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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 and the United Nations High Commissioner for Refugees (UNHCR). The Programme was initiated in 1997 and is based on the complementary mandates and areas of expertise of the two organisations; 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. 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 order to reflect the true situation of many children the Programme has 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 either 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 travelled to Europe to escape conditions of serious deprivation'<sup>1</sup>*

In realising the rights of separated children who have come to or transit through Europe the Programme aims to establish a shared policy and commitment to best practice at both national and European levels. As part of this process the Programme has developed and extended a partnership network of 28 Non Governmental Organisations (NGO's) across Europe who work with separated children.

The programme has also prepared a Statement of Good Practice that outlines the policies and practices required to implement, and protect, the rights of separated children in Europe, and the principles that underpin good practice. The Statement

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1 Separated Children in Europe Programme, Statement of Good Practice, 2nd Edition, October 2000.

is principally informed by three documents. The CRC (1989), the UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (February 1992), and the European Council on Refugees and Exiles position paper on Refugee Children (November 1996).

In addition the Programme has produced a range of materials including a Lobbying Guide, a Training Pack and a varied range of national and comparative reports examining the situation of separated children within Europe. Current initiatives include the development of a guidance pack to facilitate the involvement of separated children in the decisions that impact upon them, a revision of the Statement of Good Practice and the preparation of an accessible analysis of the implications of the legislation, directives and resolutions emerging from the decision-making bodies of the European Union.

## **1.2 Background and current context**

The Programme estimates that there are currently in the region of 100,000 separated children in Europe.

Since the ending of the 2nd World War through to the present time, conflict, war and instability have continued to rage across much of the globe. Throughout the world violations of human rights continue unabated. Children are directly affected by this turmoil,

*‘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.’<sup>2</sup>*

However fleeing conflict and persecution is not the sole factor behind the increase in the numbers of children moving across international boundaries. The ever expanding gap between the affluent and developing countries, in particular poverty and a lack of opportunity, as well as the growth in the numbers of children being trafficked for exploitation either in the sex trade or the unregulated economy has contributed to this rise.

*‘The United Nations believes that the number of children trafficked annually, internally and externally is around 1.2 million’.<sup>3</sup>*

Children are always victims in times of war or conflict. The collapse or pressures upon a society’s infrastructure will directly affect children’s access to health care and education and invariably leads to shortages in food, fuel and acceptable standards of accommodation that impact upon a child’s ability to survive. Parents may be too stressed or traumatised to give good quality care to their children and development may be affected; there will be little or no opportunities for play.

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2 S. Ruxton, Separated Children Seeking Asylum in Europe, A Programme for Action, 2000.

3 UNICEF, End Child Exploitation, ‘Stop the Traffic’, July 2003.

Children may suffer long term effects from witnessing acts of violence and many children will have to deal with the grief and trauma following the death of a parent(s) or other close family members. Needless to say, children are often victims of indiscriminate fighting and many are killed or maimed either when civilian targets are attacked deliberately; offensives on military targets go wrong; or targeting involves danger to civilians as ‘acceptable’ aspects of military strategy. Children also face the danger of being conscripted into the military or of being abducted in order to become prostitutes or to act as slaves in other ways for the army. Children are also the victims of repressive regimes and in such instances are seen as ‘legitimate’ targets. For example, neither the genocide in Rwanda nor ethnic cleansing in former Yugoslavia spared children; the poison gas used by the Iraqi regime on the Kurds in the north of the country did not discriminate between children and adults and it is estimated that perhaps up to one and a half million children died in the Holocaust.

It is all too easy for children to become separated from their parents during the mass population movements of war-induced flight or because their parents die, and so they become unaccompanied or ‘separated’. Elsewhere, parents may be able to anticipate coming strife and upheaval and make a conscious decision to send their children abroad in the hope of guaranteeing their safety. Similarly families facing conditions of serious deprivation may choose to send their children to Europe in search of a better quality of life

The trafficking of separated children into Europe is a growing phenomenon. Whilst the obvious ‘end market’ for many of these children is the sex trade some children are forced to work as ‘domestic slaves’ or in ‘sweatshops’ where the employment rights and safeguards that Western workers have acquired are non-existent. Some children are used to smuggle and deal in drugs and many are used to commit other crimes such as shoplifting and credit card fraud. Some are forced to beg, though they receive none of the money they ‘earn’. In extreme cases traffickers abduct children though in many instances parents are tricked into handing over their children by offers of ‘appropriate employment’. In some instances parents may make arrangements for their children to enter an exploitative relationship out of extreme poverty and desperation. However children are always victims in any trafficking relationship as they are simply unable to give any informed consent relating to their employment.

There are also many children who are smuggled into Europe, and thus arrive without coming to the attention of the relevant authorities, whose intention is to seek employment. Although many of these children may work in unregulated situations often for minimal payment they are not trapped in an ongoing exploitative relationship although their unregulated immigration status is a factor in their vulnerability. The economic migration of children to Europe is on the rise as more and more families see this as a means to improve their financial situations and break the cycles of deprivation that many of them are trapped in.

### **1.3 About this report**

In 1999 the Programme undertook a comprehensive assessment of the policy, practice and legislation applicable to separated children in 16 Western European countries. The assessments were directly undertaken or commissioned by the

network partners and the findings formed the basis of a comparative analysis of the situation facing separated children in Western Europe prepared by Sandy Ruxton entitled 'Separated Children Seeking Asylum in Europe: A Programme for Action' (2000). Subsequently in 2001 a similar process regarding assessment and analysis was followed in relation to the Central European and the Baltic states, see William Spindler 'The Situation of Separated Children in Central Europe and the Baltic States' (2001).

Save the Children has commissioned this report through the Programme's NGO steering group. It focuses on what has changed in the law, policy and practice within 14 European Union member states, since the preparation of Ruxton's 'A Programme for Action'. Its main source material is a number of updated national assessments within the 14 countries, which examine the reception, and responses to separated children in these states. The format once again takes the form of a comparative analysis. The information was gathered by means of responses to a questionnaire based on the Statement of Good Practice. The level of consultation varied in response to the resources of the partner leading the assessment though it is fair to say that in general primary stakeholders were consulted and the views of separated children, governments, statutory and voluntary sector agencies alike have been reflected in the national assessments.

Since the establishment of the Separated Children in Europe Programme and the undertaking of the national assessments in 1999 both state bodies and NGO's have raised their awareness of the issue of trafficking of children into Europe. The report will seek to outline the current situation relating to these children and the responses to their needs across Europe.

In preparing the updated assessments the NGO partners were asked to consult directly with separated children and this report seeks to incorporate their views into the text. The uniqueness of each separated child cannot be overstated but in general many of the children who were interviewed showed a remarkable resilience and capacity to adapt. They were making long term plans and were looking to the future with a considerable degree of optimism. In the main their comments focused on practical issues such as the quality of their accommodation, their health and education and of course the asylum or immigration determination procedure. Some children spoke about their emotional difficulties and how it felt to be a 'separated child' but few if any discussed, or appeared to grasp, concepts such as their right to participate or the 'best interests' principle. In any event it is important to acknowledge the contribution that children have made to this report and to thank them for finding the time to talk so openly and freely about their personal situations.

The aims of this report are to

- Identify where progress has been made in implementing the Statement of Good Practice.
- Highlight areas where the level of provision has moved away from the standards set out in the Statement of Good Practice.
- Outline the responses of states to children trafficked into their territories.
- Develop recommendations in changes to policy and practice regarding separated children.

The report will broadly follow the headings as set out in the Statement of Good Practice (2nd edition, October 2000) and where possible the starting point for each section will be a brief summary of the previous situation as outlined in Ruxton's report of the situation 4 years ago.

The report was prepared and produced with a budget provided by the European Refugee Fund.

## 2. Analysis of the relevant developments and changes in practice since the preparation of the national assessments in 1999

### 2.1 The definition of a separated child

#### **Situation summary, 1999**

'The definition used varies quite significantly between states'. To illustrate this point the Dutch and Belgians would not accept a child as separated if they travelled with a relative whilst the Norwegian authorities were prepared to consider that a child who arrived with family members other than their parents, e.g. aunt/uncle may be a separated child. There was a broad consensus that a child was a person under 18 years old though in Austria the age was 19. It was noted that in some states definitions varied between agencies and that inconsistency between childcare and immigration law definitions was not unusual. In some instances a definition of a separated child, was lacking in either asylum or childcare law.

Regardless of whereabouts in Europe a child arrives the receiving state's definition of whether a child is separated or otherwise remains key as from it will stem responses for the provision of welfare support and a route through the various immigration procedures. The update assessments from the respondent countries noted a small number of changes from the 1999 position in how separated children are defined.

In Austria the Children's Law Modification Act (2000) has come into force thereby lowering the age of majority from 19 to 18 years. This brings Austria into line with the consistent approach of the other respondent countries in defining a child as a person under the age of 18. However the provision of the existing Aliens Act still applies under which an adolescent over the age of 16 is deemed to have full legal capacity regarding the pursuit of their asylum application.

The Dutch assessment noted that the definition of a separated child had become more restricted; any child with relatives within The Netherlands from their extended family up to the fourth degree would now no longer be considered as separated. This applies both for the purposes of the asylum determination procedure and the provision of care and support. Checks and assessment procedures have not been put in place to establish whether relatives have a meaningful relationship with the child or whether they are able and willing to provide an adequate level of care. The Courts will no longer consider appointing a guardian in such circumstances.

Internal Home Office procedural notes and a new law on Separated Children's Guardianship (2002) have reaffirmed the Belgian position on the definition of a separated child though the assessment update noted that 'in practice no uniform definition of separated children is used nationwide'. Civil Society works to a definition that is relatively similar to that as outlined in the Statement of Good Practice.

On balance there has been very little movement since the publication of the comparative analysis following the 1999 assessments. The definition of a separated child as outlined in the Statement of Good Practice is still not applied extensively throughout Europe. It does however appear that Article 1 of the CRC is now universally applied.

### **Recommendations**

- The definition of a separated child as defined by SCEP should be implemented consistently across European states.
- There should be a plan to raise awareness of the definition amongst relevant agencies and practitioners across Europe.
- Decisions regarding the suitability of siblings or extended family members to provide support should be based on a full assessment and with the best interests of the child in mind.

## **2.2 Access to the territory**

### **Situation summary, 1999**

Despite the commitment from the EU Council of Ministers (Tampere 1999) respecting the absolute right to seek asylum and the suggestion therein that those in need of protection will be able to access EU territory 'the position in relation to separated children was much less clear in reality'. The following illustrates this point; whereas there were no known examples of children at the border being refused access to Spain and Ireland, children entering Denmark from Sweden, could, under the terms of the so called 'rapid agreement' between the two countries, find themselves refused entry to both countries. There was evidence to suggest that the recent growth in measures to prevent non EU nationals arriving in EU territory, e.g. carrier's liability, airport pre-departure checks etc had a detrimental impact on the ability of separated children to access the territory of a state where they sought protection.

It is difficult to see how any state could fulfil its obligations under Article 22 of the CRC, the duty to provide appropriate protection to refugee children, if they deny them access to the territory. There have been some conflicting developments regarding access to the territory since 'A Programme for Action' was published. Some country's practices can be seen to be moving closer to the Statement of Good Practice whilst conversely the update assessments identify a number of state responses diverging from the Statement.

The Finnish update notes that throughout the period 2001-2003 there has been no [known] cases of separated children being refused entry at the various border crossing points. It is understood that there were isolated cases throughout the 1990's where separated children were refused entry into Finland so this

development should be welcomed as progress in the implementation of the Statement of Good Practice.

However the situation is not so clear elsewhere. In Denmark, as a result of a marked tightening of policies towards aliens, the number of asylum applications has reduced by more than 50% since 2001 and the update assessment notes that this decrease is applicable to the number of applications from separated children. Similarly as a result of the passing of legislation during 2002 denying certain categories of asylum seekers the right to welfare support the UK has noted a drop in the numbers of both adults and separated children claiming asylum. New legislation in Italy introduced a 'simplified' or faster procedure applicable to, amongst others, non-residents who bypassed the official border control, aimed at facilitating prompt removal from Italian territory. The law does not specify that separated children will be exempt from this development and hence they could find that their applications are examined under the simplified procedure.

