

Separated children seeking asylum: the most vulnerable of all

by Kate Halvorsen

In recent years an estimated 20,000 separated children (primarily from Africa and Asia) have sought asylum in western and central Europe.

Many travel for the same reasons as adult asylum seekers – to escape armed conflict, persecution, severe poverty and deprivation – and some are recruited by traffickers either in their country of origin or *en route*. Some also flee child-specific human rights violations or family abuse and neglect. Many of these children face a highly uncertain and volatile future in Europe where there are many gaps in protection policies and practices.

Refusal of access and detention of children

The term 'separated child' describes those children under the age of 18 who are outside their country of origin and separated from both parents or from their legal or customary primary caregiver. Some separated children are totally alone while others may be travelling with extended family members or other adults. While these children may appear to be 'accompanied' when they arrive in Europe, the accompanying adults are not necessarily able or suitable to assume responsibility for their care.

many western and central European states refuse separated children admission and several detain separated



A tall well-built boy aged 16 arrived from Southern Africa. The many hardships he had experienced made him look very mature. The border official did not believe he could be only 16 and so he was sent to an asylum centre for adults. After a week at the centre the boy managed to speak with a worker there and told him he was only 16. Eventually he was sent to see the doctor at the centre. The doctor took an x-ray of his wrists and gave him a brief physical examination. He asked him no questions apart from his name, date of birth and country of origin. The bone atlas reference the doctor used was based on the development of a group of Caucasian children, dating back some 20 years or more. The doctor's report stated that, given the boy's physical maturity and bone development, it appeared likely that he was over 18 years of age but that he could not be certain.

children. In France separated children are regularly detained in the 'waiting zone' at Charles de Gaulle airport for up to a month or more. In Germany separated children may be detained in the 'airport procedure' and in detention centres. Switzerland also applies an airport procedure – involving detention – to some separated children. The UK previously detained many separated children (76 detained in 1997-98¹) but this situation has since improved. Some countries have made progress in limiting or banning

UNHCR has now collected statistics from 27 countries on the numbers of separated children who applied for asylum in 2000. This needs to become regular practice for all countries.

Identification involves two main aspects: determining whether the person is under 18 and whether the person is actually separated. Concerns have been expressed regarding some age assessment and determination methods. Such methods, which should only be applied if there is doubt about the age, should take into consideration the maturity and mental development of the child as well as physiological characteristics. Children should be given the benefit of the doubt. In reality, many countries apply age assessments which use only physiological measurements (such as x-rays of collarbones and wrists and dental examination). Disturbingly, in a few countries it appears that age assessment may be being used to exclude children from special attention as separated children.



When a 14 year-old girl from West Africa arrived without papers, unable therefore to prove that she was a minor, she was placed in immigration detention. She did not understand why she was in detention and felt she was being treated like a criminal. She was lonely and depressed – and found the European food difficult to eat. She stopped eating and stayed in the room she shared with three adult women. Eventually the detention officer brought her to the doctor who gave her anti-depressant pills – which made her feel disoriented and sleep for hours. Finally she was given a lawyer's card by another detainee. The lawyer came and asked her for money. She had none. At one point she was so desperate she asked to go back home but then changed her mind. A fellow detainee wrote a letter for her and she sent it to an agency that helps refugees. They found her a good lawyer who immediately started proceedings to get her released from detention.²

UNHCR recommends that separated children should not be refused entry, detained or returned without necessary safeguards in place. However,

the practice of detention of separated children, but it still occurs. More changes are needed in order to get rid of this practice completely in Europe.

Most children arriving in Europe these days are accompanied by an adult but the exact nature of the relationship to

the adult(s) must be assessed carefully by experts: trafficking is a serious problem in all countries in Europe these days.

