

Children's rights in return policy and practice in Europe

A discussion paper on the return of unaccompanied and separated children to institutional reception or family



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ACRONYMS AND ABBREVIATIONS

BID	Best Interests Determination
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of the Congo
IDCU	Identity Checking Unit
IOM	International Organization for Migration
ECRE	European Council on Refugees and Exiles
ERPUM	European Return Platform for Unaccompanied Minors
EU	European Union
NGO	non-governmental organization
SCEP	Separated Children in Europe Programme
UASC	unaccompanied and asylum-seeking children
UNHCR	United Nations Refugee Agency
UNICEF	United Nations Children's Fund

EXECUTIVE SUMMARY



In 2011, 2012 and 2013 over 12,000 unaccompanied and separated children each year entered the European Union (EU) seeking asylum. Many more enter the EU without asking for asylum. This creates challenges for European States, which must ensure that children are accorded appropriate care and protection and have their rights respected in the process in line with all international obligations. The European Commission and its Member States have responded to the challenge with, among other measures, the European Commission Action Plan on Unaccompanied Minors. The Action Plan focused on protection measures for children, on durable solutions, on application of the best interests of the child – as called for in the Convention on the Rights of the Child (CRC) – and on cooperation with third countries.

At the same time, several European States would like to increase the possibilities of return for those children who are not granted a residence permit. One of the instruments set up to achieve this is

the European Return Platform for Unaccompanied Minors (ERPUM). Co-financed by the European Commission, ERPUM from the start actively involved four Member States (Norway, the Netherlands, Sweden and the United Kingdom) and more tacitly two others (Belgium and Denmark) in an attempt to find new ways of returning children whose asylum application has been rejected.

From the perspective of States there are, in principle, two ways to achieve return of an unaccompanied or separated child: either return to the family, unless this is not in the child's best interests; or arranging other forms of 'adequate reception' in the country of origin. The country on which most efforts have been focused at in the last few years is Afghanistan, from which close to 50 per cent of unaccompanied children entering the EU came in 2011. Increased efforts to find and identify the children's families (family tracing) have been – and are still being – developed. In addition, establishing institutional reception – referred to with terms ranging from welcome centres to orphan or return houses – would make it legally possible to return children who do not have the right to stay. Currently, while many governments of destination countries actively promote return as an option for separated children, only a small proportion of children are being returned to their countries of origin and the forced return of unaccompanied children rarely takes place in practice. ERPUM, or activities following up on the project, could be used to change that.

The United Nations Children's Fund (UNICEF) is concerned that Government efforts to scale up returns of unaccompanied and separated children may lead to protection gaps for these children and give insufficient consideration to their rights and best interests. The authors of this discussion paper conclude that relevant policy approaches remain fragmented and do not address all relevant aspects of the return of unaccompanied and separated children: Best Interests Determinations are not undertaken systematically; relevant best interests considerations are not routinely accounted for in the documentation of decision making processes; family tracing may be undertaken without proper regard for potential risks or best interests considerations; and the practice of returns to institutional reception facilities remains insufficiently sensitive to the potential risks entailed for concerned children, including through the children's possible disappearance from facilities.

The concept of setting up return facilities in countries of origin to be able to send back specific groups of unaccompanied children is not new. The Netherlands, for example, has financed facilities in Angola and the Democratic Republic of the Congo (DRC) for years and Belgium has experimented with a similar policy in the past, also in the Democratic Republic of the Congo (DRC). Politically, the experiences have been communicated as a success: residence permits were no longer given on the grounds that safe and adequate reception in the children's country of origin was now available, returns increased (although not to the reception facilities) and the practice is assumed to have a deterrent effect on potential future migrant children and their families. In practice, however, there is little knowledge about the final whereabouts of unaccompanied and separated children who were returned to Angola, and the evidence on the impact of the policy on both individual lives and on return numbers is very limited. Furthermore, the Angolan experience shows there are indications that the policy has pushed children earlier and in larger numbers into irregular situations. While the effects of the policy are still unclear, replicating the model and making it available in other countries of origin is nevertheless the ambition of several European States, as shown by the set-up and initial goals of the ERPUM project.

Since the start of ERPUM I in 2011 the participating ERPUM States have negotiated with the Afghan Government to reach agreement on the return of unaccompanied children. In addition, they subsequently started similar engagements with the Iraqi and Moroccan Governments. The negotiations with the Afghan Government have reached a stalemate: first, because the Government has resisted cooperation with forced returns; and second, because the country's security situation remains volatile and it is likely to deteriorate as coalition troops withdrew in 2014. However, if one or more of these negotiations is successful beyond the scope of the project, European countries will start making return operational. In this case, many questions arise both in relation to family tracing (e.g. What level of security is provided? Has the child's consent been obtained and is she or he kept informed? What are the possible consequences?) and in relation to 'adequate reception' (e.g. Will the placement in reception facilities be used for children whose family has been traced, or also for others? Is it embedded in the national child

protection system, if any? What happens if a child has been trafficked by his or her parents? What about children whose parents are not found or dead? What happens when the child turns 18?).

Contacts with unaccompanied migrant children confirm the difficult situations they are in and the uncertainty they are experiencing concerning their rights. Especially with regard to a country such as Afghanistan, they have serious concerns about their safety and security should they return, with the view that any reception centre would become a target for attack as well as effectively constituting prison-like conditions since it would be unsafe for them to go outside such facilities. Moreover, Afghanistan has some of the worst indicators in the world for the wellbeing of children in general, with limited access to health care and education, recruitment of boys as young as eight by armed groups and often early arranged marriages for girls. The consequences on the individual level provide extra motivation to give serious attention to respecting children's rights, in policies as well as practice, as is done in this paper.

This discussion paper proposes specific considerations for Governments at this moment because of the potentially far reaching consequences that a rapid scale-up of the emerging practice may have, building on the agreements between European countries and Afghanistan, Iraq, Morocco, and others. The report does not oppose return *per se*; rather, it points to specific concerns raised by ERPUM, given that efforts relied on returning children being channelled through a secure reception facility in a highly complex and volatile environment such as in Afghanistan; given that so little is known about what happens following the children's return and what supportive structures may be in place; given that current policies of States participating in ERPUM do not provide clear and independent monitoring after return, resulting in a lack of data and evidence based on which services could be designed or evaluated against; and given that the few available monitoring reports that do exist suggest that returned children can be highly vulnerable and experience difficulties in coping with their new situation.

A returns process that does not ensure appropriate procedures for the determination of the individual child's best interests cannot meet the standards set by the CRC. At present, it appears that it is more the case that emerging opportunities rather than comprehensive policy approaches that give due considerations to the rights and best interests of children, that determine the design of return schemes for unaccompanied and separated children.