In Sweden Save the Children have been concerned for some time about the potential conflict of interest arising from the Immigration Board's dual role in deciding whether there are grounds for a separated child to enter (or stay) in Sweden whilst at the same time holding responsibility for ensuring that the child is accommodated and cared for. In consequence in early 2002 the Swedish Government instructed the National Board of Health and Welfare and the Immigration Board to investigate ways of improving the reception of separated children in Sweden. The resultant report published in June 2002 entitled 'Improvements in the reception of children from other countries who arrive in Sweden without a legal guardian' suggested that the Immigration Board's remit should be limited to processing the child's application for a residence permit. This proposal has not yet been implemented.

All separated children arriving in The Netherlands are now subject to a new procedure. Since the introduction of a new 'separated children's policy' in May 2001, regardless of their age separated children must submit an asylum application in an application centre. Previously separated children were exempt from the regulation insisting that all asylum applications were lodged in these centres. At present a number of different application centres are being used to accommodate newly arrived separated children though it is proposed that in future they should be processed through a dedicated centre. A new Immigration Act in Ireland provides for the imposition of fines on transport companies who carry undocumented passengers. This will have clear implications for separated children attempting to access Irish territory as airport and other transport staff in effect become front line immigration officers. They are likely to prevent passengers without correct documentation from travelling, regardless of whether or not their asylum application would receive a positive outcome if heard by a competent body.

An internal Belgian Home Office note originating in March 2002 outlines that where there is no immediate durable solution for a separated child they should have access to the territory and receive an arrival declaration valid for 3 months. The Belgian update assessment however notes the following constraint that in practice separated children do not always have access to the territory as many are held in closed centres for the first phase of the procedure.

Historically asylum seekers arriving in France, whether they were separated children or otherwise, without the required travel documents could be held in a ‘waiting zone’ pending a decision to admit them into France. Staff working in these ‘waiting zones’ had no specific training on working with separated children and applicants would be held for an initial period of 4 days with provision for an 8 day extension. Under the new Act on Parental Authority an Ad-hoc Administrator must now be appointed to assist and provide legal representation to all separated children held at the border. This development must be seen as a welcome improvement, though it is concerning that the provision has yet to be implemented and it is to be hoped that the French Administration will ensure that it is soon applied in full.

The changes noted since ‘A Programme for Action’ cannot be generalised in such a manner as to indicate either progress in adapting the Statement of Good Practice or departure from it. The developments are a mixture though on balance it is regrettably that there has not been further progress.

#### **Recommendations**

- Current regulations should be amended to ensure that separated children are never denied access to the territory where they seek protection.
- Future National and EU legislation should fully reflect SCEP’s Statement of Good Practice regarding access to the territory.
- Separated children should not be held in closed centres at the border. They should be admitted into procedures that do not require detention.

### **2.3 Identification**

#### **Situation summary, 1999**

A number of countries, including Austria, Finland, Germany, the UK and Italy did not have established procedures for identifying separated children. The problem in identifying them was exacerbated because many children were too fearful upon arrival to trust the agencies requesting information from them. The use of fingerprinting was not uniform; it was undertaken in Austria on a compulsory basis but elsewhere appeared to be applied randomly with the age of the child being a factor. The EU Council of Ministers had proposed the Eurodac Regulation, which called for all asylum seekers over 14 years old to be fingerprinted.

State parties shall undertake to preserve the child’s identity states Article 8 of the CRC. Perhaps the main development around identifying separated children relates to the roll out of the Eurodac system. As Denmark’s response outlines all asylum applicants in participating countries will be fingerprinted and the fingerprints will be stored digitally in a central database. The purpose is to aid in identifying applicants who have already lodged a claim in another country. In Denmark, Finland and Austria all asylum applicants over the age of 14, including separated children, are now fingerprinted. There is a real danger here that taking fingerprints from children may make them feel criminalized and suspicious of the ensuing asylum procedure. In Portugal training of border patrol staff has been undertaken concerning the identification of asylum seekers and those entering the country illegally. It is apparent that officers are more attentive to the needs of separated children as a result of this training.

A failure to identify an applicant appropriately as a child is likely to leave them vulnerable as their particular welfare needs will go unnoticed and they will not receive the necessary support needed by children. The worst scenario is that they will be placed in unsupervised settings with adults where they may be exposed to risk. Clearly, their rights will also be compromised. It is thus very disappointing that no significant progress can be noted since the assessments of 1999 in a European wide move towards the application of good practice as stated by SCEP. Opportunities have been missed to develop better identification procedures by a number of states that have recently produced new asylum legislation and the recommendations made by Sandy Ruxton in 'A Programme for Action' have been ignored.

### Recommendations

- All states signed up to the Eurodac agreement must develop procedures, including staff training, to ensure separated children fully comprehend why they are fingerprinted.
- Procedures for assessing age should be established as outlined by SCEP.
- The relevant authorities should establish systematic procedures for the identification of separated children.
- Border control personnel should receive appropriate training particularly regarding the skills required for interviewing children.

## 2.4 Family tracing and contact

### Situation summary, 1999

In general the Statement of Good practice was not adhered to. Tracing rarely took place at the earliest opportunity and only Spain and Sweden had guidelines relating to family tracing and contact. Many children would tell their support workers that they did not want family contact, presumably because they felt it would impact on their asylum application and tracing was frequently frustrated by the impact of conflict in the child's country of origin.

A consistent theme of the revised assessments was that family tracing is still not prioritised and does not take place promptly. Most of the respondent countries reported little if any change in the application of good practice.

Denmark was able to report an improvement in practice. In January 2003 new legislation relating to guardianship of separated children was introduced, a consequence of which is that the Danish Immigration Service is now expected to commence tracing a separated child's family as soon as the asylum application is lodged. A safety net is in place because the child or their guardian must approve this step. A verdict in an appeal court instructed that the relevant local authority pay the travel costs of a Somali girl who wished to visit her mother in Kenya. This decision set a precedent in Denmark and it is worth noting the text of the Danish assessment regarding the practical impact of the courts decision in full.

*The decision formed a precedent and afterwards several separated children and youth had their travel expenses paid to their countries of origin or neighbouring countries if their parents resided there. It has turned out to be beneficial for the children both because they get*

*to know their families again and because the questions as to their backgrounds, the flight, the possibilities of repatriating may be answered. Those are questions to which most of the separated children and youth want answers. It has become evident that after such travels the children handle their new life situation much better and they are better able to come to terms with the prospect of a future life in Denmark.*<sup>4</sup>

There have been a number of new initiatives striving to facilitate greater cooperation and pooling of resources between different agencies with a view towards improving the capacity to trace the families of separated children. These developments should be welcomed. In Italy conventions between several NGO's have been agreed regarding the tracing of families of separated children originating from Albania, Romania, Moldova, Macedonia, Serbia, Bosnia and Kosovo. During the winter of 2002 a group of Austrian NGO's met with International Social Service (ISS) to look at how they could forge a cooperative approach to trace the relatives of separated children. Similarly in Greece NGO's and ISS are now reported as working in partnership.

The Dutch have widened the categories of adequate carers in countries of origin that they feel it is appropriate to try to contact under the auspices of family tracing to include extended family members, friends, neighbours and members of the same tribe or village. Whilst this is commendable in one respect any perceived advantages for separated children are somewhat offset when it emerges that this is largely to facilitate their return and that little or no checks are taken regarding the suitability of return to the care of the identified 'carer'. The Dutch authorities are also prepared to explore the possibilities of separated children returning to the care of agencies rather than identified family members.

In suggesting recommendations it is important to recognise that family tracing is often inhibited by the child's reluctance to provide accurate and up to date information regarding the whereabouts of family members. However we also need to bear in mind the obligations on states as outlined in the CRC. In particular Article 22 lays a responsibility for states to work in partnership with various NGO's with the aim of tracing the family of a refugee child. Additionally Articles 9 and 10 of the convention outline the child's right not to be separated from their parents and for states to be proactive in facilitating family reunion.

### **Recommendations**

- Family tracing should be prioritised and undertaken promptly.
- Policy must be amended to ensure that location of family will not necessarily mean return of a separated child unless this is in their best interest and the child should be given appropriate assurances of this practice.
- Following successful tracing an independent assessment of family should take place to establish the suitability and willingness of carers to look after the child should reunification take place. Resources need to be made available to undertake this effectively.

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4 Danish National Update Assessment 2003.

## 2.5 Appointment of guardian or adviser

### Situation summary, 1999

The responses across the 16 assessed countries in the main identified a lack of systems to automatically appoint guardians. In some countries this could only be done through the courts, e.g. The Netherlands and Italy and in other countries 'advisers' were appointed on a non-statutory basis as in the UK. However Luxembourg and Norway did have systems for the prompt allocation of a guardian to represent the child's best interests. In many instances the duties and powers of the guardian or adviser were not clearly defined.

In recognition of the importance of providing separated children with guardians the EU Council Directive on Temporary Protection (2001/55/EC) Article 16 places particular responsibilities on member states relating to guardianship. The Directive requires steps to be taken to ensure the necessary representation of separated children by legal guardianship or by any other appropriate and responsible representation. Perhaps as a consequence of this there have been some positive developments in the provision of guardianship services for separated children. Article 20 of the CRC notes that children who are separated from their families are entitled to receive special protection.

In January 2003 the Danish parliament passed a change in the law relating to guardianship, which entered into force in April 2003. A guardian, who holds all the rights of a biological parent, is now appointed to all separated children at the beginning of the asylum procedure. The system relies on volunteers and guardians are not paid for their work, raising obvious concerns about barriers preventing some people from undertaking the role. Guardians are only to be appointed for a short time and not necessarily until the child reaches adulthood and because of this doubts have again been raised surrounding the effectiveness of the system. The Danish Red Cross are currently overseeing the service and whilst the current supply of guardians is equal to the demand for support Save the Children Denmark believe it is of the utmost importance to monitor this new development. They fear it may be hard to maintain this service in the long term.

The Belgian Government has adopted a new law creating a guardianship body for separated children. The new body's mission is to guarantee the protection and representation of separated children and to work at establishing durable solutions for them. This is a positive development consistent with the Statement of Good Practice though some NGO's are concerned that there is a lack of political will behind this initiative and that the budget will be insufficient for the service to be of good quality. In Portugal a recent decree (2003) outlined that the state must guarantee the representation of separated children by a guardian or an organisation who cares for the well being of the child. New legislation in France stipulates that separated children should have an Ad-hoc Administrator appointed to represent them whilst they are held in waiting zones (see page 12 above) but this is for a short term period only and falls considerably short of the practice outlined in the SCEP Statement.

In Finland the guardianship system has seen some development since the initial national assessment in 1999. ERF funding was used to develop the 'Alone in

Finland' project, which had a particular focus on guardianship and from which a handbook for guardians is currently being prepared. The handbook will include information on legislation; tasks and the practical day to day work that is deemed necessary as part of an effective guardianship role. A perceived shortcoming is that no single agency seems to hold responsibility for managing and developing the service though on a positive note the Finnish government has been proactive and have made proposals concerning the system. It states that recruitment and training methods will be developed and offers full support to the preparation and implementation of the guidelines currently being prepared. In addition consideration will be given to extending the guardianship role beyond the child turning 18.

In the UK Part 2 of the Adoption and Children Act introduces the provision of Special Guardianship Orders. This will be applicable to children who cannot return to their birth families and where adoption is not in the child's best interests and therefore not the most suitable option. On face value this piece of legislation would appear highly relevant to separated children. However the Department of Health have indicated that although foster parents of separated children are not excluded from becoming special guardians they are not expected to do so on a regular basis.

Italy has also amended its existing guardianship system. The local mayor or other representative of the local authority is now appointed as guardian rather than the manager of the accommodation centre where the child lives, as was the existing practice. The concerns here are that opportunities for developing a strong relationship between child and guardian may be restricted and the role of the guardian in acting in the child's best interests may be compromised because of the guardians relationship with the state and in particular their focus on minimising costs and reducing the number of separated children in Italy.

