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MIGRATION OF UNACCOMPANIED MINORS – A HOLISTIC APPROACH BASED ON THE RIGHTS OF THE CHILD

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Introduction

1. Compliance with human rights starts with the way a society – a country – treats children: all children! While it is true that the legal commitments entered into by the States Parties to the United Nations Convention on the Rights of the Child (hereafter referred to as "the Convention"), adopted by the United Nations General Assembly at its 44th session on 20 November 1989, mainly apply to those children who are directly within their jurisdiction, no children must be left by the wayside or categorised in such a way that they are left in legal limbo.

2. The issue of separated minors outside their country of origin –which is an issue of prime concern for the Committee on the Rights of the Child (and one to which it has drawn attention during its consideration of periodic reports submitted by States Parties to the Convention) and for many other relevant international institutions and non-governmental organisations (NGOs) – must be considered within the framework of these values.

3. The ratification of the Convention by 192 – almost all – UN member states can be considered as the starting point of a systematic process designed to give new impetus to the range of measures and programmes for children that have been implemented to date, with the aim of aligning national legislation and policy more closely with the rules and principles set forth in the Convention and other related international instruments, including the Convention's two optional protocols: the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict.

4. However, while it is true that children have never had as many rights, or enjoyed as much care and special attention, as now, neither have they at any time been exposed to as many risks, or called upon to adapt to such an extent, as in the case of abandoned children or those involved in other difficult situations: poverty; disabilities; lack of school; deviant behaviour, economic exploitation; sale of children; child prostitution; child pornography; involvement of children in armed conflict; trafficking and illegal movement of children; and separated children or children seeking asylum. Children in these situations continue to be an issue of prime concern for the international community, and call for fruitful debate about universal values: not only about the responsibility of each state and its obligations towards its own nationals, but also about the support and resources each state is willing to make available, including in the framework of international co-operation and solidarity, to ensure that childhood is the time when children – all children – learn to trust in humanity.

5. The issue of separated minors raises a number of questions and challenges. Each state, under international public law, naturally has exclusive competence to establish laws governing the conditions relating to the entry and residence of foreign nationals on its soil. However, at the same time, states have also acceded to many international instruments, including the Convention, Article 10 of which, in particular, calls for applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification to be dealt with "*in a positive, humane and expeditious manner*". Article 22 of the Convention similarly provides that: "*States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present*

Convention and in other international human rights or humanitarian instruments to which the said States are Parties ...".

6. Consequently, the international institutions and bodies responsible for co-ordinating and monitoring states' policies in this area are trying to ensure greater realisation of the rights enshrined in the Convention, by encouraging states – particularly the European states primarily concerned by the increasing flow of children seeking asylum or applying for family reunification – to adopt a series of measures and programmes incorporating the principles and guarantees enshrined in the CRC and other related instruments of protection. In 1994 the Office of the United Nations High Commissioner for Refugees (UNHCR) drew up the UNHCR Guidelines on the Protection and Care of Refugee Children (UNHCR, 1994), which acknowledge the key importance of the Convention as the reference framework for all action in this field. In 1997 the UNHCR went on to publish Guidelines on Unaccompanied Children (UNHCR, 1997), which were systematically based on the general principle of the "best interests of the child" as enshrined in Article 3 of the Convention, with the aim of providing systematic, comprehensive and integrated protection and assistance for those children.

7. More recently, UNHCR and some members of the International Save the Children Alliance set up a joint initiative: the Separated Children in Europe Programme (SCEP). The Programme partnership is based on the complementary mandates and areas of expertise of the two organisations: UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum; the International Save the Children Alliance strives to ensure full compliance with the rights of all children.

