



Separated Children in Europe Programme

Position Paper on the Use of Biometric Data

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1. Introduction

1.1 The Separated Children in Europe Programme

The Separated Children in Europe Programme (SCEP) is a joint initiative of some members of the International Save the Children Alliance together with the United Nations High Commissioner for Refugees (UNHCR)¹. The Programme was initiated in 1997 and is based on the complementary mandates and areas of expertise of the two organizations. The International Save the Children Alliance is focused on the full realisation of children's rights. UNHCR's responsibility is to ensure the protection of refugee children and those seeking asylum. As part of this process SCEP has developed and extended a network of non-governmental organizations across 30 countries throughout Europe. A commitment to the full implementation of the United Nations Convention on the Rights of the Child (CRC) is fundamental to the work of the Programme. In realising the rights of separated children who have come to or transit through Europe, SCEP aims to establish a shared policy and commitment to best practice at both national and European levels. The purpose of this paper is to set out SCEP's position to inform on-going policy developments at the national and European Union (EU) levels on the use of biometric² data.

1.2 SCEP's Definition of a Separated Child

In order to reflect the true situation of many children the Programme adopted a broad definition of the term 'separated child', which recognises that some children may appear 'accompanied' when they arrive in Europe but in practice the accompanying adult may be unable or unsuitable to assume responsibility for their care.

'Separated children are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP, 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 the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have traveled to Europe to escape conditions of serious deprivation'³

¹ This paper does not necessarily represent the views or position of UNHCR.

² The term biometrics refers to measurable systems that use physical or physiological characteristics to recognise or verify the identity of an individual.

³ Separated Children in Europe Programme, Statement of Good Practice 3rd Edition 2004.

2. Recommended Procedure for the Undertaking of Biometric Tests

Based on the research, expert consultation and the principles outlined in this position paper, SCEP takes the position that if a separated child is to be subjected to any type of biometric testing the following procedure should be used as a measure of safeguarding the child.

- The purpose for undertaking the test must be clear – what information is being sought and why.
- Confirmation must be gained that biometric testing is the best option available to gather the information that is sought.
- The decision to pursue testing must be made in the best interests of the child.
- The procedures must be explained clearly to the child.
- Counseling must be provided to help the child consider the impact of unforeseen revelations that may arise from the testing as well as the possible consequences of the information.
- The child must give informed consent.
- A guardian should accompany the child or, where there is no guardian, an independent and responsible adult (unless the child states that they would prefer not to be accompanied).
- The least invasive method of biometric testing should be used.
- The test should be administered by trained staff skilled in working with children.
- The outcome(s) of the test should be shared with the child or their guardian promptly.
- In case of doubts or a large margin of error, the decision taken must be the most favourable to the child and in their best interests.
- There must be access to an independent appeals procedure.

Whatever the merits of using biometric data, the procedures underpinning the application of testing are critical. All procedures should be open and transparent. They must be consistent and must outline agreed and objective criteria that need to be met in deciding on the appropriateness of testing separated children. There should be agreed standards of practice and practitioners need to be accountable for their practice. Interviewers and those who administer the tests should receive appropriate training in working with separated children and this should manifest itself in child sensitive practice. The State should fund the costs of biometric testing and the burden of proof should not lie with the applicant.

Procedures should also be undertaken in a timely fashion to minimize uncertainty and reach outcomes promptly. A case study from the Netherlands outlines a mother waiting for one year from the time she established the location of her child to the time of reunion. This was because the procedure for gathering and examining her child's DNA took this length of time.

3. Background

Central to the EU's desire to effectively control its external borders and to manage movement after entry within the Union is the need to accurately identify individuals who wish to enter its territory. The development of effective identification methods is also consistent with the EU's aim of building common asylum and immigration policies and the harmonization of practice regarding procedures and standards of reception and care within Member States. The current, anti terrorism agenda, rising xenophobia and fears about weaknesses in border control following the recent expansion of the EU

are all factors which have contributed to placing the search for more accurate and reliable identification techniques at the forefront of the agenda of those concerned with immigration control. The political agenda has ensured the availability of the necessary resources to pursue this search and a number of sophisticated technologies are becoming available to immigration departments throughout the EU. These developments are likely to assist in the identification of irregular migrants who seek to gain entry to the EU.