Contrary to the Statement of Good Practice the Dutch arrangements for guardianship have seen changes that are likely to weaken the effectiveness of guardians in promoting the welfare of separated children. A whole new reception model has been implemented consisting of an integration model and a return model. Those separated children who are placed in the integration model are expressly denied the support of the Guardianship Foundation if a family member up to the fourth degree is resident in The Netherlands.

It is difficult to see how the 'best interest' principle can be adhered to without the appointment of effective guardians for separated children. There is a tendency here to lower the standard and level of support offered through guardianship schemes by referring to 'representatives' or 'advisers' and this falls far short of appointing a responsible adult with the legal authority to act solely in the best interest of the child without reference to the requirements of central or local government. A young woman interviewed in Germany commented that it was most important to have somebody that she could trust and that this was the platform from which all other support was built. The positive steps taken to provide separated children with effective guardians as outlined above should be applauded. However considerable progress is still needed if we are to realise the delivery of good practice in line with SCEP's statement and article 20 of the CRC, throughout Europe.

## Recommendations

- All European states should apply the definition of Guardianship found in the Statement of Good Practice.
- European states should develop systems for the effective recruitment, training and ongoing support of guardians.
- All children within SCEP's definition of a separated child should be appointed a guardian promptly.
- The role of the guardian should be clarified and clearly understood by all parties including the child. In any event the role should be consistent with that of a reasonable parent and the guardian should safeguard the child's best interests.
- States should consider initiatives to encourage guardian applicants from relevant minority communities.

## 2.6 Registration and documentation

### Situation summary, 1999

Best practice calls for separated children to have a brief interview at the point of entry and a subsequent interview(s) to collect the information necessary for the asylum determination procedure. 'In practice however there was considerable variation between states'. France lacked a procedure for interviewing children at the point of entry, as did Greece though in both Finland and the UK it was stated that the initial interview was solely to establish identity (though see 2.3 above regarding the UK and the lack of clear procedures to identify separated children). The conclusion to be drawn from 'a Programme for Action' was that relevant training for staff interviewing children was lacking.

Following new legislation in the UK all asylum applicants over the age of 5 are now issued with asylum registration cards, otherwise few of the countries that had undertaken a revised national assessment reported anything of particular significance regarding changes and developments in practice on the registration and documentation of separated children. Is it to be assumed that this is not an aspect of practice that has prominence on States agendas? If so this is surprising as registration and documentation of separated children is often an essential first step if a child is to be successfully reunited with their family.

As previously referred to, all separated children in The Netherlands must now make their claim for asylum in an application centre. The Greek assessment identified the lack of effective information technology systems in some of the major social service departments as an on-going problem in the struggle to register separated children. A 'personal information form' in relation to all identified separated children arriving in Italy is sent to the Committee for foreign minors, though the responses are, somewhat understandably, mixed. The quantity and quality of the information collated by the various social services departments varies immensely though this can be attributed in part to the responses from children; some immediately provide a wide range of reliable data; some require time to build a trusting relationship before they will impart information; others provide conflicting and misleading information throughout the asylum process.

It is frustrating that so little progress in improving procedures for the registering and documentation of separated children has taken place since 1999. This is particularly so in view of the marked increase across Europe in the trafficking of separated children and the requirements of Article 8 of the CRC upon states to preserve a child's identity.

### **Recommendations**

- All separated children should be registered and documented as soon as they come to the attention of the appropriate authorities. Consideration should be given to the establishment of a consistent format for recording this information.
- Training should be provided to all staff that interview children so that interviews are conducted in a supportive, facilitative and child friendly manner thus aiding the collection of accurate data.

## **2.7 Age assessment**

### **Situation summary, 1999**

A difficulty in accurately establishing the age of adolescents was a theme emerging from the 1999 national assessments. Although most states imply that they gave the applicant the benefit of the doubt this did not appear to be the case in practice. In most cases physical tests of some form or another were undertaken, though not in either Portugal or Luxembourg. Again inconsistencies emerged when procedures were examined, for example X-rays were used in The Netherlands as part of the age assessment process yet their use was expressly prohibited in the UK and rejected in Germany as being ineffective. The expertise of the professionals undertaking the assessment of age was also questioned with little evidence that personnel had knowledge of cultural factors or indeed a specialism in paediatrics.

The age of separated children is still a pivotal factor in determining the initial reception and interim care facilities that will be offered to the applicant. Across Europe in those cases where the authorities consider that the stated age is not credible they carry out an age assessment. For many professionals working with and supporting separated children the question of 'age disputes' has become a real theme of their work. This point is well illustrated by considering the UK statistics where in an 18 month period from February 2002 – July 2003 a total 2,605, or approximately one third, of those applicants claiming to be children had their stated age disputed. The updated French assessment also notes that this is a developing theme in work with separated children.

Whilst many long standing concerns remain the changes noted since 'A Programme for Action' seem to reflect that the existing procedures for assessing age are, perhaps, not so robust and when challenged states do have to consider their responses carefully.

The Swedish association of paediatricians claimed that the Immigration Board's practice for assessing age diverged from the guidelines laid down by the National Board of Health and Welfare. As a result of these criticisms the Immigration Board is currently reviewing its procedures and has undertaken to prepare guidelines for staff to follow when striving to assess age. Similarly in the UK guidelines for

assisting this procedure are also being drafted. The guidelines acknowledge that assessing age is not an exact science. However they are currently being piloted and it is envisaged that they will be a positive aid to social workers attempting to establish the age of separated children. The Austrian Aliens Act (2002) stipulated a clear duty on the Immigration Authorities to consult specialised bodies, rather than relying on their own opinions, when attempting to determine age. In particular reference was made to the use of Public Health Officers, although some NGO's have criticised the assessments of these officers for being too cursory.

The legislation in Austria also makes reference to applicants being allowed to request a wrist X-ray, which they must pay for themselves, as a measure by which they can establish their age. This contrasts somewhat with The Netherlands where the continued use of X-rays has been challenged and in response the Ministry of Justice has given a commitment to establish a Medical Ethics Committee to deliver second opinions if required.

Reports persist from many German Lander that the authorities 'make refugees older'. Three years ago a particular Lander criminalized all applicants who they believed had misinformed them about their age. However the legal challenges against this practice were all successful.

Given that this is a growing concern of many immigration and asylum decision making bodies and welfare agencies who provide care and support to separated children it is surprising that so little has happened in the development of procedures to aid attempts at assessing age.

### **Recommendations**

- Procedures should be established for age assessments in line with SCEP's statement of Good Practice. These should recognise that the most accurate assessments are likely to take place over time and should be holistic calling on the professional expertise of a range of experts.
- The benefit of the doubt should be applied in all age disputes.
- Consideration should be given to the establishment of 'mid way' accommodation units whilst a long term age assessment is being undertaken.
- X-rays are potentially damaging to health and are questionable in terms of accuracy in determining age. They should therefore be avoided.
- All examinations should be on a voluntary basis and there should be no coercion. In line with Article 37 of the CRC all procedures must respect the dignity of the child.

## 2.8 Freedom from detention

### Situation summary, 1999

The maintenance of an effective immigration control clearly took precedence over principles of good childcare and the rights of children. Notwithstanding the difficulties surrounding the accurate assessment of age as outlined above many European countries detain separated children. This may have been a relatively rare occurrence in, for example, Ireland, Italy or Denmark but the detention of separated children was used more widely in other countries, again for example, the UK, Austria and Germany. The length of time that a separated child could be detained also varied greatly with a 72 hour maximum period in Sweden to instances of up to 6 months in Germany and even longer in the UK.

There has been little noted change in the respondent countries around this contentious issue since 1999. However the developments that have taken place potentially open avenues for more separated children to be detained and affirm the situation at the time of the previous assessment that child rights are secondary to border control.

In Italy changes to asylum legislation have introduced new circumstances, such as illegal entry etc, whereby asylum seekers can be detained. Previously asylum seekers were not detained under Italian law. The law does not specify that separated children are excluded from these provisions and there are justified fears that this will lead to an increase in the number of children who are denied their liberty. Under the new reception model in The Netherlands all separated children are held for a number of days following their arrival at an application centre. Separated children aged 15 years and older who are channelled into the return model are placed in a campus where their opportunities to leave are somewhat restricted. Similarly the Spanish assessment notes that with the passing of new legislation in Catalonia during 2002 minors in state care can be detained in a closed section of an open centre for up to 30 days before their case is presented before a judge or before they gain access to a legal representative. Some observers feel that this law was aimed specifically at separated children though it is hard to establish this as fact. The Asylum and Immigration Act in the UK legislated for the increased use of detention where there was doubt about the credibility of the applicant. This has led to an increase in the number of separated children who are detained because their age is disputed.

However the implementation in 2000 of the amended Irish Refugee Act indicates a reversal in this trend. Although the act legislates for the detention of asylum seekers, Section 4 expressly excludes minors, and those who it is reasonable to believe are under 18, from this provision.

It can never be in a child's best interest to be detained and the practice is detrimental to all aspects of their development. The CRC (Article 37) is clear that the detention of children must take into account their needs and be for the shortest possible period. There should be prompt access to legal representation and the decision to detain must be made by a court of law. Detention should be in accommodation separate from adults unless it is in the child's best interest to do otherwise. It is highly regrettable that Article 37 of the CRC and the

Statement of Good Practice have not been fully implemented by all European countries on this particular matter.

### **Recommendations**

- All European countries should legislate to prevent the detention of children for reasons relating to their immigration status.
- In consequence, throughout Europe appropriate settings need to be developed for the accommodation of separated children that reflects and addresses their needs.

## **2.9 Right to participate**

### **Situation summary, 1999**

Generally children did have the right and the opportunity to state their views during interviews relating to the asylum determination procedure. This could either be directly by the child, through a legal representative or through a guardian (though see Section 2.5 on this latter point). The real issue was whether having expressed their views the child's contribution had any material impact on the decision making process. Indeed this appeared to be minimal in relation to the asylum claim though there were some instances where the child had clearly influenced the planning of their leisure and education. The national assessments confirmed that in the absence of any asylum determination procedures that had been tailored to the particular needs of children the lack of child friendly environments frustrated their active and meaningful participation in the process.

Despite the widespread acknowledgement of the child's right to participate as enshrined in Article 12 of the CRC and the recognition that this is a key pillar in the maintenance of the rights of children there appears to be a lack of will to place the child's right to participate at the heart of policy development. It is likely that by involving children in the development of services they will be more relevant and workable than if their views were excluded. Where there is a reference to involvement it is invariably a secondary consideration. Separated children did not appear to have a good understanding that they had a right to participate and to influence decisions in line with their best interests.

In The Netherlands new policies whose primary focus is on gathering information surrounding the separated child's asylum application allow for the interviewing of children as young as 4 years old. Similarly the UK is about to commence a pilot scheme for the interviewing of children from the age of 12 upwards. What is interesting is that part of the argument for the increased interviewing of children is that many of them would welcome the opportunity to state their case to remain at first hand. However when it was suggested that children take part in the pilot scheme on a voluntary basis the Home Office insisted that it should be compulsory, as they feared that children would not take part if they had a choice. One is left to ponder whether the true motivation for the increased interviewing of children is to cross examine them on the substance of their asylum application rather than the promotion of the child's right to participate.

The Belgian Guardianship law of December 2002 makes reference to the child's right to participate, though this appears to have been stated in isolation with little

consideration to how this will be implemented in practice. The Irish assessment refers to children who although they are given the opportunity to state their case directly to the Immigration Service, are unable, owing to developmental reasons, to adequately explain why they had to leave their home countries.

Perhaps a positive note comes from Sweden. A new paragraph has been added to the Aliens Act making a particular reference that when considering whether or not to issue a residence permit to a separated child steps should be taken to ascertain the child's view on this subject. Similarly in Italy when the Committee for Foreign Minors are making decisions concerning status or repatriation of a separated child, legislation states that the child's views must be taken into account. In France the new Code of Civil Procedure (2002) requires the courts to seek the views of children in their procedures and whilst not aimed specifically at separated children they are not excluded from this provision.

