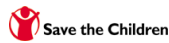




## Separated Children in Europe Programme

### Challenges in Protection of Children in Migration

Child trafficking – children in migration – children in the asylum system – information and intelligence management  
15 June 2010



The Separated Children in Europe Programme  
The Statement of Good Practice, SGP

Issues/challenges:  
Definition, categories & figures  
International protection  
Age assessment  
Disappearances & safeguards



### The Separated Children in Europe Programme

- Started 1997 as a joint initiative by members of the International Save the Children Alliance and UNHCR
- Cooperate today with UNHCR: European Bureau & UNHCR SCEP Focal Points
- NGO Network: members in EU Member States and non-EU Member States throughout Europe
- National ↔ EU/European advocacy



### Overall aim

- to promote recognition and realisation of the rights of separated children - commitment to the full implementation of the Convention on the Rights of the Child, CRC (as outlined in General Comments No. 6)
- to support the raising of standards in all policies, practices and services that impact upon them

### 3 legs:

1. international protection of separated children
2. well-being and developmental rights of separated children are fully addressed
3. participation and empowerment of separated children



#### Main objectives – focus 2009-2013

1. **Age assessment** - age assessment methods and procedures being in line with the SGP
2. **Guardianship** - every separated child has a guardian who ensures the best interest of the child
3. **Return & reintegration** - separated children are only returned if an independent assessment decides it is in the child's best interests
4. **Trafficking** - every child is guaranteed prevention and protection from trafficking
5. Detention
6. Dublin II

Thematic groups



#### The Statement of Good Practice - 4th new revised edition

- a document that provides an account of policies and practices
- relevant to **all** separated children
- informed by and refers to international and regional human rights principles, law, policy and guidelines, mainly
  - 1) the UN Convention on the Rights of the Child
  - 2) the UN Committee on the Rights of the Child's General Comment Number 6
  
- + around 50 other international & regional instruments



#### The Statement of Good Practice emphasizes

- all actions should be based on the principles set out in the Convention of the Rights of the Child, in particular:
1. • the best interests of the child as a primary consideration
  2. • the right to life, survival and development
  3. • the non-discrimination principle: that separated children should be entitled to the same treatment and rights as national children;
  4. • the views of children should be sought and taken into account in all matters affecting them;
  5. • The right to protection



#### The Statement of Good Practice

- reflects the experience and practice of the SCEP's NGO Network
- a framework for action and advocacy
- outlines good practice on a range of specific issues
- consists of standards and benchmarks against which current State practice can be compared
- a living document

#### The Statement of Good Practice **is not**

- an exhaustive listing
- a manual

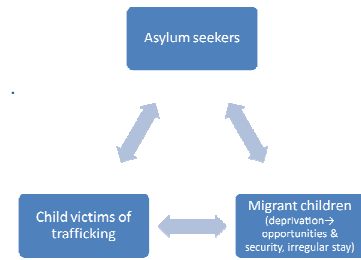
### Definition

Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or legal or customary primary care giver.

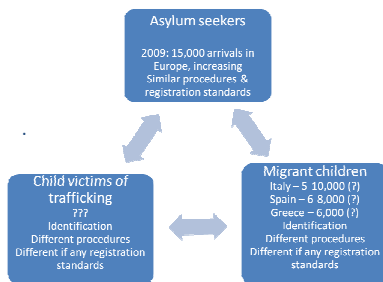
Some may appear to be accompanied, but the accompanying adults are not necessarily able or suitable to assume responsibility for their care.

(Unaccompanied minors, UAM, widely used, e.g. by UNHCR and EU)

### Categories & figures



Overlaps and movement within the categories



### EU Council conclusions on unaccompanied minors, 3 June 2010

– only 3<sup>rd</sup> country nationals!

“The phenomenon cannot be properly assessed, nor appropriate and durable solutions be found, without a clear evaluation based on comprehensive, reliable and comparable data”

\*encourage Member States to use the full potential of the Regulation on Community statistics on migration and international protection in order to **collect comprehensive data** on UAMs arriving

\*encourage Member States to **cooperate with EU agencies and networks**, mainly FRONTEX, Europol, the European Asylum Support Office (EASO), the Fundamental Rights Agency (FRA) and the European Migration Network (EMN), to **improve the analysis and exchange of relevant information** on UAMs arriving

\*request FRONTEX and Europol to **systematically improve data collection, analysis and exchange of detailed information** on UAMs using all available sources...