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

8. The Committee on the Rights of the Child, as the official treaty body responsible for monitoring application of the CRC, also has an important role to play, in particular when it considers the periodic reports submitted by the States Parties under Article 44 of the CRC. For example, at its 36th session, when considering the second periodic report submitted by France (CRC/C/15/Add.240, 30 June 2004), the Committee *"note[d] the efforts of the State party to address the situation of unaccompanied minors by providing them assistance during their time in the holding area by an "ad hoc administrator" who replaces a legal representative."* However, the Committee also noted that *"the number of minors in such situations has been steadily increasing, and that the implementation of the new legislation remains a challenge. Foreign unaccompanied minors continue to be deprived of their liberty and placed in detention with adults."* The Committee was also *"concerned that unaccompanied children arriving at the airport may be returned to the country of origin without judicial intervention and without an evaluation of their family situation. It [was] further concerned at the absence of clear instructions to coordinate and facilitate access to basic services by these children for the protection of their rights. In addition to this, the age determination process allows for errors which may lead to minors not being accorded protection they are entitled to."*

9. The Committee therefore recommended that the State Party pursue its efforts in this area and, in particular, that it: *"a) ensure a coordinated approach to the collection of information and statistics, allowing a response commensurate to the needs; b) establish norms that orient and coordinate actions aimed at guaranteeing access to basic services, in*

particular education, health and legal assistance; and c) consider introducing recent methods of age determination which have proven more accurate than the method in use."

Similar observations were made, albeit to varying degrees, during the consideration of the periodic reports submitted in recent years by many other European countries. One of the key conclusions to emerge is the Committee's desire, in the light of the relevant observations made by UNHCR and its SCEP partners, to encourage those states concerned by separated minors arriving at their borders, in order to apply for family reunification or seek asylum, to adopt a holistic approach based on the rights of the child **(I)**. Such an approach, as pointed out by the Committee in its General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children, will enable European states to negotiate an agreement on areas of concern that sometimes necessarily differ, by establishing good practices **(II)** that enable the specific needs and rights of separated children, as guaranteed by the Convention, to be addressed more satisfactorily.

This paper has therefore been divided into the following two parts:

- I. The Convention and separated children: a holistic approach based on the rights of the child**
- II. Good practices in the treatment of separated children**

I. The Convention and separated children: a holistic approach based on the rights of the child

10. A holistic approach to the question of separated children reflects progress made in the implementation of a strategy for promoting and disseminating the rights of the child, systematically using international human rights standards as a reference framework. The aim is not to describe in detail a model system for dealing with separated children, to be applied in all circumstances and at all times, given the wide variety of issues raised and situations covered. The aim of the approach is, rather, to encourage constant efforts on the part of States Parties to the Convention on the Rights of the Child to apply, and comply with, the minimum rules and principles, as defined by the relevant provisions of the Convention – in particular Articles 9, 10 and 32 – and other United Nations rules in this area, such as the UNHCR Guidelines on the Protection and Care of Refugee Children (UNHCR, 1994), the Guidelines on Unaccompanied Children (UNHCR, 1997), and the Separated Children in Europe Programme (SCEP).

Moreover, the minimum rules applying to separated children concern areas in which thinking is constantly changing. This paper will attempt – as far as possible – to report on the position of the Committee on the Rights of the Child and on the role played by the relevant international organisations, in particular UNHCR and its SCEP partners, with the aim of increasing the focus on – and understanding of – the rights of separated children; recording existing measures and good practices in this area; and helping to draw up legislation and promote action plans, strategies, policies and programmes that are based on the needs of separated children and designed to bring national legislation and policy into line with the provisions of the Convention and other United Nations rules and directives in this area.

11. Although examples of good practice exist at national and local levels, the issue of separated children continues to be, in many countries, mainly seen in terms of the regulations defining the conditions of entry and residence for foreigners, focusing on administrative and police action rather than on social and humanitarian action. The particular needs and rights of separated children in the area of asylum policy are generally little understood or acknowledged. At EU level, this lack of attention reflects the fact that issues affecting children remain relatively invisible in terms of law and policy; and it was only in 1999 that the European Commission announced that it was intending to produce a first “Communication” (i.e. statement of policy) in relation to children (Ruxton, S., *A Children’s Policy for 21st Century Europe’s First Steps*, 1999).