Considerations for government policy and practice

Against this background, this discussion papers suggests the following considerations for government practice in the returns process for unaccompanied and separated children.

- 1.** Assess the security situation carefully, on a country and local basis and specifically for children
- 2.** Carry out a Best Interests Determination (BID) as well as an assessment of international protection claims to identify a durable solution for every separated child
- 3.** Develop and use child rights-based procedures for tracing and contacting families
- 4.** Respect the best interests of children in returning to families
- 5.** Work on options for long-term development and durable solutions
- 6.** Conduct public consultations now on policy provisions needed to accompany emerging practices
- 7.** Do not return children to institutional reception unless the recommended safeguards are in place.



1

Introduction

“ 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. ”

Convention on the Rights of the Child, art. 3, para. 1

The issue of unaccompanied children who enter the European Union (EU) and seek protection or asylum has grown in importance over the past decades. In 2011, 2012 and 2013 over 12,000 such children were recorded in the EU each year, and many more enter without asking for asylum (in 2013 alone 12.770 unaccompanied minors were recognised not seeking asylum). The issue of children's (possible) return to their home countries has thus also increased in importance, and attention to the issue is still growing. Several European governments have voiced their intention of returning more children or, as the European Return Platform for Unaccompanied Minors (ERPUM) phrased it, "to find new methods for the return of unaccompanied minors that need to return after receiving a final rejection of their asylum application".

At the core of these efforts is a focus on either return to the family or – if the family is unavailable or deemed unsuitable for return – to 'adequate reception facilities'.⁴ For the first type of return, the family has to be found and to accept taking responsibility for the child. For the second, efforts are focusing on institutional reception in the country of origin. In both cases, the country of origin has to cooperate before children can actually be returned. Both of these possibilities for return have been part of the scope of the ERPUM project and are still standing goals of individual or joint follow-up efforts by several European States.

Children who apply for asylum live in reception under the responsibility of the State they reside in while awaiting a decision on their application. If their claim is rejected, they will typically not be granted a residence permit and are expected to return to their home country. However, being below the age of 18, they cannot be returned unless there is either a member of their family who is willing to receive them, a nominated guardian or adequate reception facilities to return to.⁵ Furthermore, they should not be returned if this is not considered to be in their best interests.⁶ As a result, only a small number of these children return voluntarily, usually when their families are found and have agreed to take them back, while most continue to live in reception until they are close to 18 years old. Others disappear to unknown destinations.

Many governments of destination countries such as Belgium, Denmark, Norway, the Netherlands, Sweden, and the United Kingdom actively promote return as an option for separated children. National policies often place emphasis on providing incentives

The European Return Platform for Unaccompanied Minors (ERPUM)

ERPUM is an initiative of four Member States (Norway, the Netherlands, Sweden and the United Kingdom), co-financed by the European Commission and closely followed by two other Member States (Belgium and Denmark). It contains two consecutive projects, ERPUM I (2011-2012) and ERPUM II (2013-2014).

The projects are designed to find new ways of returning children whose asylum application has been rejected. The activities focus on facilitating the tracing and contacting of family members and the setting up of reception facilities in countries of origin. The main countries of origin on which the activities focused were Afghanistan, Iraq and Morocco. It is not yet known – or made public – what the follow-up to ERPUM will be.

for voluntary return by, for example, providing reception conditions with minimal standards, or by not developing integration policies. In practice, however, every year only a small proportion of children return to their countries of origin from these countries. Although figures are not clear or comparable across countries and public statements sometimes offer mixed messages, it seems that forced return of unaccompanied and separated children rarely takes place in practice.

ERPUM was set up to change this, which is the main reason it has attracted a lot of attention from both States and non-state actors. The ERPUM project – or actually projects, as the second one ended in

the summer of 2014 – involved cooperation between the Netherlands, Norway, Sweden and the United Kingdom to work on different aspects of the possible return of unaccompanied children.⁷ In addition, Belgium and Denmark have publicly stated interest in the project⁸. Denmark was closely involved in project development and has earmarked

funding to support related activities.⁹ ERPUM focused on seeking to stimulate the return of unaccompanied children by agreeing with the Afghan, Iraqi and Moroccan Governments to accept returns, by improving capacities to find families (family tracing), and by supporting the creation of conditions for 'adequate reception' in Afghanistan, and possibly also Iraq and Morocco.¹⁰

The first ERPUM project started in 2011, financially supported by the European Commission under the European Return Fund, and ended in December 2012. A second project started in 2013¹¹ with the main activities during the first half of the year focused on family tracing and negotiations with the Afghan Government. It appears that little progress has been made so far in relation to setting up adequate reception facilities as negotiations between line ministries in Afghanistan and European governments have not been concluded.¹² In light of the current security situation in Afghanistan, European partner countries appear to have recently scaled back their efforts.

Typically, family reunification will more likely be assessed to be in the best interests of the child than return to institutional care. Family tracing in general has been done for years by several international organizations, including the International Committee of the Red Cross (ICRC), and local actors. Researching whether reunification is possible and in the child's best interests and, if so, attempting to find the family, re-establish contact and arrange reunification is an obligation that States have towards a child.¹³

Yet, while new practices of family tracing keep emerging, the rights and involvement of unaccompanied children in this process are poorly defined and differ between States. The purpose and process of tracing and the use of the results are not always laid out and clear to all those involved. There is as such no absolute requirement to acquire a child's consent to initiate the process of tracing. In fact, States may have an obligation to conduct tracing activities without the child's consent in order to assess his or her best interests. However, States do have an obligation to ensure that the child is informed of the tracing and is appraised of any findings and is consulted on any actions a State proposes to undertake as a result of information arising from the tracing, and finally to give the child's opinion due weight.



In the context of the complex security situation in Afghanistan it is difficult for governmental or other structures to ensure confidentiality and data protection in the process of family tracing. Therefore, it is important to carefully assess the possible dangers for those involved in the tracing, for the concerned children, and for their families; and the process has to account for the possibility that results may be inaccurate as families may have reasons for not wanting to be identified, such as distrust towards government authorities, personal debts, a criminal record, or not wishing to be associated with government officials vis-à-vis their neighbours.

Furthermore, if the family is located and the door is open to return, it remains essential that family members are assessed in light of a Best Interests Determination¹⁴ before care is transferred back to them. Methodologies for assessments such as home studies and family assessments – consistent with the relevant provisions of the Convention on the Rights of the Child (CRC) – should be developed

further between key stakeholders to ensure the best interests of the child can be determined.

The possibility of return to institutional reception raises more profound concerns. It is vital that the approach is not driven by the desire to increase return numbers, but rather by the aim of safeguarding the best interests of the concerned children. Yet, both the agreements negotiated by European States with governments of countries of origin too often seem narrowly concerned with operational issues, while leaving many policy and security questions unanswered.