It is reasonable for EU Member States to take measures to identify those wishing to enter its territory. The 3rd edition of SCEP's *Statement of Good Practice* stresses the importance of identifying and registering separated children and offers good practice on how this should be done⁴. The use of biometric testing can make a beneficial contribution to practice concerning separated children. For example, there is scope for biometric testing to be used positively in the reuniting of families separated across Europe. However any potential benefit needs to be balanced against ethical, practical, financial and administrative considerations. The use of biometric data is currently in its infancy and as yet there is little knowledge about possible drawbacks. Article 8 of the European Charter of Human Rights refers to an individual's right to respect for private life and implicit within this is the respect for the individual's physical integrity. Throughout any procedures using biometric data human dignity should be fully respected. All personal data should be obtained fairly and lawfully and it should only be processed for specific and legitimate purposes.

Although most biometric systems are deemed to be reliable it could be dangerous to put too much trust in them, as a recent experts' report points out:

‘An absolutely certain match or non-match between the enrolled data and the data subsequently submitted to the system is technically unfeasible. The use of a system based on biometric data relies inevitably on a mere statistical certainty. There is no zero default system. If the enrolled and submitted data match with a sufficient degree of probability, the data subject will be recognized by the system. Biometric systems are thus inherently fallible.’⁵

Thus in instances where the child's testimony differs from the findings of a biometric test it should not automatically be assumed that the test is accurate. Where a separated child disputes the findings following a biometric test they should be able to challenge these findings through an independent appeals process. This appeals process should be designed so that it recognizes and responds to the particular needs of separated children and is readily useable by them.

It is also important to bear in mind that even if biometric testing establishes that a child's stated identity is false this does not necessarily invalidate the child's asylum application or claim to other social protection (such as that provided to victims of trafficking and exploitation). For example a separated child may have had to travel on a false passport in order to escape persecution in their country of origin.

⁴Separated Children in Europe Programme, *Statement of Good Practice 3rd Edition*, p15 and p17

⁵ Progress Report on the Application of the Principles of Convention 108 to the Collection and Processing of Biometric Data: Council of Europe Consultative Committee of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, February 2005.

The costs associated with biometric tests are significant. It is likely that they will be beyond the means of all separated children. Similarly exceptionally few families will be able to fund tests as part of the process of providing evidence to link them to their children. The use of biometric tests in relation to separated children is invariably used as a means to establish identity within the context of whether a child should be allowed to remain within or enter into an EU Member State. In some instances a separated child or their family may initiate a request to partake of a biometric test but this will always be because of the need to fulfill requirements of the State. For example a parent may resort to DNA testing to prove the link to their child because without the evidence that the tests are deemed to provide family reunification will be blocked by the State. Thus the costs of any biometric test should not be borne by the individual applicant but should be met in full by the State.

4. Overview of the Impact of Biometric Testing on Separated Children.

An initial consideration of the pros and cons of the use of biometric data as it could impact upon separated children is presented below:

Potential Benefits to Separated Children	Potential Difficulties
<ul style="list-style-type: none"> ▪ Accurate identification. ▪ Accurate information with which to facilitate family tracing. ▪ Could facilitate the gathering of information for more effective registration. ▪ Assistance in tracking and resolving disappearances. ▪ Could prevent as well as assist in discovering abuse / trafficking. ▪ Prevention of the inappropriate use of the asylum determination system or repatriation/assistance programmes. ▪ Aid to children wishing to exercise their right to identity and nationality. 	<ul style="list-style-type: none"> ▪ May be traumatizing to children. ▪ Could be used to discriminate. ▪ Some measures (fingerprinting) are not reliable. ▪ Raises serious data protection concerns with potential subsequent risks to children. ▪ Danger of a restricted perception of family based solely on biological factors. ▪ Different concepts of family and lack of appreciation that many separated children's principle carers are not their immediate family. ▪ Truth may undermine family unity in cases where there was infidelity or rape that led to birth. ▪ Measures may be expensive and not the best use of limited resources. ▪ Could be viewed as a violation of privacy. ▪ Could simply be a measure of immigration control and rule out consideration of applicant who may have grounds to stay.