12. This lack of attention is potentially very damaging for separated children, who constitute a highly vulnerable group of children. It is therefore essential that political will be mobilised in order to take action to assist them, duly taking into account the general principles of the Convention: the right to non-discrimination (Article 2); children's right to have their best interests considered a primary consideration (Article 3); the right to life, survival and development (Article 6); and children's right to have their views given due weight (Article 12). All these guidelines should be carefully taken into account at the different stages of the system for dealing with the different groups of children concerned.

13. Because of the interdependence and indivisibility of the rights of the child, effective measures meeting the requirements of the Convention and other United Nations rules and directives in this field can only be adopted if the rights of children and teenagers are

fully respected. As stated in the SCEP, the most important rights in this connection – besides those arising from the provisions of the CRC on family reunification (Article 10) and on protection and assistance to be given to children who are refugees or those seeking asylum (Article 22), and those enshrined in the general principles of the Convention listed in paragraph 12 above – are as follows: children's right not to be separated from their parents (Article 9); the right to be protected from violence (Article 19); the right to health (Article 24); the right to education and leisure (Articles 28 and 31); and the right to be protected from economic exploitation and from sexual exploitation and violence (Articles 32, 34 and 36). The Convention, particularly its four general principles, which advocate a global approach, provides a solid framework on which states can back their efforts to bring their national legislation and policy into line with the provisions of the Convention and other United Nations rules and directives in this area. The holistic approach, which is based on the rights realised through the application of the Convention, is the best way to deal with the wide range of issues raised by the system for dealing with separated children.

14. In short, a holistic approach to dealing with separated children entails the adoption of the following rules and guidelines:

a) The definition of a "separated child"

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

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16. There are variations in how states define a "separated child" (or the more commonly used "unaccompanied child" or "unaccompanied minor". Some use a relatively broad definition (eg Norway), largely in line with the approach adopted in the SCEP Statement of Good Practice. Others apply a similar definition in practice, although it is not set out in asylum or child law (eg Finland, Ireland).

But there are other countries where a more restrictive definition is used. For example, in Belgium, the Netherlands and Portugal a "separated child" is not regarded as including a child who travels with a relative. And in Greece, definitions vary between agencies, with potentially damaging consequences for children.

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

b) The right to non-discrimination (Article 2)

17. Discrimination increases the vulnerability of separated children and has serious repercussions on the life of these children and their ability to lead a normal social life. All discriminatory practices against them constitute violations of the rights of the child set out in the Convention. Article 2 of the Convention obliges States Parties to respect and ensure the rights set forth in the Convention, without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". In the Committee's opinion the expression "or other status" applies *inter alia* to the situation of

separated children. Laws, policies, strategies and practices must aim to eliminate all forms of discrimination, which hinder the realisation of the rights of this group of children.

b) The best interests of the child (Article 3)

18. By the terms of Article 3(1) of the Convention: "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The obligations arising from this right are essential for guiding states' actions in drawing up, and constantly updating, asylum policy. The principle requires that the impact on children of the development, administration and resourcing of government policy must be assessed and the interests of children must be "a primary consideration".

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

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

Both the Finnish Aliens Act of 1999 and the Swedish Aliens Act of 1997 specifically state that particular attention should be paid to the "best interests" principle. Attempts to ensure consistent decision-making on the basis of Article 3 of the CRC are, however, relatively few and in practice, it appears that separated children's best interests are not duly taken into account. For example: guardians or advisers are not regularly appointed to support them; legal representation may be non-existent; lack of any form of legal status often means that children live in uncertainty for considerable periods of time; in many cases children are routinely detained, sometimes in penal conditions and/or with adults.

