cases of individual children. Although it can prove very difficult, determining “best interests” must be central to establishing appropriate action for resolving the situation for any separated child. This may mean balancing potentially conflicting rights. For example, seeking to realise the right to family reunification (CRC Article 10) can give rise to conflicts with the child’s own expressed wishes (CRC Article 12). The same can be true when considering the question of whether or not a child should return to his or her country of origin. Children’s opinions will be strongly affected by the conditions and expectations that surrounded their departure; the expectation of their family and the home community, and the quality of information available to them.

”A child may be an orphan living in a refugee camp, with grandparents in the country of origin, an uncle in a second country of asylum, and with an unrelated family in another country that would like to adopt the child. In deciding what is best for the child many factors would have to be considered, including ‘the desirability of continuity’ of culture and language (Article 20), the preservation of family and nationality (Article 8), and the child’s own desires, which must be considered according to the child’s age and maturity (Article 12).”
(UNHCR, 1994.)

Both the Finnish Aliens Act of 1999 and the Swedish Aliens Act of 1997 specifically state that particular attention should be paid to the “best interests” principle. Attempts to ensure consistent decision-making on the basis of Article 3 of the CRC

are, however, relatively few and in practice, it appears that separated children's best interests are not duly taken into account. For example: guardians or advisers are not regularly appointed to support them; legal representation may be non-existent; lack of any form of legal status often means that children live in uncertainty for considerable periods of time; in many cases children are routinely detained, sometimes in penal conditions and/or with adults.

Alongside the principle of the child's "best interests", increasing attention has focused in recent years on the principle of the child's right to participate in decisions affecting him or her (CRC, Article 12). Indeed, it has been suggested that the "best interests" principle should be properly understood to accommodate an opportunity for the child to determine what those best interests are – on condition that it is compatible with the law and interests of others and that it is not contrary to his or her self-interest in terms of physical or mental wellbeing and integrity (Eekelaar, J., 1994).

Against this background, it is essential that a comprehensive assessment of the child's "best interests" should be included in the EU Directive on Asylum Procedures and other relevant EU instruments. Governments should also explain how the principle has been respected when decisions have been taken, either in relation to broad aspects of policy or individual cases. Appropriate mechanisms should be developed to monitor and evaluate implementation.

The child's right to participate in decisions

In practice, attempts are made to incorporate the principle of the right to participate into the refugee or asylum determination process. Children normally do have the right to have their views represented during interviews, and most states have an age limit above which the child either should be or must be consulted (usually 12). Nevertheless, the child's rights in this area are marginalised in some countries. Beyond the determination procedure, it appears that children are able to participate to a greater extent in decisions in relation to care planning.

Although the right to participation is lacking in the EU Resolution on Unaccompanied Minors, any national and EU level legislation on asylum procedures should include the principle of consulting children and taking their views into account whenever decisions affecting them are being made. Additional factors which facilitate child participation, which should also be addressed in any instrument are:

- the early appointment of guardians and legal representatives;
- the availability of skilled interpreters;
- access to education, and
- child-friendly environments.

Access to territory and to asylum procedures

The 1997 EU Resolution on Unaccompanied Minors sets out that Member States should prevent the "illegal" entry and residence of separated children, and allows

Member States to refuse admission at the frontier to separated children and to keep them at the border until a decision has been taken on their admission.

Within Europe, although refusals are rare or unknown in some countries (e.g. in Scandinavia), denial of access of separated children to the territory of a country in which asylum is sought appears to be relatively common in others.

Although safeguards exist in some countries, access to normal determination procedures are also obstructed in many states by “accelerated” and “admissibility” procedures. For instance, “safe third country” policies are commonly applied (e.g. in Austria, Denmark, Finland, Germany, Portugal, UK). Similarly, applications are often regarded as “manifestly unfounded” (e.g. Austria, Denmark, France, Portugal, Sweden). However, some countries rarely use this concept for children (e.g. Finland, Ireland).

Building on the conclusions of the Tampere European Council (see page 35 below), the principle must be established that separated children seeking protection should never be refused entry or returned at the point of entry, and that when such children seek asylum, they must have access to the normal refugee status determination procedure; they should gain access immediately and not have to wait until they are 18.

Combating trafficking

The trafficking of separated children into Europe is a serious problem, and this study reveals disturbing examples from several states (based on material provided by the SCEP national assessments). In Greece and Italy, Albanian children in particular are sometimes being brought into the country illegally to be economically or sexually exploited. In France, there are cases involving children from China being forced to work in sweatshops, and children from Sierra Leone being forced into sex work. In Spain, Roma children from Portugal, Romania and other Eastern European countries are exploited as beggars in the streets. Trafficking routes to the Netherlands appear particularly well-established with children being brought from Eastern Europe, China and Nigeria by organised gangs to work in the sex trade.

A particularly worrying aspect of the Dutch experience is the number of children who disappear from reception centres; many do so in order to work as sex workers. Although it appears not to happen to the same extent elsewhere, there is an urgent need for further research to establish the true scale of the problem and to promote the development of effective responses.

Although issues relating to trafficking are broader than the focus of this study, there are links between trafficking and the use of asylum. Children seeking asylum sometimes come into the EU via trafficking routes. It appears also that the more states introduce restrictive control measures to make it more difficult to reach EU territory, the more the incentives for trafficking grow.

It is suggested that, building on measures set out in the EU Council of Ministers’ Joint Action to Combat Trafficking in Human Beings and the Sexual Exploita-

tion of Children of 24 February 1997, practical initiatives should be developed at all levels in response. These could include priority procedures for children who have been trafficked; swifter appointment of guardians; better information to children on the risks; increased monitoring of children “at risk”; and training courses for relevant staff. The effectiveness of measures taken under the Joint Action also needs to be properly evaluated.

Guardianship and legal representation

In relation to guardianship, policy and practice across Europe is diverse. In several states (e.g. Austria, Denmark, France, Ireland, Italy, Portugal, UK), guardians or advisers are not appointed systematically to advise and protect separated children; in others they are (e.g. Luxembourg, The Netherlands, Norway, Spain, Sweden). A number of additional problems arise with guardianship systems. For instance, the role of guardians may be short-term only and it may take a long time for them to be appointed; they may lack specific guidance, expertise or awareness of refugee issues; training may be limited; they may have a purely administrative relationship with the child; and resources are often lacking to provide a sufficient number of guardians. Despite these difficulties, there are some examples of positive practice. In The Netherlands, for instance, appointing a guardian takes around four weeks, their role is wide-ranging and long-term, and continuous training is available for them.

In most states, some form of legal representation exists to assist separated children in making an asylum claim; however this is not necessarily available at all stages of the asylum process (e.g. Belgium, Denmark, France, Italy). In some countries advances in legal representation have occurred recently; in Finland and Ireland, for instance, representation is now provided throughout the process. But significant weaknesses remain in legal representation in many states. The quality of legal representation may be poor; there may be no prior consultation with the child before an interview; lawyers may lack knowledge of countries of origin or experience of representing children; there may be constraints on access to free legal aid.

In order that the “best interests” of a separated child are met, it is essential that he or she should be assisted by a guardian or adviser during the whole asylum process, in line with the UNHCR Guidelines and the CRC. In particular, guardians should be appointed as soon as possible (and certainly within a month of the child arriving in the country); co-ordination between guardians and staff in other relevant agencies should be improved; training and guidance materials should be developed; and accessible information about the guardianship system should be available to the child on arrival.

Similarly, the provision of appropriate legal representation is essential if a separated child is to receive a fair hearing. Representation by specialist lawyers should be available to every child throughout the determination procedure; lawyers should be present at asylum interviews, and they should be skilled in supporting children; regular and open contact should be established between the lawyer and the child;

free legal aid should be provided; and training should be available to legal representatives. These recommendations should be integral to the EU Directive on Asylum Procedures and any other relevant instrument at national and EU level.

Age assessment

Separated children frequently arrive in Europe with false documents or no documents at all. In many cases this is their only means of escape from danger, as is recognised by Article 31 of the 1951 Refugee Convention. As a result it can prove difficult to ascertain their age, and if they are incorrectly identified as adults, they will not be entitled to the full protection of international law.

Although several states (e.g. Denmark) appear to apply the principle of the “benefit of the doubt”, in line with the UNHCR Guidelines, others (e.g. Austria, France, Portugal) do not. In most states, some form of medical assessment is undertaken to attempt to determine the age of the child. Although the UNHCR Guidelines go on to state that methods “must be safe and respect human dignity”, concerns are widespread that unnecessary X-rays are being carried out (commonly of the wrist and hand, but also in Italy of the head) and that intrusive and sometimes frightening bodily examinations are also conducted. Neither of these methods appears to provide conclusive evidence of age, and the margin of error can be wide.

Minimum guarantees should therefore be included in any legislation affecting age determination. For example, the principle of the “benefit of the doubt” should be respected (with 20-24 months’ leeway as a suggested guideline); age assessment should not be based solely on appearance without taking into consideration ethnic/cultural background, but should also take psychological maturity into account; experts should be involved for a second opinion prior to detailed medical assessment; existing bone directories are dated and incomplete and should not be used for age assessment; if medical examination is necessary, it should be carried out by a physician with appropriate expertise and familiarity with the child’s background; and medical examinations should never violate the physical integrity of the child.

The use of detention

Within Europe there are several countries where separated children are not detained (or only extremely rarely detained) for reasons associated with their asylum application (e.g. Denmark, Finland, Ireland, Italy, Norway, Spain). But there are others where detention is more common (e.g. Austria, Belgium, France, Portugal, UK), either in so called “waiting zones” at airports, or in detention centres, police cells, or prisons. The age of children who can be detained varies, and there are cases of children as young as 13 or 14 being detained in the UK.

Detaining children is a highly damaging practice which can be traumatic for those involved – especially within the context of the situations from which they have fled. Detention may represent a contradiction to the 1997 UNHCR *Guidelines* and the “best interests” principle of the CRC. Instead, children should be ac-

commodated in appropriate residential child care facilities or other settings (e.g. foster placements, group homes, independent living) where support is available from specially trained staff with experience of working with separated children. These recommendations should be included in EU and national legislation.

Criteria for making a decision on a child's application

Although the EU Resolution on Unaccompanied Minors sets out some of the criteria relevant to a decision on a child's application (e.g. age, maturity and mental development), UNHCR's 1997 Guidelines and the SCEP Statement of Good Practice go further. In particular they raise (among other issues) the significance of child-specific forms of human rights violations which, depending on the circumstances, may justify recognition of refugee status or the granting of a humanitarian status. Also underscored in these documents is the need for a liberal application of the "benefit of the doubt".

The information available from the Country Assessments indicates that, on the one hand, there is a lower refugee status recognition rate among separated children than the general asylum-seeker population; and that, on the other hand, there is a much higher recognition of humanitarian status.

In general the issue of child-specific forms of human rights violations is not emphasised in EU states, even though there is considerable evidence of children being recruited into armed forces from as young as ten years, of girls experiencing female genital mutilation, and of children being forced into prostitution or child labour. This study provided some further examples, especially in relation to children being trafficked for the purpose of economic and sexual exploitation ("Comating trafficking", page 8 above, and "Child exploitation and trafficking", page 36 below).

Neglect of these issues in the decision-making process reflects the overall lack of focus on the needs and rights of separated children in immigration and asylum policy. Greater efforts must be made by NGOs and UNHCR to ensure that European governments and the EU recognise the importance of child-specific forms of human rights violations and "liberal application of the benefit of the doubt". These principles should also be specifically referred to within the EU Directive on Asylum Procedures. Further research should be undertaken to monitor and explore current practice in more detail, with the aim of informing the development of appropriate policy and practice.

Training for those working with separated children

The importance of training for officials dealing with separated children and their cases at all stages should be highlighted in relevant EU and national instruments, as in the EU Resolution of Unaccompanied Minors (Article 4(5)). Appropriate training is also essential for legal representatives, guardians/advisers, interpreters, and other care staff working with separated children. The extent to which this happens

in practice varies between states. For example, in some countries (e.g. Austria, France, Italy, Portugal, Spain) there is no training for officials in interviewing children, in others (e.g. Germany, Ireland, The Netherlands, Sweden, UK) there is some, even though it is often not sufficiently widespread.

As the roles of officials, representatives, guardians, interpreters and other care staff often differ, training programmes should be tailored to the specific needs of the groups involved. However, the evidence from this study suggests that, in addition to knowledge of national and EU asylum policy and procedures, the following topics should be core elements:

- the principles and standards of the CRC and other key instruments and guidelines;
- knowledge of countries of origin;
- appropriate interviewing;
- child development and psychology;
- cultural issues;
- use of language, and
- creating child-friendly environments.

Initial training should be backed by the setting up of networks and continuing education programmes.

The return of a separated child

In most European countries it appears that some or all of the special conditions set out in the SCEP Statement of Good Practice (e.g. family assessment, preparation for immediate and long-term care in the country of origin, analysis of conditions in the country or origin) are not fulfilled prior to the return of a separated child.

Although some countries have established systems or programmes of return for separated children, most have not. A number of countries also practice deportation and return of separated children without taking necessary safeguards. In Austria, Belgium, France, Germany, Greece, Italy and the UK deportations or returns without sufficient preparation are known to happen. However, it is difficult to get statistics and general information on the return of separated children, and consequently there is a great need to increase knowledge and awareness of this aspect.

There is a need for formal schemes for return to be developed in European states, however it is essential that appropriate safeguards are respected. For instance:

- guidelines and procedures should be in place in order to assess the best interest of the child in the context of return measures;
- standard criteria should be set out for determining whether care in the country of origin is in line with the CRC;
- assistance should be provided to separated children prior to, during and after the return to country of origin;
- attempts to locate a separated child's parents in order to assess whether the child should be returned should be standard procedure;

- the child should be fully informed at all stages regarding progress in relation to return, and should be involved in any decisions regarding his or her future, and
- returns should always be carried out in a child-appropriate manner. If return is not possible without endangering the child's wellbeing, a solution in the host country should be found.

Data and research on separated children

The available statistics on separated children in the European states covered by this study are patchy, both in scope and quality. This mirrors the fact that general statistics about children in the EU are limited both between and within states (Ruxton, S., 1999).

It appears that most countries – but not all – collect basic data about the number of arrivals and/or applications by separated children; however beyond this, detailed breakdowns are more difficult to find. Nevertheless, there is evidence from some countries that the majority of separated children are boys (mainly aged between 16 and 18 years) and that the main source countries are Afghanistan, China, Iraq, Morocco, Sierra Leone, Somalia, Sri Lanka and Republics of the former Yugoslavia (though the distribution varies between countries). Where statistics on status determination are kept, refugee recognition rates appear to be generally very low (around 1 to 2 per cent) – lower in many cases than those for adults.

Overall, this study highlights significant gaps in the data at all levels. There are several main reasons for this. Data are frequently not recorded according to the same categories and formats, both between and within countries. There may be no centralised data bank and information may be held by different institutions. Some concerns surround confidentiality and access to personal information. Resources for data collection may be scarce. State authorities may have little or no desire or capacity to collect comprehensive information and statistics.

Despite these obstacles, there is a strong argument that the development of well-founded information systems and continuous monitoring in relation to separated children is vital, both at local, national and European levels. The availability of such information is an important precondition for developing and implementing positive policies towards separated children.

Given the different systems which currently exist for information collection in different states, it is impossible to be prescriptive as to which institutions should have primary responsibility in each country (although at EU level, Eurostat should be approached). However, it is more feasible to attempt to specify the kind of data which should be collected. At a minimum, this should include basic biographical data (e.g. age, sex, nationality, ethnic group); total number of arrivals; total number of refusals of entry to the territory; numbers of asylum applications made; guardians and legal representatives appointed; type of accommodation (e.g. detention, reception centres, group homes, independent living); participation in education and training; information on status determination (e.g. refugee status, humanitarian status,

temporary protection, other forms); statistics on returns and family reunification.

In addition to setting up systems for collecting statistics and ongoing monitoring, additional in-depth research should seek to analyse the qualitative experiences of separated children – especially in relation to areas which are as yet insufficiently explored (e.g. the impact of trafficking, disappearance of children).

Recommendations

A full list of recommendations will be found at the end of each section of Chapter 4: Key Findings.

The definition of a “separated child”

Recommendation 1: When developing legislation and administrative regulations, the EU and European states must recognise the needs and protect the rights of all separated children. The inclusive definition of ‘separated children’ as defined by SCEP should therefore be central to legislation dealing with asylum-seekers and refugees, and should also be acknowledged within child law.

Access to the territory

Recommendation 2: In order to ensure effective protection for separated children seeking asylum, greater political will should be focused on meeting the standards set out in international law and guidance (especially the 1951 Refugee Convention, the CRC, and the UNHCR Guidelines), and endorsed in the SCEP Statement of Good Practice. Any subsequent EU and national level legislation in relation to access to the territory should reflect these instruments and the European Council conclusions from the Tampere summit.

Identification

Recommendation 3: In order to ensure that children are given appropriate protection, the EU and European states should build on the EU 1997 Resolution on Unaccompanied Minors based on paragraphs 5.1 – 5.3 of the UNHCR Guidelines regarding identification.

The appointment of guardian or adviser

Recommendation 4: For children’s “best interests” to be adequately protected, there is a clear need for all children under 18 years old to be assisted by a guardian or adviser at all stages of the asylum process and in relation to durable solutions. Such assistance should be in line with the provisions set out in international law and guidance (principally the CRC and the UNHCR Guidelines) and the SCEP Statement of Good Practice. In developing common standards on asylum pro-

cedures, the EU should ensure that the safeguards identified in the EU 1997 Resolution on Unaccompanied Minors are strengthened and incorporated in subsequent EU legislation.

Registration and documentation

Recommendation 5: To protect the interests of separated children, such children should be registered and documented as soon as possible following entry to the territory. Article 3.1 of the EU 1997 Resolution on Unaccompanied Minors should be elaborated upon and strengthened, in line with the SCEP Statement of Good Practice and the UNHCR Guidelines.

Age assessment

Recommendation 6: In any legislation developed by the EU and European states, minimum guarantees in relation to the age assessment of separated children should be integral, based on paragraphs 5.11 of the UNHCR Guidelines and the SCEP Statement of Good Practice.

Detention

Recommendation 7: SCEP believes that the detention of separated children for reasons relating to their immigration status violates the CRC and also contravenes the UNHCR Guidelines. In any legislation which is subsequently developed at European and national level, a clear statement preventing the use of detention for all separated children should be included.

The right to participate

Recommendation 8: In order to meet the standards set out in Article 12 of the CRC, states should ensure that separated children are provided with appropriate opportunities to be heard at all stages of the asylum process. It is also essential that states should fulfil their positive duty to assist children to express their views. The EU and European states should integrate the standards set out in the CRC and the UNHCR Guidelines into any relevant asylum legislation.

Family tracing and contact

Recommendation 9: Despite the real obstacles which exist, the emotional and psychological importance to the child of maintaining and developing contact with family and relatives, and of preserving cultural links with the country of origin, is undeniable. It is therefore vital that the EU should develop legislation which upholds the key principles established in the CRC, and reinforced in the ECHR, the EU 1997 Resolution on Unaccompanied Minors, and the UNHCR Guidelines.

Family reunification in a European country

Recommendation 10: In order that the “best interests” of the child are met, states should ensure that separated children seeking asylum within one EU country who have family relatives in another EU country should receive appropriate assistance so that family reunification can take place as soon as possible. Separated children’s access to reunification procedures should be premised upon the fact that they are children rather than upon their status in the asylum procedure. The existing Dublin Convention provisions fail to meet the needs of separated children and their families adequately. Future EU legislation (e.g. Directives on Temporary Protection and Asylum Procedure) should provide for the right of separated children to be reunited with their families.

The asylum or refugee determination process

Access to normal procedures

Recommendation 11: Separated children are to have access to normal asylum procedures containing appropriate provisions and safeguards, in line with the UNHCR Guidelines, ECRE’s Position on Refugee Children, and the SCEP Statement of Good Practice.

Legal representation

Recommendation 12: The provision of appropriate legal representation is essential if separated children are to receive a fair hearing in asylum procedures. This principle is reiterated in the UNHCR Guidelines and expanded upon in the SCEP Statement of Good Practice, and should be integral to any EU and national legislation on asylum procedure which is developed.

Minimum procedural guarantees

Recommendation 13: The evidence suggests that there are minimum guarantees for separated children in European states. There is, however, considerable variation in practice, both between and within countries – even in those where official policy exists. If asylum claims by separated children are to be processed efficiently and fairly, it is essential that any legislation on asylum procedures should ensure that the minimum guarantees within it are sufficiently rigorous and that they are met in practice, in line with the UNHCR Guidelines.

Independent assessment

Recommendation 14: In any legislation on asylum procedures which is developed by the EU or European states, reference should be made to the possibility of undertaking expert assessments on the child’s ability to articulate fear of persecution.

Interviews

Recommendation 15: The evidence suggests that in many states conformity with the principles set out in the UNHCR Guidelines (and the SCEP Statement of Good Practice) is not ensured. Official guidance is generally lacking, and many children can be subject to hostile questioning in an alien environment. Several governments admit that currently the training for those interviewing children is either not available or not extensive enough. And it is also relatively common for a child to attend an interview alone, without adult support. Measures should be taken by governments to ensure that officials who interview separated children are adequately trained; and that interviews are undertaken in a child-friendly manner.

Criteria for making a decision on a child's asylum application

Recommendation 16: The evidence suggests that, in general, there is a lack of clear policies on the factors which should be taken into account in determining separated children's cases – despite the existence of developed UNHCR Guidelines. In practice, this gap means that officials may make decisions in a policy vacuum, leading to wide variations in treatment based on criteria which can be subjective and unfair. When determining refugee status, governments should make sure that child-specific forms of human rights violations are taken into consideration as well as the fact that children might have different ways of communicating fear of persecution and different knowledge regarding their claims than adults.

Young people who become adults during the asylum process

Recommendation 17: There is wide variation in approaches between states to separated children who become adults during the asylum process. Significant unfairness can result, especially when “ageing out” occurs as a result of delays which have not been caused by the children themselves. In this context, it is important that the EU and European states should seek to establish fair procedures in this regard.

Durable or long-term solutions

Grounds for a child remaining in a host country

Recommendation 18: Generally speaking, European states do allow separated children to remain in the “host country” in line with the criteria set out in the SCEP Statement of Good Practice. However, to meet fully the needs and rights of separated children, key safeguards such as providing a status which gives them access to assistance and family reunification, must be implemented in all states, in line with the CRC principle of the “best interests of the child” and the UNHCR Guidelines.

Family reunification

Recommendation 19: The evidence presented by the assessments indicates that practice is far from meeting the standards set out in the CRC in relation to family reunification in the “host country”. Efforts should be made to change policy and practice to allow for family reunification in the “host country” for all categories of separated children.

Integration

Recommendation 20: Although a number of good practices are in place, existing evidence suggests that significant improvements are required if the standards of the CRC, the EU 1997 Resolution on Unaccompanied Minors, and other relevant international instruments, are to be met. All separated children should gain access to appropriate services on a non-discriminatory basis and facilities and programmes should be designed to meet their special needs.

Adoption

Recommendation 21: Adoption is rarely a suitable option for a separated child. It is essential that prior to adoption being considered as a viable option for a separated child, there is a rigorous assessment of the family circumstances in the country of origin. The separated child’s parents often still live in the country of origin, or sometimes they are missing but not officially reported dead.

Family reunification and return to the country of origin

Return

Recommendation 22: There is a need for formal schemes or programmes of return to be developed in European states. Guidelines and procedures should be in place in order to assess if return would be in the best interest of the child. Such guidelines and procedures should be drawn up in collaboration with agencies with specific child and country knowledge, and according to the UNHCR Guidelines.

Conditions that must be fulfilled prior to return

Recommendation 23: Experience in European states suggests that greater attention and effort must be devoted to ensuring that the conditions and safeguards set out in the UNHCR Guidelines and the SCEP Statement of Good Practice are implemented. Guidelines should be developed at national level specifying which steps to be taken before a separated child is returned including verification that care will be provided for and basic needs will be met.

Programmes and aid to facilitate return

Recommendation 24: Programmes to assist the reintegration of returned children should be initiated and supported.

Settlement in a third country

Recommendation 25: In general it appears that guidelines and procedures are not in place in European states to assess if settlement in a third country would be in the best interest of the child and to ensure that the decision is reached in accordance with appropriate safeguards. Procedures should be put in place in all European states in order to allow for the transfer of a separated child to a third country if the child has a family member in that country who is willing and able to care for him or her.

2 Introduction and Background to the Report

The impact of global insecurity on children

In the post-Cold War era, the world has seen an upsurge of violent and enduring conflict, in countries as diverse as Afghanistan, Colombia, Liberia, Rwanda, Sierra Leone, Sri Lanka, Sudan, and in the region of the former Yugoslavia. Serious violations of human rights abuses have also increased worldwide. As throughout history, children have been at particular risk from such dramatic events.

The impact on children has been catastrophic. Save the Children UK estimates that, in the last decade, more than 1.5 million children under 18 have been killed and more than 4 million children disabled or maimed, more than 5 million have been forced to live in camps, and more than 12 million have lost their homes (Save the Children Fund, 1998). This increasing instability has generated massive population displacement and the evidence suggests that children are affected more than any other group.

Armed conflict and fear of persecution are not, however, the only reasons for children moving across borders in greater numbers in recent years. Fuelled by growing global inequality during the 1990s, children are also now travelling due to a combination of factors in source countries, including environmental disaster, abuse and abandonment, denial of education (especially for girls), poverty and lack of opportunity. Most seriously, a growing trade has emerged in child trafficking for the purposes of exploitation, usually in the sex industry.

The response of EU governments to these events has generally been to seek to limit the numbers of asylum applications to EU territory – both of adults and children. Moves towards common standards in relation to immigration and asylum policy have so far been based on the primary aim of making it far more difficult for non-EU citizens to gain access to the territory and to asylum procedures (e.g. visa restrictions, carrier liability legislation, swift refusal of “manifestly unfounded” claims).

Under an extensive agenda for the “communitisation” of EU asylum policy under the 1997 Amsterdam Treaty, common standards are likely to be further developed. There are fears that more restrictive policies may be introduced which may push people who are increasingly desperate to flee their country of origin into the hands of traffickers. However, some organisations believe that the conclusions of the Tampere European Council in October 1999 may provide a platform for a more positive Community-wide approach.

Separated children

The position of children who have been separated from their parents or previous legal/customary carer is particularly vulnerable, whatever the reasons for travel. As the seminal study of Ms Graca Machel to the UN on the impact of armed conflict on children put it:

”Children are often separated from parents in the chaos of conflict, escape and displacement. Parents or other caregivers are the major source of a child’s emotional and physical security and for this reason family separation can have a devastating social and psychological impact. Unaccompanied children are especially vulnerable and at risk of neglect, violence, military recruitment, sexual assault and other abuses”. (Machel, G., 1996)

The vast majority of refugees – and separated children among them – stay within the region of the conflict from which they have fled. During the genocide in Rwanda, for example, based on information collected by the International Committee of the Red Cross, some 120,000 separated children escaped to bordering countries.