\*invite FRONTEX to introduce in the **training programme** for border guards, a specific **module on how to detect particularly vulnerable situations related to UAMs, especially those with a high risk profile, such as trafficked minors**

### International protection

“the reasons behind the arrival ... include, inter alia: to escape from wars and conflicts, discrimination or persecution; being sent by their family in the expectation of work, for a future family reunification, a better life or in order to access education and welfare; to join family members; being victims of trafficking”

EU Council conclusions on unaccompanied minors, 3 June 2010

The EU Charter for Fundamental Rights and the UN CRC:  
**children should be treated as such regardless of their migratory status, nationality or background**

– Italy & Spain. When turning 18?!

### Asylum:

1951 UN Refugee Convention relating to the status of refugees

EU Directives on minimum standards and procedures + qualification and status

→ Refugee status, subsidiary protection

### Problems & challenges:

- The child's perception of own situation & agenda vs existing protection systems and provisions

- Migration authorities' knowledge, interpretation & use of child specific rights, child related manifestations of persecution and child specific forms of persecution in relation to 1951 Refugee Convention:

e.g. under-age recruitment, child trafficking, female genital mutilation, family and domestic violence, forced underage marriage, forced or hazardous child labour, forced prostitution, child pornography

- Legal assistance – provision and quality

- Knowledge among peers/staff about child related manifestations of persecution and child specific forms of persecution

### Protection measures for child victims of trafficking:

- Council of Europe Convention on Action Against Trafficking
- EU Directive on residence permit issued to third-country nationals who are victims of trafficking ...

The EU Council conclusions underline the need for an adequate implementation

And

“invites the Commission to assess whether the EU legislation offers sufficient protection in order to ensure adequate standards on reception and procedural guarantees for all UAMs, regardless of whether they are asylum seekers, victims of trafficking or illegal migrants, to guarantee that minors are treated as such until proven otherwise”

### Age assessment

Council conclusions: "guarantee that minors are treated as such until **proven** otherwise"

- CRC defines a child < 18 – specific rights, e.g. the primary consideration of the best interests of the child
- Important that those < 18 enjoy their special rights and protection – and to avoid abuse by > 18
- Also some minors claim to be > 18, e.g. for work & prostitution/trafficking

### Difficulties for children to prove their age:

- from countries/areas without birth registration
- from countries/areas where difficult or impossible to obtain proper documents – or have been lost

### THERE ARE NO EXACT METHODS TO ESTABLISH CHRONOLOGICAL AGE

- Assessment/decision on who are age disputed – who, how and why differs
- Methods used differ:  
Most often only x-ray of teeth and/or wrist bone
  - Bone maturity vs chronological age
  - Risk of harm - by law only for medical purposes in some places
  - Margins 2- 4 years, different expert opinions
  - Undertaken by forensics
  - "Completely useless" according to some paediatricians

Sometimes only interview by migration authorities  
Sometimes combined with assessment of physical appearance and psychological assessment of maturity

How to handle the benefit of doubt when forensic experts disagree on margin?

- To be treated as minors until **proven** otherwise:
- Several countries practice detention until proven minors!
  - Informed consent/refusal
  - Guardian often not appointed at this stage
  - Appeal possibilities
  - Placement with children or special care arrangements?

Children's experiences:

- Mistrusted
- Inappropriate and invasive methods
- Treated as criminals
- Non-sustained decisions

### Disappearances & safeguards

Why? – factual knowledge very limited

- transit, not in country of end destination (e.g. family members)
- Lack of adequate protection provisions
- Lack of information that can be understood
- Dublin II practice
- Lack of proper reception facilities
- Lack of qualified care staff
- Trafficking – either 'in process' or abduction



#### Possible safeguards

- Immediate appointment of qualified guardian
- Proper reception/care facilities, e.g. foster care or group homes run by NGOs - good experiences where in place
- Background check on adults claiming custody
- Procedures for Best Interests Determination, BID, in place
- Procedural guarantees incl. decisions based on BID
- Adequate protection provisions in place
- Flexibility for transfers to intended destination when in the best interests of the child
- Understandable information and time to take it in
- (secure centres/safe houses/protective detention: only as measure of last resort. E.g. UK experiences led to change of practice)

Research: UNHCR: Alternatives to detention of asylum seekers and refugees. April 2006



Cases of separated children gone missing often not treated as when national children go missing – why not?!

EU Council conclusions:

“encourage Member States to thoroughly study and combat the phenomenon of the disappearance of UAMs in care of their authorities and, where possible, prioritise the use of missing person alerts in the Schengen Information System for cases of absconding or disappearance from care”



These and many more issues regularly monitored in the bi-annual SCEP Newsletter, available at

[www.separated-children-europe-programme.org](http://www.separated-children-europe-programme.org)

Thank you 😊