Family tracing: essential for all children

One of the first actions taken on behalf of a separated child should be to trace the family in order to establish contact and explore the long-term possibility for family reunification. Tracing is undertaken in several European countries, but nowhere is it done systematically. Tracing is normally done at the request of the child itself or by an NGO or government agency. Concerned agencies do not undertake family tracing unless it is specifically requested by the child him/herself lest any information they obtain about the family, relatives or country of origin be abused by authorities implementing refugee determination procedures or used to immediately return the child.

Tracing needs, nevertheless, to be stepped up, done systematically for all separated children, and coordinated at national and international levels. Mechanisms must be put in place to protect the data from being misused.

Guardians for all children

Appointment of a guardian to protect and advise a separated child is essential in order to safeguard their rights. Most countries have guardianship systems. In some countries separated children seeking asylum are referred to the national system of guardianship, or there may be a special guardianship arrangement for

held by an individual or by institutions such as NGOs or semi-governmental agencies. In some countries, guardians are responsible for a very large number of children (up to 200 in Italy), while in others it is less (25-30 in Germany).

Guardianship systems need to be harmonised to ensure that:

- all separated children have guardians appointed
- appropriately trained guardians are appointed within a month
- guidelines are developed for all guardians

Access to asylum procedures

In all western and central European countries separated children are legally entitled to apply for asylum or to have their guardians do so on their behalf. In practice, however, a number of children never access asylum procedures. They may not know how to apply, be in the wrong place, fail to meet application deadlines or be wrongly advised not to apply by those who consider they are sufficiently protected within the child welfare system. Guardians may not be willing to apply on their behalf. In those countries, most notably in southern Europe, where it is believed that all separated children are best protected in the child welfare system, they are not encouraged, or not given the opportunity, to apply for asylum. There needs to be awareness raising among government staff, policy makers and practitioners about the fact that separated children who need protection as refugees should go through the asylum procedure.

Legal representation: greater training and awareness-raising needed

Although most countries recognise the need for separated children to receive legal advice on asylum applications, legal representatives are not routinely appointed. In some states they are only appointed at the appeals stage. Frequently there is a charge for their services. The quality of legal representation is a central concern. Sometimes lawyers are appointed who have no prior experience in representing a separated child's case. They may not know how to communicate with a child, how to elicit relevant information or even the specific guidelines and rights of children in asylum procedures. More special training and awareness raising needs to be done among lawyers who represent separated children.



he solicitor was very busy and made one call, then said: "You must wait; you must leave now." I did not finish what I wanted to say."³

Refugee status determination: children or adults?

Very few separated children are recognised as refugees in any European country. Most of them, however, get permission to stay temporarily or permanently on humanitarian or some other grounds. There are very few examples of enforced returns of rejected child asylum seekers. Problems arise, however, when children with temporary permission to stay turn 18, are considered adults and are thus placed at risk of deportation. A few countries, such as Spain, have until recently had strategies to 'freeze' asylum applications submitted by separated children until they are 18 in order that they can be processed as adults.

A particular concern is that child-specific forms of human rights violations must be taken into consideration when determining refugee status. Children may have the same grounds for being recognised as refugees as adults. They might also have experienced violations of child rights which fall within the scope of the Refugee



A 14 year old girl was fleeing from the Great Lakes region with her mother and siblings, helped by an agent. Her father had been arrested and disappeared. As they were attempting to leave the country by taking a boat across a river to a neighbouring country, the girl's family was arrested at the last minute but the agent managed to get the girl to safety. Once in Europe the girl expressed her fears about the fate of her family. The social worker contacted the Red Cross to see if there were any messages from the girl's family but there were none. The worker then contacted the International Social Service who carried out their own investigation. Eventually, the girl was told that her family house was empty and the whereabouts of her family unknown.'

children seeking asylum. In most countries guardians are appointed but not necessarily for all children and not necessarily in a timely manner. Guardianship responsibility is either

If they do not do so, they will not attain the legal status that they need in order to access appropriate services and long-term benefits as refugees.