5. Child Led Agenda / Child Protection Approach

The CRC, ratified by all EU Member States, provides the most important legal framework for policy responses concerning children. Whilst all of the 54 Articles within the CRC are important and contribute to ensuring that the document is comprehensive in its coverage of survival, developmental, protection and participation rights there are 3 particular articles which underpin the Convention. These are the articles relating to ‘best interests of the child’, ‘non-discrimination’ and ‘the child’s right to be heard’. The principles and values enshrined within these articles run throughout the convention and inform the application of all the remaining articles therein.

5.1 The Best Interests of the Child

Article 3 of the Convention deals with the principle of the ‘best interests of the child’ and states,

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁶

Generally speaking the domestic legislation of EU Member States recognises that where state bodies make decisions concerning children they will be made in the best interests of the child concerned. References are made to the best interests of children in the European Charter of Fundamental Human Rights and in some of the EU’s many directives and regulations. Thus to a greater or lesser extent the ‘best interests’ principle is being used at Member State level in the development of child welfare and child protection legislation and policy. National courts regularly use agreed and prioritised criteria to make decisions in child welfare cases based on the best interest of the child.

However the principle is applied much less in the area of immigration legislation. Childcare law is generally based on the rights of children and acknowledges their role as stakeholders in society and encourages participation in processes whereas immigration law is far more restrictive, based on notions of public order and security and at least partially inspired by principles of sovereignty and security. In signing the CRC both Germany and the United Kingdom entered reservations relating to the primacy of immigration control over the best interests of children and in practice other Member States mirror this even though they have not entered a formal reservation. Immigration control effectively takes precedence over childcare law when matters fall within both jurisdictions.

Biometric testing should only be applied in relation to separated children when it can clearly be demonstrated that the decision to do so has been based *solely* on the best interests of the child. In assessing whether this ‘best interests’ threshold has been met consideration should be given to a number of factors including:

- Is biometric testing really necessary to accurately identify the child?
- What are the ascertainable wishes of the child?
- What is the level of vulnerability of the child and will biometric testing serve to protect them?
- Will biometric testing aid family reunification?

⁶ The United Nations Convention on the Rights of the Child, Article 3, 1989

- Have the risks associated with the possible emergence of previously unknown information been assessed?
- Will testing add further to any trauma a child may have experienced?

The child must be informed of the reason for testing and the likely perceived outcomes. They should receive support in thinking through the possible outcomes and the possibility of hitherto unknown information emerging, which may have great significance for the child or their family. These should be anticipated as far as possible and thought should be given to supporting children and their families in order to deal with unexpected revelations.

Before biometric procedures are initiated the purpose of the test must be clarified and consideration given to whether the information sought can be gathered by other more appropriate methods. For example, DNA testing may establish the identity of a child's biological parents but a simple series of interviews may also achieve the same result. Similarly a DNA test may establish that contrary to the child's and their 'father's' understanding the 'father' is not their biological parent. However if the adult male has effectively acted as the father and is a primary and stable carer of the child this relationship should only be disrupted if it is absolutely necessary. If the important fact that needs to be established is the identity of the child's primary carer(s) then this may be achievable through interviews or consideration of documentary evidence rather than resorting to DNA testing. Only if it is absolutely necessary to establish the child's biological parents should DNA testing be considered.

5.2 Security of Data

The vulnerability of separated children is widely recognised. Recent SCEP research⁷ identified that many separated children do not receive an appropriate level of care and support. Many are isolated and marginalized and in consequence may be at greater risk of harm than citizen children, from those adults who seek to exploit them. It is thus essential that information gathered on separated children through biometric testing is stored in strictest confidentiality in secure settings and is only retrieved under strict procedures. Existing data protection legislation should be seen as a minimum requirement. In order to prevent sensitive information relating to children falling into the wrong hands it is essential that all staff handling this information are subject to detailed employment checks. This would serve to minimise the risk of appointing staff who have previously harmed or abused children. Only if robust procedures for maintaining confidentiality and data control are established can it be ensured that the child is protected from harm and abuse (article 19 of the CRC) and that their right to privacy (article 16 CRC) is respected.