### **Recommendations**

- All separated children should have the opportunity to state their views if they choose to do so and these views should be taken into account when decisions are made about their immigration status or proposed repatriation.
- In order for this to be effective European countries must ensure, through legislation and guidance as appropriate, that their asylum determination procedures are child friendly. This is particularly so regarding the interviewing of children. On going training should be available for all appropriate staff, including interpreters etc.
- The age of the child should be taken into consideration and where appropriate specialist assessments should be used to establish the child's ability to participate effectively in the determination process.

## **2.10 Family reunification in a European country**

### **Situation summary, 1999**

Family reunification in a European country rarely happened. From the practice of the 16 countries where assessments took place the only example that began to meet the requirements of the Statement of Good Practice was in The Netherlands. Here the authorities processed applications to enter The Netherlands lodged by children living in a different EU country relatively quickly if their parents had applied for asylum in The Netherlands.

According to Art. 6 of the Council Regulation (EC) No 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II), the asylum application of a separated child shall be examined by the member state where a relative is legally present. This provision, effective from September 2003, is a significant improvement over current EU law, which ensures family reunification only for recognised refugees. The same Article 6 also provides that separated children shall only be brought to another Member State if family members are present. In other cases, the child's asylum application has to be examined by the state where it was lodged, meaning that in contrast to practice up to now, a journey through, or a

previous presence in an other EU member state will in future cease to be a ground for rejection of an asylum application or for a return to another EU member state. Article 10 of the CRC effectively lays a duty on states to prioritise family reunion and to be proactive in realising this right.

The Finnish assessment notes that one child had commented that the day they received a positive outcome to their application for family reunion was the happiest of their life. Such is the importance for many separated children of being reunited with their families.

This is an area where despite a marked failure across Europe to meet the standards outlined in the Statement of Good Practice there has been little indication from any of the revised assessments that practice has changed since the initial assessments. Perhaps the implementation of the Dublin II Convention will lead to some positive practice developments in this field. The Portuguese assessment noted a progressive development with the introduction of a decree in 2003 clarifying that separated children are eligible, subject to an application as part of the family reunification procedures, to have their parents and siblings, if under 18, join them in Portugal.

A case study from the Austrian assessment presents a good example to illustrate the lack of development in this area,

*In the summer of 2001, an Afghan citizen E., aged 15, entered Austria unaccompanied by any relatives. He filed an asylum application and stayed for several weeks in the Traiskirchen refugee camp. Then he left Austria in order to get to his uncle in England. Nine months later the British authorities brought him back to Austria, having established that Austria was responsible to examine his asylum application. After two weeks E. was again on his way to his uncle and cousin, both lawfully resident in England. But a further month later, he found himself in Austria against his will for a second time, having been picked up again by the British police. His wish is to be able to live in England without interference, but this perfectly understandable wish will not be fulfilled because of the current Dublin Convention's narrowly defined concept of family.<sup>5</sup>*

The Finnish Aliens Act (2000) introduced DNA testing into legislation as a tool to aid the authorities in establishing family ties.

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## **Recommendations**

- Decisions on family reunification should recognise the applicant primarily as a child rather than be informed by their status within the asylum process.
- Separated children should be eligible for family reunification at any stage of the asylum process.
- A broad interpretation of ‘family’ should be applied if it is in the child’s best interests to do so.
- European countries need to work in partnership to implement ‘Dublin II’ recognising the best interests of the child at all stages of the process.

## **2.11 Interim care, health and education and training**

### **Situation summary, 1999**

The area of interim care, and along with it health and education was covered in the reports of the 16 respondent states as part of the national assessments of 1999. However they did not feature in the comparative analysis. It is likely that levels of compliance with the Statement of Good Practice would vary in relation to the resources to hand in each of the assessment countries.

### **2.11.1 Interim care**

The changes outlined in the revised national assessments tend to reflect governments taking more of a control function rather than developing high quality, needs based, childcare provision for separated children.

As previously noted the Dutch have recently introduced an entirely new model for the reception of separated children. Support provision stems from whether the long term plans are to integrate the child into Dutch society or return them to their country of origin. Age is not the sole reason in the decision to seek to return a child or integrate them into Dutch society and children spanning a range of ages have been earmarked for return. The emphasis for children under 15 years old, regardless of which strand of the new model they are placed in would be to support them in foster families, group homes, independent living schemes etc as appropriate. This is also the case for the older children in the integration model. The 15 years and older children whose long term future is geared towards return would be placed in special separated children’s campuses.

The Spanish assessment notes the development of a trend to place separated children in centres located away from the main population centres where their support would be provided outside of mainstream services. This is often justified by citing the difficulties in maintaining peaceful co-habitation between Spanish national children and children from minority groups. Similarly the revised Belgian assessment points out the opening of two specific care centres for separated children. The centres have a multi disciplinary staff team and a collaborative relationship with other Belgian child rights NGO’s. The French Red Cross run a residential centre for separated children who have entered through Charles De Gaulle airport. The centre opened in September 2002 and children are normally placed there for a 3 month period whilst an assessment of their needs and longer term options takes place.

An Austrian guideline on Federal Care in October 2002 excluded certain nationalities of separated children from receiving Federal support. Initially some separated children literally found themselves on the street before the provincial authorities took up their responsibilities to provide care. This triggered protracted negotiations between the Federal and Provincial authorities over funding which was only resolved within the last year with the provinces agreeing to fund 40% of the support costs to separated children and the Federal authority meeting the balance.

The UK Department of Health has issued guidelines clarifying the situation that, pending a full assessment of need, local authorities best practice, consistent with the law, should be to support, safeguard and promote the welfare of separated children. Previously the interpretation of the law applied by many local authorities was to provide most separated children, particularly those aged 16 and 17, with minimal support. Reduced support should now only be offered if a detailed assessment indicates that the child has a relatively low level of need.

The separated children who were consulted on the levels of care they received tended to focus their responses on their accommodation. Many were unhappy with the quality of their support, particularly those living independently or semi-independently. Some talked of having to share rooms where privacy was impossible and others spoke of shared houses where they clashed with the other residents or where they described the accommodation as dirty. Some of the girls interviewed felt uneasy at night if they were living in shared houses without 24-hour cover and references were made to accommodation being isolated. However those separated children placed in group homes or family felt more satisfied with their care and in general felt that they developed close and supportive relationships with care staff and substitute carers. Some separated children were placed with extended family. Whilst this made the practicing of the child's culture, religion and maintenance of their mother tongue easier the down side was that these relatives were themselves often struggling to cope with trauma and dealing with a new way of life and in consequence the quality of care often suffered.

In spite of significant developments on the provision of care for separated children since 1999, the large increase in the numbers of separated children in Ireland has far out-stretched the capacity of the Health Boards to absorb children within existing residential childcare services, particularly in the Dublin region. Good practice exists with respect to younger children in residential settings. However concerns were expressed about the well being of adolescents in hostel accommodation, which is a largely unsupervised and unsupported environment, and where minors have the same welfare allowances and self-care responsibilities as adults. Other concerns were that some separated children were not providing themselves with a nutritionally adequate diet, that some were not accessing education, that those with mental health needs as a result of experiences of loss, violence or trauma were very isolated and lonely, and that adolescents were vulnerable to abuse or sexual exploitation. The need to target foster care placements for separated children was identified as a priority by the Health Boards.

### **Recommendations**

- Separated children should be found appropriate needs based placements immediately upon arrival.
- European countries should prepare detailed practice guidelines regarding the delivery of services to separated children.
- All separated children should receive a comprehensive assessment of their needs from which should be prepared a detailed care plan.
- Separated children should be consulted and allowed to inform the care and placement plans that are made for them.
- Separated children over 15 years old should not be treated in the same way as adults and should have their needs as children recognised and assessed.
- Care for separated children should be within adaptable mainstream provision that is able to respond to their particular needs as separated children.

### **2.11.2 Health**

Across the respondent countries the legislation provides for separated children to have access to both preventative and reactive health care. This is in line with Articles 24, 39 and for children with disabilities Article 23 of the CRC. Problems may be experienced because of language barriers and lack of awareness of services, attitudes and values of healthcare professionals, lack of resources and cultural insensitivity but nevertheless services are available. The assessments noted very little change or developments over the past 4 years.

For many of the children who were interviewed during the gathering of information for the revised assessments the most painful and difficult area in their lives was the separation from their parents, particularly their mothers. They miss them and worry about them. Some children outlined how this anxiety caused them sleeplessness, nightmares, eating disorders, depression and aggression. Some of the children had chronic head and stomach aches and they would cry and feel afraid at night. Few spoke of having seen a therapist or psychologist and many felt that they had no one to talk to about their anxieties and worries.

Several German *Länder* have established treatment centres for refugees suffering from trauma as a direct result of experiences during their journey into exile. These services are not specific to separated children though several have benefited from their services.

### **Recommendations**

- Effective access to all health care services should be available to separated children.
- Health professionals and other appropriate staff should be aware of the psychological impact of violence and trauma on children.

### **2.11.3 Education and training**

During the preparation of the updated assessments a theme that emerged from the consultation with separated children was how much they valued education. The Finnish assessment noted that children felt responsible for doing well at school and in The Netherlands there were references from children to the importance of school. However a large proportion of separated children do not attend school or college. This could be due to any one of a range of factors. Sometimes they could not pay their transport costs to get to school or, in other instances, the inability to get a good nights sleep or have the space to study owing to the circumstances surrounding their accommodation was a factor. One 16 year old boy commented that he had an argument with a teacher and did not know how to resolve this dispute. He felt that he was no longer allowed to attend classes and in consequence stopped attending school altogether.

A recent change in Greek law now enables separated children to attend reception classes within the mainstream Greek education system. This is a positive step though its value is probably questionable as attendance at class is for a limited period only. A similar decree in Belgium from June 2001 ensures that all separated children have special language classes thus providing the opportunity for them to learn a language promptly upon their arrival. Italian legislation outlines that even children without a residence permit have the right to be enrolled in school and may be awarded a certificate at the conclusion of their studies. This good practice is in line with the SCEP statement and should be welcomed.

On a less positive note the older children in the Dutch returns model (see above) receive their education isolated from mainstream society in the campuses. The education package is focused on developing the skills a child may find most useful upon return to their country of origin. The Dutch language is not taught extensively even though many separated children have stated that they would like to learn it. In Dublin, Ireland, there are only 9 project workers to respond to the needs of 500 separated children and against this backdrop of limited resources it is not surprising that in practice some children have had to locate their own school places.

Placing a child promptly with peers in an educational setting is an important and readily achievable step in reintroducing stability and normalcy into a child's life. It is an important part of the process in helping a child to rebuild their life and is essential if the child is to successfully integrate into the host community. The right to education is clearly outlined in Article 28 of the CRC.

#### **Recommendations**

- Separated children should be allocated a place in an educational establishment promptly upon arrival in the host country.
- Additional language classes should be available to separated children if appropriate.
- Education should be provided within mainstream services though opportunities should be provided for the child to retain cultural awareness, learn about their country of origin and maintain the use of their mother tongue.

## **2.12 The asylum or refugee determination process**

The direct consultation process highlighted that many separated children had problems with the asylum procedures. The Dutch assessment noted that every separated asylum seeker had had difficulties in this respect. Delay in the decision making process and a lack of accessible information about the procedures seem to be at the centre of most young peoples dissatisfaction. One young woman commented that she had waited a year for a decision that was yet to come and another child outlined that he did not know where to go to for information about the progress of his application. When asked what should be done about this situation one group of children responded that the responsibility lay with central governments who should provide separated children with more information about the asylum procedures, their future possibilities and that decisions should be made quickly. A young man in Germany mentioned that he did not understand the procedure because it was explained to him in German, a language he did not understand.