Rather than face often dangerous and desperate conditions in the country of origin or in the region, a small but increasing number of children travel to European countries. Usually it is family and/or friends who – fearing for the child’s safety and wellbeing – go into serious debt to purchase an airline ticket or arrange travel with traffickers.

Separated children in Europe

In recent years, the phenomenon of separated children has appeared within Europe on a more regular basis. During the war in Bosnia, for instance, around 10,000 children were separated from their parents but remained within the region of the former Yugoslavia. Over 90 per cent were subsequently reunited with their parents, but records for many who travelled further afield were not kept and the outcomes for them are much less certain. While it appears that practice was far more systematic in relation to children from Kosovo during the later conflict there, some children became separated from their parents when they were evacuated and, despite the efforts of agencies in a number of countries, are still living thousands of miles apart.

Alongside children arriving from conflicts like those in the region of the former Yugoslavia, there is growing evidence of a rise in cases of economic and sexual exploitation. For example, in Greece and Italy most of the Albanian children are sent to work. Sometimes they are also sent to beg or to be workers. In France there are Chinese children sent illegally and forced to work in sweatshops to refund their travel. In The Netherlands children from Eastern Europe and Nigeria frequently end up working in the sex trade (see below, page 38).

The range, depth and quality of statistics on separated children in Europe varies significantly between states, and due to different definitions and recording methods, the data from one country are not necessarily comparable with those of another.

er. However, it is possible to give some indications of the number of arrivals. In Austria, for example, 265 asylum applications were received from separated children in Vienna alone during the first half of 1999 – double the number for the previous year. In Sweden, 137 such applications were received over the same period, compared to 295 the year before. The numbers of separated children who applied for asylum in 1998 were 137, 220 and 229 for Finland, France and Denmark respectively. In Greece, a conservative estimate suggests that around 500 separated children arrived between 1995 and 1998. Although figures cannot be provided for all the German Lander, Bavaria alone registered 825 applications from separated children in 1998. In The Netherlands there were 1,650 asylum applications by separated children in 1997, and 3,500 in 1998.

The SCEP Statement of Good Practice drawn up by SCEP defines “separated children” as follows:

”Separated children and young people’ are children under 18 years of age who are outside their country of origin and separated from both parents, or their legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP project, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation”.

It is important to note that SCEP prefers the term “separated children” to “unaccompanied minors”, as it is a wider definition which includes those children who may be accompanied by family members or relatives, but have been separated from both their parents, or their previous legal/customary primary caregivers.

Based on this definition and the available national information, SCEP believes that there are roughly 100,000 such children in Europe at any one time. But unless and until they claim asylum many remain “hidden” to public authorities. For this reason (and also because of the lack of policy focus on this group), it is not unusual for official statistics to be either non-existent or highly inaccurate. It is vital for such information-collection to be improved in order to ensure that individual children receive the protection they need; that the tracing of parents and other relatives can take place, and to raise awareness of the issues involved.

The experience of separated children in Europe

Separated children are a particularly vulnerable group. Not only are they – as other children – more susceptible to illness and injury than adults, but they also lack the physical protection and psychological and emotional support they need. Without such support, there is a great danger that their full development will be disrupted or impeded.

In the short term, they can be overwhelmed by the practicalities of fleeing their homes, arriving in Europe exhausted from the journey, and suffering the shock of dislocation from their family and environment. Frequently they disembark into an alien culture, where they are unable to speak the language and to express their views.

In the period following arrival, they are often faced with complex asylum procedures which are not fully explained to them. They may face probing interviews about their backgrounds, identities and motives from officials who lack any understanding of their culture or circumstances. They may be subjected to fingerprinting or invasive medical examinations to establish their ages. They may be detained in airport “waiting zones”, in reception centres, or even in prisons.

During the refugee determination process, they may lack the support of an adult guardian/adviser or legal representative. They may have insufficient access to appropriate food, education, health and social care, and cultural links, and in some cases may experience racial harassment or attack.

Ultimately, while most separated children are allowed to remain in the country of application, either as recognised refugees or, far more commonly, with some form of humanitarian status or temporary protection, some are likely to be returned to their country of origin.

The rights of separated children

The particular vulnerability of children without parents or other carers – the most vulnerable children of all – makes it essential to provide proper protection and care for “separated children”. Failure to do so risks undermining the health, wellbeing and development of the child.

Any consideration of the rights of separated children must be based on the clear understanding that they are children who, by virtue of this fact alone, have special rights. They are separated from their parents, outside their country or origin, and therefore are in need of international protection. This remains true irrespective of the reasons (and the means by which) they entered Europe, the conditions under which they are living, and their status in relation to national and international law.

Governments have relevant obligations under international child law, especially the 1989 UN Convention on the Rights of the Child. By ratifying the Convention – as all but two governments worldwide have done – governments undertake to put in place systems to protect children and to provide alternative care when children are separated from parents or caregivers. Furthermore, under Article 2, they are under an obligation to provide the same standards of care for all children within their jurisdiction; under Article 3, the “best interests” of the child must be a primary consideration in all actions concerning children; and under Article 12, children must be able to express a view on matters relevant to them. There are also more specific provisions which are relevant and which should be read in conjunction with these “umbrella” articles. Article 22, in particular, sets out the rights of a child who seeks refugee status or is considered a refugee, accompanied or unaccompanied, in

accordance with international or domestic law to receive appropriate protection and humanitarian assistance.

In addition to child law, there is a substantial body of refugee law which is relevant to the position of separated children. For example, the 1951 UN Convention and the 1967 Protocol relating to the status of refugees set out the core definition of the term “refugee” in international law; and a more specific reference recommends that governments take necessary measures with a view to “the protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption” (Final Act of the Convention, Recommendation B). Building on the cornerstone of the 1951 Convention, UNHCR published detailed guidelines on refugee children in 1994, recognising the increasing focus on children’s rights globally during the 1980s and 1990s and reflecting the content of the CRC. These were elaborated upon in 1997 by a further set of UNHCR guidelines specifically addressing the position of separated children. More recently, attention has also centred on the 1996 Hague Convention for the Protection of Children; although this Convention has yet to enter into force, it could help to implement some of the major objectives of the CRC in this area by providing a binding international framework (See Appendix 3 for further details).

The European legal context

Although there is a framework of international law to draw upon, there are also European instruments which are useful. In particular, many of the provisions of the Council of Europe’s European Convention on Human Rights (ECHR), which has been in existence since 1950, are applicable to refugees. The most relevant articles are Article 3 (prohibition of torture or inhuman or degrading treatment), Article 4 (prohibition of slavery and forced labour), Article 5 (the right to liberty and security), Article 8 (the right to respect for private and family life), and Article 16 (restrictions on the political activities of aliens).

The EU’s legal basis can be found in several instruments. Article K1 of the 1992 Maastricht Treaty defined asylum policy as a matter of common interest to be dealt with; according to Article K2, in compliance with both the 1950 European Convention on Human Rights – under which there is now a body of case-law concerning asylum – and the 1951 Refugee Convention. The Maastricht Treaty is the first reference to an EU founded on three “pillars”: the first pillar is European Community and its legislation, the second is a common foreign and security policy (CFSP), and the third is justice and home affairs. Since then, the European Council has passed several non-binding resolutions concerning refugees, such as a common interpretation of Article 1 of the Refugee Convention and the treatment of unaccompanied minors, but asylum policy has remained essentially a matter of inter-governmental co-operation.

The 1997 Treaty of Amsterdam removed asylum policy from the third pillar – an area of inter-governmental co-operation – and into the first pillar. Police and judicial co-operation has been left in the third pillar. Asylum policy is not entirely

“communitarised”, however, as the voting rules still require unanimity. Also, the right to initiate legislation is shared between Member States and the European Commission, and the rights of scrutiny and consultation of the European Court of Justice and the European Parliament are not fully complete. The Amsterdam Treaty came into force on 1 May 1999. Heads of government met to discuss Justice and Home Affairs policy, for the first time, at Tampere on 15-17 October 1999, under the Finnish Presidency.

Within the last five years the EU has devoted some attention to the issues facing separated children, however the two relevant Council of Ministers’ Resolutions have no binding force. The first, the 1995 Resolution on Minimum Guarantees for Asylum Procedures, sets out standards in relation to a range of relevant issues, such as the need for state authorities to have fully qualified personnel to examine cases, and for a separated child to be represented by a specially appointed adult or institution.

The second, which focuses directly on the position of separated children, is the 1997 Resolution on Unaccompanied Minors who are Nationals of Third Countries. While the resolution represents existing “soft law”, it sets out an important political commitment by the Member States to realising the rights of separated children, and is relevant to the preparation of proposals for any Community legal instrument. Although the resolution is generally useful, some improvements should be introduced when any primary legislation is being constructed (see the specific sections below on the EU legislative programme for examples).

The EU legislative programme on asylum for the transitional period following the entry into force of the Amsterdam Treaty is a broad one and was set out in a European Commission Working Document in March 1999. All of the areas outlined in the document are likely to have some impact on separated children. It is therefore vital that their needs and rights should be mainstreamed in any Community instruments which are subsequently developed. Failure to do so could result in their interests being forgotten or ignored. The box below summarizes the main instruments where the rights and needs of separated children should be mainstreamed.

The EU legislative programme on asylum for the transitional period

- 1 *Criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States:* This area is currently covered by the 1990 Dublin Convention, which in due course will need to be replaced by an instrument of Community law.
- 2 *Draft Directive on Family Reunification*, December 1999.
- 3 *Eurodac:* This is a fingerprint comparison system to implement the Dublin Convention, and a related Proposal for a Council of Ministers Regulation is currently being considered.
- 4 *Minimum standards on the reception of asylum-seekers in Member States:* The scope of an instrument in this field will cover issues such as accommoda-



tion, means of subsistence, medical care, education, employment and access to the labour market for asylum-seekers.

- 5 *Minimum standards with respect to the qualification of nationals of third countries as refugees:* An instrument in this area will be concerned with interpretation of the refugee definition contained in Article 1 of the Geneva Convention.
- 6 *Minimum standards on procedures in Member States for granting or withdrawing refugee status:* A number of non-binding “soft law” instruments relating to asylum procedures have been adopted, however the Amsterdam Treaty requires a legally binding instrument. A draft directive will be published shortly by the Commission.
- 7 *Minimum standards for complementary/subsidiary protection for persons in need of international protection:* An instrument in this area will deal with the provision of protection to people who are not refugees within the meaning of the Geneva Convention, but who are nevertheless in need of international protection.
- 8 *Minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their countries of origin:* Temporary protection is designed to meet the need for protection in the EU in crisis situations. The Commission will revise an existing proposal on this subject as a draft Community instrument.
- 9 *Promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons:* The Commission will revise an existing proposal in this area as a draft Community instrument.

(European Commission, 1999.)

The “European Programme for Action”

Despite the emergence of global children’s rights standards over the past decade (symbolised by the CRC), there is evidence from several states that the obstacles to separated children arriving in Europe are becoming greater rather than less.

Building on comprehensive assessments in 16 countries, this study explores the extent to which policy and practice meet the standards set out in international law and guidance. It reveals a disturbing picture, reflecting the lack of attention which has so far been accorded to separated children in European states. The problems experienced by separated children include:

- restrictive definitions of “separated child”;
- refusal of access to EU territory;
- difficulties establishing their identity and proving their age in the face of official disbelief;

- poor registration and documentation procedures;
- deprivation of liberty, sometimes in prison environments;
- lack of awareness and training among officials; absence of sufficient support at all stages of the asylum procedure, from both guardians and legal representatives;
- failure to undertake family tracing, to establish contact with family, or to provide for reunification;
- lack of opportunities for children's views to be considered, and
- inappropriate – even hostile – determination procedures.

Although examples of positive policy and practice can be found within European states (some of these are outlined here), this study has found that the negative experiences outlined above are by no means uncommon. There are therefore important reasons to focus on the needs and rights of separated children.

Despite these well-founded arguments, there remains much to do if the rights of separated children are to be recognised in Europe. This study therefore sets out the core components of a comprehensive European “Programme for Action”, aimed at informing and influencing international agencies, central and local governments, law-enforcement agencies, NGOs, and the public. It focuses on the level of EU policy; however it is relevant too to national and local levels, as the outcome of decisions at EU level will depend on the positions adopted by Member State governments – a trend which is likely to increase as asylum policy becomes more closely integrated.

3 Aims, Methodology and Structure of the Report

This report sets out a “European Programme for Action for Separated Children”, building on comprehensive assessments of law, policy and practice in 16 Western European countries carried out by members of the network during 1999 (see list in Appendix 1). (A further 11 assessments will be completed for the Central European and Baltic states in 2000.)

Given the increasingly significant role of the EU in the development of immigration and asylum policy (see “Access to the territory”, page 35 below), this report’s recommendations are primarily aimed at influencing debate at this level. However, the development of EU law and policy reflects trends and debates within European states, and the report therefore seeks to make recommendations which are relevant at national and regional levels.

The report aims to:

- summarise the extent to which law, policy and practice across Western Europe conform to the standards set out in the SCEP Statement of Good Practice and relevant international instruments;
- identify significant problems or gaps in law, policy and practice at European and national levels;
- set out the case for further action in relation to separated children at European and national levels;
- develop recommendations for the development of law, policy and practice at European and national levels, and
- develop recommendations for the establishment of data on the number and situation of separated children on an ongoing basis.

In addition to the current report and the development of the SCEP Statement of Good Practice agreed by the network, the programme has also initiated a research study to explore the wide range of reasons that result in children being separated from their parents or carers in their countries of origin, and to examine the diverse means by which they travel to Europe unaccompanied. It is intended to publish this ground-breaking study in autumn 2000.

Methodology

This report is based almost exclusively on primary data collected via a detailed questionnaire (Appendix 2). The SCEP Statement of Good Practice provided the framework of the questionnaire against which law, policy and practice were assessed in relation to each country. The questionnaire was completed for each country either by staff of member organisations of the network, or by independent researchers engaged specifically for this purpose by member organisations. In some cases, the task was shared jointly between staff within different NGOs. (Appendix 1).

The Programme also held a series of training events during 1999 in Denmark, Germany, Spain and the UK, attended by staff who were to oversee or undertake the research (each course had participants from a range of countries). The aims of the training were to develop a shared understanding of the SCEP Statement of Good Practice; to prepare participants to carry out the assessment; to build relationships between NGOs in the network and UNHCR staff in each country, and to increase understanding of EU policy development.

For each assessment, a literature review was first carried out. Although the quantity and quality of available literature varied from country to country, among the documents consulted and referred to were: relevant international instruments and guidelines; European instruments and policies; state laws, policies and procedures; national parliamentary debates and questions; official and independent reports; and international and national journals and websites.

Literature reviews were supplemented by interviews with key organisations and individuals. While the number and range of interviews differed between countries, the overall spread included: Ministry officials (e.g. Justice, Internal Affairs, Foreign Affairs, Health, Education, Children), immigration and passport control staff, reception centre workers, police officers, judges, lawyers, guardians, social workers, psychologists, doctors, teachers, statisticians, interpreters, and staff in relevant NGOs (e.g. the Red Cross, International Social Services, Refugee Councils, youth welfare services, children's and human rights organisations).

Some interviews and/or discussion groups were also established for separated children themselves; however these did not take place in all cases, owing to a range of obstacles (e.g. the need for confidentiality, fears of tokenism, resource limitations). It is intended that the programme should develop this important aspect of the work in the future, in particular by running training for network members on children's participation.

Following writing up, some consultation subsequently took place on draft assessments with other interested parties, either formally or informally. The whole process was co-ordinated on a European basis by a consultant to the Programme, who was available for assistance throughout the period of the research and put together the current report based on all the assessments.

It is important to be aware of the potential limitations of action research of this kind conducted on a transnational basis within a tight timescale. First, given the lack of attention to the needs and rights of separated children across Europe, secondary data are largely unavailable. And although some country-specific studies

have been conducted, on the whole they fail to reflect the significant developments in asylum policy across Europe in recent years (which have also affected separated children).

Second, although all the assessments were based on the same questionnaire, inevitably differences were evident in the range and depth of analysis in each. This was particularly evident in countries (predominantly in the south of Europe) where separated children (as defined by SCEP) were arriving, but not necessarily claiming asylum. And in countries with federal systems (e.g. Belgium, Germany, Spain), the research task was obviously more complex and the responses were of necessity more generalised than for countries with unified systems.

Third, the diverse histories, cultures, administrative structures and public policies of different states meant that definitions and recording methods varied. Information – and in particular statistics – were therefore often not available between countries (and sometimes within countries) on a directly comparable basis.

Fourth, the scope and depth of the responses varied depending on the resources available to each national researcher. In some cases (especially within smaller NGOs), questionnaire respondents were also dealing day-to-day with a significant number of asylum-seekers and refugees. Although as a result their comments may reflect personal feelings about the national and local systems in place more than other “objective” forms of research, their proximity to separated children themselves helped to identify important issues which would perhaps otherwise not be addressed in official discourse or research.

Fifth, language issues provided considerable scope for misunderstanding. In some cases, there was a difficulty in translating particular words, phrases or concepts which did not exist in other languages. For example, in several countries the term “separated child” itself is difficult to translate.

Attempts to reduce the risk of inconsistency between assessments in relation to issues such as those outlined above are essential. This report seeks as far as possible to acknowledge the different contexts in which information was collected, to identify and combat potential bias, and to check information against a range of sources. Yet it is important to be clear that the report provides a snapshot of European law, policy and practice towards separated children. As the main aim of this report and the Country Assessments is to provide information on the situation of separated children in Europe as a first step to changing policy and practice, the report describes rather than analyses existing approaches and issues. It is therefore important to emphasise that analysis of policies and practices and causal relationships is not within the scope of this study.

Despite these acknowledged limitations, it is also important to highlight that the results of this project are derived from the most ambitious attempt ever to assess the situation of separated children across Western Europe. Undoubtedly the information presented – which goes beyond official responses and gives insights into the real experience of separated children – provides the most accurate contemporary picture available. Nevertheless the Programme recognises that it is only the first step towards the comprehensive and systematic approach to information and data collection on this subject which is required.

Structure of the report

The main body of the report is divided into four sections, the first one being an Executive Summary and Recommendations which highlights key themes and the main recommendations arising from the analysis.

Section 1 (*Executive Summary and Recommendations*) provides an overview of the main issues identified from the assessments, and highlights key recommendations as stated at the end of each sub-section of Section 4: Key Findings which deserve priority action at EU and national levels.

Section 2 (*Introduction and Background to the Report*) outlines the impact of global insecurity on children; defines “separated children”; sets out the basic circumstances they face in travelling to Europe; highlights the context of international child and refugee law, and provides the background to the “European Programme for Action” set out in this study.

Section 3 (*Aims, Methodology and Structure of the Report*) describes the Separated Children in Europe programme, and the aims, methodology and structure of the report.

Section 4 (*Key Findings*) assesses in relation to specific issues how far the SCEP Statement of Good Practice and relevant international obligations are met; highlights examples of positive and negative policy and practice, and sets out more detailed recommendations. The issues addressed are: the definition of a “separated child”; access to the territory; identification; the appointment of a guardian or adviser; registration and documentation; age assessment; detention; the right to participate; family tracing and contact; family reunification in a European country; the asylum or refugee determination process; and durable or long-term solutions.

The report concludes with appendices and references.

4 Key Findings

The definition of a “separated child”

”Separated children and young people” are children under 18 years of age who are outside their country of origin and separated from both parents, or their legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP project, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or due to armed conflict or disturbances in their own country, or they may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.”

(SCEP Statement of Good Practice, February 1999)

Until relatively recently, “unaccompanied children” or “unaccompanied minors” have been the main terms used to describe children who have fled from their countries of origin without their parents. But as many children undertake their journeys accompanied by other members of their families or family friends, in recent years the term “separated children” has begun to be accepted as more appropriate. This change of terminology widens the definition to include these children who might arrive with family members or other potential customary caregivers who were not previously their primary caretakers. The widening of the definition creates a clearer focus on the key issue of children’s separation from their parents or prior primary caregiver.

The definition of a “separated child” used in each European country is vital as it will have a significant effect on the approach taken and the process adopted by relevant agencies. The definition used by SCEP builds on those set out in other international instruments, including the CRC (Articles 1 and 22), the 1996 Hague Convention for the Protection of Children (Article 6), and the UNHCR Guidelines (Paragraphs 3.1-3.2 and Annex II). The SCEP definition is a broad one, encompassing within the term “separated child” not only the child who arrives in Europe alone, but also the child who travels with caregivers other than his or her parents (e.g. extended family members, friends, acquaintances) or previous primary caregiver. This formulation is to ensure that the child’s history is properly investigated, and that the authorities are made aware of the particular vulnerability of the child so that appropriate protection is provided in line with the child’s “best interests”. It is vital that the authorities do not accept as given the suitability of the

temporary care arrangement and relationship.

In some states, policy apparently meets the standards set out in the SCEP Statement. For example, the Norwegian Directorate of Immigration accepts three categories within the term “separated child”: a child who arrives alone and does not have any connection to family members living in Norway; a child who arrives alone and who has relatives already living in the country who may be regarded as potential caregivers; and a child who arrives without parents, but with adult family members (e.g. brother/sister, aunt/uncle, cousins). In Finland, although the term “separated child” is not used, practice appears to conform to the SCEP definition. In Germany, the term “separated child” is not used, however a child is considered to be separated when there is no guardian to care for him or her; a negative aspect of the legal framework is that after age 16 children have legal capacity on their own and in the majority of cases legal representatives or guardians are not appointed. In Sweden, children who travel with an accompanying adult, who is not the legal custodian of the child, are deemed to be separated children. They are dealt with in accordance with the routines for children, as they do not have a legal custodian in Sweden. In order to clarify the term, however, the definition “children without legal custodian in Sweden” is increasingly used.

The definition used varies quite significantly between states. Almost all European countries define the child as below 18 years (in Austria the age is currently 19). In Portugal and in The Netherlands, there appears to be inconsistency between immigration and child law, and – as elsewhere (e.g. Belgium, The Netherlands) – a “separated child” is not understood to include a child who travels with a relative. Similarly, in France, a range of legal categories applies to separated children. In Ireland and Luxembourg, although practice appears to mirror SCEP’s approach, the definition is not yet included within asylum or child law.

In some states definitions vary between agencies, with potentially damaging consequences for children. Greek asylum law does not make specific reference to “separated children”. Social services therefore act according to Family Law and the UNHCR Guidelines, whereas the police apply the Penal Code. As a result, social services may treat a child under 18 as “separated” (even when accompanied by older siblings), yet the police may deport a separated child as young as 14 who is alone, without making relevant enquiries in the child’s homeland.

Italian law does not distinguish between asylum-seeking children and other children – children are respected as such irrespective of whether they are asylum-seekers. However, this approach could potentially lead to neglect of the especially vulnerable circumstances and particular needs of separated children. New legislative proposals currently under consideration will for the first time define the category of children seeking asylum. However, the definition will be fairly narrow and will not apply, for example, in circumstances where there are adult relatives in Italy. This means that the more restrictive term of “unaccompanied minor” will be applied. The Italian branch of International Social Services has found that there are often cases of children who are exploited or badly treated by relatives; it therefore believes that in such cases the Juvenile Authorities should evaluate the child’s particular circumstances.

In other countries, current changes in agency roles may affect the definition used in future. Until recently the Danish Refugee Council was able to apply a definition in line with the SCEP Statement of Good Practice; however a more restrictive approach may be adhered to as a result of the transfer of certain responsibilities from the Council to the Immigration Service and local authorities in 1999.

Where a child is accompanied by an adult sibling, the UNHCR Guidelines indicate that they should be processed through the refugee status determination procedure together, on the presumption that “they have a shared or common history”, and that “the adult sibling is aware of and able to articulate the child’s claim for refugee status” (Annex II). This has been the practice in Spain, for example. If these preconditions are not met, then the child should be treated as a separated child. Yet in practice, processing claims jointly can mean that a child is confronted with the asylum regulations drawn up for adults.

The status of children in this situation in Denmark is decided by the Red Cross, who work on the basis that any child who arrives without legal primary caregivers/ biological parents is a separated child; additional assessments are carried out by an experienced psychologist. Within the Austrian system, children accompanied by siblings over 18 are considered to be separated children, but the guardianship court may appoint siblings as their guardians. The procedure includes an assessment of the older sibling’s capacity to act in this role and consideration of their relationship to the child concerned.

Recommendation 1: When developing legislation and administrative regulations, the EU and European states must recognise the needs and protect the rights of all separated children. The inclusive definition of “separated children” as defined by SCEP should therefore be central to legislation dealing with asylum-seekers and refugees, and should also be acknowledged within child law. A number of additional issues should be taken into account in relation to the definition:

- Separated children should never be denied access to asylum procedures, but they should also receive the full benefit of all appropriate child legislation in each state.
- All agencies working with separated children in each state should seek to agree and apply the same broad-based definition of a “separated child”.
- The asylum application of a child who enters a state with an adult sibling or relative who is not the legal/customary caregiver should be considered as an application from a separated child.
- Action should be taken to ensure dissemination of information about separated children at all levels within relevant agencies.

Access to the territory

”Separated children seeking protection should never be refused entry or returned at the point of entry. They should never be detained for immigration reasons. Neither should they be subject to detailed interviews by immigration authorities at the point of entry.

”Trafficking in children and young people for the purposes of prostitution, the production of child pornography and other forms of exploitation is a serious problem in Europe. As already agreed in the EU Joint Action, states should take counteractive measures by sharing information on trafficking with other states, and ensuring that immigration officers and border police are alerted to this problem, bearing in mind that trafficking routes are also being used by separated children seeking asylum. The purpose of any such advocated measures should be motivated by child protection principles, not migration or crime control measures.”

(SCEP Statement of Good Practice, February 1999)

Children seeking asylum

These guarantees are especially important to separated children due to their vulnerable circumstances, and are reinforced in the UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997). However the EU Council of Ministers’ resolution on unaccompanied minors (26 June 1997) indicates that states may refuse separated children leave to enter, in particular if they are without the required documentation and authorisations. Their birth may never have been registered, or identity documents may never have been issued. Identity papers are sometimes lost, forged, or destroyed. Or it may only have been possible to obtain them at great risk from state authorities in the country of origin (UNHCR, 1994).