In 2012 UNICEF the Netherlands published a report that examined the issue of returns to reception facilities and raised a number of questions.¹⁵ Since then, European States have proceeded with the second ERPUM project (of which the creation of facilities for adequate reception of unaccompanied children has been one of the goals). However, actual returns to institutional reception within the framework of the project have not taken place. Follow-up actions by the European governments involved – jointly, separately or in other international networks – are not defined at this moment, but the aims that led to the setting up of ERPUM still stand.

This discussion paper reviews the latest developments and summarizes the key elements of the situation, serving as an update to those familiar with the previous report and an introduction to those who are not. Following this brief overview, the next section provides an outline of UNICEF's principles and concerns; section 3 looks at questions and controversies around return policy and practice; section 4 focuses on children's experiences; and section 5 looks at how many children are affected. Finally, section 6 presents some considerations for government policy and practice.



2

UNICEF's key principles and concerns

Over recent years UNICEF has worked on the situation of unaccompanied and separated children in many contexts. Examples include the Separated Children in Europe Programme (SCEP) Statement of Good Practice,¹⁶ the Nordic Child Trafficking Study,¹⁷ the Child Notice on Afghanistan¹⁸ and the UNHCR-UNICEF publication *Safe and Sound*, on Best Interests.¹⁹

The subject of return to countries of origin is of particular concern to UNICEF given the potential risks to the rights and wellbeing of concerned children. Against the background of the European Returns Directive and the collaboration among EU Member States in setting up facilities (with funding from the European Commission under the European Return Fund),

UNICEF National Committees in Belgium, Denmark, the Netherlands, Norway, Sweden and the United Kingdom are working closely in collaboration with UNICEF's Programme Division in monitoring current practice and proposed schemes, in particular also in relation to the ERPUM initiative.

The basis for UNICEF's position on the return of unaccompanied and separated children, as well as the procedures and practices involving their return, is that decision-making should be in line with the CRC and should reflect a rights-based approach. While UNICEF is overall concerned about safeguarding the rights and wellbeing of this particular vulnerable group of children, some aspects of the emerging practices for family tracing and the set-up of 'adequate reception' in countries of origin raise questions, as to whether appropriate safeguards are being maintained to protect the rights and best interests of unaccompanied and separated children, both within the framework of the ERPUM project and as part of individual initiatives.

Key principles

UNICEF's key principles for the return of unaccompanied and separated children (*see box*) and the conclusions in this report (*see section 6*) are intended to stimulate debate on better return policies and procedures that follow a balanced and holistic approach in line with children's rights, respect the individual child in all relevant decisions during the procedure, and produce decisions that are consistent with the best interests of the concerned child. The best interests principle finds its origin in Article 3 of the CRC, and the Committee on the Rights of the Child provided authoritative guidance on its application in its General Comment no. 14.²⁰

UNICEF key principles for repatriation of unaccompanied and separated children²¹

UNICEF has formulated key principles to be fulfilled in any procedure relating to the repatriation of unaccompanied and separated children. These form the basis for the conclusions of this report:

- a. A child-sensitive approach must be ensured in all policies and practices. Unaccompanied and asylum-seeking children (UASC) must be treated as children first and migrants second.
- b. The guiding principles of the CRC must also be the guiding principles in any procedure relating to the repatriation of UASC as these represent the underlying requirements for any and all rights to be realized. The four guiding principles of the CRC are: non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate.
- c. A gender-sensitive approach must be ensured in all policies and practices.
- d. There must be adequate procedures for determining the best interests of the child.
- e. Repatriation must only be used as a protection measure, not a punitive measure.
- f. UASC must not be detained and accommodation for UASC must be child-sensitive.
- g. The right to seek asylum (refugee status or other international protection categories) must be ensured.
- h. States must respect the principle of *non-refoulement*.
- i. Due process must be ensured in all procedures relating to the repatriation of UASC.
- j. Durable solutions must be sought for UASC.
- k. Repatriation mechanisms must be safe and child-sensitive.



Main concerns

A review of the emerging practice raises the concern that the desire to find practical solutions which is in part determining the development of return procedures and policies is leading to increased tensions between these policies and the rights of children. The approach to the return of unaccompanied children seems fragmented and not suitable to address best interest considerations in a holistic manner and in all aspects. And it appears that checks may only be put in place to assess consistency with children's rights standards once practices have actually started. Three concerns are of particular relevance:

First, the practice of family tracing is being expanded without further assessment of current procedures and safeguards and their ability to ensure appropriate protection. Tracing procedures and safeguards may need updating to indicate when tracing does pose a threat to the safety of the child or his or her family; whether contact should

be made with the family or not; who to involve in the process; how tracing relates to the child in terms of consent or information and how to use or share the results etc. Without continually asking these questions in the light of new developments, the implementation of family tracing may not comply with best interest considerations.

Second, States emphasize that 'adequate reception' should be defined against local standards. However, States have neither defined what these local standards are and how they relate to international (minimum) standards as laid out in the CRC and other instruments, such as the UN Guidelines for the Alternative Care of Children²². Nor have they made efforts to operationalize these standards and what the implications may be of returning children to widely varying local standards. If local standards form the principle for defining adequate reception, they should at least be formulated explicitly.

Third, Best Interest Determination is not done systematically, and relevant best interests considerations are not routinely accounted for in the documentation of decision-making processes. As a result, there are no standard instruments in place that can be used to guide individual decisions.

Specific issues around family tracing and reunification

UNICEF advocates for family tracing measures in accordance with the Inter-Agency Guiding Principles on Unaccompanied and Separated Children.²³ When both the family and the child agree and the family is able to take care of the child, the best option for the development of the child is usually family reunification, be it in the country of origin, the host country, or a third country. In this regard, the development of more adequate family tracing -procedures as part of the ERPUM project is indeed a positive development. However, there is a concern that tracing practices are not always consistent with Best Interest Determination criteria and may not help in finding durable solutions. Rather, it is often being carried out without appropriate consideration of the dangers that may arise from tracing the family, without explicitly determining the purpose of tracing, and without informing the child of the progress and results.²⁴

Under the CRC, State Parties have an obligation to facilitate family contact and family reunification where appropriate. While children should grow up in a family environment, however, the facilitation of family contact and family reunification should only take place where it is believed to be in their best interests.²⁵ An assessment must therefore be made as to whether the child's best interests are indeed served by the tracing of and placement in the family. It cannot be assumed that option of reunification is necessarily always in a child's best interests and should automatically lead to a decision in favour of return.