### **2.12.1 The determination process**

#### **Situation summary, 1999**

Once again it was difficult to identify a consistent approach across Europe. The idea that asylum seekers whose applications are manifestly unfounded should go into special, accelerated procedures, thus speeding up removal, was applicable to children in some countries, e.g. in Austria, France, Portugal and Sweden. In practice though it was seldom used. Most countries expected children to go through the normal determination procedures, though those under 15 in Denmark were deemed to be incapable of expressing a fear of persecution and were automatically given a residence permit. In Germany the under 16's were ineligible to make an asylum application, and thus denied access to a procedure that could recognise their need for international protection, because under German law they had no legal capacity. Similarly the requirement that separated children should have legal representation at all stages of the process received varied levels of compliance. In Austria a separated child had to have a lawyer present at all immigration interviews and in Finland they would be assisted by a lawyer at all stages. In Belgium a lawyer was not designated to a separated child but otherwise the picture was rather disjointed with most states accommodating legal representation for separated children at some stage of, but not throughout, the process.

The Italian immigration and asylum legislation approved in 2002, though not yet in force, has introduced a simplified procedure for processing claims of applicants who have entered, or attempted to enter, or remain in Italy illegally. The law does not provide specific protection for separated children and there is concern that they may not be exempt from the new provisions. Similarly in the Dutch application centres some decisions relating to separated children are being made inside 48 hours.

In Sweden new provision since 2003 requires that decisions concerning the asylum applications of separated children must be prioritised throughout the

initial application and the appeal stage. The Government's instructions stipulate that at each stage decisions should be made within 3 months, however representatives of the Immigration Board have outlined that, as yet, these targets are not being met.

Children need a stable environment and this is reflected in the principle that decisions concerning their welfare should be made promptly without delay. However gathering delicate and often painful information from a potentially frightened and traumatised child takes time and needs to be undertaken in appropriate surroundings by specialist and skilled personnel. Time also needs to be factored in to support the child through this difficult procedure and to allow opportunities if required for 'expert assessments' and if appropriate, second opinions. All of this may be further slowed down if the work needs to be done through the services of an interpreter. The balance needs to be struck between a quick decision making process and the need to ensure that when made these decisions have enough meaningful information behind them to be accurate if Article 3 of the CRC, the best interests principle is to be adhered to.

### **Recommendations**

- Separated children should always be excluded from 'fast track' or special procedures as outlined in the Good Practice Statement.
- Priority should be given to decisions relating to the status of separated children though this must not undermine the principle that due care should be exercised when making these decisions.
- A competent legal representative skilled in working with children should be appointed for every separated child at the start of the determination procedure. States should develop effective systems for the regulation and monitoring of the quality of legal representation available to separated children.

## **2.12.2 Minimal procedural guarantees**

### **Situation summary, 1999**

'In general states did appear to have minimal procedural guarantees in place. The competent authorities took decisions and appeals systems were available'. The failing is that they were far too slow and for example procedures in France and Italy took longer for separated children than adults. In Finland decision times were averaging longer than a year. Although mechanisms for appeals were in place there were difficulties around deadlines, support through the process and information about the procedure.

The new Italian legislation creates a structure in which Territorial Commissions will make decisions on the merits of applications for asylum. Under the existing structure, decision making bodies did not receive adequate training on issues regarding children's rights and child specific forms of human rights violations and there is naturally concern that this will remain a gap in the functioning of the new Territorial Commissions.

The UN Committee on the Rights of the Child expressed its concerns regarding the length of time it took the Finnish authorities to make decisions on asylum

applications from separated children. Similarly the Finnish Parliamentary Ombudsman raised the same issue and asked the Ministry of the Interior to clarify why decision times were so long. Although explanations are still lacking the average decision time on an application for asylum from a separated child had dropped from 17 months to 7 months by the end of 2002 according to the Directorate of Immigration.

A significant change since the initial assessments relates to an increase in the number of countries who now seek to interview separated children. As noted above the UK and The Netherlands are implementing procedures to extend the interviewing of separated children. Additionally Denmark has provided training as part of its strategy to enable the Immigration Service to interview greater numbers of separated children and Austria is preparing guidelines to facilitate an expansion of interviews with this group. In Finland the function of the Directorate of Immigration has recently been extended to include the conducting of asylum interviews with separated children. Staff received training and the Directorate of Immigration produced detailed guidelines to assist their staff in interviewing children.

#### **Recommendations**

- Separated Children should never be refused status on the grounds of ‘non compliance’.
- All immigration staff who interview children should receive extensive training and ongoing support. States should consider the relevance to them of establishing dedicated and specialist teams to undertake the gathering of information from separated children. Detailed guidelines should be prepared to aid staff in this task.

### **2.12.3 Criteria for making a decision on a child’s application**

#### **Situation summary, 1999**

The pattern that emerged from the 1999 national assessments was that scant attention was given to child specific forms of persecution. Austria, France and the UK effectively took the same view on asylum applications from separated children as they would for adults in a similar situation. In many other countries e.g. Spain and, concerning the under 15’s, Denmark, asylum applications were effectively disregarded and separated children given ‘de facto’ or discretionary protection. Sweden and latterly Finland did, however, make specific reference to the best interests principle, article 3, of the Convention on the Rights of the Child, when decisions were made on individual cases. Somewhat predictably the responses to children turning 18 before a decision was made on their claim was also varied. This point is highlighted by the following comparison; in Norway and the UK the application would continue to be processed as if the applicant was a minor, whereas in Sweden the case would be re-registered as an adult application.

The update assessments highlighted the continued lack of willingness across Europe by decision making bodies to acknowledge the existence of child specific forms of persecution. Despite existing declarations by both Finland and Sweden

that the ‘best interest’ principle must be considered when making a decision on a separated child’s application for asylum there is little evidence of other European countries following this line. The Austrian assessment comments that the awareness of decision making officials about the particular needs of separated children has increased and this has been reflected in some of the recent decisions. The assessment also adds that since the implementation of the Children’s Law Modification Act the representation by the youth welfare agency to separated children in the asylum procedure terminates when the child turns 18. There is no transition period and the young asylum seeker must find independent representation or represent themselves.

The UK has reviewed the provision of discretionary leave and in consequence has changed their policy towards separated children. Applicants, who do not meet the criteria for refugee status but have a sound reason for not returning to their country of origin, e.g. the country is ravaged by war, would be awarded Humanitarian Protection. However a separated child whose application has failed and additionally does not meet the criteria for Humanitarian Protection would be given Discretionary Leave to Remain. This would normally be granted for a maximum of 3 years or up to the child’s 18th birthday if this came within the 3 years. At the end of the period of leave to remain the child can apply for an extension, which is not automatic, or if they have turned 18 they should either leave the UK or likewise apply for an extension. The change in procedure is clearly a deterrent as it gives a clear message to separated children that they will not be allowed to remain in the UK as adults.

### **Recommendations**

- Procedures need to be established to enable relevant staff to develop their awareness of the issues that impact upon children, particularly with respect to child specific forms of persecution.
- States should avoid making ‘de facto’ decisions as an interim administrative measure as a means of avoiding solutions that are in the best interest of the child.

## **2.13 Durable or long term solutions**

### **Situation summary, 1999**

In practice very few separated children throughout Europe would be removed following a failed application for asylum. Although there were examples of children remaining without a legal status, e.g. Greece, most separated children would be given a discretionary status allowing them to remain. This would be granted for a fixed period, sometimes coinciding with the child turning 18, but in any variation the status was subject to review leading to the child feeling insecure and being unable to plan for their future with any degree of certainty.

### **2.13.1 Remaining in a host country/country of asylum**

There has been little change since 1999 here. Very few separated children whose asylum applications have failed are removed and the issue for many of them remains the lack of a secure status and the difficulty that ensues from this in

making long term plans. Austria reported instances where the Independent Asylum Review Board had deemed the planned repatriation of separated children inadmissible. In such instances the child would remain in Austria.

In The Netherlands following the introduction of the Alien's Act many separated children who do not qualify for refugee status are given residence permits for a fixed period only. In making this decision the authorities take into account the self sufficiency of the child and whether or not they would receive an adequate standard of care if they were returned to their country of origin.

Not surprisingly most of the children interviewed for the assessments wished to remain in Europe. The Spanish assessment noted that none of the children interviewed wanted to return immediately though some did express a desire to return at some stage in the future, usually after establishing viable options for themselves in Europe. However some separated children in The Netherlands stated that they would like to return to their country as soon as possible in order to see family and friends again and some talked of wanting to help rebuild their countries.

### **Recommendations**

- Where states award temporary protection to separated children this status should carry with it the access to all forms of welfare support available to citizen children and a right to family reunification.
- Separated children receiving temporary protection should have dual care plans to prepare for both integration and to help them adequately prepare for their possible return to country of origin.

## **2.13.2 Integration**

### **Situation summary, 1999**

'A Programme for Action' noted that the Scandinavian countries approached the integration of separated children in a manner broadly reflecting the Statement of Good Practice with long term planning and care plans at the heart of their initiatives. Otherwise practice was less consistent. In Portugal there were no specific measures for the integration of refugees, whether separated children or otherwise, though the Greek national assessment noted that the integration of separated children had become a high priority. The UK had an integration framework clearly set out in Department of Health Practice Guidelines but there was little evidence that this was effectively being implemented. The range of accommodation on offer to separated children covered every spectrum from foster care and independent living through to unsupported lodgings in accommodation shared with adults. This clearly raised major issues around compliance with the Statement of Good Practice.

Integration is inevitably the missing chapter in many countries approach to the issue of asylum and immigration. Where integration is lacking many asylum seekers feel dislocated and can become physically and mentally ill. Some of them drift to the margins of society where many of their skills are underused or wasted. Once a permanent status is awarded separated children need to rebuild their lives and this process is usually aided by how well or otherwise they adapt and integrate

into their new surroundings. It still seems apparent that governments focus their initiatives on deterring asylum seekers from seeking protection in Europe rather than looking at how the host country can best benefit from the skills they bring with them.

Arrival in Europe can be quite a shock for many separated children. It is invariably very different from the countries they have come from and children often feel that they have arrived in a society that is quite strange, controlling and bureaucratic. They are often marginalized and find it hard to get to know their way around a community. A young man in The Netherlands said that he didn't know how to meet young Dutch people and a girl, also in The Netherlands commented that she didn't know what she could do, or wasn't allowed to do. These difficulties were often exacerbated if children were placed away from the more cosmopolitan areas in small or rural communities and as one boy put it, 'In a small village it is as if they have never seen a black person before'. If separated children are to be supported through this difficult transition period governments need to be proactive in considering initiatives to aid their integration into the host community.

A positive development in aiding the integration of separated children can be found in Finland where legislation was passed in 1999 to aid the integration and reception of refugees, immigrants and asylum seekers. Each applicant has an individual integration plan lasting up to 3 years. As a general rule children under 17 would not have their own plan, as they would be included in their parents plan. Children that belong to risk groups however do have their own plan and understandably separated children fall into this category. Children also have an integration plan lasting longer than 3 months if necessary and the government report on the implementation of the legislation reaffirmed the need for flexible plans for children.

Elsewhere opportunities to further the integration of separated children would appear to have been missed. The hard line approach to migration and employment rights raised its head in Italy with the Ministry of the Interior ruling in 2000 that minors (separated children) residence permits did not give children permission to work and neither could they be converted to other types of permit when the child reached 18. The result is that many separated children no longer feel that they have long-term opportunities in Italy and prefer to remain out of reach of the authorities. They avoid schooling and many work illegally or drift into street activities, petty crime and in some instances drug trafficking and prostitution. In Spain many children commented that they were not granted work permits and this was clearly an important issue for them. At present if a separated child resident in France is supported by the Child Protection Agency they can immediately apply for French citizenship. There is a bill before parliament proposing to change this by the introduction of a 5 year qualifying period before a separated child can lodge an application for citizenship. This is likely to increase the feelings of insecurity of many separated children in France.

Reference has already been made in this report to the new Dutch reception system for separated children. Clearly those children placed in the returns model of this new procedure will be denied an opportunity for integration into Dutch society.

### **Recommendations**

- Programmes and procedures should be developed to facilitate the integration of separated children.
- All separated children should have a long term care plan to address the specific areas and steps necessary for effective integration.
- Access to all welfare services should not be restricted and should be available to all separated children regardless of their immigration status.
- Separated Children whose temporary status expires upon their 18th birthday should be treated in a generous manner with full regard to their vulnerable status. Their current situation regarding work or study should be given considerable weighting in decisions around whether they remain in the host country or return to country of origin.
- Consistent with national legislation on the employment of children, separated children should have the right to engage in paid work if they wish to.