5.3 Non-Discrimination

The principle of non-discrimination is presented at Article 2 of the CRC,

States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion,

⁷ Separated Children in Europe, Policies and Practices in European Union Member States: A Comparative Analysis, 2003

political or other opinion, national, ethnic or social group, property, disability, birth or other status.⁸

This article is clearly important for all children. It is particularly relevant for separated children, who by definition, are outside their country of origin. There is an extremely strong likelihood that, in their country of arrival, they will be in a minority regarding their nationality, language, race, ethnicity, colour and possibly religion. Those separated children seeking asylum will already have experienced discrimination and persecution and some girls and young women may have sought exile as a result of gender specific persecution or harmful traditional practices.

It is thus essential that any application of biometric testing and storage of information acquired through the use of biometric testing be administered in a manner that is non-discriminatory. It would be inappropriate to select any particular group as being more suitable for testing, for example where there are assumptions that particular communities or nationalities 'lend' children to make fraudulent benefit claims. Similarly children who are from 'safe countries' or from countries whose nationals are subject to accelerated asylum procedures should not be singled out merely because there are existing assumptions about the credibility of their asylum claim. The decision whether to use biometric testing should only be made on the circumstances of each individual child and must be based on the merits of each case.

The practicalities of testing should also be sensitive to gender and culture. Even where procedures are deemed not to be physically invasive great care should be taken to ensure that the child is comfortable with the gender of the person administering the tests. Procedures should be explained clearly in a language that the child fully understands and the level of language should be appropriate to the child's maturity and understanding. Practitioners should appreciate and manage the level of anxiety a child may experience with any form of 'medical' procedure, particularly if they have witnessed or experienced torture. Settings should endeavour to be suitably child friendly.

5.4 The Child's Right to be Heard

Article 12 states:

'States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'⁹

The article further outlines that:

'For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law'¹⁰

⁸ The United Nations Convention on the Rights of the Child, Article 2, 1989

⁹ The United Nations Convention on the Rights of the Child, Article 12 (1), 1989

¹⁰ The United Nations Convention on the Rights of the Child, Article 12 (2), 1989

This right to be heard and to participate only becomes meaningful if the views of the child are listened to and are allowed to inform outcomes that impact upon him or her. If this article is to be applied in practice regarding biometric testing then it follows that testing should only take place with the consent of the child, though this will need to be balanced with the best interests of the child. Further, consent should be informed and hence children need to be presented with all the information that they require in order to enable them to fully understand the consequence of testing. Where a child is unable to give informed consent, perhaps because of their age or mental capacity, the decisions regarding the application of biometric testing should only be made by their guardian or, in the absence thereof, by courts within existing child welfare settings. Children should never be encouraged or coerced into giving their consent and if they decline to consent to testing this should not be taken as an assumption that the child wishes to mislead the authorities and should not prejudice outcomes or influence long-term status decisions.

6. Types of Biometric Data

Biometric data is always collected or derived from the human body. As already noted the use of biometric technologies is still developing. The main types of biometric data currently in operation are:

- Fingerprints
- X-rays
- Iris scans
- Examination of DNA
- Face recognition - digital photographs

6.1 Fingerprints

The use of fingerprints as a method of identifying irregular migrants is a reasonably well-established procedure, which is used regarding both adults and children. A pre-requisite is an effective storage and retrieval system. The procedure requires the subject to place their fingers on an electronic pad, which creates a copy of their fingerprints. It is of critical importance that the procedures are explained clearly to children in a language and style that they can understand and in a non-intimidating manner. With the exception of immigration control, fingerprints are usually only taken for criminal and law enforcement measures. In consequence there is a danger that separated children who have their fingerprints taken may believe that they are being suspected of having committed a crime and in consequence may feel stigmatized or afraid. There are examples of adults who have attempted to remove their fingerprints, either by burning their fingers or applying acid to them. There is a slight concern that adults wishing to exploit or abuse a child could submit them to these methods should it suit the adult's purpose to prevent the child from being identified.