The Separated Children in Europe Programme (SCEP) 'Statement of Good Practice' makes a number of recommendations in relation to tracing, building on the provisions of the CRC, the Committee on the Rights of the Child's General Comment Number 6 and UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. It states that "tracing [...] should only be done where it will not endanger the child or members of the child's family in the country of origin"²⁶ and that "tracing must only be undertaken on a confidential basis and with informed consent."²⁷ The SCEP Statement further points to the need for respecting the opinions of the child and her or his legal guardian: "separated children need to be properly informed and consulted about the process and their views taken into account"²⁸ In addition, the tracing results need to be made available to the child and the guardian or representative.

The consent and cooperation of a legal guardian is not a necessary prerequisite for the return of a child in every European country and in some countries important decisions around the return (e.g., whether to carry out a family assessment or not) are often left in the guardian's hands. Often, it is not standard practice to conduct family assessments to help determine the suitability of the parents to take the child (back) and to exclude dangers such as the possibility of (re) trafficking by the family. Existing methodologies remain unused and assessments, if done at all, often consist of a general background check.

Specific issues around institutional centres

Efforts for setting up institutional reception facilities are associated with significant risks, as summarized by the Council of Europe Commissioner for Human Rights, Nils Muižnieks: “the – so far limited – experience of sending children to return houses in war-torn countries has also shown that such procedures place children at a very high risk of trafficking for sexual and military purposes and in general at a risk of persecution in the return country. Most of the children have disappeared a few days after return.”²⁹ Against this background, relevant governmental policies and procedures should articulate specifically how best interests considerations guide the return of unaccompanied and separated children to institutional reception and what it implies for the children’s development to become independent on reaching the age of 18.

‘Adequate reception’ (suitable for long-term stay) as a basis for return is about more than food, shelter and the opportunity to go to school; it relates to the wider environment in which the child grows up and whether this environment safeguards her or his rights. Before returning children to institutional reception centres, it is important to know whether these facilities are embedded in the national child protection system and, if so, whether this system is sufficiently developed and operational. It should be clear what services will be provided and how the reception centres and their operation will be evaluated. The long-term prospects offered for repatriated children need to be clear, as well as the activities that European States will undertake to ensure the safety of children returned to such facilities. With many of these factors remaining unclear, individual assessments can hardly be sufficiently comprehensive to allow weighing best interests in a meaningful manner and ultimately to serve as a basis for deciding on a return to institutional reception.

Weighing the best interests of the child

Returning unaccompanied and separated children to adequate reception in their country of origin can be in line with the CRC and other relevant standards, provided that the child’s best interests are taken into account as a primary consideration. This requires

a thorough case-by-case assessment to collect all the relevant information on the individual child and her or his future environment.

Yet, currently individual decisions are mostly based on very limited information, given that not much is known about the situation of unaccompanied and separated children after their return. So far, there is no systematic monitoring of returnees and the return policy and practice. When monitoring is done, it is often not carried out independently but by the organization implementing return, focusing on the process of return assistance itself.

At the same time, general country-of-origin information is often also of limited value to determine best interests, as it is mostly generic, rather than child-specific and regionally specific. As a result, it is hardly possible to come to well-informed and child rights-based return decisions for separated children on the basis of the currently available information.

There are a number of promising practices for Best Interests Determination in several European countries, but no standard comprehensive procedures with a reach similar to the 2006 UNHCR Guidelines³⁰. Without the development of appropriate safeguarding mechanisms there is a risk that efforts by European States to implement (forced) returns of unaccompanied and separated children to families or institutional reception will produce outcomes that may not be in their best interests and may well lead to a violation of their rights.

The need to assess the security situation

While activities to return children to adequate reception in Afghanistan are currently on hold, most efforts for the return of separated children in recent years (especially within ERPUM) have focused on that country. A specific concern has been the ongoing ambitions in 2013 and 2014 within the volatile security situation in Afghanistan, with limited or no humanitarian access to many areas, and continued large-scale displacement. In June 2013 the Secretary-General's Special Representative for Afghanistan stated that, "unfortunately [...] the situation of civilians in the country and conflict-related civilian casualties are, indeed, not going into the right direction. On the contrary, the situation has worsened."³¹



For children, security concerns are even more pressing: a recent report of the UN Secretary General to the Security Council lists 66 cases of documented recruitment and use of boys, some as young as 8 years of age and describes the use of children by armed groups and police, of detainment in juvenile rehabilitation centres by the Afghan authorities, of abductions, of sexual violence and of incidents affecting education³². The report goes on to list 1,304 conflict-related child casualties, attributed to armed groups and pro-Government forces, including through explosive remnants of war, crossfire incidents and cross-border shelling, as well as attacks with improvised explosive devices and suicide attacks.³³

As coalition troops have withdrawn in 2014, the security situation may further deteriorate in 2015. Against this background – which is different, but largely mirrored in the present situation in Iraq – it appears questionable that returns without an individual on-the-ground assessment can be consistent with the best interests principle.

In Iraq, the second aimed country to establish adequate reception facilities, security concerns are high as well. Many children and

families are displaced and in addition to the psychological impact on children. As humanitarian efforts scale up, UNICEF is deeply concerned about the situation of children in areas that remain beyond the reach of humanitarian organizations due to insecurity. There are also alarming reports of children being drawn into the fighting, in blatant disregard for their safety and well-being and in breach of international humanitarian law.³⁴

Given the current volatile security situation in Afghanistan and an anticipation of a possible further deterioration of the situation the question arises if any potential return of children to Afghanistan or Iraq can be undertaken in a manner that ensures both their safety and individual development prospects any time in the near future.

The need for public consultations, debates and expert scrutiny

States have so far focused primarily on generating services and conditions (e.g., through the activities developed in the context of the ERPUM project). However, the approach does not provide a wider framework for action. The policy intentions of European States beyond the immediate goals of ERPUM remain unclear, be it during the project or once it is completed. For example, it is not evident if children from third countries with adequate reception facilities in place will, as a group, be denied residence permits on the grounds of adequate reception being established. It is further not clear if national policies intend to actively pursue the return of children and what actions would be taken if measures lead to a large increase in the number of children in an irregular situation?

With many of these questions unaddressed there is a need for public debate on what kind of national policies should follow the availability of a return house and how the implications of policy choices will be dealt with to protect the rights of these children.



3

Questions and debates around return policy and practice

The context of ERPUM and its possible wider consequences determine the policy debate around the potential return of unaccompanied children far more than the project activities itself. The legal framework has been extensively discussed in the previously mentioned UNICEF the Netherlands 2012 report.³⁵ Two concepts emphasized in the emerging legal and policy framework are essential to understanding the debate: ‘adequate reception’ and ‘best interests’.

Legal and policy framework: ‘adequate reception’ and ‘best interest’

The first concept – ‘adequate reception facilities’ – is most prominently used in the EU Returns Directive, which states that “Before removing an unaccompanied minor from the territory of a Member State, the authorities (...) shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.”³⁶ For all unaccompanied children who have no known family and no access to a nominated guardian, the only option for return is thus to ‘adequate reception facilities’. Some EU Member States have developed or tried to develop these facilities – in the form of return houses – in the past. Within the framework of ERPUM, this is being attempted again.