### **2.13.3 Adoption**

#### **Situation summary, 1999**

This was perhaps the only section of the 1999 comparative analysis where practice across Europe was seen to be consistent. Adoption was seen as an inappropriate solution for separated children and was thus so rare that instances were not worth noting. The French government was proactive in preventing the adoption of Rwandan children after the genocide there and reiterated this position in respect of Kosovo at the time of the Humanitarian Evacuation Programme from that territory.

Austria reported that the adoption of separated children within their territory has taken place. In Vienna throughout 2002 there were about 10 such cases. In Dutch law the rules regarding the adoption of foreign children are laid down in the Act of adoption of Foreign Children and the Alien Circular of 2000. In practice this does not take place and to do so would require approval from country of origin and guarantees that there are no longer parents and/or legal guardian to care for the child in the future. All states need to be mindful of Article 21 of the CRC, which relates to adoption, particularly the references to inter country adoption.

### **Recommendations**

- All states should develop guidelines regarding the adoption of separated children within their territory. These need to be mindful of the ‘permanence’ of adoption and the difficulty in accurately establishing the circumstances of birth families within the context of the global movement of people in times of conflict and upheaval.

### **2.13.4 Identity and nationality**

#### **Situation summary, 1999**

This section was reported on as part of the 1999 national assessment but did not feature in ‘A Programme for Action’.

The new Nationality Law in Germany enables a separated child who has been living in Germany for 8 years or more and is in possession of a permanent residence permit to apply for German nationality. A major drawback is that in order to qualify for this the applicant must not be reliant on public funding. This effectively rules out all separated children. A similar development in Sweden allows a separated child to apply for Swedish nationality if they have lived in Sweden for 5 years, or 3 if they are stateless, and as in Germany hold a permanent residence permit. This is mirrored in The Netherlands where separated children can apply for Dutch nationality if they have legally lived in The Netherlands for 5 years and hold a residence permit valid for a further 5 years from the date of application.

In contrast the French are proposing to review their procedures (see page 33 above) thus lengthening the time a child must wait before applying for citizenship.

#### **Recommendations**

- European States need to prepare guidelines for awarding nationality to separated children consistent with Articles 3 and 7 of the CRC.

### **2.13.5 Return to country of origin**

#### **Situation summary, 1999**

As previously noted separated children were seldom forced to return so it is thus not surprising that there was little evidence that states had policies and practice guidelines to follow in such instances. What may be more puzzling is that guidelines rarely existed for the occasions where separated children chose to return voluntarily. This was, and still is particularly surprising given that most governments encourage return/repatriation. On the rare occasions where return to country of origin did take place the lack of guidelines was a likely contributory factor in what was a general failing to meet the standards outlined in the Statement of Good Practice. In Portugal a family assessment would not take place and in Austria the authorities failed to research potential reception arrangements, though in Italy International Social Service would usually undertake a social inquiry. The Dutch proceeded with return if they believed that the child was sufficiently independent to look after themselves.

The Austrian update assessment noted that in some cases the return of separated children to their family in the country of origin has been supported by voluntary sector agencies. The Youth Welfare Agency is always involved and the situation in country of origin is clarified. Contact is established with the child's carers and return would only take place if it could be demonstrated to be in the best interest of the child.

In October 2002 France and Romania concluded an agreement to cooperate in protecting Romanian children on French territory by developing procedures for the return of children to Romania. In practice this establishes a formal route for the French authorities to request a local assessment of the conditions of the child's family in Romania. In theory there is meant to be a follow up exercise to establish the circumstances of the child after return has taken place but the French updated assessment noted that there was no information available on this aspect of practice.

Save the Children Sweden is currently working on an innovative project to help children decide if they wish to return to their country of origin and, if so, preparing them for return.

*During the summer of 2003 approximately twenty children will be travelling to Somalia and staying there for three months with the aim of re-establishing their ties with their country of origin. There will be a certain amount of educational activities during their stay. Most of the children still have relatives in the region, and will be living with them. Many of the children have not been feeling psychologically well, they are worried about their relatives in Somalia and what kind of life they are able to live, for example from a financial point of view. These worries are an obstacle to the children's integration in Sweden. The aim of the project is to improve the children's well being by enabling them to re-establish their links with their country of origin; the hope is that this in turn will give them greater motivation to pursue their education.<sup>6</sup>*

Spain noted that repatriation of separated children does take place, mainly to Morocco. The process for return rarely conforms to Spanish law, let alone the Statement of Good Practice. None of the children wished to return and families were not consulted except in two cases where the Moroccan police liaised with the family. Some of the children were well integrated into Spain and for them removal was particularly traumatic. The update assessment also notes that upon return some children were abused by the police, imprisoned and had to pay for their release. Not surprisingly this practice has been heavily criticised by a range of well standing organisations.

The decisions on the repatriation of all separated children in Italy are now made by the Committee for Foreign Minors, a body that is part of the Ministry of Welfare and whose main mandate is the protection of the rights of separated children. Previously this body only held responsibility for the repatriation of separated children from Albania and the local authorities or minors courts dealt with children of other nationalities. Separated children cannot be expelled in a similar manner to adults. They can only be returned if it is in the child's best interests and within the aim of family reunification. There must be a detailed evaluation on a case by case basis following a successful outcome to family tracing. Repatriation is not ordered by the police or other enforcement agencies, but by the Committee for Foreign Minors. Although practice is not always consistent with the law, some repatriations were clearly not in the best interests of the child, the assessment highlights that there is no evidence that the Committee has ordered repatriations in the absence of family members or authorities in the country of origin who were willing to take responsibility for the child, or where repatriation would have endangered the child.

The Greek update assessment confirms that some separated children have voluntarily decided to return to Albania. In such instances the situation of the child's family was assessed prior to return. The assessment also records that

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6 Swedish National Update Assessment 2003.

separated children found working in the street were often deported, particularly if they were aged 13 or older, though if they claimed asylum they would be placed at a 'relevant shelter'.

The UK are developing a procedure and policy to facilitate the return, on a non voluntary basis, of separated children whose asylum applications have failed. The practice is likely to hinge on developing facilities to receive children upon their return rather than assessing the ability and willingness of carers to provide support. This bears much similarity with the Dutch approach to forced returns where the view is that children can be returned to certain countries, e.g. China, Sri Lanka, Algeria and Turkey because institutional care is available and adequate for them. The Dutch have also financed the building of a residential institute in Angola, again with an aim to facilitate return.

#### **Recommendations**

- Separated children should only be returned to their country of origin if this is in their best interests.
- A thorough independent assessment must be made of family circumstances before any decisions on return can be made.
- The child must be kept informed throughout all stages of the process and should agree to any proposed return. In any event return should not be coercive and should be undertaken in a dignified manner.

### **2.13.6 Settlement in a third country**

#### **Summary situation, 1999**

'A programme for Action' states that it was extremely rare for a separated child to be settled in a third safe country. Finland, Greece, Ireland and Spain reported that it had never happened to children originally arriving in their territories and the French reported a small number. Policy in this area was described as underdeveloped.

This remains extremely rare in practice with little development since the initial national assessments. Finland is currently reviewing its Aliens Act and is likely to propose that, notwithstanding the 'best interests' principle, family reunification would primarily take place where parents are located.

#### **Recommendations**

- Procedures should be established to facilitate the transfer of separated children to another country if family are resident there and are willing and able to provide the necessary support to the child.
- European states need to develop a framework for closer liaison and partnership working on this issue.

## 3. The trafficking of children

### 3.1 Introduction

A trafficked child is the victim of a crime. In addition, a trafficked child has been robbed of care, childhood, family life, education, and health. Thus, the professionals giving assistance to them need to gain knowledge of the complex legal and social situation in which the child finds him or herself in the receiving country as well as in the country of origin.

*The EU Council of Ministers' Joint Action to Combat Trafficking in Human Beings and the Sexual Exploitation of Children, 24 Feb. 1997 outlines practical initiatives that should be developed, including "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 for relevant staff".<sup>7</sup>*

Key characteristics of any definition of trafficking are the existence of a coercive on-going exploitative relationship.

*'Trafficking in person's shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'<sup>8</sup>*

Trafficking should not be confused with the term 'smuggling'. Smuggling involves a third party facilitating the illegal entry of a person into a country, for which they would usually be paid, but upon arrival at the country of destination this relationship terminates.

Trafficking in human beings, particularly children, for the purposes of various kinds of exploitation is a rapidly expanding worldwide phenomenon. According to a recent UNICEF report, it is estimated that 1.2 million children are trafficked annually.<sup>9</sup> It confirms that almost all countries in Western Europe are both countries where children are trafficked through and to and that a similar fate was now befalling countries in Central and Eastern Europe, as well as those countries remaining a source of trafficked children. There are no reliable and verifiable

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7 S. Ruxton Separated Children Seeking Asylum in Europe, A Programme for Action, 2000.

8 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in a supplement to the United Nations Convention against Transnational Organised Crime, 2003.

9 UNICEF, End Child Exploitation, 'Stop the Traffic' July 2003.

statistics on the number of children trafficked within Europe. Children are trafficked for a variety of purposes including commercial sexual exploitation (including prostitution and child pornography), sweat shop work, forced begging, pick-pocketing, drug trafficking, domestic work, illegal adoption, and other purposes. There is also some anecdotal information noted in the UNICEF report about trafficking in children for organs.

Children become vulnerable to trafficking for a number of reasons such as: widespread poverty and lack of opportunity in certain countries of origin; political conflict and economic transition; unstable family life and child neglect or abuse; placement in under-resourced institutions where children suffer neglect and abuse; cultural attitudes; discrimination in terms of gender or ethnicity; lack of education; and, inadequate local laws and regulations.

Traffickers employ numerous ways to “obtain” children, for example, through deception, e.g. offers of marriage, false employment offers, or abduction and coercion. Many children and their parents have contracted a large debt to pay the trafficker for the child’s travel to Europe, which they can only repay through submitting to the work imposed by the traffickers. Violence, threats and intimidation are commonly used to ensure the children remain compliant, during the journey and when they arrive in the country of exploitation. In many cases children are kept as virtual prisoners by those who use them, have little or no access to health care and no opportunities for education or play. Furthermore, most trafficked children are undocumented and have no legal status in Europe, rendering them even more vulnerable to the control of their traffickers and fearful of approaching authorities.

### **3.2 Numbers, sources and forms of exploitation**

If there is to be a co-ordinated and European wide response to prevent the trafficking in children and to provide appropriate protection and rehabilitation for those children who are trafficked there needs to be an understanding of the size, scope and trends of the issue. A theme that ran through all the assessments was the difficulty in accurately recording the extent of the number of trafficked children. However there was a clear consensus that this is a real and growing phenomenon. The following extracts from the national update assessments illustrate this point.

‘Numbers are hard to define though children are certainly trafficked for sexual and economic purposes.’<sup>10</sup>

‘Trafficking mafias are unquestionably involved in bringing children to Spain for the purpose of exploitation with prostitution rings comprising of Eastern European girls as the most common form of exploitation.’<sup>11</sup>

‘No precise knowledge about the numbers of children who are trafficked to Denmark exists, rather the question is to what degree’<sup>12</sup>

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10 Belgian National Update Assessment 2003.

11 Spanish National Update Assessment 2003.

12 Danish National Update Assessment 2003.

‘It is difficult if not impossible to give clear numbers of trafficked children in The Netherlands’<sup>13</sup>

‘It is more or less impossible to get accurate statistics though estimates indicate that in 2001-2002 between 550 and 650 trafficked girls were involved in prostitution.’<sup>14</sup>

The very nature of trafficking i.e. it is a clandestine operation, is a major block in trying to portray an accurate picture of the numbers involved. This is compounded by the reluctance of the victims of trafficking to identify themselves for fear of reprisals against themselves or their families. Furthermore the tactics of the highly organised gangs behind much of the illegal and exploitative global movement in people, for example the movement of girls working as prostitutes from city to city as outlined in the Italian assessment, makes it very difficult for victims of trafficking to come to the attention of the welfare agencies.