6.2 X-rays

The use of x-rays is current practice in many countries particularly where the authorities doubt the stated age of an applicant. This may be because the authorities believe an applicant is saying that they are younger than their actual age to benefit from the concessions and services available to separated children. The issue also arises where trafficked or migrant children claim to be older than they are

because they wish to work or because they have been instructed to state that they are older by adults who do not want the childcare services involved as this will hinder their plans to exploit the child. Once again practice is variable with some States applying x-rays to the collarbone whilst others consider the wrist and others the teeth of the applicant and in some instances a combination is used. In some situations the assessment of age is based on an examination of materials gathered from abroad.

As medical science cautions against the use of x-rays and the dangers of side effects where there are repeated exposures consent is usually sought from the applicant whose age is disputed, before x-rays are taken. However in instances of separated children the question arises concerning the level of appreciation of the risks involved and whether or not agreement to undertake the procedure is gained with informed consent. A refusal to agree to x-rays being taken should not prejudice the assessment of age or the outcome of the asylum application. In practice if the young person doesn't agree to x-rays being taken as part of the age assessment process they are invariably deemed to be an adult because the burden of proof rests with the applicant. Medical practitioners state that the use of x-rays does not provide an accurate assessment of age and a margin of error of at least 2 or 3 years (in the UK the Royal College of Pediatricians have suggested 5 years) needs to be allowed either side of the estimated age. At least one professional body of radiographers has questioned whether it is ethical for their members to engage in procedures that are not used to inform a medical diagnosis. In short, the effectiveness of x-rays both as a means to assess age and aid identification is highly dubious.

6.3 Iris Scans

This is a new and emerging technology. The subject places their eye immediately in front of a scanner where an image of their iris is taken and electronically stored. For many separated children this is likely to feel similar to a medical procedure and they can be reasonably expected to approach it hesitantly or even with trepidation, anxiety and fear. Once again the key to managing this process in a manner that is appropriate for children is a clear and full explanation of the procedure by staff who should approach the child in a supportive and non-threatening manner. It is imperative to take the time to reassure the child about the process. Perhaps staff could demonstrate to the child how the scan will be undertaken. The environment where the scans will be conducted should be designed in such a way so that children will feel relatively comfortable throughout the process.

6.4 DNA Testing

DNA testing is one of the most reliable means of biometric testing and has an established record of widespread and accurate use in tracing and subsequently establishing identity. Although most body tissue can be used to initiate a search and/or match the usual procedure is to take a swab of saliva, from the subject. Although this method involves a relatively minor physical invasion of privacy the same pre-requisite that the process is carefully explained to separated children is of critical importance. As with fingerprinting above, historically the use of DNA testing as a tool to aid identification is linked to criminal investigations and the solving of crimes. Thus the concerns expressed above in relation to stigmatization are also relevant here.

6.5 Face Recognition - Digital Photographs

The requirement from many States that digital photographs will soon need to be affixed to all valid travel documents is impacting on the type of photographs that will be deemed suitable. Many children, though not all, are used to being photographed and feel comfortable with a process that is relatively unthreatening. Nevertheless the requirement to adequately explain processes and the reasons for taking a child's photograph still remains.

7. Uses of Biometric Data

There has been considerable anecdotal evidence that the use of biometric data will enable the successful resolution of a number of issues that impact on separated children. However, further consideration of these issues is required.

7.1 Identification and Registration

According to SCEP's *Statement of Good Practice*, identifying separated children and then accurately registering and documenting their arrival is of critical importance if their welfare needs and future links with family are to be properly addressed. The *Statement* outlines the process for completing these tasks in a manner that is child sensitive.