The second concept is the principle of the best interests of the child (also discussed in section 2), which is mentioned in many European Directives. Related to return specifically, the same article that refers to ‘adequate reception’ mentions best interests as well: “Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.”³⁷

The CRC and CRC General Comment No. 14³⁸ give essential background on how to assess or determine the best interest of the child; the UNHCR-UNICEF publication *Safe and Sound*, a good practice document on the best interests of unaccompanied and separated children in Europe provides additional reference on approaches and criteria for making operational the best interest principle in decision-making.³⁹ In any case, as stipulated in the CRC – and reflected also in the Returns Directive – the best interests of the child should always be considered before any return decision is taken.

Return of unaccompanied children to reception facilities in countries of origin poses two major questions related to the concepts mentioned above. First, what can be considered as ‘adequate’

reception? Second, how can a return policy that makes use of return facilities take the best interests of children properly into account as a primary consideration?

ERPUM and its possible implications for children

As noted previously, the second ERPUM project started in January 2013 after the first project ended in December 2012. It finished in the summer of 2014. ERPUM has come up for debate in many contexts, including several national parliaments and the European Parliament, conferences by national and international non-governmental organizations (NGOs), in mainstream media and on migration websites. It has drawn the attention of academics and policy makers, and events have been organized to discuss the project. While the Swedish project secretariat is relatively open to answering questions on project activities, the ERPUM project itself operated without actively seeking publicity.

Perhaps partly as a result, debates, articles and public statements have in many cases been based on incomplete or incorrect information. Often the project itself and its possible effects have been the subject of confusion, with many elements being attributed to the project that are actually not a part of it. In addition, States have themselves in several cases made statements that may have led to inaccurate impressions of the project. As stated in the report of a workshop on ERPUM at the Refugee Studies Centre in Oxford on 3 May 2013: “while some of the governments involved have preferred to keep their project out of the national media, others have used it selectively [...] demanding stricter asylum policies.”⁴⁰ Although this is an interpretation of the political use of ERPUM, media appearances, public statements and answers to parliamentary questions support this view.

In any discussion of ERPUM it is important to separate the discussions on the project activities and goals on the one hand and the (potential) consequences of the project (which are not within the scope of the project activities) on the other. The main elements of the project were threefold: (1) activities aimed at family tracing

and reunification; (2) the envisaged setting up of institutional reception facilities; and (3) on-going negotiations with third country governments to convince them to cooperate on family tracing and to accept (forced) return to either institutional reception or the family – given that without such agreement adequate reception facilities would have little impact on stimulating return.

These goals are thus straightforward and easy to understand. However, the project hardly concerns itself with the environment in which its results are to be achieved. Whilst references are made in the project description to the best interests of the child being the primary consideration in the implementation of project activities, this is not made operational or interpreted further. The only explicit reference to individual rights in the project description is the following statement: “family reunification as a fundamental right for the child making family tracing an absolute necessity as stated in Childs Rights Convention article 22 p.2”.⁴¹ While this reference is important and correct, it does not explain how this will be made operational and begs a number of questions.

There is no clarity on how the fundamental right to family reunification is understood to relate to the determination of the best interests of the child (CRC article 3). Is it a question of a case-by-case consideration whether contacting the family and reunification of an individual child is in her or his best interests?; or is all contact with the family and reunification per se considered to be in the best interests of every child, in any situation? There seems no particular stance on how CRC article 22 (special protection for refugee children) and article 12 (respect for the views of the child), are understood to influence return proceedings. Is the child to be heard before the decision is taken to trace and contact the family and are his or her opinions given due weight and considered in that decision? Furthermore, it remains unclear if the option of family reunification in the destination country (rather than in the country of origin) would be considered in the best interests of the child?

The ERPUM project only creates the instruments for action. It is up to the participating Member States how to make use of them. If ERPUM resulted in a service that traces the family of unaccompanied



and separated children, it is up to individual States to decide whether the service will be used and what procedure will be chosen. If an institutional reception centre is opened, it is also up to those States to decide whether it will be used and how. This creates a significant policy gap.

In the first part of ERPUM II the primary focus has been on negotiations with the Afghan Government, as its cooperation with returns was perceived as a prerequisite for the full achievement of the other goals (Iraq and Morocco were only included later). As noted in the introduction, mixed signals have been received on progress throughout the project. While updates by several European government officials describe the progress as slow but steady, statements by representatives of the Afghan Government have presented a more complex picture.⁴²

While the Afghan Government has cooperated with family tracing and voluntary return, it does not take back unaccompanied children who are forcibly returned. Some official statements from the

European side have indicated that this is unlikely to change in the short term. For example, the Dutch Secretary of State noted that “progress is disappointing due to insufficient cooperation of the Afghan Government at the moment” and results cannot be expected in the near future.⁴³ The negotiations for placing adequate reception and the operations regarding family tracing in Afghanistan have stopped some time before the project finished, whilst contacts with Iraq and Morocco continued longer.g.

This suggests that the creation of institutional reception facilities alone would be of little use. They could be used in case of voluntary return, but previous incidences of voluntary returns to a reception facility suggest this is very unlikely to happen on a large scale. Whether the European countries are still pursuing the goal or whether it has been (temporarily) dropped is not clear at this point.

Family tracing

Family tracing has been the most advanced element of the project, but again mixed signals have appeared in the media and reports in the last year as to how much progress has been achieved. In a complex set-up – involving the ERPUM countries, other European States, the Afghan Government, and the International Organization for Migration (IOM) – a dedicated organization for tracing is being used. In the report of the aforementioned Oxford workshop a detailed description is given: “... ERPUM has [...] decided that tracing is to be undertaken by the Identity Checking Unit (IDCU), framed as an NGO, with a unit working from within the Afghan Ministry of Interior. Yet the IDCU, launched in 2004, is quite far from the conventional NGO actor.”⁴⁴ Furthermore, it says that, “IOM acknowledges having ‘helped the IDCU’s Fraud and Forgery Section increase their capacity to conduct more sophisticated investigations’. IOM also promises that its ‘continuing coaching, mentoring and training for IDCU staff will ensure not only the efficient running of the Unit, but also its long term sustainability’.”⁴⁵

The IDCU operated at full capacity for some time, treating requests from the ERPUM countries, Belgium and Denmark as well as Australia, until the activities were paused in 2014 because the Afghan Government temporarily withdrew its support.

Without going too much into the roles of the different organizations, it is clear that the manner in which tracing activities were organized requires an extra level of security in the procedures. When working together with the Afghan Government in asylum cases, which may involve a claim for protection from persecution or a lack of protection associated with actors employed by that same Government, this can have serious consequences. It is imperative to be alert to situations where sharing specific information with the authorities from the child's country of origin may not be an appropriate approach. This may for example be the case where the child's reason for leaving was to seek asylum or international protection as a result of State actions or the State's inability to provide appropriate protection.