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

Against this background, it is essential that a comprehensive assessment of the child's "best interests" should be included in the EU Directive on Asylum Procedures and other relevant EU instruments.

Governments should also explain how the principle has been respected when decisions have been taken, either in relation to broad aspects of policy or in individual cases.

Appropriate mechanisms should be developed to monitor and evaluate implementation.

c) The right to life, survival and development (Article 6)

20. The obligation on states to ensure children's right to life, survival and development highlights *inter alia* the need to pay special attention to how being involved in criminal activities adversely affects the lives of separated children and their right to survival and to harmonious development, especially if these criminal activities are the work of organised criminal groups.

The trafficking of separated children into Europe is a serious problem, and research reveals disturbing examples from several states.

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In Greece and Italy, Albanian children in particular are sometimes brought into the country illegally to be economically or sexually exploited.

In France, there are cases involving children from China being forced to work in sweatshops, and children from Sierra Leone being forced into sex work.

In Spain, Roma children from Portugal, Romania and other Eastern European countries are exploited as beggars in the streets. Trafficking routes to the Netherlands appear particularly well established with children being brought from Eastern Europe, China and Nigeria by organised gangs to work in the sex trade. A particularly worrying aspect of the Dutch experience is the number of children who disappear from reception centres; many do so in order to work as sex workers.

Although it appears not to happen to the same extent elsewhere, there is an urgent need for further research to establish the true scale of the problem and to promote the development of effective responses.

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

It is suggested that, building on measures set out in the EU Council of Ministers' Joint Action to Combat Trafficking in Human Beings and the Sexual Exploitation of Children of 24 February 1997, practical initiatives should be developed at all levels in response. These could include priority procedures for children who have been trafficked; swifter appointment of guardians; better information to children on the risks; increased monitoring of children "at risk"; and training courses for relevant staff. The effectiveness of measures taken under the Joint Action also needs to be properly evaluated.

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d) Children's right to express their views and to have these views taken into account (Article 12)

21. Separated children have specific rights, in particular the right to participate, according to their level of development, in decisions relating to an application for family reunification or for asylum, and the right to "to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law" (Article 12(2)).

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

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

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

II. Good practice in the treatment of separated children

24. The following paragraphs essentially reiterate the recommendations contained in the Statement of Good Practice of the Separated Children in Europe Programme (SCEP), as set out in the study by Sandy Ruxton entitled *Separated Children Seeking Asylum in Europe: a Programme for Action* (Stockholm, 2000). The author compiled this study on the basis of the conclusions of national assessments carried out for the purposes of the study. The same author had already published a study entitled: *A Children's Policy for 21st Century Europe: first steps* (Euronet, Brussels, 1999).

a) Access to territory and to asylum procedures

25. The 1997 EU Resolution on Unaccompanied Minors sets out that member states should prevent the "illegal" entry and residence of separated children, and allows member states to refuse admission at the frontier to separated children and to keep them at the border until a decision has been taken on their admission.

In his study, Sandy Ruxton writes:

" Within Europe, although refusals are rare or unknown in some countries (eg in Scandinavia), denial of access of separated children to the territory of a country in which asylum is sought appears to be relatively common in others. Although safeguards exist in some countries, access to normal determination procedures are also obstructed in many states by 'accelerated' and 'admissibility' procedures. For instance, 'safe third country' policies are commonly applied (eg in Austria, Denmark, Finland, Germany, Portugal, UK).

Similarly, applications are often regarded as 'manifestly unfounded' (eg Austria, Denmark, France, Portugal, Sweden). However, some countries rarely use this concept for children (eg Finland, Ireland).

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

b) Guardianship and legal representation

26. According to Sandy Ruxton's study, in relation to guardianship, "policy and practice across Europe is diverse. In several states (eg Austria, Denmark, France, Ireland, Italy, Portugal, UK), guardians or advisers are not appointed systematically to advise and protect separated children; in others they are (eg Luxembourg, The Netherlands, Norway, Spain, Sweden).