‘At ports of entry immigration authorities should put in place procedures to identify separated children and to refer such children to the appropriate child welfare authorities. Where an adult accompanies children, 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. Some children become separated after entry into a country (breakdown of family situation, departure of caregiver etc). Immigration and refugee determination authorities should ensure that any change of status resulting from that separation is reflected in their procedures.’¹¹

‘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. Immigration and border police officers should limit their interviews to gathering basic information about the child's identity. Interviews with immigration authorities should always be carried out in the presence of legal counsel, a guardian or other mandated person. A complete social history should be taken by the competent child welfare authority or other designated organisation with care duties towards the child. All those interviewing separated children should have appropriate training and expertise in interviewing separated children’.¹²

¹¹ Separated Children in Europe Programme, *Statement of Good Practice* 3rd Edition 2004 p15

¹² Separated Children in Europe Programme, *Statement of Good Practice* 3rd Edition 2004 p17

In its conclusions on the registration of refugees and asylum seekers UNHCR's Executive Committee acknowledges the importance of registration as a tool of protection and an aid in the assessment of need and implementation of appropriate durable solutions. The conclusion makes the following recommendations:

- Registration should be a continuing process.
- Fundamental principles of confidentiality should be applied.
- The process should be accessible and take place in a safe and secure location.
- Registration should be conducted in a non-threatening and impartial manner with due respect for the safety and dignity of the subject.
- Personnel undertaking registration should have appropriate training and a sufficient number of female staff should be available.
- Registration should be on an individual basis.

The use of biometric testing may assist in the identification, subsequent tracking and ongoing protection of a separated child. It must be borne in mind though that despite the scientific assurances of the reliability of biometric testing, its application is limited at the first point of contact. Unless there is an existing entry against which to cross reference information initial contact is unlikely to *confirm* identity. It will merely create a record to cross-check identity at a later date. Biometric testing should only be carried out in situations where it is not possible to identify the child by other means. This is equally applicable to establishing the link between children and accompanying adults at the time of arrival. It is worth reaffirming the importance of keeping all information securely and the need to destroy it as soon as it is no longer required.

7.2 Age Assessment

The medical profession has outlined that the assessment of age is an inexact science. The favoured method for attempting to assess age tends to be the use of x-rays, which requires such a large margin of error as to be almost meaningless (see above). The development of biometric testing has failed to produce an absolute method by which age can be assessed. Although biometric testing may be able to establish identity, without a cross-reference to a verified source that accurately records age, resolution in cases where age is disputed, is not forthcoming.

'Age-assessment includes physical, developmental, psychological and cultural factors. If an age assessment is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child's ethnic/cultural background should carry it out. Examinations should never be forced or culturally inappropriate. Particular care should be taken to ensure they are gender- appropriate. In cases of doubt there should be a presumption that someone claiming to be less than 18 years of age will provisionally be treated as such. It is important to note that age assessment is not an exact science and a considerable margin of error is called for. In making an age determination separated children must be given the benefit of the doubt'.¹³

¹³ Separated Children in Europe Programme, Statement of Good Practice 3rd Edition 2004 p18

SCEP's *Statement of Good Practice* puts a clear focus on the importance of holistic age assessment procedures rather than just relying on any one factor. Despite the developments in the field of biometric testing this approach remains valid.

7.3 Family Tracing and Reunification

Where it is consistent with the best interests of the child, family reunification is invariably a desired outcome when working with separated children. SCEP's *Statement of Good Practice* notes:

'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 13.6. (*This paragraph refers to return to the child's country of origin*). In any situation regarding a separated child European states must always facilitate family reunification in the country where the child is living if it is in the child's best interest to do so. Where a separated child has a family member in a third country and both the child and family member wish to be reunited in that country, the child welfare authority should carry out a careful investigation of the suitability of the family member to provide care for the child'.¹⁴

An essential starting point in achieving this outcome is the accurate identification of the parties concerned. Once again biometric testing is a potential aid here but again there are limitations and concerns. Most biometric methods will not of themselves prove family links, fingerprinting or iris scans for example may assist identity but would need existing and verified records to prove a family connection. The exception would be DNA testing which can be used to establish *biological* family links.