At the summit of the EU Council of Ministers at Tampere in October 1999, the Presidency’s conclusions restated the EU’s commitment to the 1951 Refugee Convention, and endorsed in particular “absolute respect for the right to seek asylum” (Paragraph 3). This suggests that everybody in need of international protection should be able to access EU territory. However, there are concerns that other aspects of EU policy – and in particular the Action Plans of the EU High Level Working Group on Asylum and Migration – may in reality make it more difficult for asylum-seekers to reach EU territory to claim asylum.

The position in relation to separated children seeking asylum is much less clear in reality. In some states, entry is relatively accessible. In Denmark, for example, the majority of separated children are permitted to seek asylum, however there is a so-called rapid agreement with Sweden, whereby a person who applies at the border can be refused entry directly to both countries, without any exchange of correspondence in accordance with the Dublin Convention. In Finland and Spain there are no

known cases of separated children seeking asylum being refused entry, and legislation and guidance make specific reference to the principle of the “best interests” of the child. In Norway such children are not rejected on arrival without their application being considered. In The Netherlands the EU’s Schengen rules apply, and children can enter unchecked from Germany or Luxembourg. At international airports, where controls do exist, separated children are generally refused entry only if there are doubts about the child’s age and nationality; in these cases accelerated procedures are employed at the airport registration centre.

There is evidence to suggest that in several European states separated children seeking protection face great difficulty in gaining access to a country. An important reason relatively few separated children gain access to asylum procedures in Europe is the establishment by states in recent years of a growing range of measures which make it difficult to reach EU territory. For example, visa regimes, gate and pre-boarding checks, and carrier liability legislation have been introduced widely. In the UK, for instance, carrier liability legislation has been gradually tightened since its introduction in 1987 (and now includes not only airlines, but also road hauliers), and the numbers of Airline Liaison Officers steadily increased to combat document fraud. The Government believes that arrivals with inadequate documents have been reduced by 30 per cent as a result of the legislation, but it cannot confirm that those prevented from travelling to the UK did not include asylum-seekers fleeing persecution. In most states it appears that such legislation contains no special safeguards regarding children.

Significant problems surround arrivals of separated children such as those who are considered “illegal” by states (either because they have inadequate documentation or because they enter the country clandestinely). In Italy, although a very high proportion of separated children enter the territory secretly from the Balkans, according to the Immigration Law separated children who are already on Italian territory cannot be expelled unless the Juvenile Court orders to expel them for reasons of public order or state security. In Greece, the number of separated children coming into the country is significant; data is very incomplete, but a conservative estimate is around 500 between 1995 and 1998. This is due to factors such as the recent upheaval in the Balkans region, the geographical position and extended borderline of the country, and the lack of resources for effective border control.

Child exploitation and trafficking

A particularly serious feature of the Greek situation is the extent to which separated children are being trafficked for the purpose of economic or sexual exploitation (see box below). Cases of children seeking asylum – mainly from Iraq, Iran, Kurdistan, Afghanistan, Pakistan and (rarely) African countries are considerably fewer. The response of the authorities can be severe, with large-scale police arrests (of children and adults) and immediate deportations to the border. Such approaches are clearly contrary to children’s “best interests”.

Exploitation of separated children in Greece

Economic exploitation: There are cases of parents who “rent” their children to traffickers who bring them to Greece to work (children known as “street children” or “the children at the traffic lights”). Children begging or working in the streets are considered delinquent under Greek law, and if arrested they are either referred to social services or deported (depending on their age). In most cases family tracing is successful. Nevertheless, children are not always accepted by their parents in the country of origin, due to previous binding “contracts” with the traffickers. In cases where all members of the family reside in Greece, children are accepted back, but they are often sent to work again by their own parents. The country of origin in most cases is Albania.

Sexual exploitation: Due to strict laws against promoting sex work, most children involved in such activities are provided with forged documents, a fact which makes the identification process extremely difficult, if not impossible. Although there are no official statistics or records, it is widely acknowledged that activities of this kind take place, involving mainly children and young people of both Greek and foreign origin (Albania, Ukraine).

(Greek assessment)

Although in some countries the problem does not appear to have either occurred or been explored in any depth (Denmark, Ireland, Norway), evidence from other countries suggests this is not an isolated problem. In Austria at least four girls were trafficked to Vienna between the beginning of 1998 and autumn 1999, according to an NGO working in this field; all were deported to their country of origin since no residence permits were granted, though this would have been possible under paragraph 10(4) of the 1997 Aliens Act. Lack of protection in Austria itself also means that children and young people are easy prey for pimps. The Welfare Agency Vienna suspects too that people are being brought to Austria for drug trafficking purposes, especially black Africans (probably under false pretences), who then are forced to sell drugs to repay their “travelling expenses”.

Romanian children have been trafficked into Germany since the mid-1990s (mainly to Berlin). Most came from Romanian orphanages; once in Germany they are forced to commit theft, burglary and other criminal offences. The stolen property had to be delivered to the leader of the gang and if his instructions were not met children were punished brutally. There are also some indications that these children were used as sex workers and for child pornography. It is expected that the number of separated children coming into Germany illegally will grow. In Hamburg and Frankfurt, for example, the number of Algerian and Moroccan juveniles involved in drugs has increased sharply.

In France there are cases involving Chinese children (15-16 year-olds) sent illegally and forced to work in sweatshops to refund the price of their travel. Children from Sierra Leone have also been forced into sex work and criminal networks and

put to work by members of their own community. In Italy there are numerous cases of Albanian children who have escaped from the sex trade racket, and others of Albanian children reduced to slavery by compatriots and forced to beg in Italy. In Spain Roma children from Portugal, Romania and other Eastern European countries are used by their own family members to beg in the streets. There are also a very few cases of girls from Nigeria, Latin America and Eastern European countries trafficked for sex work purposes to Spain. The problem in these cases has been determining their age (as the age declared by the girls was 18 or above), and the nature of the family links with the so-called “protector uncles” accompanying them.

There are connections with the asylum issue – indeed, it is likely that the more stringent application procedures established in recent years in most European states may have provided an additional incentive to trafficking. In Finland, apparently most separated children coming from Somalia in order to apply for asylum have travelled along international routes established by traffickers. In recent years a new phenomenon has appeared in Finland: children who have come as asylum-seekers disappear (not during the asylum process but later when they have a residence permit), and then sometimes resurface with a different identity in Finland or other Nordic countries.

Meanwhile, an unknown number of separated children are smuggled to The Netherlands for the purpose of sexual exploitation. They often end up as sex workers there or in another EU country. Some come through the official asylum procedures; they then usually disappear from the reception centres within a few days and their whereabouts are unknown. Others are brought illegally by child traffickers and are then exploited in closed prostitution rings (see box below). Approximately 250 children per year have disappeared from the centres between 1996 and 1998; a number have later been found who have become sex workers. Others are assumed to be living with family members.

Child trafficking to The Netherlands

East European children are caught up in the sex trade mostly as a result of advertisements or contacts in discos which lure them to the West to be sex workers. If the police discover them, they are usually sent back to their country of origin, although some of them fall within the asylum procedure for separated children.

Chinese children fall into the hands of the traffickers or “snakeheads” in different ways. Some families give their children to the traffickers in the hope that they will have better opportunities in Europe. Other children leave home by themselves and meet the traffickers in Chinese cities. Some parents are forced to pay the traffickers significant amounts to arrange travel, and mostly the children themselves have to earn back the cost of the trip. They often come through Moscow where they stay several months as child sex workers. Then they travel on towards The Netherlands. Here too they sometimes become sex



workers before they file their asylum application. Some of the girls are then already pregnant. A number of girls simply disappear from the registration centres.

The police also believe that the traffickers make use of asylum procedures to bring in Nigerian girls. They too are lured to The Netherlands as sex workers; some know this and accept it to improve their parents' economic position. The traffickers arrange for the girls to get on to the plane by giving them false documents which they give back or destroy before arrival in The Netherlands, where they ask for asylum. Most girls tell standard stories on the instructions of the traffickers (e.g. their parents are dead and they have no-one to care for them). They usually claim that they come from the Sudan or Sierra Leone. Lack of documentation or doubts as to the girls' nationality can lead to an accelerated asylum procedure. Most of the girls are placed in a reception centre. After a few days or weeks they disappear and become sex workers. The traffickers use them not only in The Netherlands, but also in Belgium, Germany and Italy. It is difficult to obtain reliable information about the nature and extent of the trafficking as the girls concerned are usually too frightened to discuss it. They do not often co-operate in investigations against the traffickers as they have to pay back the debt that their parents have incurred to bring them to The Netherlands.

(Dutch assessment)

Trafficking in children is clearly condemned by international law. Article 34 of the CRC says that states shall protect children from all forms of sexual exploitation and abuse; Article 35 that states shall take all appropriate measures to prevent the abduction, sale or traffic in children; and Article 36 that states shall protect children from all other forms of exploitation prejudicial to their welfare.

However, these principles need to be translated into practical action. The international dimension to exploitation and trafficking has led to the EU playing an increasingly important role in recent years (alongside related global initiatives such as the 1996 World Congress Against the Commercial Sexual Exploitation of Children). Four relevant "Joint Actions" have been developed under the Third Pillar (i.e. on an intergovernmental basis), the most significant of which is the "Joint Action to combat human trafficking and the sexual exploitation of children" of 24 February 1997. This aims to establish a common definition of trafficking; institute measures at national levels, and promote co-operation between Member States. While it is clear that many worthwhile initiatives have been taken within this framework (e.g. specific legislation has been established in several states), the effectiveness of these measures has yet to be properly evaluated.

Against this background it is therefore welcome that the EU Council of Ministers summit at Tampere agreed that there should be a new priority to fighting crimes against children.

Child trafficking – an example from Luxembourg

”One case involved a boy from Georgia whose parents had died. He was all alone and was ‘taken in’ by an adult at Moscow station, who offered to take care of him. After a few weeks, the adult suggested that the boy, then aged fifteen and a half, accompany him on a journey to Germany. When they crossed borders, the boy was to confirm that he was travelling with his father. The man had already obtained forged documents indicating that the boy was his son. The boy remembers having gone through Berlin, and then having driven for about three hours. Then he was left in a large house, handed over to other adults. They explained that now he was in Europe, he had to pay for the journey. As he did not have any money, he was locked in. For four months, he had to prostitute himself with ‘a lot of people who came from outside and spoke different languages’, as well as make pornographic films. There were other adolescents there, too. After about four months, the man from Moscow returned and fetched him. He was told that the journey had now been ‘paid for’ and that he was to be set free. From there he was taken to Luxembourg, where he was left in the city centre. He got by as best he could for several days before he realised that he could ask for political asylum”.

(Luxembourg assessment)

Recommendation 2: In order to ensure effective protection for separated children seeking asylum, greater political will should be focused on meeting the standards set out in international law and guidance (especially the 1951 Refugee Convention, the CRC, and the UNHCR Guidelines), and endorsed in the SCEP Statement of Good Practice. Any subsequent EU and national level legislation in relation to access to the territory should reflect these instruments and the European Council conclusions from the Tampere summit. A range of recommendations arise from the assessments:

- Legislation to guarantee that separated children seeking asylum will not be refused entry or returned at a point of entry should be established in all European states, together with strong measures to combat trafficking.
- All separated children who are seeking asylum should be excluded from safe third-country and other regulations which deny them the opportunity to claim asylum or flee persecution.
- Separated children who cross the border illegally and are apprehended should be able to contact the relevant welfare authorities in the country of arrival as soon as possible. Large-scale deportations by police authorities are clearly a violation of children’s “best interests”.
- Member State legislation should criminalise all forms of child trafficking, including for the purposes of sex work, pornography, and forced labour, building on the EU Joint Action of 24 February 1997 to combat trafficking in human beings and the sexual abuse of children.

- Research should be developed into the impact of trafficking on the use of asylum procedures by separated children, and options for improving existing legislation, policy and practice.
- Practical initiatives to combat trafficking should be developed and tested, such as: swift procedures (bearing in mind the importance of fairness and thoroughness); swifter appointment of guardians; better information to children on the risks of exploitation; agreements between local agencies to monitor children “at risk”; and training courses on trafficking for immigration officials and care personnel.
- Separated children who are victims of trafficking should be supported and assisted.

Identification

”At ports of entry immigration authorities should put in place procedures to identify separated children and young people. Where children are accompanied by an adult, it will be necessary to establish the nature of the relationship between the child and adult. Since many separated children enter a country without being identified as separated at ports of entry, organisations and professionals should share information in order to identify separated children and ensure they are given appropriate protection.”

(SCEP Statement of Good Practice, February 1999)

In order that the needs and rights of separated children are guaranteed, it is vital that such children are identified on arrival. This involves two main aspects: determining the age of the child, and whether or not he or she is “separated”. The basic requirement of identification is endorsed by Article 8 of the CRC, and expanded upon in the 1997 UNHCR Guidelines (paragraphs 5.1-5.3 and Annex II). It is also set out in Article 3.1 of the EU Resolution on Unaccompanied Children of 26 June 1997. The importance of such identification is reinforced by the fact that some separated children who do not apply for asylum are simply deported to their country of origin without investigation.

There are several countries – including Austria, Finland, France, Germany, Italy, Luxembourg and Portugal – where there are no established procedures for identifying separated children. In the UK, although the Government has announced that drafting of such guidelines is “under consideration” (UK Parliament Official Report, 1998), they have not yet been produced.

In terms of principles, there is evidence that the importance of the “best interests” of the child set out in the key Article 3 of the CRC is not necessarily respected in the identification process. In Finland, for instance, there have been cases where the Parliamentary Ombudsman has indicated to the border authorities that insufficient attention has been paid to the principle; practice has improved since this intervention.

In practice, responsible authorities experience considerable difficulty in identifying separated children. In some cases children are too scared of the consequences to tell the truth, especially to police officers. Often it is only when a climate of trust is established that the child talks more freely. This was highlighted in the Greek and Italian assessments, in particular in relation to situations where children have entered the territory clandestinely.

Photographing and fingerprinting in order to ascertain identity is undertaken in Austria on a compulsory basis, whereas in Denmark these methods are available but are not generally applied to children under the age of 15 years. In Spain the authorities are planning to create a database to register data on separated children (in order to avoid abusive practice of minors presenting different identities in several autonomous communities, and thus multiplying administrative procedures and inter alia guardianship). On a wider scale, the EU Council of Ministers has recently proposed the Eurodac Regulation (which will be immediately binding on Member States) which will mean – if adopted unamended – that the fingerprints of asylum-seekers over age 14 will be taken and compared through a central database with the intention of deterring individuals making multiple asylum claims. Save the Children is concerned about this regulation based on the view that including children within the scope of Eurodac will result in them feeling criminalised and threatened by the process, and will not assist the child to tell the truth or be forthcoming to people in authority. Furthermore, this position is based on the belief that few separated children are likely to make multiple applications in EU countries and there is no proven need to identify them for this purpose (see also “The European legal context”, pages 24-26 above).

Establishing the nature of a child’s relationship with an accompanying adult (or adults) is also problematic – especially when children lack documents, or when documents are those of another person or are forged. If a child is not identified as separated at the border, entry to claim asylum for the child can be dependent on whether the adult(s) is allowed to enter – if the adult is rejected, so too is the child (Denmark). Often it is only some time after entering a country with an adult that an application for asylum is submitted by a separated child (e.g. Finland). Or after the family has been granted residence permits, it is discovered that the adult is not the child’s parent; sometimes this is as a result of problems with the child which cause the carer(s) to contact social welfare authorities and ask them to take over responsibility for the child.

Another problem is that systematic sharing of information between the various agencies involved which could be helpful in establishing identity is often lacking. Training is also underdeveloped, although there are examples where this is being introduced (e.g. Finland).

Recommendation 3: In order to ensure that children are given appropriate protection, the EU and European states should build on the EU 1997 Resolution on Unaccompanied Minors, based on paragraphs 5.1-5.3 of the UNHCR Guidelines. Any legislation or guidance which is developed should:

- establish systematic procedures for the identification of separated children;
- promote comprehensive training in child-friendly processes and environments for border officials (see “Recommendations”, page 71 below)
- establish procedure for age assessment in line with SCEP Statement of Good Practice, and
- ensure that separated children who do not apply for asylum are identified, and that special provision is made for them.

The appointment of a guardian or adviser

As soon as a separated child is identified, a guardian or adviser* should be appointed – in a long-term perspective – to advise and protect the separated child. Regardless of the legal status of this person (e.g. guardian, NGO worker) his or her responsibilities should be as follows:

- to ensure that all decisions taken are in the child’s best interests;
- to ensure that a separated child has suitable care, accommodation, education, language support and healthcare provision;
- to ensure a child has suitable legal representation to deal with his or her immigration status or asylum claim;
- to consult with and advise the child or young person;
- to contribute to a durable solution in the child’s best interests;
- to provide a link between the child and various organisations who may provide services to the child;
- to advocate on the child’s behalf where necessary, and
- to explore the possibility of family tracing and reunification with the child.

In order to ensure necessary protection for separated children, appointments of guardians or advisers should be made within one month of a child being notified to the relevant authorities.

The authorities carrying out these responsibilities may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, advisers or guardians must have relevant childcare expertise and an understanding of the special and cultural needs of separated children. They should receive training and professional support.

(SCEP Statement of Good Practice, February 1999)

* The term “adviser” is used in the UK context, where “guardians” have a specific role in relation to other aspects of child law.

The principle that, in the absence of a child’s parents, his or her “best interests” should be protected by a guardian or adviser is reflected in the provisions of several international instruments. Article 18(2) of the CRC sets out that states shall assist

guardians to carry out childrearing responsibilities, and Article 20(1) that children deprived of their families are entitled to special protection and assistance. These principles are elaborated upon in more practical terms by the 1996 Hague Convention for the Protection of Children (Hague Convention on Jurisdiction, 1996) which, when it enters into force, will provide – among other things – the basic infrastructure so as to facilitate the appointment of a guardian, and the expeditious determination of the legal status of separated children. The necessity of ensuring that guardians are appointed is reinforced by the UNHCR Guidelines (paragraph 5.7).

At EU level, the Council of Ministers 1997 Resolution on Unaccompanied Minors identifies the need for the representation of separated children as soon as possible after arrival. However, the means of ensuring this are left open to interpretation by individual states (Article 3 (4)). This formulation reflects the wide diversity between the policies and practices of different European countries.

In many states, provision is apparently limited or non-existent. Under Danish law there is no clear obligation to appoint a legal primary caregiver/guardian for a separated child, and in practice this happens very rarely; in contrast a caregiver is almost always appointed for a Danish child in similar circumstances. In Austria there is no automatic appointment of a guardian; if the youth welfare agency concludes it is necessary it may file an application for an appointment as guardian at the guardianship court; however, there are considerable differences between provinces. In Ireland identification of a separated child does not mean that a guardian is appointed, and in the rare cases where this has happened, it has been at the initiative of NGOs or through Judicial Review court proceedings. There is also no systematic procedure in France for appointing a guardian and the child does not have recourse to one single person to refer to in relation to social care and legal representation. According to Italian and Portuguese law, there is no individual guardian either; rather, “guardianship” resides in the authorities responsible for taking care of children in need. In Italy, however, this does not always happen; the judges can appoint qualified private guardians (relatives or family members) who are registered in a specific list at courts after proving that they have no criminal charges.

Nevertheless, there are some countries where guardians or advisers are appointed. In Luxembourg the Caritas Refugee Service has recently offered to assume guardianship, and all separated children are sent to this office. The Service ensures that a lawyer is appointed; prepares the child for questioning; accompanies him or her to the interview; takes care of education and health requirements, and explores the possibility of reunification. In Sweden all separated children obtain an adviser (usually from the Board of Guardians), whose task is to “protect the interests of the child from a holistic perspective and with his or her best interests at heart”. However, how this role is carried out in practice varies significantly, as there are no clear guidelines. According to the Dutch civil code, the civil court will assign a guardian to any separated child who applies for asylum in The Netherlands and who is not over 17 years and 6 months old (children who are older than this do not have a court-appointed guardian because of their approaching majority). In practice, if a relative or friend living in The Netherlands is not appointed, a guardian of an NGO (Stich-

ting de Opbouw) will be appointed. Each guardian has approximately 25 wards. Their role is set out in the box below.

Responsibilities of the guardian in The Netherlands

- Integrating the child into Dutch society and general guidance. For this purpose, he or she will see the child every month and will also be in contact with relevant organisations such as the school, the “new arrivals” office, the IND, lawyers and organisations responsible for the child’s daily care.
- Deciding how the child will be cared for on a long-term basis. The guardian will decide this after consulting those who took care of the child in the reception centre during the first three months.
- Advising on the kind of education that the child will follow.
- Giving the child financial support.
- Assisting the child if he or she wants to find other family members. If this is the case, the guardian will represent the child at the tracing department of the Dutch Red Cross.

(Dutch assessment)

Under the Norwegian system, independent guardians are appointed to assist the child until he or she is 18 years old. Their role is to ensure that the rights of separated children are respected and implemented by the responsible authorities. The children have a right to the support of a guardian throughout the asylum process – at police interviews, during residence in the asylum centre, and after settlement by local authorities. The guardian also has some personal responsibility for the child, but this is not to replace the social support provided by the child welfare authorities.

In the UK, advisers are appointed for the child by a non-statutory “Panel of Advisers” (co-ordinated by the Refugee Council) with the role of befriending, advising and assisting the child; ensuring that social service departments fulfil their statutory obligations under child law; acting as an advocate where necessary; ascertaining the child’s feelings and views; helping the child to develop awareness of the options open to him or her, and to make informed decisions; and finding suitable legal representation. In Italy, guardians are appointed to assist the child until he or she is 18 years old, and they should ensure that the rights of the child are respected and implemented by the responsible authorities. The separated child should be supported throughout all the asylum procedure, including the appeal phase. In practice, however, it takes too long for guardians to be appointed and time limits appear not to exist. In addition, a separated child cannot make an asylum application without the agreement of the guardian. In some cases separated children have been prevented from being reunited with recognised refugee family members, according to the Dublin Convention, due to the fact that no guardian had yet been appointed by the court.

However, it appears that a range of problems are regularly encountered, whatever the system in place. Important differences emerge between states in the role of

guardians and advisers (where appointed). For instance, the SCEP Statement of Good Practice requires that they should be appointed “in a long-term perspective”, but in the UK (unlike The Netherlands and Norway) the main aim of the adviser is to ensure that social service departments have taken responsibility for the child, and that appropriate legal representation is available.

Within states there is also confusion about the role of guardians and advisers. In most countries it appears that there is little or no specific guidance for advisers as to how to carry out their role. Although they often have expertise in the field of child welfare, social work or teaching, many have limited awareness of refugee issues or of the countries from which separated children come. As a result, cultural and family issues can be sidelined; in Italy, “very often no efforts are made to preserve either the child’s native tongue or ties with his/her culture, and the importance of maintaining continuous relations with the family of origin is underestimated”.

In many states the guardian has a relatively formal relationship with the child, and frequently day-to-day communication and support is delegated to other staff (e.g. in the accommodation where the child is living) whose main focus is not on advocating for individual children. There is a danger that this largely administrative form of guardianship may mean that the child’s views are not heard to the extent indicated by Article 12 of the CRC.

Training programmes are generally not widespread, although in The Netherlands guardians are involved in a continuing education programme of internal courses and there are also regular meetings within the co-ordinating agency. In Finland the Ministry of Labour prepared for the implementation of a new Act that came into force in 1999 by launching a five-day training project for guardians, with financial support from the EU. The Act provides for guardians to be appointed instead of the former limited and ill-defined system of “trustees”.

In many cases it takes too long for guardians to be appointed and time limits appear not to exist. In Austria, from the date of application it may take several weeks or up to several months until a final decision is made. In Ireland the appointment may be made “at any stage of the asylum procedure... or it may not be made at all” (Irish assessment). Due to the pressure on the Panel of Advisers in the UK, it takes three months or more for an adviser to be allocated; the time taken relates to the country of origin of children referred and the availability of advisers who can be appropriately matched. More encouragingly, the appointment of a guardian in The Netherlands takes around four weeks; until then a so-called “pre-guardian” (usually a representative of the Opbouw) looks after the child’s interests. A new guardian will be appointed when the child is moved from the reception centre to a follow-up care location after about three months. In Sweden it appears that appointing a guardian normally takes between two weeks and one month, however in more than 5 per cent of cases it takes over four months.

An important factor underlying time delays is the ability to recruit an adequate pool of guardians. In Norway guardians are appointed as soon as possible – and at the latest one week after the child has arrived in the country. Even so, it can be difficult to find guardians to be present at interviews at short notice.

Underlying all these issues is the central principle of the child's "best interests", and it appears that these are often overridden in practice. The Austrian assessment argues that there is no way of ensuring that all decisions are taken in the child's "best interests" – especially when the youth welfare agency does not assume guardianship, and the care duties of organisations and the rights of children are unclear. The Danish and Spanish assessments state that "there is reason to question whether all local authorities possess adequate refugee expertise to be able to properly evaluate the child's best interests". In The Netherlands an increasing number of children are placed in asylum-seeker centres without any pedagogical assistance. In other words, these are decisions made for essentially administrative reasons which may breach CRC Articles, especially Article 3 ("best interests" of the child) and Article 37 (separation from adults in detention).

As in The Netherlands, resource questions also arise elsewhere. The UK Panel of Advisers is funded by the Home Office, but although funding has increased, it is not proportionate to the increased rate of arrival of separated children in recent years; many currently have no allocated adviser at all and are simply invited to call in at a drop-in service. In a recent report, Amnesty International concludes that the Panel "does an excellent job but its resources are very limited and its remit is narrow" (Russell, S., 1999). In Germany, although official guardians are usually appointed within a month, they may be responsible for far too many children – in recent years in Berlin, every guardian was in charge of 200 to 300 children. As a result the quality of support offered has clearly suffered.

Recommendation 4: For children's "best interests" to be adequately protected, there is a clear need for all children under 18 years old to be supported by a guardian or adviser at all stages of the asylum process and in relation to durable solutions. Such support should be in line with the provisions set out in international law and guidance (principally the CRC and the UNHCR Guidelines) and the SCEP Statement of Good Practice. In developing common standards on asylum procedures, the EU should ensure that the safeguards identified in the EU 1997 Resolution on Unaccompanied Minors are strengthened and incorporated in subsequent EU legislation. Complementing the points set out in the SCEP Statement of Good Practice, information from the assessments highlighted the following issues in relation to guardians and advisers:

- Establish procedure for appointing guardians quickly and systematically.
- The ability or suitability of an older sibling, relative or family friend should be carefully assessed by trained staff if they are to assume responsibility for a separated child.
- The best interests of the child should always be the guardian's or adviser's main objective when caring for a separated child.
- Once a separated child has been identified, a guardian should be appointed as soon as possible – and certainly within a month of arrival in the country – to protect the child's best interests.