Only a small proportion of separated children entering Ireland are identified at the port of entry. The vast majority, about 95% are identified within the country. This raises the likelihood that many other separated children enter the country without coming to the attention of the statutory authorities, and they could potentially be at risk of exploitation from traffickers. The assessment notes that there is anecdotal evidence to support this assumption. In preparing the Irish assessment it became apparent that there was insufficient monitoring and protection procedures in place to deter trafficking. This is exacerbated by a legislative weakness, which makes it difficult for the Immigration Service to prove trafficking if there is no evidence of financial gain.

It is difficult to make statements about the extent and organisation of child trafficking in Germany and even Europol can only provide sketchy information. There is still an alarming tendency to regard trafficked children as criminals rather than victims and in consequence many do not feature in statistics relating to child protection. The police in Frankfurt arrested girls that they found working in brothels and held them in custody overnight because they had neither work nor residence permits. Similarly the UK update assessment outlines that there are no reliable statistics on the number of children being trafficked into the UK and cites the clandestine nature of the activity as a key factor behind this. There were 250 known cases identified during the last 5 years though the real number is inevitably higher. Whenever the Danish police approach prostitutes working in the street who appear under 18 the girls invariably produce visas and identification papers that demonstrates that they are adults. The general assumption amongst the police and NGO’s is that far more children are trafficked into Denmark than the authorities are aware of. This is mainly within the sex industry and evidence of other forms of exploitation is limited.

In Sweden there are concerns that separated children are involved in the sex trade although representatives of the Immigration Board, National Criminal Investigation Department and Social Services outlined that they had little concrete evidence of this phenomenon. This may be because most trafficked children enter illegally and are outside the asylum system. Another factor

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13 Dutch National Update Assessment 2003.

14 Italian National Update Assessment 2003.

contributing to a likely under recording of trafficking in children arises where children are given residence permits on the grounds of family ties, as it can prove extremely difficult to accurately establish the relationship between the child and the adult. One representative of the Immigration Board said that throughout 2002 she had only encountered two cases where there were suspicions of trafficking.

The assessment from Finland is slightly at variance with the other assessments as the trafficking of children is deemed to be not quite so widespread as in other countries. The police are unaware of child trafficking cases, foreign child prostitution or a child labour force in Finland. Illegal entry in general into Finland is described as being almost insignificant with only a few cases recorded annually and the amount of separated children residing illegally in the country is estimated to be very small. However this may not be a true representation as it is acknowledged in the update assessment that the problem in conducting research into trafficking is exacerbated by a shortage of systematic sources. Additionally the limited financial resources of the police and the lack of legislation explicitly dealing with trafficking do not create the conditions for an accurate overall assessment. Similarly the Portuguese assessment refers to a single confirmed case of trafficking of a child on route to England. Allegations have been made that girls are being brought to Portugal from parts of Africa for the purposes of prostitution and the courts are currently in the middle of a prosecution of an alleged trafficker. As in Finland it is highly likely that the incidence of trafficking in Portugal is understated, as there is limited awareness of the issue and a lack of structure to identify and respond to cases of trafficking.

Reference has already been made to the commercial sex trade as the end market for many trafficked children and it is indisputably a major reason behind the trafficking of children. For example an indicative figure of the number of trafficked children forced to work in the sex trade in The Netherlands stems from research undertaken in 1998, which estimated that there were in the region of 350 – 500 foreign children engaged in prostitution in the country. Similarly in Italy trafficking is very closely linked to sexual exploitation though a number of other forms of exploitation including illegal labour, begging and petty theft have emerged in recent years and the updated assessments confirmed that it would be a mistake to assume that the sex industry is the only reason behind the trafficking of children into Western Europe.

Initially in Vienna but latterly throughout Austria the number of children brought into the country by criminal gangs for the purpose of exploitation has risen significantly. In Vienna the children are predominantly Romanian boys who are usually involved in theft and petty street crime. The Youth Welfare Agency (YWA) is sometimes contacted as many as 40 times per month by the police who have a boy in their custody. The YWA provides accommodation but invariably the child remains with them for less than a few hours. There is a welcome proposal to provide accommodation units staffed by Romanian speaking personnel as part of a plan to develop more social contacts outside the criminal environment for these youngsters.

The Coalition for Children's Rights, a Belgian NGO, undertook a study on the circumstances of child beggars within Belgium. Their research revealed that most children begging were from the Central and East European states, many of who

had failed in their asylum application. Rather than face conditions of extreme deprivation upon return to their country of origin they chose to remain in Belgium where begging was often their only means of survival. The German assessment notes that children are trafficked into Germany to take part in organised theft, prostitution and child pornography, diamond smuggling, drug smuggling and dealing, and domestic work.

The assessments also confirmed that the traffickers do not limit their 'recruitment' activities to a few regions or areas and there are many countries around the world that serve as sources of trafficked children. The German assessment gave a flavour of this with reference to trafficked children originating from Nigeria, Ghana, Sudan, Liberia, Algeria, Turkey, Sierra Leone, Romania, Thailand, Russia, Poland, Latvia, and the Czech Republic who had been identified within German territory. However Eastern Europe and Africa repeatedly appeared in the assessments as significant sources of trafficked children. UNICEF states that the source countries to the UK have changed over the last 5 years with East, Central and Southern Africa now featuring alongside the more traditional originating countries in West Africa. There are also examples of children being trafficked into the UK from China, Vietnam, Southeast Asia and Eastern Europe. Most trafficked children enter The Netherlands illegally though some do enter via the asylum system. They originate mainly from Eastern Europe and West Africa. Italy is often a point of transit for trafficking operations stemming from Eastern Europe, North Africa and Albania.

### **3.3 Legislative and other responses**

A real understanding and awareness across Europe that trafficking in people is a major and growing crime is relatively recent. The realisation that trafficking seriously undermines the immigration control of a number of countries combined with a greater understanding of the misery this trade creates has no doubt fuelled the increase in legislation across the continent aimed at its prevention. Most countries now have specific legislation penalising those found guilty of trafficking and the allocation of powers to those charged with its suppression. Similarly most countries have existing legislation criminalizing the use of children in sexual activities or pornography. The Portuguese assessment commented that there was no specific provisions in the Aliens Law concerning trafficked children or their traffickers and this is consistent across Europe where there is a marked lack of a specific criminal offence of trafficking in children. In practice those traffickers whose activities target children are prosecuted under a varied range of legislative instruments.

Specific legislation against traffickers in the UK is very recent and at present is limited to an offence of trafficking for prostitution. It became an offence to facilitate the arrival, travel within and departure from the UK of a person to be used in prostitution. Further legislation is proposed in the forthcoming Sexual Offences Bill, which will cover, amongst others, clauses on child pornography and trafficking. Additionally the government intends to introduce a bill, which will introduce a new offence of labour exploitation and trafficking for labour exploitation. The Sexual Offences Bill will also redefine a child as being under 18 years old rather than 16, thus making it an offence for a child under 18 to be used in prostitution or pornography.

Similarly legislation dealing with trafficking in people is recent in Denmark and was introduced in 2002. This new law includes a section, which clarifies that it is illegal to recruit, receive or transport children with a view to their exploitation, sexual immorality, forced labour, slavery or similar conditions, or the removal of organs. It is, according to Danish legislation, a criminal offence to buy sexual services from a person under 18 years old.

Since 1995 legislation has existed making the trafficking of persons into Belgium for exploitation a criminal offence. The law in Portugal provides for the imprisonment for up to 3 years of those found guilty of trafficking people for exploitation and separate legislation criminalizes the use of children in prostitution. In Germany child trade is a criminal offence according to a particular section of the Penal code but within it children are defined as under 14. The section is rarely used to prosecute traffickers, presumably because most trafficked children are older than 14. The Greek assessment highlighted that there is legislation criminalizing trafficking in human beings and legislation criminalizing the use of children in prostitution and pornography. Furthermore legislation exists to protect children in the labour market. However there is no specific legislation targeting the trafficking of children for exploitation. In Finland it has been prohibited by law to use the sexual services of a minor since 1999. New legislation to criminalise trafficking in human beings is presently under preparation though at present this is a gap in Finnish law. The Italian parliament recently approved a new law in 2003 on the trafficking of human beings. The law has a number of components but two that are particularly relevant here are the introduction of harsher sentences when the trafficked victim is a child and the introduction of an offence of forcing children to beg which carries a maximum sentence of up to 15 years imprisonment. In Austria steps have been taken to strengthen the legislation used to prosecute traffickers. The Aliens Act (2000) effectively redefined trafficking from an administrative to a criminal offence. Similarly the exploitation of a person who has no secure legal status within Austria has now become a specific criminal offence.

Prostitution is legal in The Netherlands though prostitutes must be over 18 and do their work voluntarily. It is an offence under the Dutch criminal code to traffic in persons or to involve a minor in prostitution. These offences carry a maximum of up to 8 years in prison. In October 2002 a new law came into effect lifting the ban on brothels and introducing a licensing and inspection regime regarding their operations. The expectation is, understandably, that this will improve the situation of prostitutes. The danger is that illegal prostitutes, including children, will be forced into even more perilous situations in 'hidden' houses.

A major barrier in the fight against trafficking is the difficulty in securing convictions because the victims are inevitably illegally resident and fear removal if they outline their plight to the law enforcement or immigration services. There have been a number of limited initiatives aimed at encouraging victims to testify against their exploiters, usually involving the issue of some form of residence permit.

Anyone who has been brought into The Netherlands by traffickers for the purpose of prostitution and who lays charges against their traffickers will be granted a temporary residence permit provided there is enough evidence to prosecute the

trafficker. This permit is issued pending the outcome of the legal proceedings and in some cases may be extended to a permanent permit. However a person claiming to have been trafficked for the purpose of prostitution but who has not yet engaged in the activity will not be entitled to either a temporary or permanent permit even if they testify against their traffickers. In Spain in exchange for testimony against traffickers victims are given immunity from immigration sanctions and offered temporary residence and work permits as well as assistance with social integration. The government intends to reform the foreigner's law for the third time in two years. One of the reasons justifying yet another reform was to include amendments to toughen the sanctions against those found guilty of human trafficking. In the fight against trafficking Italy has made provision for permits of 'Social Protection'. These permits can be awarded to those at risk of serious violence or exploitation where the applicant has attempted to escape from their oppressors or fears reprisal if they testify against their exploiters. This protection is available for minors. Victims of trafficking in Portugal may also avoid expulsion if they collaborate with the police investigations and be awarded a residence permit. In Belgium in 1997 guidelines were issued by the Home Office allowing certain categories of trafficking victims to be given work and residence permits. However none of these measures are specific to children.

In December 2002 the Danish Government published a plan of action to combat the trade in women. The plan is divided into two parts, the prevention of trafficking and support for victims of trafficking. As the Danish assessment notes it is alarming that the specific vulnerability, conditions and rights of trafficked children are not mentioned in the plan and that there are no areas in the plan that take into consideration the special needs of trafficked children. It is unclear whether a trafficked child will gain access to similar welfare advantages as those of separated children in the asylum determination procedure and Danish children who have been sexually exploited.

In March 2003 the UK government published a 'toolkit' aimed at Immigration Officers, the police and social services departments. It is hoped the 'toolkit' will raise awareness so that victims will be treated more fairly and is a welcome resource. Save the Children (UK) believe that training is required if the target professionals are to be able to maximise the potential of the 'toolkit'. Steps to prevent the trafficking and smuggling of separated children into The Netherlands have been incorporated into the new 'unaccompanied minors policy'. This proposes areas of research alongside greater scrutiny of entry and exit procedures in both the main identified source countries and The Netherlands.