However, there is a danger that a narrow definition or concept of the family unit will be applied, which effectively refers only to parents and siblings. This would fail to appreciate the cultural importance within some communities of the extended family and the harsh realities of life for many separated children, some of whose parents may be dead, missing or imprisoned and hence a child's principle carer may not be a member of their immediate family. DNA tests may have limited use in situations of polygamy or where children have been born following rape or infidelity. In these situations the child may not have a biological link to their primary carer. Rather than resort to biometric testing a series of appropriate questions may be able to establish kinship links. A failure to consider a more flexible definition of family is likely to mean that the best interests of many separated children are ignored. Article 10 of the CRC relates to family reunification. Within the text of the article reference is made to States Parties dealing with applications for family reunification in a positive, humane and expeditious manner. Where this can be achieved without resort to biometric testing it would be arguably unnecessary to subject a child to the procedures. Biometric testing should be used to aid family reunification where there is doubt as to the identities of the parties, not as a routine procedure to gather information on a child with the aim of using this information in informing the decision on the application to remain within the EU.

¹⁴ Separated Children in Europe Programme, *Statement of Good Practice* 3rd Edition 2004 p28

Family Unity – Case study provided by Save the Children Italy

In 2001 a couple arrived to the Southern coast of Italy from South Africa and applied for asylum. After a few days, the Territorial Commission, responsible for the examination of their case, rejected the asylum application giving them the possibility to stay in Italy with an humanitarian permit.

Some months later the couple left for Norway and there they gave false names to authorities, different from the ones they gave in Italy, in order not to be sent back. Once there, the woman gave birth to a child and registered him with the false family surname. It happens that, after few months, the family was sent back to Italy under the Dublin II regulation: but once there the baby was not recognised as the son of the couple.

The Municipality of the place where they arrived, with a formal request from the Police Authorities, asked the International Organization for Migration to carry out a DNA test for the baby and his mother in order to ensure the right to family unity. Usually the cost of the DNA test is 150€ and it must be paid directly by the person asking for it, but in this case the test costs were covered by the public administration in charge of the case.

7.4 Return to Country of Origin

Separated children should only be returned to the care of a named individual who has been assessed as competent, able and willing to care for them. Again identification is key in establishing these criteria and it is understandable that the development of biometric testing has been viewed optimistically as a tool to aid the effective and safe return of separated children. However it would be inappropriate to return separated children *solely* on the basis that a carer has been identified. Return should only be made where a full assessment indicates that this is consistent with the best interests of the child.¹⁵ Conversely it may in a separated child's best interests to return to the care of an adult who does not have a biological connection to the child, and thus not verifiable by DNA testing, but who is, nonetheless, their primary carer.

8. Conclusion

It is inevitable that new technology will be applied by immigration authorities in the maintenance of border control and in future we can expect to see greater use of biometric data as a means to aid the identification of separated children entering Europe. These developments need to be balanced with ethical considerations – not least of which that informed consent should always be granted by children before data is gathered and guarantees should be sought that separated children fully understand the procedures. The procedures should be monitored and open to inspection. They should be applied consistently, without discrimination by accountable staff trained in the particular challenges of working with separated children. All biometric data must be stored securely and only released to appropriate agencies for the sole purpose for which it was gathered.

¹⁵ Save the Children and SCEP, Position Paper on the Returns and Separated Children, September 2004

Biometric data should only be gathered from separated children when it is the best method to establish the child's identity. Separated children should only be subject to biometric testing when it can be demonstrated that the data is required to inform the assessment of the best interests of a particular child. Consideration must always be given to any potential negative consequences for the child of hitherto undisclosed information coming to light. The child should be fully informed throughout the procedure and due consideration should be given to the views of the child. This is applicable in situations where a separated child is requesting to provide biometric data, perhaps for the purposes of family reunification, or where they are expressing a reluctance to submit to testing.

Whilst the use of biometric data to aid in the accurate identification of separated children is a positive step that may often contribute to improved care and protection, such measures still should be applied sensitively and with caution.