- There is a widespread need for greater co-ordination between guardians and relevant staff in other agencies to ensure clarity about the roles and responsibilities of each in relation to guardianship.
- The roles of guardians for separated children should mirror the roles of any staff specially appointed to represent children of the host country who are not living with their parents, in line with Article 2 of the CRC.
- The development of specific training and guidance materials for guardians and advisers is essential. This should cover issues such as consulting with and representing children, and the particular legal, social, medical, psychological, cultural and linguistic needs of separated children.
- Information should be made available (in their own language) to children on arrival about the guardianship system in the country.

Registration and documentation

Registration and documentation are essential to protect the long-term interests of separated children. This should be carried out by a “twin track” interview procedure once a guardian or adviser has been appointed. Immigration and border police limit their interviews to gathering basic data about the child’s identity. A complete social history should be taken by an organisation with care duties towards the child. All those interviewing separated children should have appropriate training or expertise.

(SCEP Statement of Good Practice, February 1999)

As the SCEP Statement of Good Practice outlines, registration and documentation are vital to protect the long-term interests of separated children. The collection of sufficient data helps to ensure that clear decisions can be taken with children about their best interests, that claims can be determined fairly, and that appropriate interim care and ultimately durable solutions can be established; registration can also help to combat trafficking. These processes should be carried out based on Article 8 of the CRC, paragraphs 5.5 and 5.8-5.10 of the UNHCR Guidelines, and Article 3.1 of the EU Council of Ministers Resolution on Unaccompanied Minors of 26 June 1997.

A “twin-track” strategy (i.e. a restricted border interview followed by the taking of a complete social history) is intended to ensure that children are not placed under too much pressure by border officials on initial arrival, and can gradually build the trusting relationships they need with care professionals in order to tell their stories. In practice, however, it appears there is considerable variation between states. For example, there is no unified service to register separated children in Greece, and duplication of record-keeping is common between agencies (especially because some organisations do not have computers). In France there is no systematic procedure

for interviewing children at the point of entry – apart from an interview in the “waiting zone” (see “Detention”, page 54 below) with a government official to determine whether the claim is “manifestly unfounded”.

In Sweden the Immigration Board intends that children should have one file dealing with both the reasons for seeking asylum and social history. There are fears among social workers that this approach could draw them into a policing role, but the Board denies such a problem would arise. In The Netherlands, initial interviews are not always limited to collecting basic information about the child’s identity. In Italy and Ireland the initial questionnaire is limited to biographical data unless the Dublin Convention is considered, in which case a more detailed standard questionnaire is filled in, to establish, among other things, the route taken.

However, in the UK, under Home Office instructions (IND asylum casework instruction Feb/99), the basis of an immigration officer’s initial interview with a separated child is to establish “that the interviewee is claiming asylum, is a child, and is unaccompanied”. Similarly, Finnish immigration and border police officers limit their initial interviews to gathering basic information about the child’s identity (although there is concern that interviews are currently carried out by the police rather than the Directorate of Immigration). The compilation of a social history of the child takes place subsequently at a reception centre. In Germany, initial interviews focus on the registration of basic data, although an exception is the “airport procedure”, to which some children are subjected.

In Denmark, although children are interviewed at the border in the same manner and by the same staff as adults, subsequent in-depth reports compiled at refugee centres are more sensitively handled by designated staff. Nevertheless, children are often still uncomfortable with figures of authority and frequently say what they have been told to say by their parents or the person who arranged travel; when they feel secure with the staff they usually offer more accurate information.

A range of other problems was highlighted by the assessments. For example, in some states (e.g. Ireland, Portugal) children are not assigned a guardian or adviser before they undergo registration and documentation. In others (e.g. Austria), care services have little or no resources to assess children’s histories or current prospects. There is no special format for interviews with children in several states (e.g. Finland and Portugal), although creative ways are found of shortening them for younger children. In Spain, particular difficulties surround the registration of Moroccan children (not asylum-seekers), many of whom come into the country with no documentation at all and remain in legal limbo for extended periods of time.

More seriously, information from more than one state suggests that separated children sometimes disappear from refugee centres. In Norway, at present 28 such children are registered as “disappeared” in official files and the cases have been closed. The Department of Immigration claims that some go to live with relatives, and others hide after being rejected for a residence permit. As a result of recent media attention, the Child Minister has now instructed the Directorate of Immigration to attempt to discover what has happened to these children.

In relation to training, in many cases neither police nor immigration staff possess childcare expertise or training in child interviews (e.g. Belgium, Denmark, Italy, The Netherlands, Portugal, Spain). Training has taken place for border officials and staff of the Asylum Division in Ireland, but although it includes issues surrounding separated children, it does not address interviewing techniques. In the UK a good and useful Department of Health Training Pack has been developed for local authority care staff on seeking information from separated children in an appropriate manner.

Recommendation 5: To protect the interests of separated children, such children should be registered and documented as soon as possible following entry to the territory. Article 3.1 of the EU 1997 Resolution on Unaccompanied Minors should be elaborated upon and strengthened, in line with the SCEP Statement of Good Practice and the UNHCR Guidelines. Such guidance should seek to:

- develop ‘twin track’ approaches to registration and documentation, as outlined in the SCEP Statement of Good Practice;
- encourage states to develop specific guidelines relating to the registration and documentation of separated children, based on research into existing practice in each state;
- set out criteria for assessing the validity of information on personal identity provided by a separated child;
- develop research into the reasons why children disappear, and approaches to ensure effective protection in the child’s best interests;
- promote training (and the development of training materials) in interview techniques in relation to separated children, given the widespread lack of this in almost all states;
- establish core groups of specialist staff both at point of entry and at registration and documentation stages, and highlight the role that experts in child development and child psychology could play in assisting with interview processes;
- ensure that interviews take place in child-friendly surroundings, and also take into account the need for confidentiality;
- encourage states to reduce administrative delays in relation to registration and documentation;
- promote co-operation between different agencies both within and between countries, and compatible computer systems for data-collection which identify separated children as a special category.

Age assessment

”There should be a presumption that someone claiming to be under 18 years of age will be treated as such. Separated children must sometimes travel on false documents in order to flee from danger. In making an age determination

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separated children must be given the benefit of the doubt. If an age assessment is thought to be necessary, it should be carried out by an independent physician with appropriate expertise and familiarity with the child's ethnic/cultural background. Examinations should never be forced or culturally inappropriate. It is important to note that age assessment is not an exact science and a considerable margin of error is called for."

(SCEP Statement of Good Practice, February 1999)

If separated children are incorrectly identified as adults, they will not be entitled to the full protection which is accorded to children under international law. However, children's ages are often misrepresented, as they frequently arrive with false documents or no documents at all. In many cases this is the only means of escape from danger for asylum-seekers – as is recognised in Article 31 of the 1951 Refugee Convention. For instance, it may be dangerous to request a passport or visit a consulate to apply for a visa. A consulate may be too far away to travel to. Documents may have been destroyed by the destruction of dwellings, or lost during flight. The asylum-seeker may have had to flee at short notice. For children the problem can be compounded if they are not entitled to passports until they reach the age of majority, their birth has not been registered, or their parents are dead or missing.

UNHCR Guidelines indicate that children should be "given the benefit of the doubt if the exact age is uncertain" (paragraph 5.11). SCEP accepts that some applications are made by people claiming to be aged under 18 who are actually some years older, but believes that the damage incurred when a child is wrongly denied recognition as a child outweighs the problems that may arise when an adult is accepted as a child. In fewer cases, it is children themselves who declare they are over 18; this appears to be a more common occurrence in Spain, where Moroccan children frequently seek work permits for economic reasons.

The approaches taken by states vary considerably, according to SCEP assessments. Several states generally appear to apply the "benefit of the doubt"; in Denmark, for example, a flexibility of a few years has been applied in the past, although this is now changing somewhat. Conversely, in France and Portugal the authorities tend to assume that applicants are over 18 when there is any doubt.

There is no legislation or policy with regard to the age assessment of an asylum seeker claiming to be under 18 years of age. Although the Asylum law does refer to the possibility of specialists being asked to make external assessments, there is no record of any doctor ever making such an age assessment, even when the Aliens and Borders Service had serious doubts about a minor's age. There is wide suspicion of asylum seekers who claim to be between 16-17 years old. They are regarded as *de facto* adults.

Country Assessment from Portugal

In the UK, Home Office policy states that “the benefit of the doubt should be applied more liberally than when dealing with an adult”. But this theoretical adherence to the principle is not always matched in practice. A recent report cites the case of a Nigerian girl who was detained at Campsfield House because of an age dispute, and eventually released after several months following a paediatric examination that confirmed she was about 13. The Immigration Service refused to accept the evidence and relied instead upon a passport it had itself certified as false. The report suggests that this is by no means an isolated case (Russell, S., 1999).

In most states, physiological tests of some form are undertaken to attempt to ascertain age (none has apparently been undertaken in Luxembourg and Portugal so far). In many cases these involve X-rays; however, there are doubts about the accuracy of such testing (see box, page 52 below). UK policy recognises, for example, that age determination is an inexact science and the margin of error can be substantial, sometimes by as much as two years either side. The Royal College of Radiologists has advised its members in Britain that “it is inappropriate to undertake a radiographic examination at the request of an immigration official, or the like, for the purposes of bone age estimation” (letter to all members, 1998). Similarly, in Germany dental examinations and X-rays of the bones of the wrist used to be carried out, against the child’s will if necessary. However, many physicians and lawyers rejected these examinations, mainly because they represent an interference with the freedom from injury and bodily harm and because they are imprecise; nowadays, in cases where doubt exists, age is assessed by an “inspection interview”. In Sweden, age determination of separated children is carried out based on dental and skeletal assessment.

”X-rays of the growing end of the wrist bones provide an indication of age according to charts established in 1930 and based on examinations of white north-American children originating from the same social class. These charts do not take into account ethnic, geographical, social, environmental or nutritional background. Radiologists unanimously state that bone age estimation by radiology does not necessarily correspond to chronological age.”

(French assessment)

The UNHCR’s 1997 Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum indicate that methods “must be safe and respect human dignity” (paragraph 5.11). Yet there are also significant fears that use of X-rays on children may have a negative impact on their health. Wrist and hand X-rays to establish age appear to be the most common; however, in Italy X-rays of the elbow and even the head are also carried out. In The Netherlands, under a new procedure X-rays of the collar bone are being carried out (in addition to hand and wrist) to see whether it has fully grown to join the breastbone; if it has, the inference is that the person is 20 years or older.

Alternatively, age assessments can involve checking for signs of puberty, requiring the intimate examination of genitalia. Such intervention might be experienced by children as both invasive and frightening, and provides no guarantee of adequate age determination. The French border police, for instance, call for examinations almost systematically, and children are never told the purpose, or that they could appeal against the result. There are also questions surrounding the expertise of the professionals undertaking the exams. In many instances the medical staff involved have no knowledge of the ethnic and cultural background of the child. Some are also not specialists in paediatrics or have any special knowledge of child maturity and development.

Finally, the impact of an age assessment examination finding that an applicant is an adult can be very disruptive. The individual involved may well have to move to an adult reception centre (or equivalent) and leave school, and existing legal representation may be removed.

Recommendation 6: In any legislation developed by the EU and European states, minimum guarantees in relation to the age assessment of separated children should be integral, based on paragraphs 5.11 of the UNHCR Guidelines and the SCEP Statement of Good Practice. To minimise the risk of incorrect assessment, legislation developed by the EU and European states should adhere to the following principles and practice:

- Establish procedure for age assessment including child experts (e.g. paediatricians, child psychologists or psychiatrists, social workers, anthropologists, sociologists) who take into account the maturity and development of the child and cultural aspects.
- The principle of the “benefit of the doubt” should be applied to the age determination of asylum-seekers who claim to be children.
- Age assessment should not be based solely on appearance. Physical ageing can be accelerated due to factors such as hunger, conflict, poverty and child labour. Testing should stress approaches that are based more on psychological than physical factors.
- X-rays on children may have a damaging effect on their health and should therefore be avoided.
- Existing bone directories are out-of-date and are based largely on the physical measurements of white people. As they neglect the impact of ethnic, geographical, social, environmental and nutritional factors, they should not be used for age assessment.
- If medical examination is necessary for the purpose of age assessment (e.g. in circumstances where travel documents have been falsified), it should be carried out by a paediatrician with appropriate expertise and preferably familiarity with the child’s ethnic and cultural background (a considerable margin of error should be accepted in relation to existing medical practices, none of which are totally reliable. It is suggested that this should amount to 20-24 months in either direction).

- Physiological tests should never be forced or violate the physical integrity of the individual, and they must take into account the culture and ethnic background of the child.
- It is important that decisions as to a child asylum-seeker's age are taken as soon as possible to avoid a long time waiting in uncertainty.

Detention

Freedom from detention

”Separated children should never be detained for reasons relating to their immigration status. This includes detention at the border, for example, in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people.”

(SCEP Statement of Good Practice, February 1999)

According to the 1997 UNHCR Guidelines, “Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children” (paragraph 7.6). The SCEP Statement of Good Practice endorses this position, and further argues that detention should never be used, whether in detention centres, police cells, international “waiting zones”, or prisons – a policy which is repeated in similar terms in the Position on Refugee Children set out by the European Council on Refugees and Exiles. However, the EU Council of Ministers Resolution on Unaccompanied Minors of 26 June 1997 does not include any statement of this kind, and fails to address adequately the issue of detention.

Within Europe there are several countries (e.g. Denmark, Finland, Ireland, Italy, Norway, Sweden) where the detention of separated children for reasons associated with their asylum claim does not take place or is extremely rare (although in some cases children are detained as a result of offending). Since a scandal in Luxembourg in 1997, when the Government placed an 11-year-old in a detention centre, children are no longer imprisoned unless they commit an offence. However, this approach is by no means universal and in other countries there appears to be a breach of Article 37 of the CRC, which states – among other things – that detention of a child should be “a measure of last resort and for the shortest appropriate period of time”.

On arrival, many separated children are detained while their claims are processed. Asylum-seekers arriving at a French border without the requisite travel documents can be placed in detention in the so-called “waiting zone” until the Ministry of the Interior decides either to admit them into the territory or to refuse their admission on the grounds that their application is “manifestly unfounded”. In some cases, when the Ministry applies to a judge to extend the detention period, the judge rejects this request. However, court decisions in relation to this are not consistent. In Belgium a separated child can be detained if he or she applies for asylum and does not have the necessary documents, and is held in the same conditions and the same

centres as adults. In Austria most separated children entering the country do so illegally, and some are picked up as a result of heavy border controls and confined before being released, detained or returned to the Hungarian authorities. While detained they are not able to contact youth welfare agencies and there is no information on the number of children who disappear in this legal “grey area”.

Meanwhile in the UK, over an 18-month period (January 1997-June 1998), Amnesty International knew of 76 cases of separated children having been detained (Russell, S., 1999).

According to the inter-governmental Consultation Report on Unaccompanied Minors (1997), although governments view detention as generally not in children’s “best interests”, some draw a distinction between “detaining” children and “restricting their freedom of movement”, arguing that the latter approach may protect children from risks (e.g. disappearances, trafficking, exploitation). At the same time, they also believe that detention facilitates the determination of claims or the investigation of conditions in the country or origin. These observations highlight the fact that detention is used by states to fulfil conflicting purposes, some of which have no legal justification and are not connected to children’s immigration status. In reality, detaining children can be highly traumatic for them (especially bearing in mind the circumstances from which they have usually fled) and is also less likely to provide effective protection than improving supervision in open childcare facilities. Detaining children for administrative convenience undermines the “best interests” principle that governments claim to be upholding.

Practice varies as to where children are held and the conditions they face, and there is evidence that their special circumstances are often neglected. For example, in Portugal, although there are no records of children being held in prisons or detention centres, they are regularly kept in the international zone at the airport; as they are officially outside Portuguese territory. In Germany, accommodation during the “airport procedure” is not called detention, but in practice the conditions are similar. If children seeking to enter France do not have the required entry documents, the authorities often detain them in “waiting zones” in the same way as adults. In Belgium also, children are routinely detained in the same closed centres as adults.

An area of divergence concerns the length of time for which children can be detained. In Sweden, a foreign child under the age of 18 may not be kept in detention for longer than 72 hours, or in exceptional cases, longer than a further 72 hours. In the UK it is frequently children who are appealing against negative decisions on their claims who face the longest periods of detention (often several months). In Germany, “preventive detention” prior to deportation can last up to six months.

Recommendation 7: SCEP believes that the detention of separated children for reasons relating to their immigration status violates the CRC and also contravenes the UNHCR Guidelines. In any legislation which is subsequently developed at European and national level, a clear statement preventing the use of detention for all separated children should be included. A number of additional measures should also be introduced:

- Children should be accommodated in appropriate residential childcare facilities or other settings (e.g. foster placements, group homes, independent living) where support is available from specially trained and vetted people experienced in working with separated children.
- Children should not be placed in isolated areas with poor access to appropriate community resources (e.g. health, cultural, education, interpreting, and legal facilities), and their wishes should be taken into account as far as possible.

The right to participate

”The views and wishes of separated children must be sought and taken into account whenever decisions affecting them are being made. Measures must be put in place to facilitate their participation in line with their age and maturity. Any interviews by immigration or police officers should be done in a child-friendly manner by officials who have received training in interviewing children. Separated children are entitled to be heard directly or via a legal representative or guardian/adviser”.

(SCEP Statement of Good Practice, February 1999)

Article 12 is one of the cornerstones of the CRC; it builds on long-standing concerns with protection of and provision for children by embracing children’s participation in decisions which affect them. The 1997 UNHCR Guidelines accord sufficient importance to this principle that they cite Article 12 and state that the views and wishes of children should be elicited and considered.

It is sometimes argued that participation imposes burdens on children at too young an age; that children lack the capacity to be involved in decision-making, and that children should not be given rights until they are capable of accepting responsibility. But no children should be forced to put forward their views. Furthermore, Article 12 does not imply a right to self-determination, but rather the recognition of children’s right to be heard.

For separated children, a central focus in relation to participation is the refugee determination procedure. Children usually do have the right to have their views represented during interviews. In Sweden a new section was introduced into the Aliens Act in 1997, based on Article 12, which states that the child’s view shall be established (unless this is inappropriate), and that it should be taken into account depending on the child’s age and maturity. In Denmark, for instance, the authorities are under an obligation to consult with asylum-seeking children over the age of 14 before making any decision; Danish children over 12 can, however, be consulted under child law. In The Netherlands, separated children over 12 will be heard directly by the immigration authorities; for younger children the guardian will apply for asylum and the children themselves will not be heard. Under Finnish law, a child

over 12 also has the right to be heard, “unless hearing the child is manifestly unnecessary”. In Ireland and Portugal there is no specific provision on child participation in asylum law, but child law obliges the authorities to listen to the child. In Italy there is no specific provision for child participation in asylum law and there does not seem to be much participation of the child in practice either.

Another element which is usually taken into account is the age and maturity of the child. Greek law provides for a child’s right to participate in decision-making, but for a child aged 14-16 the interviewer must assess the impact of the child’s age and psychological state. Likewise in France, although children can express their opinions at all stages of the process, this is dependent on the imprecise formula that they should be “mature enough” (“capable de discernement”). Moreover, the children are not even party to proceedings, and can only be represented by their guardian.

Examples of positive practice do exist; however, it is clear that there is considerable room for improvement – even in countries where child participation is taken seriously. Moreover, evidence from the assessments suggests that there are countries where the views of the child are largely marginalised. The Belgian assessment makes it clear that the impact that children’s views have there can be severely constrained:

”The unaccompanied minor is in no way associated with the decisions taken in his/her regard but is restricted to the role of providing answers to particular questions. His/her stay in Belgium may be totally disorganised because competence in such cases is split between the different federal regions, or may suffer as a result of a gap in the law (the unaccompanied minor has no legal status). In short he/she is shunted around by administrative authorities whose main concern is not always the child’s interests.”

(Belgian assessment)

Beyond either direct or indirect involvement in interviews relating to the determination of claims, it appears that in some cases a greater degree of participation operates in relation to care decisions. In the UK a Department of Health Practice Guide requires the active participation of the child during the care planning process, including placements and reviews (written records of reviews should also be translated into the child’s first language). While the system is in place for children entering the care system, children who do not enter care have fewer established procedures for consultation. In The Netherlands, children’s views are taken into account to a great extent, but the decisive factor in selecting the follow-up care centre is often available capacity rather than the wishes of children. Children have more influence, however, on decisions relating to their education and leisure time.

A key role in supporting the participation of children in major decisions affecting them is that of the guardian or adviser (see “The appointment of a guardian or adviser”, page 43 above). However, as has been seen, guardians are not always appointed – indeed in many cases it is a minority of separated children who have such assistance available.

Overall, there is also a need to create more child-friendly environments and approaches to facilitate children's participation. In Norway, official guidelines on interviews set out topics to ask about and how questions are to be framed, but although guardians may be present at this stage, lawyers are usually not – which conflicts with the recommendations of the authorities. In many countries (e.g. Finland, France, Italy) legal entitlement is often undermined by a lack of appropriate training of officials.

Language issues are also important. The Finnish assessment indicates that there are too few interpreters who specialise in working with children. The Spanish assessment also mentions the lack of interpreters available for languages other than English and French. And the Greek assessment suggests that all separated children should be given the opportunity to express themselves in their mother tongue.

Consulting with separated children in Ireland

The Irish Refugee Council (with UNHCR) recently held a workshop in Dublin for separated children in Ireland, so they could offer their views on their experiences (in order to inform the SCEP national assessment). The ten participants were between 15 and 18 years old, and came from Belarus, the Democratic Republic of Congo, Kosovo, Liberia, Nigeria and Sierra Leone. The majority were male.

Overall, the children felt that the Irish government and people generally did not like asylum-seekers. However, some added that support from private individuals and from some social workers had been invaluable. Some felt that immigration officers held pre-conceived ideas on the validity of their claims. The Minister for Justice had also stated that only 10 per cent of asylum-seekers were genuine, and this kind of statement was helping to foster a negative image. Some of the children had suffered verbal abuse, and one had been seriously injured in a racially-motivated attack.

The majority felt that they did not have the same entitlements as Irish children and were unhappy about the lack of information on their entitlements. In relation to accommodation, the children were unhappy at sharing rooms, often with adult strangers. On education, access was unnecessarily difficult, but those who did attend school had received great support from the teachers (e.g. extra tutoring). Most did not practise any sport or any leisure activity, owing to lack of information and language difficulties. They had been given access to good healthcare.

The majority did not yet have a decision on their claim and were extremely concerned about the possibility of deportation. But they agreed that they had been given the right to apply for asylum and that they had found some protection from abuse and exploitation. They made several concluding recommendations:

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- Immigration officials, in particular those conducting the interviews, should have a non-discriminatory approach to their case; they should be genuinely interested in assisting children to establish their reasons for seeking asylum.
- A lawyer should be appointed at the initiation of the asylum process and prior to the interview, and claims should be prioritised and processed expeditiously. Serious concerns were voiced over obtaining legal representation at appeals.
- There should be a guardian or careworker, whom the child could confide in and trust, to offer the child ongoing practical and emotional support and help.
- The majority were in favour of sharing accommodation with people of their own age from a similar cultural and linguistic background. Some of the children who had attained majority during the application process preferred the option of living independently.
- There was a particularly strong feeling of “having nothing to do”, of feeling alienated and “useless”, and there should be a possibility of pursuing educational or vocational training.

(Irish assessment)

Recommendation 8: In order to meet the standards set out in Article 12 of the CRC, states should ensure that separated children are provided with appropriate opportunities to be heard at all stages of the asylum process. It is also essential that states should fulfil their positive duty to assist children to express their views. The EU and European states should integrate the standards set out in the CRC and the UNHCR Guidelines into any relevant asylum legislation. In particular, the following points should be taken into account:

- Separated children should have the right to be heard (directly or indirectly) in proceedings concerning them, and no discretion should be available to state authorities in restricting this right. However, no child who is unwilling to be involved in a particular decision should be required to express a view.
- Children over the age of 12 (or children younger than this who display sufficient maturity) should have the automatic right to participate directly in proceedings.
- The competence of children in relation to key decisions affecting them depends both on the assessment of “maturity” (based on adequate training) and on the willingness and capability of adults to help children demonstrate competence.
- Interviews with children should be conducted sensitively (e.g. use of breaks, non-threatening questioning) and held in confidential and child-friendly surroundings.
- Separated children should receive the support of lawyers and/or guardians in making their views known at all points in the asylum procedure, and such people should be present during interviews with children.

- Guidelines should be developed and implemented on appropriate methods for helping separated children to express their views in all relevant services.
- Children should have as much involvement as possible in decisions in relation to their long-term care and welfare (e.g. accommodation, education, health-care, cultural observance), and should have access to adequate information upon which to base their views.
- Specific courses should be made available for interpreters in child interpretation. Staff working with separated children should receive training on communicating with a child in the presence of an interpreter.

Family tracing and contact

”Tracing for a child’s parents and family needs to be undertaken as soon as possible, but this should only be done where it will not endanger members of a child’s family in the country of origin. States and other organisations undertaking tracing should cooperate with UN agencies and the ICRC Central Tracing agency. Separated children and young people need to be properly informed and consulted about the process. Where appropriate those responsible for a child’s welfare should facilitate regular communication between the child and her or his family.”

(SCEP Statement of Good Practice, February 1999)

International law places considerable priority on family tracing and contact. Article 9(3) of the CRC states that children who are separated from their parents have the right to maintain contact with their parents; Article 10(2) states that children whose parents reside in different countries have the right to maintain regular relations with their parents; and Article 22(2) sets out that states must co-operate with the UN and NGOs in family-tracing measures in relation to asylum-seeking or refugee children. This emphasis is reinforced by the European Convention on Human Rights (Article 8), the EU Council of Ministers Resolution on Unaccompanied Minors (Article 3.3), and the UNHCR’s 1997 Guidelines (paragraphs 5.17 and 10.5). Yet despite this extensive legal framework – and the centrality of the principle that tracing should begin as soon as possible – in practice it appears that very little is done.

In several countries (e.g. Belgium, Denmark, Germany, Ireland, Luxembourg, Norway, Portugal) no official regulations or policy exist, and tracing does not take place at the earliest opportunity. In Spain and Sweden, detailed guidelines exist at national and regional level, and the importance of maintaining a “return” perspective during the whole process is emphasised.

The decision about what is likely to be in the child’s “best interests” is frequently a very complex one which the authorities feel they lack sufficient information to take. High levels of poverty, low living standards, and the absence of basic health and education services in the country of origin may be perceived as factors out-

weighing the importance of reunification with parents and family. However, as experience in countries like Italy shows, settling separated children with host families or in other forms of semi-permanent accommodation can sometimes have a negative impact on existing family ties, and can result in the child's need to maintain his or her cultural identity being neglected.