Convention. These include forced recruitment into armies, female genital mutilation, forced labour, forced prostitution and other sexual exploitation, and forced marriage. In cases where there are reasons to believe that such violations have taken place, a proper assessment should be conducted as part of consideration for refugee status.

Long-term solutions

Although most countries currently recognise very few separated children as refugees, very few or none are ever returned to their country of origin. Consequently, of the three main durable solutions – remaining in the country of asylum, resettlement in a third country (normally on family reunion grounds) and return to country of origin – the overwhelming majority remain in the country of asylum, many with an indeterminate temporary status which lacks any long-term security. Although very few are returned to their country of origin, it should be assessed whether it is in the best interests of a child to return. Most countries lack procedures to determine the best interests of the child for those who are not seeking asylum or for those who have been rejected as refugees. With the exception of Denmark, Sweden, the Netherlands and Italy, European states lack programmes to return separated children which include all the necessary safeguards according to international standards.

Several steps need to be taken.

- Long-term solutions need to be identified much more quickly than at present.
- Systems to establish the best alternative in the best interests of the child need to be put in place.
- Return programmes that make return a viable long-term solution should be established.
- Programmes to assist children to reintegrate upon return and to monitor the reintegration should be established in countries of return.

Separated Children in Europe Programme

In an effort to address various gaps in policy and practice concerning separated children, UNHCR and Save the

Children launched the Separated Children in Europe Programme⁴ in 1998. It aims to ensure that principles and standards concerning the rights of separated children are upheld through the promotion of a common policy and commitment to good practices at national and European levels. Currently covering 28 countries in western and central Europe, the programme in its present form is due to end in late 2002.

One of the first activities of the Programme was production of a Statement of Good Practice in 1999. Primarily based on UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997) and the UN Convention on the Rights of the Child (1989), it has become the most important tool in the implementation of the Programme.⁵ Programme activities have included a number of awareness-raising and capacity-building initiatives as well as lobbying at both national and EU levels. The situation of separated children in each country covered by the Programme has been documented in Country Assessments which compare the reality in each of the 28 states with the standards set out in the Statement. Based on these reports and on other country-specific information gathered, it has been possible to identify gaps and concerns in current national practices and to promote changes.

Conclusion and recommendations

Recently the Programme has documented a number of positive changes which have improved or developed EU and national legislation and practice. New draft legislation developed by the European Commission relating to reception standards, asylum procedures, family reunification, refugee definition, temporary and subsidiary forms of protection is very encouraging. Once adopted, these instruments will be binding on Member States. They contain many of the provisions for the protection of separated children advocated by the

Programme.

Momentum needs to be maintained. Similar legislative progress is now required in non-EU countries. Programme experience has shown that even where there is good legislation in place (as in some Central European states) it is not necessarily implemented. Enforcement needs to be addressed as a priority. We must recognise that separated children, the most vulnerable of all asylum seekers, need to be given special attention (in terms of both financial and human resources) by policy makers and practitioners.

Kate Halvorsen works for UNHCR as Senior Policy Advisor to the Separated Children in Europe Programme. The views expressed in this article are those of the author and do not necessarily reflect the views of UNHCR or the UN. Email: halvorse@unhcr.ch.

See also: Sandy Ruxton *Separated Children Seeking Asylum in Europe: a Programme for Action*, Separated Children in Europe Programme, UNHCR/Save the Children, Stockholm 2000.

1. Reported by Amnesty International.
2. This and the two subsequent case-examples in this article are from *Training Guide*, Separated Children in Europe Programme, Save the Children and UNHCR, Brussels, 2001.
3. From *Young separated refugees in Oxford* by Kate Stanley of Save the Children, 2001, p48.
4. For further details see the Programme's website: www.sce.gla.ac.uk.
5. The Statements asserts principles such as the best interests of the child, the principle of non-discrimination and right to participation before listing good practices promoted by the Programme. See: www.sce.gla.ac.uk/Global/English/StatementGoodPract.htm



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