There is little evidence that the protection of children is the main priority when a trafficked child is brought to the attention of the authorities. If state agencies placed the safety and the welfare needs of children at the top of their agenda they would not use the practice of linking settlement to a child's ability and willingness to present the evidence necessary for a successful prosecution. In general the assessments questioned the trafficked child's ability to access the mainstream childcare services let alone the provision of specialist services specific to their needs. It is very unsatisfactory that despite the evidence of the serious harm inflicted upon trafficked children, the threats that they are exposed to and the perilous nature of their existence that immigration control still appears to be the paramount concern throughout Europe and the welfare of the child a secondary matter. The inevitable consequence of this is that the needs of the child often remain unaddressed.

### **3.4 Interagency relationships**

Intervention to protect trafficked children calls for an open sharing of information amongst the relevant agencies and an effective response to the rehabilitative needs of this group similarly calls for a multi disciplinary approach. It is therefore somewhat concerning that the assessments portrayed a mixed picture across Europe of the relationships between the key protection agencies. This must, in some instances, cast doubt on their ability to work effectively to prevent trafficking in children.

The German assessment notes that the police have little interest in the welfare of trafficked children; rather their focus is the prevention of organised crime and the illegal entry of foreigners into Germany. In consequence the police rarely treat trafficked children as victims and tend to criminalise them. There is little public debate on this issue in Germany, presumably because an inevitable consequence of serious engagement with the subject of child trafficking would not allow these children to continue being left to their fate. The response would be the recognition of the need to provide these children with a residence permit and the political will to do this is lacking. Traffickers have been known to try to accommodate children in youth welfare accommodation so that they don't have to deal with their every day needs. The adults literally pick them up in the morning and return them in the evening. The Youth Welfare Office has a common practice of asking children whether they were trafficked into Germany. They rarely receive an answer but the assessment notes that in all *Länder* the Youth Welfare Office and the police co-operate closely. The picture is less positive regarding the relationship between police and social workers where there is little evidence of effective joint work.

The child welfare authorities in Spain consider it the responsibility of the police to identify and reach out to the children caught up in the prostitution rings or other mafia operations. Many claim to be adults and can produce documents to support these claims. There is little evidence of effective joint working between the police and welfare agencies.

However on a positive note responses in the UK include the formation of a Counter Trafficking Steering Group which is a multi disciplinary inter agency forum to facilitate an information exchange and the discussion of current developments. This group have prepared a toolkit to help practitioners support the victims of trafficking. West Sussex social services in partnership with other statutory and voluntary agencies drew up a profile to aid in the identification of trafficked children arriving at Gatwick airport and a similar profile has recently been introduced at Heathrow airport.

### **3.5 The care of victims**

If European states are serious about treating the trafficked child as a child first and foremost who is the victim rather than a perpetrator of a crime they need to develop adequate responses for their care, nurturing and rehabilitation. The updated national assessments reported a range of varied and often contradictory responses in the provision of childcare support to this group.

There is no difference in the treatment of trafficked children compared to other children in the German asylum procedure. Programs for witness protection are limited because the program ceases if the child revokes their testimony exposing them to further risks from the traffickers and the threat of deportation if the court action is abandoned. Notwithstanding this there are some examples of innovative practice within the German system and in general social workers try to support and build a relationship with the children and alter the conditions of their relationship with their exploiters, e.g. in Dortmund a shopkeeper agreed not to employ children after 10.00 pm and in Hamburg care workers provided lessons for Romanian ‘theft children’ in the early morning before the children went out to ‘work’ for the day. A trafficked child in Portugal is, at least theoretically, entitled to the same welfare provision applicable to any child ‘in danger’ though inevitably this is often questionable in practice. In The Netherlands trafficked children who claim asylum receive the same support, including the appointment of a guardian, as do other separated children in the asylum determination procedure. Trafficked children have the right to go to school, though this is rare in practice. It is questionable whether trafficked children get adequate special attention focusing on their health and psychological needs, unlike Dutch nationals exploited by prostitution who do receive specialist services. Further, initiatives to support Dutch women and girls who want to quit prostitution are not offered to trafficked children.

An unusual, if perhaps ultimately flawed, project took place in Austria concerning a number of Bulgarian girls who had been caught shoplifting and were subsequently referred to the Youth Welfare Agency by the police. In partnership with IOM some of these girls were returned to a unit in Sofia, however IOM recently ceased this operation, as they were dissatisfied with the standard of the accommodation available to the girls. The obvious question to ask here is what steps were taken to care for the girls upon return to Sofia and more pertinently what action was taken to ensure the girls were not re-trafficked. Without effective care and protection measures in place this becomes, quite simply, a matter of immigration control rather than an exercise in the protection of children.

All trafficked children are entitled to support within the existing UK childcare legislative framework though concerns remain about the effective delivery of services in practice. This is partly due to the quality of services on offer though a contributory factor, as ever, is that it can be very difficult to engage with this group. It has been noted that Chinese children disappear immediately upon arrival into their community without contact with welfare agencies. The Africans on the other hand often initially contact welfare agencies for support and ‘disappear’ at a later date. Eastern Europeans are frequently met by a ‘relative’ and remain outside social protection until they resurface, perhaps following a raid on an illegal prostitution establishment. A safe house for trafficked girls located in Southern England is to be closed in the near future owing to fears that the traffickers have identified the property. A similar concern was raised by Spanish childcare staff and government officials who expressed serious anxieties for the welfare of the girls caught up in the prostitution rings citing their lack of contact with child welfare agencies as a particular problem. Also in Spain the updated national assessment noted that prostitution is not the only form of exploitation and there are isolated cases of girls in domestic service who are even harder to detect than the girls in the prostitution rings.

### **3.6 Recommendations**

- As a general recommendation and consistent with Articles 32, 33, 34, 35 and 36 of the CRC efforts should be made to build on existing measures to combat all forms of trafficking in children; by developing services for their protection and care; by introducing legislation to protect them; by developing initiatives for the sharing of information across appropriate agencies and by the introduction of more robust identification, tracking and monitoring procedures. These steps must be taken in line with the best interests of the child.
- European states should ensure that specific legislation exists to criminalise the trafficking of children for any type of exploitation.
- Legislation must reflect trafficked children, as victims rather than criminals and states must develop a strategy for raising awareness of this emphasis. They should be provided with protection and rehabilitation and must not be subjected to criminal proceedings against them.
- Trafficked children must be excluded from any accelerated decision making process and where appropriate should never be denied access to asylum determination procedures.
- The granting of residence permits should be based on the best interests of the child following an assessment of the child's circumstances and not on their willingness or ability to testify against their traffickers. Procedures must ensure that the threat of removal is never used to gain the child's cooperation during the criminal investigation.
- Safe accommodation should be provided by European states for trafficked children. This should be diverse to meet the varying needs of children and could range from safe houses to specialist foster care as long as there are sufficient guarantees that the children are beyond the reach of their traffickers.
- Children who are victims of trafficking should have access to all mainstream services for children and states should pursue initiatives to respond to their particular needs arising from their exploitative relationship with traffickers. Close attention should be paid to their psychological health and Guardians should be appointed promptly.
- States should share information on trafficking with other states and immigration authorities should develop closer working relations with each other. Appropriate training and awareness raising should be given to all staff who may come into contact with trafficked children.
- Internal procedures should be introduced to ensure clarity of role and to enable joint working between the police, immigration services and welfare staff so as to deliver effective protection for trafficked children. All protection initiatives should be coordinated and multi disciplinary.
- Trafficked children should never be removed to their country of origin without a full assessment of the level of care they will receive upon return. Decisions should be based on the 'best interests' principle and there should be a plan in place to prevent the child from being re-trafficked.

## 4. Conclusion

Historically separated children have been doubly marginalized, as children, to whom societies tend to ascribe fewer rights, and as refugees or migrants, who are invariably denied, usually by legislation, the same rights as host community nationals. Indeed in recognition of this it was the plight of refugee children from the Balkans that inspired Eglantyne Jebb, the founder of Save the Children (UK), to begin the draft that ultimately became the Declaration of the Rights on the Child in 1924. The difficulties of separated children are further compounded because they have no one to care and provide for them or to act as advocates on their behalf. In short they are an exceptionally vulnerable group. It is thus a matter of extreme concern that despite the financial resources available to the countries of Western Europe, their collective and individual response to the needs of separated children arriving within their territories has, to date, been largely inconsistent, ad hoc and fragmented.

The SCEP Statement of Good Practice compliments the CRC and provides a clear framework for the recognition and implementation of the rights of separated children, and therein the provision of appropriate care and support for them. It is a useful document against which to assess responses by states and their institutions to separated children and to monitor progress in responding to their needs.

It is perhaps somewhat inevitable that there will be many inconsistencies when comparing practice across a range of countries. A number of factors may contribute to the lack of a consistent approach. These would include the scale of the issue, i.e. the numbers of separated children, is it a new or established phenomena, the range of resources available, whether a country is perceived as a destination or transit country, whether a country has a tradition of multi culturalism or otherwise etc. However it was extremely worrying that the comparative analysis of the situation of separated children in Western Europe that emerged from the national assessments in 1999 highlighted such wide discrepancies in practices across Europe and in consequence noted many areas where the Statement of Good Practice was not being implemented to a satisfactory standard. Whilst recognising areas of good or acceptable standards where they existed an overall conclusion of the initial country assessments had to be that the practice as outlined in the Statement of Good Practice was not being met.

Given this rather low starting point there were, therefore, some grounds for optimism that this subsequent analysis examining the changes in legislation, policy and practice since 1999 would be able to note an improvement in the standards of protection and care available to separated children. Indeed there has been some progress. For example, in the field of guardianship, where specific positive changes have taken place in Denmark, Belgium and particularly Finland, and where overall a general trend is emerging that Guardianship is a necessary and useful function in the effective protection of separated children. In relation to trafficking where there is a growing recognition of the rise of this issue and the need to respond to this increase. Finally optimism that 'Dublin II' will lead to greater opportunities for family reunion.

However the larger picture is not so good. There has been a marked hardening of attitude across Europe to migrants and asylum seekers with energy focusing on deterrent rather than the development of models of managed migration. A whole host of legislation, regulations and guidelines have emerged since 1999, most of which has an extremely negative impact on both children and adults alike. There have been a number of departures from the Statement of Good Practice, e.g. the introduction of the new reception model in The Netherlands, the proposals in the UK to return separated children to institutional rather than family care, and the adoption of several separated children by families in Austria to name but a few. There has been little real progress in exposing and breaking the organised criminals who traffic children into Europe for the purposes of exploitation and there is an overall consensus that the incidence of trafficking in children continues to rise. It is appalling that there are still occasions where trafficked children who have been coerced into illegal activities are perceived as criminals rather than victims and dealt with as such. In certain contentious areas such as the detention of separated children and the assessment of age the current situation mirrors that of 1999. This is particularly disappointing given that governments surely have a vested interest in developing effective and credible procedures and this presumably indicates a lack of will on the part of governments to address these key areas.

If we were to ask if there has been any progress in the realisation of the rights of separated children across Europe since 1999 the response, based on the updated assessments, would be that there has been some gains and losses though on balance there has been no real progress. We have some considerable way to go before we can say with confidence that the Statement of Good Practice is being applied consistently throughout Europe. Without exception, since 1999, all of the countries highlighted in this report have introduced guidelines, regulations, and in some cases major pieces of primary legislation e.g. Italy, Austria and the UK, dealing with asylum and immigration. Within all these administrative and legislative changes it is hard to find an example where the welfare of children has been paramount over the requirements of robust border control. This is disappointing to say the least.

It is difficult to foresee an end to the widespread global movement of people and children until conflict and human rights abuses across the world cease, and we see an erosion of the fundamental inequalities in wealth and standards of living between the affluent and emerging nations. History has demonstrated that deterrents have limited effectiveness and consequently European states need to accept that separated children will continue to arrive within their territories. If they are to respond appropriately to the needs of separated children and receive the benefits of investing in their potential governments need to find ways to put the child's interest at the heart of their decisions. Perhaps the simplest starting point is to recognise the separated child as a child, first and foremost.

## 5. Sources

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Updated National Assessments co-ordinated by the Separated Children in Europe  
Programme's NGO partner in the following countries:

Austria	Germany	Portugal
Belgium	Greece	Spain
Denmark	The Netherlands	Sweden
Finland	Ireland	United Kingdom
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