Another important factor is the child's perspective. Some tell officials or care-workers they do not want to have contact with their parents; however, this is largely because they believe that this could undermine their asylum claim and lead to deportation. Although this does appear to happen in practice in some cases, the 1997 EU Council of Ministers resolution suggests that states should endeavour to trace family members "without prejudging the merits of any application for residence".

Practical problems arise too. In some countries, contact is generally not possible as tracing is limited to areas where the ICRC/Red Cross is operating; the task is considered very costly and the funds required are not available. In Ireland there is no state provision for tracing, and the Red Cross only instigates tracing procedures on demand. In some countries it is not clear which agency holds primary responsibility for tracing, as none is clearly appointed, and co-operation between agencies is often poor. The reality of tracing in countries of origin is frequently extremely difficult, owing to the impact of conflict or other large-scale disruption, and as a result progress is very slow and painstaking.

Recommendation 9: Despite the real obstacles which exist, the emotional and psychological importance to the child of maintaining and developing contact with family and relatives, and of preserving cultural links with the country of origin, is undeniable. It is therefore vital that the EU should develop legislation which uphold the key principles established in the CRC, and reinforced in the ECHR, the EU 1997 Resolution on Unaccompanied Minors, and the UNHCR Guidelines. The following proposals should be taken into account:

- Family tracing should be initiated at the earliest opportunity after the child's arrival. The "best interests" principle (Article 3, CRC) should be accorded prominence in decisions in relation to family contact and reunification. The safety of children and their families should be the primary concern.
- Independent investigation of a family's situation and ability to care for a child in the country of origin should always be undertaken prior to family reunification (even when that country is officially considered "safe").
- An agency should be appointed to take the lead in tracing, working in co-operation with governmental and NGO partners and relevant international organisations (e.g. the ICRC Central Tracing Agency, UN agencies).
- Tracing and contact should be a priority for all ages of children; there is some evidence that greater emphasis is placed on meeting the needs of younger children in this respect.
- Given the significance to the child of tracing and contact, states should devote greater resources to the carrying out of this task.

Family reunification in a European country

”Separated children seeking asylum or otherwise present in a European state sometimes have family member(s) in other European states. European states should positively facilitate family reunion for the child in the state where the child’s best interests will be met in accordance with safeguards set out in paragraph 12.2.”

(SCEP Statement of Good Practice, February 1999)

According to Article 10(1) of the CRC, applications for family reunification shall be dealt with by states in a “positive, humane and expeditious manner”. The UNHCR Guidelines similarly emphasise that every effort should be made to reunite a child with his or her parent in another asylum country at an early stage and before status determination takes place.

Within the EU context, the most influential instrument has been the Dublin Convention (the Convention determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities, 1990) which entered into force in 1997. The Convention seeks to ensure that one Member State has responsibility for examining and determining an asylum application, and sets out an order of precedence for establishing responsibility, beginning significantly with the principle of family unity.

Under Article 4 of the Convention, separated children who have parent(s) who are recognised refugees living in another EU state will be entitled to have their asylum claim dealt with by that state. However, this definition is a narrow one. Paragraph 185 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* extends “family unity” to include “other dependants, such as aged parents of refugees...living in the same household”. At EU level, the 1998 report of the High Level Panel on free movement of persons has similarly argued in relation to migration that “family rights should be amended to reflect social change”.

Under Article 9, Member States will admit asylum-seekers to their asylum procedures on the basis of family or cultural reasons, at the request of another Member State, provided that the applicant so desires. But, as the European Council on Refugees and Exiles has pointed out, states are under no obligation to inform the asylum-seeker that he/she may request the transfer of his/her application to another state (ECRE Position on the Implementation of the Dublin Convention). For a separated child, the lack of this provision undermines the important principle of the child’s right to participate, as set out in Article 12 of the CRC.

On the evidence from the Country Assessments, it appears that the Dublin provisions are little used. Where they are relevant, most cases relate to spouses and only very few to separated children. For example, the Austrian authorities are aware of one separated boy admitted by Sweden based on Article 9. In Spain only one case of reunification has occurred in Madrid and one in Barcelona.

The Articles providing derogations appear not to have much impact in practice either (see box below). In France, for instance, although there are legal provisions

for family reunification for migrants and refugees under the Dublin Convention, there are none for asylum-seekers, and obtaining a visa for a separated child (or parents) to join a relative in another European country is almost impossible. Article 9 (and Article 3.4, which under certain circumstances allows Member States to examine an asylum application, even if it is not responsible under the Convention) rarely enables reunification of family members applying for asylum in different EU countries as it is applied in a very restrictive manner.

”A ten-year-old Kurdish girl, whose parents had applied for asylum in Germany, was not authorised to enter Germany and could only go there secretly. We tried for a long time to arrange for an eight-year-old Somali boy to enter Holland, where he had an adult older brother, his only relative, but he too could only go there secretly. We applied to the British authorities for an entry permit for an Ethiopian woman resident in Italy for over 10 years, who was fully integrated in Italy with a job and home of her own, so that she could make a brief visit to her 12-year-old son living with the father, providing every possible guarantee, but the British authorities refused to issue the visa.”

(Italian assessment)

Given the length of time it takes in many countries for asylum applications to be processed, and the increasing use of some form of temporary status, family reunification under the Dublin procedures can take up to several years depending on the countries involved.

An example of good practice is in The Netherlands, where the authorities will process relatively swiftly an asylum application filed by a child in a different EU country if his parents have filed an asylum application in The Netherlands; reunification can take place quickly under these circumstances. However, where the child is in The Netherlands and the parents are in another EU country, the Dutch authorities will wait for the reunion to take place in the other country.

At the end of 1999, the European Commission presented a new proposal for a family reunification Directive. However, it includes only the category of refugees, while excluding asylum-seekers and those with humanitarian status and other forms of temporary residence. The proposal recognises the need for special facilities and procedures for separated children and contains a range of other positive points, such as an extended concept of the family to allow for reunification of dependent members (including adult children). The Directive is expected to enter into force in December 2001, following negotiations with Member States. However, the proposals are relatively generous and some Member States have indicated that they want to lower the standards and/or delete the refugee-related sections, suggesting that these should come under a refugee-specific instrument.

(Note: several assessments failed to answer on **European** reunification and put information which is more appropriately in 12.2.)

Recommendation 10: In order that the “best interests” of the child are met, states should ensure that separated children seeking asylum within one EU country who have family relatives in another EU country should receive appropriate assistance so that family reunification can take place as soon as possible. Separated children’s access to reunification procedures should be premised upon the fact that they are children rather than upon their status in the asylum procedure. The existing Dublin Convention provisions fail to meet the needs of separated children and their families adequately. Future EU legislation (e.g. the Directives on Temporary Protection and Asylum Procedure) should provide for the right of separated children to be reunified with their families. The following points should be addressed:

- Family reunification should also be possible for separated children still in the asylum procedure and those who have received other forms of residence permits both of permanent and temporary nature.
- The restrictive definition of “family” in Article 4 of the Dublin Convention should be widened to include other relatives. It is essential that procedures under the Dublin Convention are swift so that separated children are not left waiting for long periods of time in insecurity.
- States should make use of the provisions under Article 3 of the Dublin Convention so that asylum applications of parents and family members can also be processed in the country where the separated child is residing.
- Systems of family tracing which involve international and national NGOs, government and UN agencies should be established.

The asylum or refugee determination process

Access to normal procedures

11.1 Separated children and young people, regardless of age, should never be denied access to the asylum process. Once admitted they should go through the normal procedures and be exempt from all special procedures including those relating to “safe third country”, “manifestly unfounded” and “safe country of origin” and from any suspension of consideration of their asylum claim due to coming from a “country in upheaval”.

(SCEP Statement of Good Practice, February 1999)

The principles set out in the SCEP Statement of Good Practice are rooted in several key international instruments. The 1948 Universal Declaration of Human Rights states in Article 14(1) that: “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. This is reinforced by Article 1 of the 1951 Refugee Convention. Although the Convention does not set out age distinctions in the right to seek asylum, Annex IV (Recommendation B) emphasises that govern-

ments should take necessary measures with a view to “the protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption”.

The importance of acknowledging the vulnerability of the separated child in safeguarding his or her right to claim asylum is also emphasised by the 1997 UNHCR Guidelines. They state that “an unaccompanied child seeking asylum should not be refused access to the territory and his/her claim should always be considered under the normal refugee determination procedure” (paragraph 4.1). Building on this guidance, ECRE maintains, in addition, that a separated child should “be exempt from accelerated procedures, including ‘safe third country’ procedures” (paragraph 22, ECRE, 1996).

While normal asylum procedures should be employed for the determination of the cases of separated children, it is also important that children’s particular vulnerability is acknowledged in the processing of applications. There is some evidence that this happens in practice. In Finland, although children’s applications go through the standard asylum procedure, official guidelines indicate that they should be dealt with as expeditiously as possible.

In The Netherlands there is a special asylum procedure for separated children, which recognises their vulnerability. For example, on arrival separated children are sent to a reception centre to rest. A detailed hearing on their asylum application will not take place during the first four weeks. They also receive advice from professionals on their asylum hearings.

A significant factor in determining how applications are handled is the age of the separated child. In Denmark, in theory separated children are assessed on the same basis as adults, but in practice this tends not to be the case for children under 15 (separated children between the ages of 15 and 18 generally enter the normal determination procedure). Children under 15 rarely enter the normal determination procedure, based on the assumption that they are not capable of expressing fear of persecution. Instead, the child is granted a residence permit due to his or her status as a separated child; technically, this is not asylum, but immigrant status.

In Germany a similar age split is evident, though the effects are more damaging in practice. According to the Asylum Procedure and Aliens Act, children under 16 do not have legal capacity in terms of the asylum procedure, and without a legal representative they cannot make an asylum application. However, under the Aliens Act, under 16s can be refused entry, returned and deported without the approval of a legal representative. Meanwhile, under the Asylum Procedure Act, children over 16 have unlimited legal capacity in terms of asylum law.

Another cause of great difficulty for separated children is related to accelerated and admissibility procedures. For example, “safe third country” (and/or the more restrictive “safe country of origin”) grounds are frequently used to deny access to asylum procedures – even though there is evidence that states do not all apply the same criteria to this concept and that removals are often carried out without any guarantees that third countries will abide by the 1951 Refugee Convention. “Safe third country” policies are commonly applied to separated children as well as adults

(e.g. in Austria, Denmark, Finland, Germany, Portugal, UK), and in some cases it can be almost impossible to assist children in these circumstances (see box below).

”A young Palestinian from Iraq was put in pre-deportation detention by the district authorities of Neusiedl. His asylum application had been rejected by the Federal Asylum Office on ‘safe third country’ grounds, immediately after the interview. The child was transferred to the pre-deportation detention facility Villach (about 300 kilometres away). A social worker tried to appeal against the decision, but he could not do it within the two days allowed since he needed authorisation from the Youth Office. A few days later the minor was forcibly returned to Hungary. Though the Constitutional Court has meanwhile decided that the two-day deadline for such appeals contravenes the Constitution, the resulting disadvantage for the child cannot be undone.”

(Austrian assessment)

In some countries, however, limited safeguards exist. It is usually UK policy to return separated children to “safe third countries” only if their parents or close relatives are there to receive them. However, there have been cases where the child has been returned without safeguards. In The Netherlands, rules relating to “safe countries of origin” and “safe third countries” are not applied to separated children unless there are doubts as to their age.

The refusal of “manifestly unfounded” applications is justified by states on the basis that such an approach ensures the speedy removal of those who are ineligible and saves resources. However, these procedures have increasingly been applied to applications that are not obviously without foundation (e.g. the asylum-seeker did not possess valid travel documents, or did not request asylum immediately on arrival, or came from a particular country of origin).

The concept often applies to separated children as well as to adults (e.g. in Austria, Denmark, Finland, France, Portugal, Sweden). In some countries, however, it is rarely used with children (e.g. Ireland). In Finland, almost all the separated children are Somalis whose identity is uncertain, so it is impossible to know where a child should be sent back to. In other countries there are certain safeguards. In Denmark quite a few separated children are rejected as “manifestly unfounded” cases. If the Immigration Service determines that the child does not meet the criteria for asylum or a residence permit for this reason, the case is referred to the Danish Refugee Council with a recommendation to reject. However, the Council has the right of veto and the case may subsequently go to the Refugee Appeals Board.

The effect of the accelerated procedures which are employed in conjunction with the “manifestly unfounded” concept can be very damaging for separated children. For instance, the deadlines for appeals can be too short for effective legal representation to be organised. Alternatively, as in Germany, representing authorities do not expect appeals to be successful and therefore do not file them unless pressured to do so by external bodies (e.g. refugee support groups or lawyers). Most

seriously, as in France, there is no right of suspensive appeal; in other words, an applicant can be deported prior to his or her case being heard at appeal – a process which is very often irreversible.

Recommendation 11: Separated children are to have access to normal asylum procedures containing appropriate provisions and safeguards in line with the UNHCR Guidelines, ECRE's Position on Refugee Children, and the SCEP Statement of Good Practice. It is essential that the directive should reflect the following recommendations:

- The claims of separated children should always be examined substantively in the normal procedure, prior to a decision being made.
- Applications from separated children should be prioritised, so as to avoid them remaining in insecure circumstances for long periods. Procedural and legal safeguards should not, however, be undermined by a swift procedure.
- Accelerated and admissibility procedures should not be applied to the applications of separated children.
- On arrival, separated children should be sent immediately to an appropriate accommodation facility where they can rest and prepare for the asylum hearing.
- The time limits for lodging appeals against negative initial decisions should be long enough to ensure effective legal representation.

Legal representation

11.2 At all stages of the asylum process, including any appeals or reviews, separated children should have a legal representative who will assist the child to make his or her claim for asylum. Legal representatives should be available free of charge to the child and, in addition to possessing expertise on the asylum process, they should be skilled in representing children and be aware of child-specific forms of persecution.

(SCEP Statement of Good Practice, February 1999)

In order that separated children should be able to express their views in relation to their asylum application, as indicated by Article 12 of the CRC, it is vital that they should be legally represented at all stages. Paragraph 4.2 of the UNHCR 1997 Guidelines underlines that: "Upon arrival, a child should be provided with a legal representative", and paragraph 8.3 argues that: "This principle should apply to all children, including those between 16 and 18, even where application for refugee status is processed under the normal procedures for adults". ECRE's Guidelines extend these points, restating the needs of separated children for prompt and free legal advice and representation throughout the procedure (paragraph 24).

In most states some form of legal representation exists for separated children. However, in Belgium no specific legal representative is designated for separated chil-

dren, and they must present their application on their own; they do not have to be represented by a lawyer and are generally not even informed of the simple fact that they can obtain the help of a lawyer. Elsewhere it is more often the case that legal representation is not available at all stages of the procedure. In France a separated child does not always have a legal representative to support him or her. In Denmark the child is not entitled to legal assistance prior to the initial decision on the application; a lawyer is only appointed for appeals (i.e. when a case is heard by the Refugee Appeals Board). In Italy a lawyer is only appointed for appeals if the guardian agrees. In Ireland a representative of the Refugee Legal Service may attend the interview if the child requests this, but the representative is not entitled to intervene in any way during the interview. He or she can only make brief points at the end of the interview and/or make written representations within five working days. In Norway the initial interview must take place within a week of arrival; the guardian is present, but the presence of a lawyer is only on request.

In some countries, there is significant variation in the approach adopted by regions or localities. In Sweden, National Immigration Board guidelines are interpreted differently in different parts of the country. Some argue that legal representation should always be arranged as it is extraordinarily difficult to anticipate what will come up at a hearing; others that refusal of entry to a separated child happens so rarely that there is no need for legal representation. These perspectives are reflected in the extent to which lawyers are involved in procedures in different parts of the country.

”Separated children are also legally entitled to be legally represented before the courts. Generally, guardians or advisers take charge of that. Nevertheless, again and again has there been information on cases in which legal representatives (e.g. due to a work overload resulting from too high a number of wards) have neglected this task and have missed deadlines and periods for entering an opposition.

”What is particularly critical is the situation of persons over the age of 16 who, pursuant to the *Asylum Procedure Act*, possess unlimited legal capacity. They themselves are in charge of finding a legal representative and indeed they frequently do not have any financial means in order to hire a (commercial) legal representative. Sometimes lawyers with an idealistic approach who have specialised in asylum-related matters and who are committed to refugee support groups step in.”

(German assessment)

Another problem is lack of continuity in representation. Separated children arriving in Portugal do have a legal representative throughout the entire procedure, but the same person does not follow through all stages. The Portuguese Refugee Council (CPR) only goes as far as the appeal stage, then a different legal representative must take over. In Spain, asylum-seekers are entitled to free legal assistance that can be

requested at any time during the refugee status determination procedure. However, there are very few lawyers specialised in both asylum and children's issues. It is therefore the guardian who accompanies the separated child and files the asylum claim on his or her behalf.

Despite these weaknesses, advances in legal representation have occurred recently in some states. In Austria the presence of legal representatives in interviews is now obligatory. In Luxembourg a guardian is now appointed who is responsible for finding a lawyer for the child. In Ireland, legal representation has been recently (February 1999) made available to asylum applicants at all stages of the procedure. However, if a separated child does not apply to the Refugee Legal Services for representation, he or she may go through the first stage of the procedure unrepresented. In Finland, under a new law (May 1999), separated children will be assisted by representatives at all stages.

Legal representation in The Netherlands

Separated children receive free legal assistance with their asylum application. In principle, the Refugee Council will prepare each child for the asylum hearing, and in most cases a member of staff will accompany the child to the hearing. A lawyer will also be present to assist where the case is complicated. The lawyer may file written comments on the hearing before any final decision is taken and will advise the child on any appeal. Most lawyers are specialised in refugee law and have experience in representing separated children. Some children argue, however, that they do not have enough contact with their lawyer.

(Dutch assessment)

Nevertheless, even when lawyers are engaged, some problems also arise. During 1997 in Austria, in more than 95 per cent of cases no preparatory consultation with the child was held prior to the interview with the asylum authorities. This was partly due to lack of training, and partly to time constraints and lack of appropriate interpreters (Fronek, H., 1998). In the UK a recent report revealed that some representatives lacked adequate knowledge of their client's country of origin and made no attempt to obtain such information (essential to determine child-specific forms of persecution). Furthermore, some legal representatives had expertise in asylum law, but they lacked sufficient experience in representing children (Ayotte, W., 1998).

The Finnish Refugee Advice Centre can provide free legal aid, but does not have the resources to assist children in interviews (free legal advice is state-supported for appeals). In the UK, legal representatives are available for separated children free of charge, but only within defined financial limits. In Ireland asylum-seekers have access to legal advice throughout the procedure, and representation at appeal subject to a nominal charge of approximately US\$25. According to Italian law, free legal assistance could be provided in cases where a specific committee at the courts takes a positive decision in consideration that minors or guardians have no income. Few NGOs can assist them with lawyers due to their limited financial resources. In Ger-

many, separated children under the age of 16 need a guardian to lodge an asylum application. However, further legal support by the guardians may sometimes not be available due to work overload resulting from too high a number of wards if they are from the youth welfare office, or due to the lack of knowledge. Furthermore, the terms for lodging appeals are rather short, and children over the age of 16 (with legal capacity) are themselves responsible for finding a legal representative; frequently they do not have any money to do this. Sometimes, but not always, specialist lawyers step in to help.

Finally, there is the issue of how legal representation can best be made available to separated children. Although several models are possible, the most appropriate may be to set up a select panel of legal representatives for separated children to access. In addition, it may be worthwhile to create a scheme whereby separated children could be alerted to the fact that a representative who has not been accredited will not be permitted to represent the child at interviews.

Recommendation 12: The provision of appropriate legal representation is essential if separated children are to receive a fair hearing in asylum procedures. This principle is reiterated in the UNHCR Guidelines and expanded upon in the SCEP Statement of Good Practice, and should be integral to any EU and national legislation on asylum procedure which is developed. The following detailed recommendations should also be taken into account:

- A legal representative should be provided for the child at the beginning of the determination procedure to provide optimum protection for the child.
- Effective representation in the asylum procedure requires preliminary consultations between the legal representative and the child prior to the interview. Confidentiality between the legal representative and the child is also necessary.
- States should set up select panels of legal representatives for separated children to access.
- A network of legal representatives should be established to share practice and information, develop skills, and provide a focus for continuing education.
- Asylum authorities should not proceed with asylum interviews or any other asylum process in the absence of a legal representative and a guardian or care person for a separated child.
- Legal representatives should have expert knowledge of relevant international human rights instruments and EU and national asylum policy, particularly in respect of separated children. They should also be aware of national childcare law and relevant welfare services.
- Legal representatives should have the skills to interview and support children throughout the asylum procedure; they should make every effort to communicate with the child regularly, openly, and in language which the child can understand.

- It is essential that states provide sufficient resources for consultations and training for legal representatives. High quality interpreting is also vital at all stages.

Minimum procedural guarantees

11.3. Decisions on a child's asylum application should be taken by a competent authority versed in asylum and refugee matters. Children who receive a negative first decision should have a right of appeal/review by an independent judicial authority. Deadlines for appealing should be reasonable. Children's applications should be identified and prioritised so that they are not kept waiting for long periods of time.

(SCEP Statement of Good Practice, February 1999)

The minimum procedural guarantees set out in the SCEP Statement of Good Practice echo those in UNHCR's 1997 Guidelines (paragraphs 8.1, 8.2 and 8.5) and ECRE's Position on Refugee Children (paragraphs 22, 24 and 28). More limited sets of guarantees are also identified in a 1995 EU resolution on Minimum Guarantees for Asylum Procedures (paragraphs 26 and 27) and the 1997 EU Resolution on Unaccompanied Minors who are Nationals of Third Countries (Article 4(2) in relation to the processing of asylum applications "as a matter of urgency").

In general, states do tend to have minimum procedural guarantees in place. The "competent authorities" – usually the Immigration Department or equivalent – take decisions, and appeals systems are available.

However, there is considerable evidence that procedures are far too slow in many states. In Austria the law does not provide for asylum procedures for separated children to be speeded up, nor does this happen in practice. In France and Italy, procedures actually take longer for children than for adults due to difficulties linked to legal representation. In Ireland there are no provisions to identify and prioritise children's applications; in practice most separated children wait up to two years before obtaining a final decision on their asylum claim. In Spain it has been the practice of the authorities for many years to "freeze" children's applications until they attain the majority age, when their application is finally assessed. In Luxembourg it seems that no separated child has received a response while under-age.

In Finland, the length of the procedure is one of the major problems for separated children. As a result, the children (usually Somalis) live for long periods in uncertainty, perhaps with no contact with their family, and often also with a false identity. Children's applications are being prioritised but it is still taking longer to get decisions. In 1994-5 the average time was six to seven months, but in 1998-9 decisions were often taking more than a year. Government guidance states that applications have to be processed within a period of three months, and if the procedure takes longer due to circumstances beyond the child's control he or she will be granted a residence permit. But this standard is not met in practice. In Norway, in theory case work should be finished within three months of arrival, but in practice it can take

longer (especially at times when many applications are submitted) – up to six months.

In Sweden, the Immigration Board is supposed to deal with cases within six months, but a report from one of the regions shows that 50 per cent of the uncompleted cases are over six months old. The report suggests that existing resources are not sufficient, and that the deadline should be increased to eight months as children's cases need more attention and time than those of adults. In order to meet the six-months target, children are often granted fixed-term renewable permits for a further six months. The Immigration Board claims that the permits are granted in cases where family tracing and/or return is considered realistic but may take time. However, children's organisations argue that the permits exacerbate the suffering of the child, drawing out the process unnecessarily.

In terms of appeals, systems appear to be in place in all states. However, there are widespread problems in relation to access, support and deadlines. For example, in Finland, in “manifestly unfounded cases”, children do not have a right to appeal (although these decisions are reviewed by the District Administrative Court). In Austria, the decision to lodge an appeal (and any subsequent legal remedies) rests exclusively with the youth welfare agency rather than the child. Children in France can lodge an appeal against a negative decision in the same way as adults; but they cannot obtain legal aid if they do not meet the requirements (e.g. the condition of legal entry to France).

In Portugal, the outcome of appeals is determined by the Director of the Aliens and Borders Service. The deadlines for appealing are very tight – airport applications in 48 hours, and inside the territory within five days. Moreover, appeals in airport applications do not prevent the person from being sent back to the country where he/she came from. Once returned the applicant is supposed to wait for the result, which can take months. In legal terms they are protected, they have the right to appeal; the problem is that they are in legal limbo before a decision is taken and they are considered as staying in the country illegally.

In The Netherlands, separated children have the right (with legal assistance) to challenge a decision of the Ministry in front of the appeal court. However, the procedure takes more than six months despite attempts to give precedence to children. The whole asylum procedure (application, decision and appeal) often takes about two years.

In Norway, asylum applications are considered by the Directorate of Immigration, while appeals are considered by the Department of Justice. Children's appeals are to be prioritised, but in practice there are long waits for decisions. This creates uncertainty for the child and can undermine integration and participation.

Recommendation 13: The evidence above suggests that there are minimum guarantees for separated children in European states. There is, however, considerable variation in practice, both between and within countries – even in those where official policy exists. If asylum claims by separated children are to be processed efficiently and fairly, it is essential that any legislation on asylum procedures should ensure that the minimum guarantees within it are sufficiently rigorous,

and that they are met in practice, in line with the UNHCR Guidelines. The recommendations below should be fully incorporated:

- Applications lodged by separated children should be prioritised so as to reduce uncertainty for the child about his or her future.
- Monitoring should be undertaken in each state of the time taken to process cases, so that appropriate strategies can be developed to reduce waiting times.
- According to age and maturity, children should be involved in decisions as to whether to lodge appeals against initial negative decisions.
- The use of fixed-term residence permits should be reviewed, to ensure that children do not suffer potentially damaging consequences.
- Information about compliance with minimum procedural guarantees should be included in all state party reports to the UN Committee on the Rights of the Child.

Independent assessment

11.4 It is desirable, particularly with younger children or children with a disability, that an independent expert person carry out an assessment of the child's ability to articulate a well-founded fear of persecution.

(SCEP Statement of Good Practice, February 1999)

The clearest statement of this principle is set out in ECRE's Position on Refugee Children, which argues that, "if possible, provision should be made for an expert assessment of the child's ability to express a well-founded fear of persecution" (paragraph 27). The 1994 UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* is also relevant (paragraph 214), as is the 1997 EU Resolution on Minimum Guarantees for Asylum Procedures (paragraph 27).