In Denmark the issue of data sharing with tracing actors or governmental actors in the country of origin has been raised in connection with the timing for such sharing data in the asylum procedure⁴⁶. In the Netherlands parliamentary questions have been asked⁴⁷ concerning the moment at which tracing starts, the cooperation with (semi-) governmental actors, the consent of the child, the information provided to the child, and the possible consequences, based on the absence of clear guidelines and incidental reports on cases.

Some specific issues arise around tracing and the way it is organized. The moment and purpose of tracing need to be clear to all involved – early on in the asylum procedure to verify the data from the asylum interview, after the first decision of immigration services or upon appeal to look into possibilities for return. The decision-making procedure in the tracing process needs to clearly define who takes the decision to initiate tracing, at which time and according to which procedures. The issue of sharing the information on the beginning of tracing with the child and his/her guardian or representative needs to be clear, as well as the overall participation of the child in the process: is informed consent for the tracing asked or required and are results

of the tracing shared with the child and his or her representative? In relation to third countries, it needs to be clear whether tracing results are trustworthy and reliable when they are used in the asylum decision-making process and whether the results or the names of families that are searching are shared with the country of origin government, possibly when procedures are still pending. Until these issues are addressed it may be difficult for governments to guarantee that the rights of children are safeguarded in tracing procedures.

Institutional reception

The return of unaccompanied children to institutional reception largely depends on the willingness of countries of origin to cooperate with European governments on return efforts. Currently many do not, limiting the efforts of States to preparatory operations. This may however change quickly if, for example, the Afghan Government agrees to receive unaccompanied and separated children.

Following such an agreement, rushed actions to support the hasty establishment of institutional reception may be dangerous, with the potential for serious long-term negative effects on the children's well-being and future development. Policy development should be undertaken now, before such an agreement is made, and timely consultations and debate on the safeguards can be a valuable part of this process.

There are many unanswered questions and a lack of debate about a possible reception centre in Afghanistan, Iraq, Morocco or any other third country. No statements have been made on the exact target group and the purpose of their stay. It could be used as the place of first arrival/initial reception for children whose family has been traced and who accepted to take their child back. It could however also be used for children whose parents have not yet been traced, to accommodate them while awaiting the outcome of tracing. Both purposes would require different safeguards, as it needs to be clear what would happen if parents or relatives were in the end not found, no longer alive, or not willing or able to take back the child.

Many other issues need to be addressed in advance: for example how it will be determined whether children have been trafficked by their parents or relatives and what happens in such a case. Furthermore, security is a serious concern, not only the general security in the country, but also specific security concerns related to the nature of a reception facility, as the centre can create its own security problems when 'westernized' and supposedly rich children are placed in a local community.

As the nature of reception and the possible duration of stay are not specified, some children's stay in the centre might take on a more permanent character, leading to the question what will happen after they turn 18. And will there be monitoring to see how the individual lives of children unfold in the years after return until maturity, as a notion of continued responsibility on the part of European states for unaccompanied and separated children? Or will full responsibility be taken over by the country of origin or a State Party to the CRC – for example, in the form of guardianship and reception facilities? But can such monitoring and support be assured in the long run? And how are these long-term prospects influenced in case of a deteriorating security situation in countries of origin, as it was – and still is - the case in Afghanistan or Iraq?

A lot will depend on how the availability of 'adequate reception' will be used on the European side. European governments may act very differently from one another in their approach to the availability of such a facility. Some may actively attempt to deport unaccompanied children and send them to the reception centre. Others may use the availability of a centre as a means of putting pressure on unaccompanied and separated children to agree to a voluntary return, by declaring return safe and denying any residency permit on the grounds of adequate reception being available in the country of origin. The message would be that there is no possibility of settling in the host country, that repatriation is an option (before or after the child turns 18) and that return to this reception can be arranged. In both scenarios, many children are at risk of not having their best interests individually assessed, with the possibility of children opting for an irregular situation.



The Dutch experience

To learn more about how ERPUM or any similar or follow-up initiatives might turn out in practice much can be learned from the Dutch experience. This applies in particular for cases where return facilities are in place and the government of the country of origin agrees with their use. The Netherlands is the only Member State that has significant past experience with this matter, through reception facilities in Angola and the Democratic Republic of the Congo (DRC).

The return house in Angola was set up in 2003 and still exists (and continues to be financed by the Dutch Government).⁴⁸ It is an education centre called Mulemba that also has facilities in place for the reception of returned asylum seekers whose claims have been rejected. However, it has hardly ever been used for this purpose. In the approximately ten years it has existed, only three to six Angolan children have been documented to have returned to Mulemba (although many – mostly higher – figures have circulated in the media and various reports in the past decade). No children have been

returned to the DRC house, Don Bosco. The maximum of six children who did return to Angola destined for Mulemba never made it there as they were picked up from the airport by their (extended) families.⁴⁹ The last one went in 2005, and in the years afterwards the house remained unused for its return reception purpose and served the local community. One former unaccompanied child once stayed in the centre for a couple of days with her own child.

This limited usage should be taken into account because the Angolan case is often cited as showing how well return can work. For example, in ERPUM's report to the European Commission it is stated that "Dutch experiences from Angola (...) show that there is almost always a family or close relatives in the country of origin who is willing and able to welcome the minor once contact has been established and a decision for return is settled".⁵⁰ Similar claims are voiced by, among others, the Dutch and Swedish Governments in the 2011 'Comparative Study on Practices in the Field of Return of Minors' for the European Commission.⁵¹ These statements suggest an evidence base that does not appear to be supported by the facts.

Three reasons can be identified for this perception of success and – partially – refuted. First, the possibility of permanent residence in the Netherlands was not held out to the group of young Angolans since 'adequate reception' was in place and they were supposed to be able to return there even if family could not be located or was not willing to take the responsibility. This led to a decrease in approvals for both temporary and permanent residency permits.

Second, a significant number of children (104) did actually return to Angola through the International Organization for Migration (IOM) during those years,⁵² although not to Mulemba. The existence of Mulemba and the subsequent refusal of the Dutch Government to grant them a residence permit may have contributed to the choice by some of that group to return. The fact that Angola was a much safer place than before and that the majority of this group had arrived in Europe only a few years before (in 2000 and 2001) may have contributed as well. It should be noted, however, that the actual number of children was much higher and other (non-IOM-assisted) means of return to Angola were limited, leading to the conclusion

that approximately 500 unaccompanied children left with an unknown destination during that same period. This indicates that the policy might have been a push for voluntary return for some but a push into an irregular situation for many more.