A number of additional problems arise with guardianship systems. For instance, the role of guardians may be short-term only and it may take a long time for them to be appointed; they may lack specific guidance, expertise or awareness of refugee issues; training may be limited; they may have a purely administrative relationship with the child; and resources are often lacking to provide a sufficient number of guardians. Despite these difficulties, there are some examples of positive practice. In The Netherlands, for instance, appointing a guardian takes around four weeks, their role is wide-ranging and long-term, and continuous training is available for them.

In most states, some form of legal representation exists to assist separated children in making an asylum claim; however this is not necessarily available at all stages of the asylum process (eg Belgium, Denmark, France, Italy).

In some countries advances in legal representation have occurred recently; in Finland and Ireland, for instance, representation is now provided throughout the process. But significant weaknesses remain in legal representation in many states. The quality of legal representation may be poor; there may be no prior consultation with the child before an interview; lawyers may lack knowledge of countries of origin or experience of representing children; there may be constraints on access to free legal aid.

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

Similarly, the provision of appropriate legal representation is essential if a separated child is to receive a fair hearing. Representation by specialist lawyers should be available to every child throughout the determination procedure; lawyers should be present at asylum interviews, and they should be skilled in supporting children; regular and open contact should be established between the lawyer and the child; free legal aid should be provided; and training should be available to legal representatives. These recommendations should be integral to the EU Directive on Asylum Procedures and any other relevant instrument at national and EU level" (Ruxton, S., 2000).

c) Age assessment

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

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

28. Minimum guarantees should therefore be included in any legislation affecting age determination. For example, the principle of the 'benefit of the doubt' should be respected (with 20-24 months' leeway as a suggested guideline); age assessment should not be based solely on appearance without taking into consideration ethnic/cultural background, but should also take psychological maturity into account; experts should be involved for a second opinion prior to detailed medical assessment; existing bone directories are dated and incomplete and should not be used for age assessment; if medical examination is necessary, it

should be carried out by a physician with appropriate expertise and familiarity with the child's background; and medical examinations should never violate the physical integrity of the child". (Ruxton, S., 2000).

d) The use of detention

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

29. Detaining children is a highly damaging practice which can be traumatic for those involved – especially within the context of the situations from which they have fled. Detention may represent a contradiction to the 1997 UNHCR Guidelines and the 'best interests' principle of the CRC. Instead, children should be accommodated in appropriate residential child care facilities or other settings (eg foster placements, group homes, independent living) where support is available from specially trained staff with experience of working with separated children. These recommendations should be included in EU and national legislation" (Ruxton, S., 2000).

e) Criteria for making a decision on a child's application

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

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

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

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

undertaken to monitor and explore current practice in more detail, with the aim of informing the development of appropriate policy and practice" (Ruxton, S., 2000).

f) Training for those working with separated children

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

Sandy Ruxton states: "the extent to which this happens in practice varies between states. For example, in some countries (eg Austria, France, Italy, Portugal, Spain) there is no training for officials in interviewing children, in others (eg Germany, Ireland, The Netherlands, Sweden, UK) there is some, even though it is often not sufficiently widespread.

32. As the roles of officials, representatives, guardians, interpreters and other care staff often differ, training programmes should be tailored to the specific needs of the groups involved. It is also suggested that the training programmes should include the following topics as core elements:

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

Initial training should be backed by the setting up of networks and continuing education programmes "(Ruxton, S., 2000).

g) The return of a separated child

As the study by Sandy Ruxton shows: "in most European countries it appears that some or all of the special conditions set out in the SCEP Statement of Good Practice (eg family assessment, preparation for immediate and long-term care in the country of origin, analysis of conditions in the country of origin) are not fulfilled prior to the return of a separated child.