Such an assessment would be useful as there is a wide range of reasons why separated children may find it difficult to articulate their fears. In addition to the cognitive ability of the child, these may include:

- who the adults involved are (including their age, race and gender);
- the physical environment within which testimony is given;
- the style of questioning;
- the quality and nature of the traumatic event(s) to be recalled;
- the form in which the child is expected to give information;
- the language of the interview;
- fears about the impact of telling the truth, and
- the use of readymade testimony provided by traffickers or others.

It appears that relatively positive approaches are established in some countries. In the UK it is possible for a child to obtain an assessment by way of their legal representative. The Medical Foundation for the Care of Victims of Torture co-ordinates

a Panel of Expert Assessors consisting of individuals such as psychotherapists and psychologists. A legal representative can commission an assessment which would be included as part of the separated child's claim for asylum.

In The Netherlands, volunteers from the independent Refugee Council will explore the extent to which children are able to articulate fear of persecution or other flight reasons and will help them to present their story in a structured manner emphasising the most important points. The volunteers are not, however, qualified to judge whether children are able to cope with subsequent asylum hearings. Nevertheless, the preparation is essential; although volunteers may not have formal qualifications, they take time to help children with their preparation and to support them. There is concern that if a lawyer was to take over this role, he would not have enough time to provide this kind of assistance.

Recommendation 14: In any legislation on asylum procedures which is developed by the EU or European states, reference should be made to the possibility of undertaking expert assessments on the child's ability to articulate fear of persecution, based on the following recommendations:

- Policies should be developed to identify a child who may require the services of an independent assessor.
- In all cases where an assessment is required, it should be carried out as soon as possible.
- Separated children who are young or disabled should be given a form of residence status until they are able to submit an asylum application.

Interviews

11.5 Where interviews are required they should be carried out in a child-friendly manner (breaks, non-threatening atmosphere) by officers trained in interviewing children. Children should always be accompanied at each interview by their legal representative and, where the child so desires, by a significant adult (social worker, relative etc.).

(SCEP Statement of Good Practice, February 1999)

According to UNHCR's 1997 Guidelines, "the claims of unaccompanied children should be examined in a manner which is both fair and age-appropriate" (paragraph 4.2). They go on to indicate that "the interviews should be conducted by specially qualified and trained representatives of the refugee determination authority who will take into account the special situation of unaccompanied children" (paragraph 8.4). Building on Article 3(3) of the CRC ("States shall ensure that institutions and services providing protection or care for children meet established standards"), ECRE sets out more detailed guidance for procedures designed to allow the child to be heard in procedures (paragraphs 26 and 27). Although the EU's 1997 Resolution on Unaccompanied Minors emphasises the importance of appropriate training for

officers, it is less emphatic, suggesting only that separated children may be accompanied at interviews (e.g. by a guardian, representative or relative).

In most countries, it appears that there is no specific guidance regulating the conduct of interviews with separated children. However, there are official guidelines in some. Interviews with separated children in Norway, for instance, are to take place in an atmosphere where consideration is given to the child and its maturity (see box below). But in Sweden, despite the existence of guidelines, in practice case-workers alternate between working with children and adults and they believe that as a result children do not receive the priority they should.

Norwegian Ministry of Justice, Guidelines on Interviews, Oslo 1990

(from chapter on separated children)

Interviewing separated children demands special attention from the reporting officer. The separated children group is, however, very mixed, and an explanation from a 16-17 year-old asylum-seeker will obviously be different from that of an interview of the very youngest.

In order to make a good interview it is important to be a good listener. An interviewer who often interrupts, will effectively be able to stop a person from talking.

Many questions will spark bad memories and create anxiety. An interview situation could in itself be stressful for an asylum-seeker, not least for separated children.

The reporting officer should attempt to create a peaceful atmosphere. Behaviour and use of voice could be crucial to getting answers to questions asked. The separated child must to the extent possible be able to speak freely. One should not try to force answers.

Responses from separated children might seem strange, but this could be because the child finds the question strange, due to cultural differences.

The separated child's ability to answer adequately will of course, depend on age and maturity. Younger separated children will often have difficulties in responding to questions about political, social or religious conditions. They could also have problems remembering names of places, organisations, etc. In addition they do not have the same concept of distance and time as older separated children. Significant events could be time-determined by asking if it happened before or after a holiday or during which season... etc.

The conduct of interviews varies widely. In some countries, children are interviewed in the same manner as adults and the interview process takes little account of the needs of the child (e.g. for breaks in interviews, sympathetic questioning, appropriate use of language and interpreting style, less formal physical environments for

interviews). In Austria, for example, the Federal Asylum Office is trying to reduce the time spent processing a large number of asylum applications, hence the emphasis is put on speed. Breaks and interruptions run contrary to this aim and they are at the interviewer's discretion (though the legal representative may indicate they are necessary). And generally speaking, only one interview is undertaken; a second took place in ten of 185 cases in 1997 (Fronek, H., 1998).

Experience elsewhere varies. In the UK, research has found that because children are frequently perceived as adults, the time allowed for interviews will reflect that applicable to an adult (Ayotte, W., 1998). Separated children in Greece are given priority and interviews are conducted in a child-friendly manner, but sufficient numbers of interpreters and specially trained interviewers are not available to deal with every case. In The Netherlands, although some interviews are child-friendly, sometimes hostility occurs – more commonly at hearings involving older children – due to factors such as the personality of the official; scepticism over the age and nationality of the child concerned; or failure to understand the child's level of development (e.g. inappropriate questioning of illiterate children). In practice, this may mean putting pressure on children to answer questions properly, not taking account of the fact that children can become very emotional during the hearing, and not having breaks in long interviews. Where children are subject to accelerated asylum procedures, they are treated as if they were adults.

However, it appears that interviewers in most states make some allowances for the fact that children are involved. In Denmark, trained Red Cross assessors are present at all interviews that the child has with the police or the immigration authorities; this ensures that the interviews are executed in a friendly, non-hostile atmosphere with any breaks or postponements the child may need. The assessors will not hesitate to demand that an interview be terminated or postponed if they deem it too traumatic for the child. In Ireland, during the interview the interviewing officer will allow the separated child to take a break at any stage. Should the officer feel that the child has become too distressed to continue the interview, it will be halted and postponed.

Interviews in Sweden are relatively child-friendly. They are often conducted in stages, depending on the age and maturity of the child. Sometimes when there is time the interview is conducted in the home environment of the child as the child feels more secure in this setting and suffers less anxiety. Interpreters with special skill in interpretation in child matters are not used, but caseworkers usually have a couple of known interpreters whom they use, and who they know work well with children. On occasion, however, caseworkers' methods can be confrontational. Many caseworkers argue that the investigation rooms could be designed in a different way; currently the caseworker sits behind a desk and the child and others attending sit on chairs opposite.

There are also divergences between countries in the degree to which officers have been trained in interviewing children, and this is widely acknowledged by governments. In Austria, France, Italy and Portugal, staff have no special training. In Finland, Government guidelines suggest that those interviewing children have to have special training, but this is not current practice.

In The Netherlands a number of immigration officials (but not all) are specialised in hearings involving children. Special training days are arranged for officials who have no relevant knowledge about hearing separated children. In Sweden there are specially trained immigration caseworkers, but not enough. Caseworkers also feel that special skills need to be developed through properly designed courses on subjects such as interview methodology, child development and psychology. In Germany, awareness has risen over the last five years since some officials have been trained. In the UK, interviews are conducted by 50 immigration officers who have received specialist training in child interview techniques. The training is given by the Children's Panel of the Refugee Council, and lasts three days.

Another issue is whether the child is accompanied at interviews by a legal representative and social worker or relative (see "Legal representation", page 67 above). Again, practice differs from state to state. In Sweden, if a lawyer has been appointed, he or she will attend, and also the adviser. If there are other important adult contacts in the life of the child, they may also be afforded an opportunity to participate. In Finland, lawyers very seldom attend interviews, but they are carried out with an appointed representative present, and relatives living in the country or older siblings may also take part. Similarly in Norway, the lawyer is not there, but the guardian is present. And in Italy the child must be accompanied by a guardian.

In Portugal, although it is legally possible for a person of the child's preference to attend an interview, there is no evidence of this happening in reality. In Luxembourg, children are questioned on their own as soon as they arrive, and it is not until later that they are supported by a legal representative or guardian. In The Netherlands, the lawyer or other representative is usually not present either. In Ireland, in practice a separated child may begin an interview without the presence of a guardian or careworker. Furthermore, the majority of separated children do not have guardians, care persons or social workers assigned to them. There is no procedure for enquiry into whether or not children would like to have a care person attend interview with them.

Recommendation 15: The evidence suggests that in many states conformity with the principles set out in the UNHCR Guidelines (and the SCEP Statement of Good Practice) is not ensured. Official guidance is generally lacking, and many children can be subject to hostile questioning in an alien environment. Several governments admit that currently the training for those interviewing children is either not available or not extensive enough. And it is also relatively common for a child to attend an interview alone, without adult support. Measures should be taken by governments to ensure that officials who interview separated children are adequately trained and that interviews are undertaken in a child-friendly manner. The following points should be addressed:

- Official guidelines should exist in all states to ensure that interviews are conducted in a child-friendly manner.
- Particular attention should be paid to asking questions that are tailored to the child's developmental level and experience. In practice, this means expressing

complicated terms in simple language; not using standard question lists, and not questioning children endlessly about issues that make them unduly emotional.

- The quality of interpreting must be of a high standard, impartial and available in a wide range of languages.
- Officials should be specifically designated and trained to deal with the interviewing of separated children, and they should have access to continuing education in interview techniques, child development, psychology, and cultural issues.
- Interviews of separated children should not occur without the presence of a legal representative, social worker or caretaker (guardian).

Criteria for making a decision on a child's asylum application

11.6 When making a decision about a separated child's asylum claim, authorities should have regard to the UNHCR Guidelines, as contained in the Handbook and the 1997 Guidelines, specifically:

- the age and maturity of the child and his or her stage of development;
- the possibility that children may manifest their fears differently from adults;
- the likelihood that children will have limited knowledge of conditions in their countries of origin;
- child-specific forms of persecution, such as recruitment of children into armies, trafficking for sex work, female genital mutilation and forced labour;
- the situation of the child's family in their country of origin and, where known, the wishes of parents who have sent a child out of the country in order to protect him or her;
- the need for a liberal application of the benefit of the doubt.

(SCEP Statement of Good Practice, February 1999)

The points set out in the SCEP Statement of Good Practice refer directly to the UNHCR 1997 Guidelines (paragraphs 8.6-8.10) and the Handbook (paragraphs 203 and 213-19). The Statement also draws upon key CRC Articles, notably the child's right to express views (Article 12), to protection from sexual exploitation (Article 34), abduction and trafficking (Article 35), all other forms of exploitation (Article 36) and armed conflict (Article 38). Within the European context, Article 4 of the European Convention on Human Rights ("No one shall be held in slavery or servitude or subjected to forced labour") is also relevant. And Article 4(6) of the 1997 EU Resolution on Unaccompanied Minors highlights some – but not all – of the criteria set out in the SCEP Statement of Good Practice (the child's age, maturity and mental development, and the fact that the child may have limited knowledge of conditions in the country of origin).

Few states appear to have formal policies regarding special attention to separated children in determining refugee status. In Austria, France and the UK, for instance, separated children are treated and considered in the same manner as adults in a similar situation. In Denmark, applicants over the age of 14 are generally treated as adult (under this age they are usually given special consideration and granted residence permits). In Spain, children are also usually given special consideration and most of them have been granted “de facto” status on humanitarian grounds, which entitles them to a residence permit (although very few have been recognised as refugees). In Germany, although there are two general rules on the treatment of child asylum-seekers (on legal capacity for over 16s and on identification procedures), again there are no special regulations for separated children. In Ireland there is no formal policy, and although the Government states that the UNHCR Guidelines are followed, in practice analysis of the factors outlined in the SCEP Statement of Good Practice does not always take place.

More positively, since 1997 Swedish legislation has explicitly referred to the CRC Article 3 “best interests” principle in relation to Government policy-making and decisions about individual cases. Nevertheless, although such improvements have been introduced, some caseworkers believe that not all decisions are well justified. Finland introduced a similar policy in 1999, and most children get refugee or other status, which allows them to stay. However, it appears that this is less the outcome of a full analysis of cases in light of defined criteria, but more because the authorities are not clear what else could be done in the circumstances; this is especially the case with Somali children, whose identities are often unclear and whose families have not been located.

Children may express their fear of persecution in different ways from adults. A separated child’s fear of persecution may be based on stories told by a family member rather than on personal experience. Officials may interpret this to mean that the fear of persecution is not real but based only on suspicion. Alternatively, inability to talk about persecution or a lack of continuity in narratives can be caused by traumatic experiences.

It is also the case that children may have limited knowledge about the situation in their country of origin. For example, a child may be expected to know details about a family member’s political activities which have in fact been kept secret from the child in order to protect him or her. Officials often pay little or no regard to this and then decisions contain statements like: “the applicant’s explanations of his father’s activities were brief and vague”.

When considering whether or not a child has a valid ground for fleeing his or her country of origin, responsible officials often pay insufficient attention to child-specific forms of human rights violations. There are virtually no examples in the Country Assessments of cases where child-specific forms of human rights violations are taken into consideration in the refugee status determination.

There is considerable evidence that some countries enrol children in armies or rebel groups (Amnesty International, 1999; International Save the Children Alliance, 1999), but there is often official disbelief that the problem exists. For example,

in The Netherlands, a child who claims to be afraid of forced recruitment into the army is sometimes considered as no more than a draft dodger. Danish asylum authorities have been aware for some time that separated Tamil children from Sri Lanka often flee to avoid compulsory military service with the Tigers. Some Afghan children have fled the Taleban militia in recent years for similar reasons. Not all applicants over the age of 14 who have fled some form of compulsory military service are granted asylum; it is increasingly difficult for Tamil children and the current tendency is that only visible signs of torture are grounds for asylum in Denmark.

There is not much information on asylum applications concerning female genital mutilation. Since this practice is generally done under the age of 18, there might be cases where female genital mutilation is relevant to a separated girl child's asylum claim. This issue should consequently be investigated and more thoroughly studied.

In making asylum decisions, insufficient attention is also focused on the family's situation, in particular, fear of persecution. According to evidence from The Netherlands, in some countries, especially in Africa, persecution of one family member may lead to other "innocent" family members also being persecuted. Even where a separated child has been picked up by the police because he accompanied his father to a demonstration, the conclusion is that the arrest is simply the result of being present at a demonstration by chance. Where the parents are still alive, their wish to protect their child is not sufficiently recognised. The conclusion is drawn that as long as the parents are alive, the child can be cared for by them and can be returned.

"The problem of 'proof' is great in every refugee status determination. It is compounded in the case of children. For this reason, the decision on a child's refugee status calls for a liberal application of the principle of the benefit of the doubt. This means that should there be some hesitation regarding the credibility of the child's story, the burden is not on the child to provide proof, but the child should be given the benefit of the doubt."

(UNHCR, 1994)

There is a strong argument that the "benefit of the doubt" should be applied to children's cases (see box above). However, in practice it appears that it is not universally respected. Indeed, there are fears that political pressure to limit the granting of refugee status has been exerted on individual decision-makers and on their practice in recent years, and that this has resulted in a more restrictive approach becoming increasingly common.

For example, although separated children in The Netherlands are generally given the benefit of the doubt when a decision is made on their application, there are indications that a more stringent approach is being taken than before. Formerly it was understood that due to lack of maturity, children sometimes say things that are not entirely accurate; this is now much less accepted.

In Portugal, the benefit of the doubt is not widely applied, especially in relation to 16- and 17-year-olds (a less restrictive approach is applied to very young children). One police source stated that: “If we (the authorities) become liberal about accepting all those who claim to be under 18, in the following months we will have more people claiming to be minors” (Portuguese assessment). The reality is that very few of those who claim to be below 18 are accepted in the asylum procedure and get a temporary residence permit; most get a negative decision and, without any documentation whatsoever, await the outcome of their appeal.

Recommendation 16: The evidence suggests that, in general, state asylum procedures lack clear national policies on the factors which should be taken into account in determining separated children’s cases – despite the existence of developed UNHCR Guidelines. In practice, this gap means that officials may make decisions in a policy vacuum, leading to wide variations in treatment based on criteria which can be subjective and unfair. When determining refugee status governments should make sure that child-specific forms of human rights violations are taken into consideration as well as the fact that children might have different ways of communicating fear of persecution and different knowledge regarding their claims than adults. The EU and European states should address the following points:

- Formal policy in relation to the criteria for determining cases should be in place in all European states to ensure full compliance with the 1997 UNHCR Guidelines on Unaccompanied Minors and the SCEP Statement of Good Practice.
- All information on separated children, or on their relatives must be treated confidentially in order not to endanger them. The information obtained in the interview must be used only for purposes of the asylum procedure.
- Central government support, both in terms of policy direction and resources, for the development of child-appropriate decision-making is essential in all states.
- Officials’ needs for education and training on status determination of separated children on a continuous basis should be met.
- Given the apparent lack of focus in several states on the criteria used for determining children’s cases, research should be established to monitor and explore current practice in more detail, with the aim of informing the development of appropriate policy and practice.

Young people who become adults during the asylum process

11.7 Separated children who become adults during the course of the asylum process (sometimes called “aged out”) should be treated in a generous fashion. In this regard states should eliminate unnecessary delays that can result in a child gaining maturity during the process.

(SCEP Statement of Good Practice, February 1999)

While this issue is not addressed in most international instruments, ECRE's Guidelines state that:

"States should have a generous approach in the handling of cases where the child reaches the age of maturity during either the determination procedure or during the process of finding the best solution for the individual." (paragraph 30)

They also emphasise the importance of eliminating unnecessary delays which will extend the case until the age of maturity has been passed.

In practice, the response of states varies. In several countries, no special consideration is given to children in this situation. In Austria, for example, a separated child is represented by youth welfare agencies until his or her nineteenth birthday; after this, responsibility rests with the asylum-seeker alone, and there is no transitional period allowing for continuing representation. In France, the complexity and length of the procedures mean that few children are given refugee status before they become adult. When they do so, they do not benefit from any special provisions. In Portugal, children who "age out" during the asylum process – the vast majority of separated children – have no allowance made for this. In Ireland, although no official policy exists, the Government has stated that the fact that a person was a child at the time of making an application is taken into consideration – but such people are nevertheless treated as adults once they have attained majority. In the case of Germany, separated children are considered as adults from age 16 anyway (see p. 65 above).

However, some countries have more positive approaches. In Norway, if the applicant is a separated child at the time of application, then he or she is considered as such throughout – even if the child turns 18. In the UK, Home Office casework instructions state that where separated children become adults prior to a decision concerning their application or an appeal, such individuals will continue to be regarded as separated children.

In Sweden, if a child attains the age of 18 during the process and a decision has not yet been made, the case is re-registered as an adult matter. The immigration caseworker continues if possible. If the child has been staying at a children's unit, he or she is moved to the nearest reception centre. Depending on the circumstances of the case, a decision is then made in the ordinary way. Some critics consider that the use of fixed-term residence permits (see Recommendation, page 73 above) leaves children waiting in uncertainty for a long period, with the result that a child becomes an adult during the process.

The treatment of separated children in Denmark was severely criticised by the Danish press in 1992. Four children had all been denied residence as they turned 18 after processing times of 7, 10, 18 and 31 months respectively. Consequently, the Government established new guidelines which state that the child's age at the time of arrival is the determining factor in whether or not the person is included in the special provisions for separated children. The fact that an applicant turns 18 while the application is being processed has no bearing on the case.

In The Netherlands, the procedure for separated children is still applied when they attain their eighteenth birthday during the asylum process. The so-called “unaccompanied minor asylum-seeker status” is not withdrawn because the child has reached the age of majority. Separated children who, on their eighteenth birthday, do not have a temporary or permanent status, fall under the “extended guardianship” of the Opbouw, and receive financial assistance. They also receive legal and social support through the Refugee Council; however, a child who does not have a resident’s permit receives only limited provision. Such children are seldom deported at the end of the asylum procedure.

Recommendation 17: There is wide variation in approaches between states to separated children who become adults during the asylum process. Significant unfairness can result, especially when “ageing out” occurs as a result of delays which have not been caused by the children themselves. In this context it is important that the EU and European states should seek to establish fair procedures in this regard. The following recommendations are therefore made:

- Appropriate representation of separated children in the asylum procedure must continue after they become adults.
- The cases of all separated children should be prioritised to avoid the lengthy delays which make “ageing out” more likely.
- If a child enters a state as a separated child, the asylum claim should be processed, if reasonably possible, while the applicant is a child. Clear policies and practice should be established to seek to ensure this.

Durable or long-term solutions

Grounds for a child remaining in a host country

12.1.1 A separated child may be allowed to remain in a host country for a number of reasons:

- she or he is recognised as a refugee or granted asylum;
- she or he receives a de facto or humanitarian status because it is not safe to return to their country of origin, due, for example, to armed conflict and/or the child’s parents are not traceable and there is no suitable carer in the country of origin;
- she or he is allowed to remain under some other immigration category or, for example, on compassionate grounds (e.g. ill health);
- it is clearly in the child’s best interests to do so.

(SCEP Statement of Good Practice, February 1999)

The SCEP Statement of Good Practice draws upon the “best interests” principle, set out in Article 3 of the CRC, and the 1997 UNHCR Guidelines on Unaccompanied Children (paragraphs 9.1 and 9.4). The ECRE Position outlines a similar set of conditions to the SCEP Statement of Good Practice. The 1997 EU Resolution on Unaccompanied Minors reiterates in Article 5(2) the key principle that Member States should, in principle, make it possible for a separated child to remain in their territory if conditions for return are not met.

Under national law, it appears that the reasons for a child remaining in a “host” country are generally met within Western European states.

For example, if a separated child is granted refugee status in Ireland, he or she is granted full permission to remain in the State. Alternatively, a separated child may be granted temporary leave to remain (normally for the period of one, three or five years), owing to a conflict in the country of origin or the impossibility of tracing the child’s parents. In both cases he or she will be afforded the same social welfare and educational rights as an Irish child.

Separated children in Belgium who are refused asylum, or any document allowing them to remain in the country have, since April 1999, been given the right to remain provisionally. This is confirmed when the *Office des étrangers* has acknowledged the impossibility of returning the minor to his or her place of origin.

However, some states differ from the general pattern. In Luxembourg there are no specific laws and the situation requires clarification; it is possible that children may be left without a status and given the bare minimum for survival until they leave the territory of their own free will or by force. According to the Italian Immigration Law, separated children cannot be expelled unless the Juvenile Courts order their expulsion for public order or security reasons. Separated children, soon after they reach the age of 18, can request a residence permit from police authorities. However, very often NGOs intervene in order to convince the authorities to issue a residence permit to former separated children who were staying illegally in the country. In Greece, although residence categories exist, many children remain in the country without any legal status.

In other states, although the main categories outlined in the *Statement* exist, there are some problems in relation to residence status. In Portugal the law is seldom applied in practice, and the different time periods allocated to each status provide very different levels of protection: refugee status entitles the beneficiary to a five-year, renewable refugee card, but a resident permit on humanitarian grounds is issued for a one-year period for a limit of five years.

In Germany, recognition as refugee; recognition as a “de facto” refugee, or a residence permit on humanitarian grounds is available. The major problem faced by most separated children living in Germany is their insecure residence status. This is especially true for the insecure status of “toleration”, which does not provide a residence permit, but only postpones deportation. This status can be revoked by the authorities at any time, and considerably limits refugees’ freedom of movement (they are not allowed to leave the region, or even the district, unless they apply to do so). This insecure status, in combination with the denial to obtain a work permit, means

that it is very difficult to arrange training or to motivate separated children to attend school (that is if enrolment takes place at all).

In Austria the law does not confer sufficient security and is usually not accompanied by effective integration measures; for instance access to the labour market is granted only in exceptional cases.

The Finnish Directorate of Immigration has recently started to grant a lesser, “A4” status to Somalis. Without refugee status, they are not entitled to the special services for refugees, against the “best interests of the child”. These children are not returned, but neither are they guaranteed family reunification.

Recommendation 18: Generally speaking, European states do allow separated children to remain in the “host country” in line with the criteria set out in the SCEP Statement of Good Practice. However, to meet fully the needs and rights of separated children, key safeguards such as providing a status which gives them access to assistance and family reunification, must be implemented in all states, in line with the CRC principle of the “best interests of the child” and the UN-HCR Guidelines:

- A temporary residence permit should be granted to all separated children who, for practical and humanitarian reasons, cannot be returned to their home country by state authorities.
- States should avoid applying forms of status to separated children which mean that they are unable to benefit from special facilities and programmes.
- Separated children who have been granted temporary leave to remain in the state should have the right to apply for family reunion.
- Co-ordination between government agencies, schools and care institutions should be improved to increase the level of protection offered to separated children, and to ensure that the separated child can access all services effectively and without discrimination.

Family reunification in a host country

12.1.2 Applications by a separated child, residing in a “host” country, for family reunion in that country should be dealt with in a “positive, humane and expeditious manner.”
(SCEP Statement of Good Practice, February 1999)

Under Article 7 of the CRC, children have a right to know and be cared for by their parents. Article 9 goes on to guarantee that children are not separated from their parents against their will. And Article 22 suggests that tracing must take place to provide the information necessary for separated children to be reunited with their families.

In addition, Article 10 of the CRC – reiterated in the SCEP Statement of Good Practice – sets standards on how applications are to be considered. However, “posi

tive, humane and expeditious” does not imply that the application is to be granted automatically, and the CRC does not provide separated children with a right to family reunion.

This principle set out in Article 10 of the CRC is reiterated in ECRE’s Position on Refugee Children (paragraph 32). It is also reinforced by Article 8 of the ECHR, which states that “everyone has the right to respect for his private and family life, his home and correspondence”.

The evidence from the assessments suggests that in the majority of European countries family reunification is possible for separated children who are recognised as refugees in the “host” country. In most cases this only extends to close relatives such as parents and siblings under the age of majority. However, this approach is not universal. In France, for instance, no legal provision stipulates that separated children recognised as refugees are entitled to let their family come to France for the purpose of reunification. And in Germany the right of the parents of separated children recognised as refugees in Germany to join their children in that country is restricted, since it is not explicitly provided for in the German Aliens Act, and the general criteria laid down in the Aliens Law are difficult for children to fulfil. In Denmark there is considerable debate as to whether the strict Danish regulations concerning family reunification comply with the Convention on the Rights of the Child. In some countries (e.g. Finland, The Netherlands, Norway), family reunification is also allowed for separated children granted temporary humanitarian protection or leave to remain.

However, in practice, family reunification is often not implemented in many states. Although Greek law enables adult refugees to request family reunification in Greece, there is no specific provision for separated refugee children who wish to follow this course. In practice cases of separated children who wish to reunite with their families in Greece do not exist – although reunification is promoted with parents residing in third countries.