Third, a deterrence factor is assumed towards other unaccompanied children, who might have refrained from coming to the Netherlands as a result. This effect can only be measured from the number of Angolans applying for asylum. This number went down fast from 2001–2002 onwards. However, it went down not only in the Netherlands but also in the whole of the EU.⁵³ Although the number of asylum-seeking Angolans in the Netherlands was very high during these years compared to other European countries, it can be concluded that the numbers dropped in line with the European trend, just a little faster and slightly ahead of the trend.⁵⁴ Furthermore, as has been shown in extensive research, the Angolan-Dutch migration had a very specific nature.⁵⁵ So while there appears to be a correlation between the existence of an institutional reception facility in Angola and dropping numbers of asylum seekers from that country, a causal connection cannot easily be assumed as other factors did affect the trend.

The potentially deterring effect of having institutional reception in Angola on prospective migrating unaccompanied and separated children from other countries is even more speculative. Although the Netherlands had a large number of unaccompanied children in the early 2000s – close to 7,000 in 2000 itself – and subsequently had relatively low numbers (485 in 2011), there is no evidence that this has any relation to the Angolan return house. General downward international trends in the early 2000s and the decreased possibility of permanent status for all asylum seekers coming to the Netherlands, including unaccompanied children, are likely to have had (much) more effect. Moreover, in the early 2000s the Netherlands started using an age assessment procedure to identify and determine children, which is also perceived as having had a major influence on the downward trend (as fewer adults end up being classified and processed as minors).

Overall, the Dutch example brings out several issues. First, even with the return house in place, forced return hardly took place, at least not to the Angolan or DRC facilities.⁵⁶ The presence of Mulemba may, however, have contributed to increased numbers voluntarily returning to Angola and to higher numbers of children being denied the possibility of a permit to stay, being warned that active repatriation might be the next step and leaving reception in the Netherlands for an unknown destination. Second, the group as a whole was denied any status on the grounds of Angola being safe enough for return and adequate reception being available.⁵⁷ This suggests that the best interests of this group were not weighed individually and explicitly after the State indicated that adequate reception was available. Third, a deterrent effect stopping others migrating and seeking asylum is difficult to demonstrate and should not be overestimated given the number of other determining factors in that period.

Several assumptions are still repeatedly voiced based on this case, including the notion that there is always family available to take care of a returned child and that such a return policy will have a deterrent effect. Both assumptions are at best only partially supported by the facts. However, given its perceived success, the policy approach chosen in the Dutch-Angolan case (asylum claims rejected based on the statement that adequate reception existed and return could be arranged to it) is obviously an option for policy that will be considered by States if a reception centre becomes available in any third country within or outside the context of ERPUM.

From the perspective of (Afghan) children this example is unsettling, and for the majority of the group it will mean not only their development is endangered but also their security may be as well.

Each child's case individually assessed

A major concern about how ERPUM or similar initiatives may affect children is that they are implemented without prior establishment of holistic policies and procedures in the participating States. Without these, an appropriate determination of the individual child's best interests can hardly be meaningful and subsequent returns would not be consistent with the obligations of States under the CRC.⁵⁸ Given

current policies in several EU Member States it appears possible that individual cases will no longer be evaluated on an individual basis. Instead, the establishment of general 'adequate reception' conditions (i.e. a reception centre is in place and considered safe for return) would lead to the (theoretical) assumption that no child has a reason to remain in the country of destination. Should that become the practice, individual Best Interest Determination would be replaced by blanket decisions that would de facto exclude the possibility that the best interest of the child – even following the final rejection asylum claims – may in specific cases be best served by remaining in the European country of destination.

While UNICEF does not oppose return as such, it emphasizes that creating 'adequate reception' facilities does not imply that the sole condition for return is fulfilled. In relation to ERPUM efforts to attempt the establishment of a secure reception facility in Afghanistan, in the complex security environment and its long-term unpredictability raises specific concerns, in particular also as so little is known about what happens after return and what supportive structures may be in place.

As Thomas Hammarberg, then Council of Europe Commissioner for Human Rights, wrote in the foreword to the 2012 Kosovo report 'Silent Harm': "[The report] highlights a clear need for European states to overhaul their migration policies and firmly base them on human rights principles. Determining what is in the best interest of the child should be the starting point for states when deciding on migration measures that apply to children and affect their lives. No child should ever be returned to a country where there is no secure and sustainable social environment safeguarding his or her physical and psychological development."⁵⁹



4

Focusing on children's experiences

From the perspective of the concerned children, (the possibility of) return is often difficult and stressful and the consequences – if return becomes a reality – not seldom against their interests. They are aware of initiatives such as ERPUM and of the intention of countries to return them and have strong opinions and concerns about the matter as well as the rationale. Their security and safety, their possible return and its consequences, and their longer-term development opportunities are constantly at the top of their minds, potentially even harming that very same development.⁶⁰

A report from Kosovo suggests there is a threat that individual children can get into a dead-end situation upon return – dropping out of school, living in poverty and experiencing a wide range of psychological and mental health problems.⁶¹

In a bid to make sure that children's voices are heard, UNICEF asked professionals to hold individual and group talks with 16- and 17-year-old Afghan boys and their counsellors in the course of 2013, while ERPUM was actively pursuing the setting up of a reception facility in Kabul. These children already had a permit to stay in Belgium or the Netherlands, so the reflections did not concern their personal situations.

The report summarizes the perspective of the counsellors as they explained the status quo at that time to the children as follows: "Most European countries want asylum seekers whose application has been rejected to return to their country of origin. Some countries also want to make this possible for children who are in Europe without their families – the unaccompanied children who were asylum seekers. This is not easy, as countries must take care of unaccompanied children: for their reception, education and other rights. To go through with it anyway, countries want to make reception available in Afghanistan. If that were in place, with the agreement of Afghanistan, it might be possible to return children to Kabul without their cooperation and provide them with reception and education in Kabul."

The responses from the children indicated that security and safety are their primary concern. They simply are not convinced that security will be guaranteed upon return: "It will be hard to guarantee security. It will be impossible to know that you are safe." According to their own estimate of the local situation in Kabul, the children are convinced that the only way to secure a safe reception would be to make it fully closed: "if security needs to be guaranteed, it will be forbidden to go in and out. They will live in a prison and will want to run away."

The Taliban are a repeated topic in their reflections and they are convinced that a reception centre will lead to attacks: "The centre will definitely be attacked. The Taliban can punish the West and the government for their cooperation with the Western countries." Staffing is also a major concern in the conversations: "[...] the staff needs to be European. The youngsters will not be able to trust Afghan staff. Maybe they do the work with the wrong intention and plan an attack, or they have to do an attack and have no choice." The view of



the children consulted was that the counsellors would probably spy for the Government, the Taliban or families that wanted revenge on the children. For many of them, a key reason for not going there – or not staying – was the ease with which they could be located by those wishing to harm them.