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

33. The study draws attention to the "need for formal schemes for return to be developed in European states, however it is essential that appropriate safeguards are respected. For instance:

- guidelines and procedures should be in place in order to assess the best interest of the child in the context of return measures;
- standard criteria should be set out for determining whether care in the country of origin is in line with the CRC;
- assistance should be provided to separated children prior to, during and after the return to country of origin;
- attempts to locate a separated child's parents in order to assess whether the child should be returned should be standard procedure;
- the child should be fully informed at all stages regarding progress in relation to return, and should be involved in any decisions regarding his or her future, and
- returns should always be carried out in a child-appropriate manner. If return is not possible without endangering the child's wellbeing, a solution in the host country should be found".

h) Data and research on separated children

According to Ruxton: "the available statistics on separated children in the European states covered by this study are patchy, both in scope and quality. This mirrors the fact that general statistics about children in the EU are limited both between and within states (Ruxton, S., 1999). It appears that most countries – but not all – collect basic data about the number of arrivals and/or applications by separated children; however beyond this, detailed breakdowns are more difficult to find.

Nevertheless, there is evidence from some countries that the majority of separated children are boys (mainly aged between 16 and 18 years) and that the main source countries are Afghanistan, China, Iraq, Morocco, Sierra Leone, Somalia, Sri Lanka and Republics of the former Yugoslavia (though the distribution varies between countries). Where statistics on status determination are kept, refugee recognition rates appear to be generally very low (around 1 to 2 per cent) – lower in many cases than those for adults".

34. Ruxton goes on to say that "overall, this study highlights significant gaps in the data at all levels. There are several main reasons for this:

- data are frequently not recorded according to the same categories and formats, both between and within countries. There may be no centralised data bank and information may be held by different institutions. Some concerns surround confidentiality and access to personal information.

- resources for data collection may be scarce. State authorities may have little or no desire or capacity to collect comprehensive information and statistics.

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

Given the different systems which currently exist for information collection in different states, it is impossible to be prescriptive as to which institutions should have primary responsibility in each country (although at EU level, Eurostat should be approached).

However, it is more feasible to attempt to specify the kind of data which should be collected. At a minimum, this should include basic biographical data (eg age, sex, nationality, ethnic group); total number of arrivals; total number of refusals of entry to the territory; numbers of asylum applications made; guardians and legal representatives appointed; type of accommodation (eg detention, reception centres, group homes, independent living); participation in education and training; information on status determination (eg refugee status, humanitarian status, temporary protection, other forms); statistics on returns and family reunification.

In addition to setting up systems for collecting statistics and ongoing monitoring, additional in-depth research should seek to analyse the qualitative experiences of separated children – especially in relation to areas which are as yet insufficiently explored (eg the impact of trafficking, disappearance of children)" (Ruxton, S., 2000).

List of recommendations

(contained in the SCEP Statement of Good Practice, as presented in the study by Sandy Ruxton entitled *Separated children seeking asylum in Europe: a programme for action.*).

The definition of a “separated child”

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

Access to the territory

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

Identification

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

The appointment of a guardian or adviser

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

Registration and documentation

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

Age assessment

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

Detention

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

The right to participate

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

Family tracing and contact

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

Family reunification in a European country

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

The asylum or refugee determination process

Access to normal procedures

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

Legal representation

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

Minimum procedural guarantees

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

Independent assessment

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

Interviews

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

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

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

Young people who become adults during the asylum process

Recommendation 17: There is wide variation in approaches between states to separated children who become adults during the asylum process. Significant unfairness can result,

especially when “ageing out” occurs as a result of delays which have not been caused by the children themselves. In this context, it is important that the EU and European states should seek to establish fair procedures in this regard.

Durable or long-term solutions

Grounds for a child remaining in a host country

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

Family reunification

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

Integration

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

Adoption

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

Family reunification and return to the country of origin

Return

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

Conditions that must be fulfilled prior to return

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

Programmes and aid to facilitate return

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

Settlement in a third country

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