There are reasons for this lack of implementation. In The Netherlands, eligibility conditions cannot be easily complied with as the child must have sufficient money available to care for his or her parents in The Netherlands. Similarly, in Spain – until the new Aliens Law 4/2000 – rules regarding aliens’ reunification have been very restrictive, and applications or approvals of family reunification of separated children appeared to be very rare. In Portugal, family reunification is possible under asylum law for family members directly related to a refugee; however, there are no cases of this kind involving separated children as few are given a positive decision.

The principle that a separated child’s application should be dealt with in a “positive, humane and expeditious manner” is also frequently not met. In France, due to the length of the procedure, the numbers of separated children recognised as refugees are very few, and there is no established practice in this field. In the UK, unless separated children are granted refugee status they do not have a right under the law to family reunion, and if children are granted “Exceptional Leave to Remain” (ELR) they must wait four years until they can apply for reunification.

In Finland, reunification procedures have also been very slow because most of the cases involve Somalis and it has been very difficult to get all the needed documentation from Somalia. The Government is currently experimenting with DNA testing to resolve cases where identity is unclear.

In Norway, if a separated child has been granted asylum either as a refugee or on humanitarian grounds, there is a right to family reunion. If the residence permit is granted on humanitarian grounds, no implicit right exists; in practice, family reunion is mainly granted to young children in order to avoid too many “anchor cases” (most separated children are in the 15-18 age group). It is estimated that a maximum of 30 separated children, of whom most were from Vietnam, have been reunited with their families in Norway in the last two years.

In Sweden, Immigration Board Guidelines suggest that an application from parents to be reunited with the child in Sweden should normally be rejected with the explanation that reunification should take place where the parents are living. But if the child has a residence permit as a refugee or as a person in need of protection, reunification is allowed in Sweden. In exceptional cases, reunification is allowed for other reasons (e.g. reunification cannot take place in another country) (see box below). The Italian Immigration Law allows recognised refugees to benefit from family reunification without making a distinction between children and adults. However, given the small number of recognised refugees, there is no established practice in this field.

A Swedish case

”An Iraqi boy, 14 years old, arrived alone in Sweden from Jordan in March 1998. He had been living alone in Amman as his mother had died of cancer and his father had been captured and imprisoned shortly after his mother’s funeral. His paternal grandmother and two small siblings were still in Iraq. On arrival, the boy went to live with an uncle. He had suffered greatly from the flight and the uncertain family situation, and in September 1998 he obtained a permanent residence permit. Six months later, he learned that his father was alive.

”With the help of a counsellor and the caseworker who dealt with the child’s original application, the central embassy unit investigating family reunification was then contacted. The counsellor wrote personally to the embassy in Jordan and requested that the matter should be prioritised, in line with Article 10 of the CRC, owing to the boy’s situation and fragile mental health. The embassy summoned the boy’s relatives for an interview as early as March 1999, and in June the same year the boy was reunited in Sweden with his father, his two siblings and his paternal grandmother. The sensitivity of the Immigration Board and collaboration between the regions and with the municipality meant that the process could be expedited and the boy’s suffering shortened.”

(Swedish assessment)

Recommendation 19: The evidence presented by the assessments indicates that practice is far from meeting the standards set out in the CRC in relation to family reunification in the “host country”. Efforts should be made to change policy and practice to allow for family reunification in the “host country” for all categories of separated children. The following recommendations should be taken into account in any legislation or guidance:

- Articles 7, 9 and 10 of the CRC should be clearly respected in family reunification procedures.
- To meet the standards of Article 22 of the CRC, legislation should establish the state’s duty to assist refugee children with tracing their parents or family.
- European states should allow family reunification in the cases of separated children who have been granted humanitarian, temporary or other status.
- Family reunion procedures should commence swiftly once a separated child has been granted refugee status, humanitarian, temporary or other status.
- Separated children must be provided with comprehensive information about both the right to, and the procedures for, applying for family reunion.
- Inter-agency collaboration should be promoted in all family reunification cases.

Integration

12.1.3 Once a separated child or young person is allowed to remain, care/welfare authorities should conduct a careful assessment of the child’s situation (taking into account her or his age, sex, care history, mental and physical health, education and family situation in the country of origin). In consultation with the child or young person, a long-term placement in the community should then be arranged. This may of course be a continuation of the interim care placement. It is generally desirable that children under 15/16 years of age be cared for in a foster family from their own culture. Older young people may prefer/do well in a small group home environment. This should be staffed by adults aware of the young person’s cultural needs. Separated young people who have left care should be offered support via an “after-care” programme, to assist their transition to living independently.

As a matter of principle, siblings should be kept together in the same placement unless they wish otherwise. If a sibling group is living independently, with the oldest taking responsibility, then he or she should be provided with particular support and advice.

The rights of separated children and young people to education and training, healthcare, language support (as per paragraph 10) should continue on the same basis as available to national children.

(SCEP Statement of Good Practice, February 1999)

A range of rights set out in the CRC are relevant to the principle of integration: Articles 13 (access to information); 14 (freedom of conscience, thought and religion); 15 (freedom of association and peaceful assembly); 16 (protection from interference with privacy, family, home and correspondence); 19 (protection from all forms of violence); 20 (special protection and assistance to children deprived of their family environment); 23 (special care, education and training for disabled children); 24 (access to healthcare services); 25 (periodic reviews of treatment); 26 (social security); 27 (adequate standard of living); 28 (education); 29 (1c) (promoting respect for culture, identity, language, values); 30 (right of minorities to enjoy their culture, language and religion); and 39 (physical and psychological recovery and social reintegration).

These rights build upon relevant Articles of the 1951 Refugee Convention, notably Articles 21 (housing provision for recognised refugees), 23 (provision of “public relief” for recognised refugees, and 24 (working conditions and social security provisions for recognised refugees). In addition, it is important to refer to the standards in relation to care, accommodation and long-term placement set out in paragraphs 10.6-10.10 of the UNHCR 1997 Guidelines on Unaccompanied Children, paragraphs 19 and 36-41 of ECRE’s Position on Refugee Children, and Article 4(7) of the EU Resolution on Unaccompanied Minors.

In practice, it appears that assessments and care plans procedures are generally relatively advanced in the Nordic countries. In Sweden, for instance, when a separated child has obtained a positive decision concerning a permanent residence permit, a long-term plan is prepared to meet the best interest of the child. Every municipality is obliged to develop integration plans for newly arrived refugees and immigrants in their area, including separated children. In Finland a largely new system for the integration of refugees has been developed, as a result of which refugees will get a personal integration plan; the role of municipalities is crucial in that they arrange all necessary services from housing, social and health care, to cultural and leisure services, comprehensive schooling, and interpretation. In Norway, when choosing living and care solutions, the best interest of the child and the child’s individual needs are to be protected. The Immigration Department has produced guidelines for municipalities on the integration of separated children; however there is uncertainty over how to interpret them and practice is therefore not uniform. In Denmark, at each of the refugee centres for children, a member of the Danish Red Cross staff assesses each child carefully in collaboration with that child’s educators with a view to finding the optimum placement. Efforts are made to determine the whereabouts of the parents, whether the child has relatives in Denmark or other European countries, the family situation in the country of origin, school background, mental and physical health and the child’s wishes and hopes for the future.

Elsewhere, practice is more uneven. In the UK, the Department of Health Practice Guide provides a sound basis for good local implementation. In Ireland, adequate procedures to assess the care needs of each separated child are lacking. In Portugal, the measures in child legislation are relatively positive, but the law is not applied fully in practice, largely due to lack of funds. In Austria, recognised refugees

may be granted integration assistance under the Asylum Act, but this does not confer a legal right to assistance.

In Spain, the approach adopted varies according to age. For 13-16 year-olds, great emphasis is placed by the Government on the right to family life and efforts are made to reunite children with their families. Whereas for children of 16-18 years, more effort goes into vocational training and care is in shared flats or hostels. Currently the authorities are developing a new plan of action to deal with alien minors, partly because professionals working with minors, institutions and traditional reception centres are not prepared to respond to the needs of alien minors in general, and partly to reduce the number of runaways from the centres. However, assistance provided in the few specialised centres for separated minor asylum-seekers and immigrants has proved highly valuable and crucial for their integration.

Finding appropriate accommodation is a key aspect of integration, and the options vary between and within states. In Germany, the range includes residential care, small group homes, hostels, lodgings or foster families; however it is impossible to generalise as to which model is most widely used. Similarly, in Denmark, although there is concern that some expertise in this field has been lost as a result of the recent transfer of placement decisions to the Immigration Service, there are a number of possibilities (see box below).

Accommodating separated children in Denmark

”Some of the separated children who arrive in Denmark have relatives in the country. If the relatives are able to accommodate the child, the social authorities determine if placement with the relatives serves the child’s best interests. It is generally considered best for the child to reside with a family that is familiar with the child’s background and parents.

”If children under the age of 14 have no relatives in the country, they are often placed in foster families. Foster families of the same nationality as the child are difficult to find, as these families, who are often refugees themselves, might not have the psychological and emotional resources to care for another child or might belong to another clan or belief, so that there is reason to fear that the child would be influenced in a way that would be unacceptable to the child’s family. A separated child placed in a Danish family has obvious advantages: the child soon learns the Danish language, quickly develops an understanding of the community, has access to help and support in terms of education, develops friendships with Danish children more easily and is generally integrated faster than children that reside with foreign families. Unfortunately, those children often lose proficiency in their mother tongue, their culture and identity in the process. Regardless of the effort made by the Danish foster family to respect the child’s background and help it remain Somali, Iraqi, Iranian, they seldom succeed. This may cause psychological problems for the child and render any reunification with the family difficult, be it in Denmark or abroad.



”Some separated children under the age of 14 are placed in children’s houses, for instance the three Somali houses run by Red Barnet. The children live in home environments and several of the staff have the same nationality as the children. Life in the children’s houses is modelled as closely as possible on life as the children know it from their countries of origin. They speak Somali, live by the precepts of the Koran and the children remain rooted in their original culture. Eventual reunification with their families is thus facilitated. Unfortunately, there are not enough children’s houses. A greater number of children’s houses should be established (e.g. for the Iraqi children who arrive in increasing numbers).

”Some separated children are able to move into residence halls or rented private rooms. In these situations, the social authorities may appoint support staff to provide help with any problems the young person may encounter. This will always be the case if the young person so desires.

”Some separated children are placed in shared houses. These work on the same principle as children’s houses, but with less staff. The aim is to assist children in developing independence and a sense of responsibility, enable them to form social and emotional ties and prepare them for bi-cultural lives. The shared houses that were initiated in the early 1990s for the large number of Somalis arriving in Denmark are becoming increasingly multi-ethnic. There is a need for more shared houses, too, where children may live until they are ready to live independently.”

(Danish assessment)

In Sweden, accommodation is determined on a case-to-case basis; decisive factors are the wishes and needs of the child and also the conditions in the municipality in question. Residence may be arranged in group homes, other collective reception centres, in the homes of relatives or other family homes. The caseworker at the children’s unit is responsible for housing, in collaboration with the adviser and the receiving municipality.

In Norway, settlement in shared houses is primarily used for separated children who arrive alone and who are without friends or relatives in Norway. For younger children arriving in Norway, foster homes are most frequently used. Most of the separated children live with friends and relatives in private housing.

In Finland, family group homes are the most common living arrangement for separated children. Children over 17 years of age may live in separated flats where they are responsible for themselves, but are supported by employees of the group homes. If possible, young children are placed with relatives, where they often already live during the asylum procedure. Separated children have very seldom (if ever) been placed with Finnish families due to the principle of maintaining the ethnic identity of the child to ease family reunification later.

In Austria, decisions on accommodation of separated children are usually taken based on available resources and not the needs and interests of the child. It is almost a rule that separated children have to live in emergency accommodation without educational care. From time to time they are even made homeless.

In some countries, fostering is very rare. In Italy, for example, there are sometimes difficulties in finding compatriot families willing to accept another member, since the living conditions of these families are usually very modest. In Greece, services in this area are not very developed, and separated children cannot be cared for in a foster family of their own culture, nor can they reside in a small group home environment. In Ireland, no separated children in the asylum procedure have been placed in foster families. There are no group homes catering specifically for older separated children, and the majority live independently and are not assigned any specific person to provide particular support or advice.

One significant problem surrounds the transition between different forms of accommodation, which can be very stressful for the child. In Sweden, some measures have been taken to smooth the transition by offering separated children who have been integrated into the municipality their own contact person. A comparable approach is sometimes adopted in fostering cases, where there can be difficulties for the child and the families involved in adjusting to the new situation.

In terms of other services, most states appear to make efforts to provide an appropriate range. In Greece, for example, the integration of separated children has recently become a top priority. Those legally residing in the country have access to education, health and welfare provisions, and those who are under the care of state social services have access, in addition, to shelter, education, training, language and integration courses. Separated children illegally residing in the country may, if they wish, attend community projects on a daily basis.

In contrast, in Portugal there are no specific measures for integration of recognised refugees aside from the help provided for four months, of about 600 Euros per month. Until 1991 there were programmes for refugees in need, run with UNHCR funds. Since then, only the vulnerable cases such as women with children have been supported. According to the law, recognised refugees are entitled to the same rights as Portuguese citizens, but in practice the disadvantages they face are not acknowledged.

Recommendation 20: Although a number of good practices are in place, existing evidence suggests that significant improvements are required if the standards of the CRC, the EU's 1997 Resolution on Unaccompanied Minors, and other relevant international instruments, are to be met. All separated children should gain access to appropriate services on a non-discriminatory basis and facilities and programmes should be designed to meet their special needs.

- Clear procedures should be put in place to assess the needs of each separated child, to provide for an appropriate care placement, and to develop a long-term care plan in the best interest of the child. Procedures should be continuously monitored so that improvements can be made.

- The child's right to participate in decisions should be taken fully into account in integration plans.
- Separated children should have access to healthcare, education, social welfare, vocational training and work.
- Integration should enable separated children to preserve and develop their own cultural and linguistic traditions as far as possible.
- Professionals and carers working with separated children should receive training and support to meet the linguistic and cultural needs of separated children.
- Research should be conducted into the impact of current integration policy and practice on separated children.

Adoption

12.1.4 Adoption is rarely, if ever, a suitable option for a separated child. Before adoption can be considered viable or desirable, a rigorous assessment, conducted by an authorised organisation, of the child's family circumstances in the country of origin is essential. Clear procedures are outlined in the recommendation of the Hague Conference on Private International Law.

(SCEP Statement of Good Practice, February 1999)

The SCEP Statement of Good Practice recommendation draws upon Article 21 of the CRC (States' obligations with regard to intercountry adoption). More detailed procedures are set out in the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and in the 1994 Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children of this Convention.

According to the Country Assessments, the practice in most European states conforms with the SCEP Statement of Good Practice, and cases of separated children being adopted appear to be very rare. This is largely because of long-standing experience of cases where children have suffered due to inappropriate adoption placements. For example, the so-called 'baby lift' of children identified as orphans during the Vietnam War resulted in many subsequent court cases when parents eventually came forward to be reunited with their children. Having learnt from various previous experiences, state authorities seem increasingly reluctant to allow adoptions of separated children. The French Government, for instance, refused to allow adoptions of Rwandan children following the conflict in that country – and reiterated this position in relation to Kosovo.

Article 15 (Implementing Decree to the Aliens Act) Coming to Spain due to the adoption of alien minors who come from areas of conflict.

”Minors who come from a country or region where armed conflict is occurring may not be brought to Spain for the purposes of their adoption, unless it may be satisfactorily proven that proper efforts to locate the family members of the minor were carried out through the proper authorities without success, and that all the precautions required by the international agreements to which Spain is a party have been taken, as well as the recommendations of those international organisations with jurisdiction on this matter.”

In the Spanish Civil Code the adoption legislation introduces a guarantee system respectful of the provisions of the UN Children’s Rights Convention.

(Spanish assessment)

Recommendation 21: Adoption is rarely a suitable option for a separated child. It is essential that prior to adoption being considered as a viable option for a separated child, there is a rigorous assessment of the family circumstances in the country of origin. The separated child’s parents often still live in the country of origin, or sometimes they are missing but not officially reported dead.

- All European states should ratify the Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption 1993.

Family reunification and returns to a country of origin

12.2.1 This is a complex area and detailed guidance is required on the implementation of good practice. The best way for family reunification and returns to be carried out is on a voluntary basis. Children and young people should be fully consulted at all stages of the process.

12.2.2 (a) Before a separated child can be returned to a country of origin the following must be in place:

- it is safe to return the child to his or her home country;
- the child’s carer and guardian/adviser in the host country agree it is in the child’s best interest to return;
- a careful assessment is made of the family situation in the home country and whether it is safe to return a child to that country. It will be necessary to investigate the ability of the child’s family (parents or other family members) to provide appropriate care. In the absence of parents or other family members, the suitability of child care agencies in the country of origin should be investigated;
- the child’s parents, relatives, other adult caretaker or government child



care agency agree to provide immediate and long-term care upon the child's arrival in the country of origin;

- the child is fully informed at all stages and is provided with appropriate counselling and support;
- prior to the return, contact between the child and his or her family is facilitated;
- during the return the child is properly accompanied;

12.2.2 (b) Young people who arrive as minors but who have reached the age of 18 should be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin.

The 1951 Refugee Convention states that states shall not expel a refugee lawfully in their territory (Article 32(1)), and that they shall not return a refugee to a country where his or her life or freedom are threatened (Article 33). These principles are elaborated upon by CRC rights, especially in Articles 19 (protection from all forms of violence); 37(a) (cruel, inhuman or degrading treatment); 38 (armed conflict), and 39 (physical and psychological recovery and social reintegration). UNHCR's 1997 Guidelines on Unaccompanied Children are also relevant (paragraphs 9.4, 9.5, 10.5, 10.12-10.14). Within the European context, paragraphs 33 and 42 of ECRE's Position on Refugee Children, and Article 5 of the 1997 EU Resolution on Unaccompanied Minors should also be taken into account.

Return

In many states (e.g. Denmark, Finland, France, Germany) there are no regulations concerning return for separated children. In Norway, general guidelines for return based on UNHCR's principles are in place; however, specific guidelines on return for separated children are not. In Sweden, individual regions have produced their own guidelines on return issues. In Ireland, the lack of legal provision means that, at present, if separated children wished to return to their country of origin, their options would be deportation by the state or to make their own travel arrangements.

In several states, returns of separated children are unknown. Often it is judged unsafe to send the child back (e.g. in relation to Somali children in Finland). But sometimes children are nevertheless returned by relatives, without consultation with the authorities.

Often separated children do not wish to go back to their country of origin. While this may be because they feel return would be unsafe, or that they would have no prospects there, it may also be because their families sent them abroad placing high hopes in them and under substantial material sacrifices, expecting them to contribute to the maintenance of the family members who remained at home. That means that there is a big burden on the children not to disappoint their family.

In Spain the Government encourages repatriation/family reunification in the country of origin. Nevertheless, many Moroccan children (who are not asylum-

seekers) are not willing to return to Morocco and come back to Spain within 24-48 hours from the date they were returned. Attempts are therefore being made to strengthen co-operation agreements and to support NGO programmes in Morocco to address the underlying causes of migration. In France a judge can organise the return of a child to his or her country of origin if the child so wishes. In practice, however, it appears that not all returns are carried out in the best interests of the child.

In The Netherlands, separated children are rarely forced to return to their country of origin, even where they have exhausted all their rights to appeal in the asylum process. The Ministry of Justice has plans to implement returns to the country of origin, but it is not yet clear how this will operate. Although children who return voluntarily are sufficiently informed about the process and helped through it, where forced return takes place (e.g. because of doubts as to the child's identity, nationality or age) not enough attention is paid to the availability of adequate care and shelter in the country of origin.

Recommendation 22: There is a need for formal schemes or programmes of return to be developed in European states. Guidelines and procedures should be in place in order to assess if return would be in the best interest of the child. Such guidelines and procedures should be drawn up in collaboration with agencies with specific child and country knowledge, and according to the UNHCR Guidelines.

- In all states, procedures should be put in place in order to ensure independent assessment of whether or not the return of the separated child is likely to be safe.
- Attempts to locate a separated child's parents in order to assess whether or not the child should be returned should be standard procedure for all immigration authorities.
- If return is not possible without endangering the child's wellbeing, a solution in the host country should be found.
- Authorities should make every effort to ensure that return is carried out on a voluntary basis, and that deportation (and in particular pre-deportation detention) is not used.
- Alternatives to deportation should be available to a separated child seeking to return to his or her country of origin; deportation precludes the possibility of that child seeking to re-enter the country in the future, should he or she have a renewed need for protection.
- More research is required to determine how many children are returned to their country of origin because of doubts about their age, nationality or identity, and under what circumstances it happens.
- Returns should always be carried out in a child-appropriate manner. The authorities should never hand children over to the border authorities of the country of origin or of a third country without knowing how the child will be accommodated and cared for.

Conditions that must be fulfilled prior to return

Across European states there is considerable evidence that the conditions set out in the SCEP Statement of Good Practice are often neglected in practice. As Irish policy and procedure stands, separated children could be returned to their country of origin without special regard to the conditions outlined in the Statement that should be fulfilled prior to return. In Portugal, return cases are rare, but there appears to be no family assessment, no preparation for immediate and long-term care in the country of origin, and no analysis of conditions in the country of origin.

In Austria, no research is undertaken by the authorities to see whether there is the potential reception in the home country or a third country that will be appropriate. And administrative measures like deportation and return are implemented without any effort to verify what happens to children in a third country or their home country. In Norway, no investigation is carried out of the family's ability to care for the child in the country of origin beyond the written confirmation that they are to take over the care of the child. The Swedish Immigration Board (SIV) refers in its guidelines to several of the UNHCR criteria, but some caseworkers feel the approach to tracing and return is insufficiently developed (see box below).

"The Swedish Immigration Board (SIV) believes that children should go home. We share this view but with a number of reservations; the child should go home, if there are parents, if these parents have funds, if schooling can be ensured, if it is in the best interests of the child."

(Caseworker quoted in Swedish assessment)

Spanish legislation foresees that, when family reunification is not possible, the authorities may return a child provided that the relevant child protection authorities of his or her country of origin take responsibility for the minor. In all cases the Spanish authorities must confirm that the return does not entail danger to the child's safety, or trigger persecution of the minor or his or her family.

Dutch policy requires separated children to return to their country of origin where there is adequate care for them there. Care by parents, other family members or care institutions can be considered adequate (i.e. at an acceptable level by local standards). The Ministry of Foreign Affairs, together with the Embassy in the country of origin, carries out the research and its findings are contained in an individual report on the child concerned. Dutch NGOs and the National Ombudsman have expressed doubts as to the reliability of these reports, and the interests of the child do not appear to be paramount. Separated children must also return to the country of origin if they are considered to be independent enough to look after themselves there; an assessment of this is made by the Immigration Department based on whether the child has managed alone for a period of time.

In Italy a social inquiry is often (but not always) carried out by International Social Service on the family to which a separated child belongs to ascertain that there are no risks in a return, and efforts are made to understand the circumstances

surrounding the departure. This also applies to children who appear to have been sold, or to girls who are coming out of sex work. However, there is no attempt to assess the availability of “appropriate care”, as it is considered that Italian standards should not be imposed on people from other cultures where family patterns and relationships differ markedly.

There are no established procedures in Denmark for helping separated children to be repatriated, and therefore no standard list of conditions to be met. However, the reunification of two Somali brothers with their parents and siblings in Northern Somalia by Save the Children Denmark (Red Barnet) is instructive (see box below).

The reunification of two Somali brothers with their parents in Northern Somalia

When the boys arrived in Denmark in 1992, they were four and six years old. After being granted residence permits, they were placed in a Somali children's house in Copenhagen run by Red Barnet. Although they had good daily lives with school, support and care, they never really settled down. They missed their family and siblings enormously. Red Barnet consequently decided to return the boys to Somalia, provided that the parents agreed and were able to offer them reasonable circumstances.

The Red Barnet refugee consultant located the parents, who were not initially inclined to take the boys back. They lived under very poor conditions and were not sure if they would be able to remain in Somalia. They were surprised to learn that the children were unhappy and that the eldest in particular was so depressed that he was probably headed for institutionalisation in a child guidance clinic. The children had always described their lives in Denmark as wonderful to avoid upsetting their parents.

The parents were very concerned that the children were not thriving, but almost a year passed before they decided to take back the boys. The consultant accompanied the children back to Somalia along with two other staff members, and the boys were reunited with their family after a separation of five years. The reunification was a very happy one and the boys soon settled down to life in the family. This success is in part attributable to the fact that the boys spoke Somali with the Somali refugee centre staff and other Somali children throughout their stay in Denmark. Red Barnet staff visited the family again a few months later and found the boys thriving and very happy to be back in their own country.

Red Barnet has since examined the possibilities for returning more children. The primary condition to be met is that the parents are inclined to take the children back. This is very often not the case. One mother lives on the bread-line in a refugee camp in Uganda. Children are obviously not to be returned to such circumstances, so family reunification in Denmark should be the goal.

(Danish assessment)

Recommendation 23: Experience in European states suggests that greater attention and effort must be devoted to ensuring that the conditions and safeguards set out in the UNHCR Guidelines and the SCEP Statement of Good Practice are implemented. Guidelines should be developed at national level specifying which steps to be taken before a separated child is returned including the verification that care will be provided for and basic needs will be met. The following points should be addressed:

- The child should be fully informed at all stages regarding progress in relation to return, and particular care should be taken as to how, when and what children are told about any forthcoming journey to the country of origin.
- The child should be provided throughout with good quality support and counselling; this is particularly necessary prior to return, especially if there is resistance on the part of the child or opposition on the part of the family to a return.
- The child should have established contacts with his or her family before the return.
- Children should be provided with education and professional training that would be useful to them on return to their home country.
- Public authorities and NGOs should prepare a detailed checklist in preparation for return journeys.
- The child must be cared for appropriately during transportation.
- State authorities should maintain regular contact with relevant international organisations involved with return issues.
- Professionals working on return (e.g. social workers, legal personnel) should receive training on the complex issues involved.
- If possible, contact with the child and his or her parents or carers should be maintained after the return journey to monitor the child's progress.
- People who arrive on the territory of a European state as separated children and have reached the age of 18 should be treated in a generous manner, and full regard should be given to their vulnerable status.

Programmes and aid to facilitate reintegration

Although the issue of return has been raised increasingly following the conflicts in Bosnia and Kosovo during the 1990s, the evidence suggests that programmes and aid to facilitate reintegration are as yet limited. In most countries (e.g. France, Ireland, Norway, Portugal) no programmes or schemes have been developed to facilitate the safe return of a separated child to his or her country of origin, although travel expenses for return, and a financial contribution, may be available.

Nevertheless, there are some examples of fledgling attempts to organise programmes. In The Netherlands, for example, there have been plans to make return possible for asylum-seekers whose applications have been rejected, including some separated children from Angola and Ethiopia. However, a pilot project has been discontinued owing to the endurance of dangerous conflict situations in both these countries.

In Sweden, Rädde Barnen established a project with a school to provide education and training for a group of Somali children, including six months in Sweden and then six months in East Africa with a building firm. The basic idea is to train them in skills they will need to use when they return home, and to help them plan their return and their future. In Denmark, Red Barnet has been running three group homes for separated Somali children. The main aim of the projects is to reunite separated children with their parents; however, continuing conflict in Somalia has made it difficult to carry out reunifications on anything but a very small scale (Wright, D., 1998).

In Greece, NGOs have recently attempted to facilitate reintegration in Albania of Albanians who wish to return and settle there. However, most separated children are promoted for family reunification in a third country, not the country of origin.

It appears that the most developed European programme in recent years has been run by the International Social Service in Italy for children arriving from Albania. However, the programme is controversial in that returns may be carried out against the child's wishes, whenever he or she appears to be "at risk" in Italy and there are no obvious solutions for the future (see box below).

Separated children and voluntary return

Most of the separated children from Albania (mainly boys between 14 and 18 years) have no legal status in Italy and are without any form of protection. They often come with the consent of their families in search of better jobs or earning opportunities, and to escape poverty at home. They believe their life in Italy will be better, but this does not correspond with what they find in practice.

Since March 1997, when 12,000 Albanians (and among them 600 separated children) arrived in Italy having fled economic and political crisis in Albania, International Social Service (ISS) has been working on an assisted return programme to that country. Based on an agreement between ISS and the Italian Government, a number of initiatives were provided for:

- organisation of returns (including examination and assessment of every case; accompaniment of the child back to its family or other destination; registration of children in Albania for future intervention and programmes; social support for families of returning children)
- placement of returned children in professional courses or job training in Albania, with the help of Albanian and Italian organisations (including the distribution of work and study scholarships)
- gathering of statistical data on separated children in Italy
- analysis and interpretation of information gathered, so as to prevent departures, improve receptions and promote returns (including the publishing of a guide on the rights of separated children)
- training of staff in return procedures
- organisation of meetings to study the above issues →

According to ISS, their intervention has helped to reunite children with their families and to restore the children's trust in the potential of their country, which a passive and uncomfortable stay in Italy would never have given them. They also state that they are careful not to carry out returns when they are not in the best interest of the child. The conflict in Kosovo has led to a substantial slowdown in the programme.

(Wright, D., 1998.)

Recommendation 24: Programmes to assist the reintegration of returned children should be initiated and supported. In relation to such programmes:

- Support to the child's family and community should be provided through development aid and reintegration programmes.
- International and national aid agencies belonging to government, UN and NGOs need to collaborate and coordinate programs that include or are specifically designed for reintegration assistance.
- More information and research is needed to assess the effect of (reintegration) aid programs and to identify needs and action to be taken regarding returned separated children.

Settlement in a third country

12.3 When a child has a family member in another European state who is willing and able to care for the child then family reunification should be expedited as per paragraph 9. Where she or he has a family member in a non-European third country the opportunity for family reunification should be explored but to the same standards as indicated in paragraph 12.2. Care must be taken in order to ensure that the third country is a safe place for the child.

(SCEP Statement of Good Practice, February 1999)

These principles are based on Article 10(1) of the CRC, which states that applications for family reunification shall be dealt with in a "positive, humane and expeditious manner". They are also underpinned by Article 8 of the ECHR, which states that "everyone has the right to respect for his private and family life, his home and correspondence". Paragraph 10.11 of the 1997 UNHCR Guidelines on Unaccompanied Children argues for swift implementation when it is considered that resettlement is in the child's best interest. ECRE's Position on Refugee Children argues that "States should take immediate steps to allow reunion of refugee children with family members who have already found protection or are otherwise resident in countries outside the region of origin" (paragraph 34).

In practice, it appears that it is extremely rare for the settlement of a separated child to take place in a third country, and in some countries (e.g. Finland, Greece, Ireland, Spain) there are no recorded cases at all.

This is mainly because law and policy in this area is underdeveloped. In Denmark, for instance, there is no law or policy to ensure that a child may be reunified with family members in other European countries or non-European third countries. The family member may apply for the transfer of the child to the country in question, but authorisation depends on an assessment of the individual case and any agreements between the two countries.

Children are sometimes reunited with their relatives in a non-European country; however, no statistics are available. The formal procedure is not a smooth process; indeed, it is tiresome and drawn-out if an asylum-seeker does not have a status, or the government in the country concerned refuses to co-operate. Illegal family reunifications do occur as a result of the complicated procedure. In some cases where separated children leave reception centres for an unknown destination, it turns out they have gone to their relatives in a different country.

In France the small number of cases which arise are dealt with by the International Social Service (ISS). Difficulties are very much linked to the issuing of visas.

Recommendation 25: In general it appears that guidelines and procedures are not in place in European states to assess if settlement in a third country would be in the best interest of the child and to ensure that the decision is reached in accordance with appropriate safeguards. Procedures should be put in place in all European states in order to allow for the transfer of a separated child to a third country if the child has a family member in that country who is willing and able to care for him or her:

- International agreements that consider the best interests of the children as paramount are essential to facilitate family reunification in such cases.
- Decisions must take into account the child's right to participate.
- There is a need for much closer collaboration between European state authorities and NGOs in the countries of origin.

Appendices

Appendix I: List of Country Assessments*

*Note: Most of the assessments have been finalised, but some are still in draft form.

1. Country Assessment: Austria (1999). Heinz Fronck. Asylum Coordination Austria.
2. Country Assessment: Belgium (September 1999). Benoit Van Keirsbilck. Platform "mineurs en exil".
3. Country Assessment: Denmark (June 1999). Birgit Jensen. Save the Children Denmark (Red Barnet).
4. Country Assessment: Finland (August 1999). Inka Hetemäki. Central Union for Child Welfare.
5. Country Assessment: France (September 1999). Armelle Crozet and Jean-Claude Nicolle. France Terre d'Asile.
6. Country Assessment: Germany (December 1999). Steffen Angenendt. Bundesfachverband UMF.
7. Country Assessment: Greece (October 1999). Nafsika Yannopoulou. Save the Children Greece.
8. Country Assessment: Ireland (June 1999). Sara MacNiece and Laura Almirall. Irish Refugee Council.
9. Country Assessment: Italy (March 1999). Ludovica Kirschen and Melanie Taubert. Servizio Sociale Internazionale, Sezione Italia.
10. Country Assessment: Luxembourg (November 1999). Yves Schmidt. Caritas Refugee Service.
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Appendix 2: Questionnaire for Country Assessments

SEPARATED CHILDREN IN EUROPE PROGRAMME

QUESTIONNAIRE FOR COUNTRY ASSESSMENT

* PLEASE READ THE GUIDELINES ON THE FOLLOWING PAGES CAREFULLY *

COUNTRY:

ASSESSMENT PERIOD:

RESPONDENT(S):

AGENCIES/INDIVIDUALS CONSULTED:

DOCUMENTS USED or REFERRED TO:

GUIDELINES ON COMPLETING THE ASSESSMENT QUESTIONNAIRE

1. Read the Statement of Good Practice carefully. Please ensure that you have understood each point fully. If you have any questions about the Statement (content, technical words, etc.) please refer to David Wright, the Alliance co-ordinator for clarification before you begin to complete the questionnaire.
2. It is important that your response be written in **clear and simple** language. Explain any jargon or technical terms. Remember that your responses will be translated into English and so there is much room for misunderstanding!
3. Remember that the way things work in your country will not be clear to those outside it. It will be necessary to include brief explanations, for example, if you are talking about the kind of care available to separated children, give details as to whether this includes foster care, small group home care, placement with relatives or in large institutions.
4. Where relevant please include references to legislation in your country.
5. Give examples (of anonymous cases) where possible as this will be useful for lobbying work at both national and European level.
6. Sections 1-12 in the questionnaire follow the points contained in the Statement of Good Practice, **in the same order**. After each section title you will find in brackets the reference to the relevant point in the Statement of Good Practice as for example: (SGP: C.1).

7. In each section you are asked to give the following information:

- i) Current policy and practice in your country in relation to the point in question. Where relevant this could include information on policy and practice at Central Government level, Local Government level or NGO level. Please read the Statement carefully to ensure that a thorough response is given to each point.
 - ii) To what extent do policy and practice in your country conform to the Statement of Good Practice? Please be explicit even if you must repeat certain information.
 - iii) Whether any changes are needed in your country in relation to the Statement of Good Practice, and whether these changes relate to any of the first principles outlined on pages 2-3 of the Statement. Please indicate which principles are involved by number (numbers 1-11).
 - iv) In some sections there are additional questions to answer.
8. NB: The answers need to be precise and accurate, but they do not need to include all the fine detail. For the purposes of the assessment we need sufficient information to identify the gaps in policy and practice which will inform both national and European programmes of action.
9. Section 13 asks questions relating to the sorts of statistical information that need to be gathered in your country. Please also supply statistical information that is currently available.
10. Section 14 concerns international instruments. Instructions for completion of this section are found there.
11. Section 15 concerns the consultation with young people. Guidelines for consultation are being prepared by the SCEP programme and will be available in due course.
12. Section 16 contains questions relating to an analysis of the political situation in your country.

Thank you and Good Luck!

DEFINITION OF “SEPARATED CHILD” (SGP:A 2.1)

- a) Please give details of the definition used in your country. Different agencies may apply different definitions. Please give details of this.
- b) Are children with older siblings over 18 years of age considered to be separated children? Please refer to Annex II of UNHCR Guidelines 1997.
- c) To what extent does this conform to the Statement?
- d) Are any changes needed? In relation to any first principle?

I. ACCESS TO THE TERRITORY (SGP: C1)

- 1.a) Please describe relevant law, policy and practice in your country.
- 1.b) To what extent does this conform to the Statement? Please outline in brief.
- 1.c) Are any changes needed? In relation to any first principle?
- 1.d) Please also indicate whether your country has ‘carrier liability legislation’ whereby airlines, train and boat companies can be fined if they bring in someone without proper documentation. Is this applied to children and young people under the age of 18?

Trafficking (SGP: C1.2)

- 1.e) Are you aware of any children being trafficked for purposes of exploitation into your country? If so please give brief example(s) stating if possible the country of origin and nature of trafficking. Please also give examples where children have travelled along trafficking routes in order to apply for asylum.
- 1.f) Have any measures been taken by the state to combat trafficking of any sort?

2. IDENTIFICATION (SGP: C2)

2. a) Please describe relevant law, policy and practice in your country.
- 2.b) To what extent does this conform to the Statement? Please outline in brief.
- 2.c) Are any changes needed? In relation to any first principle?

3. APPOINTMENT OF GUARDIAN OR ADVISER (SGP: C3)

- 3.a) Is a guardian or adviser appointed?
- 3.b) If so what is their role?

- 3.c) How soon after arrival are they normally appointed ?
- 3.d) What kind of background and expertise do guardians/advisers have?
- 3.e) To what extent does this conform to the Statement? Please outline in brief.
- 3.f) Are any changes needed? In relation to any first principles?

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

- 4.a) Please describe relevant law, policy and practice in your country.
- 4.b) To what extent does this conform to the Statement? Please outline in brief.
- 4.c) Are any changes needed? In relation to any first principle?

5. AGE ASSESSMENT (SGP: C5)

- 5.a) Please describe relevant law, policy and practice in your country.
- 5.b) To what extent does this conform to the Statement? Please outline in brief.
- 5.c) Are any changes needed? In relation to any first principle?

6. DETENTION (SGP: C6)

- 6.a) Please describe relevant law, policy and practice in your country.
- 6.b) To what extent does this conform to the Statement? Please outline in brief.
- 6.c) Are any changes needed? In relation to any first principle?

7. RIGHT TO PARTICIPATE (SGP:C7)

- 7.a) Please describe relevant law, policy and practice in your country.
- 7.b) To what extent does this conform to the Statement? Please outline in brief.
- 7.c) Are any changes needed? In relation to any other first principle?

8. FAMILY TRACING & CONTACT (SGP: C8)

- 8.a) Please describe relevant law, policy and practice in your country.
- 8.b) To what extent does this conform to the Statement? Please outline in brief.
- 8.c) Are any changes needed? In relation to any first principle?

9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY (SGP: C9)

- 9.a) Please describe relevant law, policy and practice in your country.
- 9.b) Does this conform to the Statement? Please outline in brief.
- 9.c) Are any changes needed? In relation to any first principles?

10. INTERIM CARE: HEALTH, EDUCATION AND TRAINING (SGP: C10)

Interim Care (SGP:C10.1)

- 10.a) Please describe relevant law, policy and practice in your country.
- 10.b) To what extent does this conform to the Statement? Please outline in brief.
- 10.c) Are any changes needed? In relation to any first principles?

Health (SGP:C10.2)

- 10.d) Please describe relevant law, policy and practice in your country.
- 10.e) To what extent does this conform to the Statement? Please outline in brief.
- 10.f) Are any changes needed? In relation to any first principles?

Education, Language and Training (SGP: C10.3)

- 10.g) Please describe relevant law, policy and practice in your country.
- 10.h) To what extent does this conform to the Statement? Please outline in brief.
- 10.i) Are any changes needed? In relation to any first principles?

11. REFUGEE DETERMINATION PROCESS (SGP: C11)

Access to Normal Procedures (SGP: C11.1)

- 11.a) Please describe relevant law, policy and practice in your country.
- 11.b) To what extent does this conform to the Statement? Please outline in brief.
- 11.c) Are any changes needed? In relation to any first principles?

Legal Representation (SGP: C11.2)

- 11.d) Please describe relevant law, policy and practice in your country.
- 11.e) To what extent does this conform to the Statement? Please outline in brief.
- 11.f) Are any changes needed? In relation to any first principles?

Minimal Procedural Guarantees (SGP: C I I.3)

- 11.g) Please describe relevant law, policy and practice in your country.
- 11.h) To what extent does this conform to the Statement? Please outline in brief.
- 11.i) Are any changes needed? In relation to any first principles?

Independent Assessment (SGP: C I I.4)

- 11.j) Please describe relevant law, policy and practice in your country.
- 11.k) To what extent does this conform to the Statement? Please outline in brief.
- 11.l) Are any changes needed? In relation to any first principles?

Interviews (SGP: C I I.5)

- 11.m) Please describe relevant law, policy and practice in your country.
- 11.n) To what extent does this conform to the Statement? Please outline in brief.
- 11.o) Are any changes needed? In relation to any first principles?

Criteria for Making a Decision on a Child's Asylum Application (SGP: C I I.6)

- 11.p) Please describe relevant law, policy and practice in your country.
- 11.q) To what extent does this conform to the Statement? Please outline in brief.
- 11.r) Are any changes needed? In relation to any first principles?

Young People Who Become Adults during the Asylum Process (SGP: C I I.7)

- 11.s) Please describe relevant law, policy and practice in your country.
- 11.t) To what extent does this conform to the Statement? Please outline in brief.
- 11.u) Are any changes needed? In relation to any first principles?

12. DURABLE SOLUTIONS (SGP: C I 2)

Remaining in a Host Country or Country of Asylum (SGP: C I 2.1)

Grounds for a Child Remaining in a Host Country (SGP: C I 2.1.1)

- 12.a) Please describe relevant law, policy and practice in your country.
- 12.b) To what extent does this conform to the Statement? Please outline in brief.
- 12.c) Are any changes needed? In relation to any first principles?

Family Reunification in Host Country (SGP: C12.1.2)

- 12.d) Please describe relevant law, policy and practice in your country.
- 12.e) To what extent does this conform to the Statement? Please outline in brief.
- 12.f) Are any changes needed? In relation to any first principles?

Integration (SGP: C12.1.3)

- 12.g) Please describe relevant law, policy and practice in your country.
- 12.h) To what extent does this conform to the Statement? Please outline in brief.
- 12.i) Are any changes needed? In relation to any first principles?

Adoption (SGP: C12.1.4)

- 12.j) Please describe relevant law, policy and practice in your country.
- 12.k) To what extent does this conform to the Statement? Please outline in brief.
- 12.l) Are any changes needed? In relation to any first principles?

Identity and Nationality (SGP: C12.1.5)

- 12.m) Please describe relevant law, policy and practice in your country.
- 12.n) To what extent does this conform to the Statement? Please outline in brief.
- 12.o) Are any changes needed? In relation to any first principles?

Family Reunification and Returns to a Country of Origin (SGP: C12.2)

Voluntary Return (SGP: C12.2.1)

- 12.p) Please describe relevant law, policy and practice in your country.
- 12.q) To what extent does this conform to the Statement? Please outline in brief.
- 12.r) Are any changes needed? In relation to any first principles?

Conditions that Must be Fulfilled prior to Return (SGP: C12.2.2)

- 12.s) Please describe relevant law, policy and practice in your country.
- 12.t) To what extent does this conform to the Statement? Please outline in brief.
- 12.u) Are any changes needed? In relation to any first principles?

Programmes and Aid to Facilitate Reintegration (SGP: C12.2.2)

- 12.v) Please describe relevant law, policy and practice in your country.
- 12.w) To what extent does this conform to the Statement? Please outline in brief.
- 12.x) Are any changes needed? In relation to any first principles?

Settlement in a Third Country (SGP: C12.3)

12.y) Please describe relevant law, policy and practice in your country.

12.z) To what extent does this conform to the Statement? Please outline in brief.

12.zz) Are any changes needed? In relation to any first principles?

13. DATA COLLECTION

Good data on separated children is required to assist the implementation of good practice.

- a. Who should be responsible for collecting data on separated children? Please consider both government departments and NGOs.
- b. What sort of data is required? From government? From NGOs?
- c. Please provide any current (1997-1999) data on separated children which is available (from both government and NGOs). We appreciate that at this time most of this data will relate to asylum applications by separated children.

14. INTERNATIONAL INSTRUMENTS

Please indicate whether your country has signed or fully ratified the following international and regional conventions and covenants. As well please indicate whether rules and guidelines are being implemented.

14.1 Refugees

- 1951 UN Convention relating to the status of refugees.
- 1967 Protocol relating to the status of refugees.
- UNHCR:
 - The Handbook on Procedures and Criteria for Determining Refugee Status, paras 213-216
 - Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997

14.2 International Human Rights Instruments

- UN Declaration on Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966 (and Optional Protocol)
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention for the reduction of statelessness, 1961

- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol 11)
- Convention against Torture, 1984, Art. 3
- Convention for the Elimination of all Forms of Racial Discrimination (1966)

14.3 Children – International and Regional Instruments

- UN Convention on the Rights of the Child, 1989
- UN Standard Minimum Rules for the Administration of Juvenile Justice (25 Nov., 1985)
- UN Rules for the Protection of Juveniles Deprived of Their Liberty (“Beijing Rules”) 1990
- European Convention on the Repatriation of Minors, 1970
- European Convention on the Exercise of Children’s Rights, 1996
- Hague Conference on Private International Law:
NB: Please also indicate whether your country is in the process of ratifying any of the Hague Conventions?
- Convention for the Protection of Minors, 1961
- Convention on the Civil Aspects of International Child Abduction, 1980
- Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993 and the associated “Recommendation on the Application of the Convention to Refugee Children”
- Convention on Jurisdiction, Applicable Law, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996 (not in force yet)
- European Union
NB: Has your country implemented the following EU policies?
- Joint Action to Combat Human Trafficking and the Sexual Exploitation of Children, Feb. 1997
- Council Resolution on unaccompanied minors who are nationals of third countries, June 1997 – **NB: Please indicate briefly the extent to which your country has implemented this resolution.**

14.4 Europe

- European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols), 1950.
- The Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Community (Dublin Convention), 1990.
- Schengen Convention, 1990
- European Union
NB: Has your country implemented the following European Union asylum policies?
- Joint Position on the harmonised application of the definition of the term “refugee” in Article 1 of the 1951 Geneva Convention relating to the status of refugees, Council of the EU, March 1996
- Resolution on Minimum Guarantees for Asylum Procedures, June 1995
- Resolution on manifestly unfounded applications for asylum, 1992
- Resolution on a harmonised approach to questions concerning host third countries, 1992
- Conclusions on countries in which there is generally no serious risk of persecution, 1992
- Resolution on the harmonisation of national policies on family reunification, June 1993
- Council of Europe
- European Social Charter, 1961

15. CONSULTATION WITH SEPARATED YOUNG PEOPLE

The SCEP programme is developing guidance on carrying out a consultation with young people. This will be available in the near future. In the meantime these are some preliminary ideas on the kinds of information that might be useful:

- Describe the young people who were consulted: age, sex, country of origin.
- What are the main problems (in any areas) that they encountered since arriving in your country?
- What positive experiences did they have since arriving in your country?
- What recommendations or ideas did they express as to how their experiences could have been improved?

16. POLITICAL LEVEL – SUPPORT FOR CHANGE

Please where possible provide the following information:

- describe the level of contact NGOs working with separated children have with: central government departments, local and regional governments
- describe any contacts with European institutions eg: MEPs, European Commission (NB: please give names)
- can you identify, at the different political levels, any sources of support for improving the situation of separated children?
- can you identify, at the different political levels, the main obstacles to change?

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Appendix 3: The international legal context

The main international instruments are: the 1989 UN Convention on the Rights of the Child; the 1951 UN Convention (the “Geneva Convention”) and the 1967 Protocol relating to the status of refugees; UNHCR Guidelines; and the 1996 Hague Convention for the Protection of Children. Other relevant instruments include: The International Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1979 International Convention on Eliminating All Forms of Discrimination Against Women; and the 1984 International Convention Against Torture.

The 1951 UN Convention (the “Geneva Convention”) and the 1967 Protocol relating to the Status of Refugees

The 1951 Convention relating to the Status of Refugees (the Refugee Convention) is an essential human rights instrument. Crucially, it supports and complements other human rights treaties agreed by the international community. Drafted in the aftermath of the Second World War, the Convention has been successfully invoked in the protection of millions of refugees, and it remains the foundation of refugee protection across the globe.

The Convention establishes minimum standards that have to be accorded to refugees in the areas of civil and political as well as economic, social and cultural rights. As the 1993 Vienna Declaration on Human Rights makes plain, fifty years after its completion, the Refugee Convention remains a relevant and useful tool to address refugee problems.

The 1989 UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC) encompasses the full family of human rights (civil, political, economic, social and cultural) and should be regarded as a primary source document for establishing the rights of separated children. The vision of the Convention – that children should be seen as holders of human rights, and that societies have particular obligations towards children – has helped to focus greater attention on their circumstances and can also be usefully applied to the situation of separated children. Nevertheless, there remains much to do if the principles of the Convention are to be translated into practical action at all levels (International Save the Children Alliance, 1999).

The general provisions of Articles 2, 3 and 12 of the CRC are of central importance for separated children. Article 2 (the “non-discrimination” principle) emphasises that all the rights in the Convention must all apply to all children in a particular state. In other words, they must apply not only to those who are citizens of that state, but also to those who are asylum-seekers or refugees. Article 3 stipulates that the “best interests” of the child shall be a primary consideration in all actions concerning children. And Article 12 sets out the right of the child to participate in decisions affecting him or her.

There are also more specific provisions which are relevant, and which should be read in conjunction with the “umbrella” articles. Article 22, in particular, sets out the rights of a child who is seeking refugee status, or who is considered a refugee – accompanied or unaccompanied – in accordance with international or domestic law to receive appropriate protection and humanitarian assistance.¹ A range of other Articles are pertinent:

- Article 6: the right to life and development
- Article 7: the right to a name and nationality
- Article 9: the right to live with one’s family and, where separation does take place, the right to maintain contact with both parents
- Article 10: the right to family reunification
- Article 16: the right to protection from interference with privacy, family and home
- Article 17: the right of access to appropriate information
- Article 19: the right to protection from all forms of violence
- Article 24: the right to health and health services
- Article 26: the right to benefit from social security
- Article 28: the right to education
- Article 29: the duty of the Government to direct education at developing the child’s fullest personality and talents and promoting respect for human rights
- Article 30: the right of minority groups to enjoy their own culture, language and religion
- Article 31: the right to play
- Article 34: the right to protection from sexual exploitation
- Article 35: the duty of the Government to protect children from abduction and trafficking
- Article 37: the right not to be subjected to cruel, inhuman or degrading treatment or punishment
- Article 38: the duty of the Government to take all feasible measures to protect children affected by armed conflict
- Article 39: the duty of the Government to take measures to ensure that child victims of armed conflict, torture, neglect or exploitation receive treatment for recovery and social integration.

¹ Some governments (e.g. Germany, UK) have made “reservations” to the CRC which affect separated children.

The development of UNHCR Guidelines

The increasing focus on children's rights globally – especially during the last decade following the adoption of the CRC – prompted the creation in 1994 of UNHCR Guidelines on the protection and care of refugee children (UNHCR, 1994). These recognise the centrality of the CRC as a frame of reference, and reflect the content of the CRC Articles. Building on this innovation, in 1997 UNHCR produced a further set of Guidelines in relation to separated children (UNHCR, 1997), rooted in the guiding principle of the “best interests of the child” in any childcare and protection action. These Guidelines are intended to ensure the delivery of effective protection and assistance in a systematic, comprehensive and integrated manner.

The 1996 Hague Convention for the Protection of Children

Although the framework of law and guidance set out above (and supplemented by the instruments mentioned at the start of this section) appears well-developed, there are nevertheless some weaknesses. In relation to the CRC, for instance, it has been argued that the Articles are cast in “programmatic” language rather than in terms of precise rights and duties, and that these are difficult to enforce before domestic courts.

The Hague Conventions on child abduction (1980), intercountry adoption (1993), and the protection of children (1961; 19 October 1996) can be seen as instruments that implement some of the major objectives of the CRC, and address the legal and jurisdictional gaps which exist.

The 1996 Hague Convention has not yet come into force (this requires ratification by three states). Dealing primarily with issues which relate to the processing of cases and adequate protection for children (rather than issues about their status), it appears, nevertheless, that it would provide a robust framework of law to promote effectively the rights of separated children. In particular, Article 6 specifically includes asylum-seeking and refugee children (and other internationally displaced children) within the scope of the Convention, and seeks to tackle the problem of states alleging that they lack competence to take protection measures for children whose situation is unclear. The mere fact of a refugee or displaced child being present on the territory of a Contracting State will be sufficient for the authorities of that state to intervene.

Whereas Article 6 confirms explicitly a principle already contained in the 1961 Convention, the new Convention also provides new avenues for international co-operation to protect refugee children via the appointment of a “Central Authority” in each Contracting State, with defined duties. Overall, the Convention has the potential to play a major role in the protection of refugee children, and it is therefore to be hoped that it will come into force soon as a result of further ratifications.

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