Another aspect of security for them was the unstable situation: “Next year there are elections – who will be the next president? Are there already agreements with Afghanistan? What if the next government will not cooperate?” The fact that American troops will leave the country is seen as a high risk in the medium term. Some wonder how their longer-term prospects are integrated into the plans: “They say they will go and look for the family. What will they do if they cannot find the family? Will they put the young people on the street when they turn 18?” “What will happen if the family is not found? And if the child is in danger?” The implementing organizations are not trusted: “You want to search for their families, but that will not work. The families do not trust these organizations.”⁶²

The subject overall evokes feelings of anger and is perceived as ignoring their humanity. As one of them states, "When I hear these things, I feel observed and treated like an animal." Another says, "I really cannot imagine that people think about this. My head explodes. I cannot think any more. If they really want to help us, give us one shot to live here in a good way." They feel that their integrity is questioned in the asylum procedure while emphasizing that, "What we say is true. Our lives are in danger. We just cannot prove it." Some feel that they are not being treated fairly and question whether they are treated as an individual case. The policies are seen as showing a lack of belief in their commitment to study and work. "We want to understand everything about Belgium. We suffered a lot. We do not cause problems. We can improve the economy." "We have learnt Dutch in a short while. Why do they want us to leave?"

On the question as to what they would have done if the centre had become a reality before they received permission to remain, the most extreme answer was "I would rather kill myself than return." Others answers refer to the security situation: "Every person loves his land, soil, people and culture. We want to go back, but we need security. Who will take care of us? I do not believe they will take care of us. I do not trust the promise, so I would not go. They do not want to take care of us, they just want us to leave."



5

Looking at numbers – how many children are affected

While the number of unaccompanied and separated children entering the EU is only of secondary importance when considering their rights and how they should be treated, estimates of those numbers are helpful in forming a complete picture of the challenge States face.

The number of unaccompanied children in the EU as a whole has remained relatively stable over the past five years (see Table 1). However, it has differed for individual countries both in size as well as in composition. The main countries of origin are also changing over time due to security situations in

several parts of the world and many other reasons. Countries of destination change too for many reasons. Patterns are not easy to predict. Eurostat collects data regarding unaccompanied minors who have claimed asylum; it does not differentiate in this data between unaccompanied and separated minors and so figures shown will include children that UNICEF would identify as either unaccompanied or separated.

TABLE 1 Asylum applicants considered to be unaccompanied minors, Eurostat, 23 May 2014

Country	2008	2009	2010	2011	2012	2013
EU (28)	11,700	12,225	10,620	11,695	12,545	12,690
Belgium	470	710	860	1,385	975	470
Denmark	300	520	410	270	355	350
Netherlands	725	1,040	700	485	n.a.	n.a.
Norway	1,365	2,500	890	860	105	115
Sweden	1,510	2,250	2,395	2,655	3,580	3,850
United Kingdom	4,285	2,990	1,715	1,400	1,125	1,175

Source: Eurostat, 'Asylum applicants considered to be unaccompanied minors by citizenship, age and sex: Annual data (rounded)', <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en>.

To answer the question of how many children may be affected by forced return to institutional reception, it is important to know the following (disaggregated to the most relevant countries of origin as well as countries of destination):

1. The number of unaccompanied children entering the EU and asking for asylum;
2. The total number of unaccompanied children present in the EU without permanent status;
3. The total number of unaccompanied children returning from the EU after a negative decision on their asylum application.



Newly arriving children

As previously noted, over 12,000 unaccompanied child asylum seekers entered the EU each year in 2011, 2012 and 2013. Over 80 per cent of them were boys and over 80 per cent were aged between 15 and 18 years. The countries participating in ERPUM (the Netherlands, Sweden, the United Kingdom and Norway) and the two observers (Belgium and Denmark) received together between 60 and 80 per cent of the total number of unaccompanied children yearly between 2008 and 2012. Exact numbers and percentages cannot be given as full data are not available for 2012 (the Netherlands has no official data available yet).

The main countries of origin for unaccompanied children in 2011 were Afghanistan, Guinea, Iraq, Russian Federation and Somalia.⁶³ By far the most unaccompanied children in the past years came from Afghanistan, with 46 per cent of the total in 2011 (5,655 out of 12,225 children). After 2011 exact data per country of origin are not yet available.

Total numbers of unaccompanied children

While the new arrivals are to a large extent documented per year, few data are available for the total accumulated number of unaccompanied children in the EU without a status (within a procedure or after rejection of an asylum application but still in reception and care). The European Council on Refugees and Exiles (ECRE) and Save the Children attempted to gather data in their report of December 2011,⁶⁴ but this has not been possible for the majority of EU Member States. Furthermore, the existing data are mostly not comparable: the years for which they are available differ, they include or exclude children who have a status, they concern children who have asked for asylum only or they estimate the number of all separated children.

The group of children that may be affected by the availability of institutional reception and related policies are all those who asked for asylum in one of the six relevant countries and either have received a negative decision or are still being processed. Their number is hard to estimate; however, it is assumed that between 20 and 50 per cent⁶⁵ of unaccompanied children are given a permanent status and approximately 8,000 new children arrive in these countries as unaccompanied minors each year, bringing the likely total figure to above 10,000 in total. It is clear that, although exact numbers are hard to come by, the quantitative impact of policy measures may be significant.

Total number of returns

Numbers of returning children and whether they return voluntarily or by force are subjects on which limited data are available as well. In countries where IOM is responsible for most voluntary returns (such as Belgium and the Netherlands), the data are accessible and usually complete (see Table 2). However, other organizations are also active in the other countries.

TABLE 2 Unaccompanied children returned through IOMs Assisted Voluntary Returns (2010)

Country	2010
Belgium	28
Denmark	-
Netherlands	17
Norway	5
Sweden	2
United Kingdom	1

Source: European Council on Refugees and Exiles and Save the Children, '[Comparative Study on Practices in the Field of Return of Minors: Final report](#)', European Commission, Brussels, 2011, p. 29.

ECRE and Save the Children also reported on total numbers of children returned from EU Member States to a country outside the EU and divided this for forced and voluntary returns where applicable (Table 3). It must be said, however, that the numbers are not easily interpretable. The years differ (multi-year numbers, single-year numbers) and the results seem debatable or subject to different definitions. The table is included mainly to show how difficult it is to find reliable data. The numbers for Belgium and the Netherlands do not seem to match other records (Belgium had more voluntary returns with IOM alone and the Netherlands had no known cases of forced return in 2010 based on data from the guardianship organization Nidos). Denmark was not part of this study. The Swedish number takes into account return with extended family (but the definition and practice is unsure). The number of forced returns from Norway is so high that it raises the question of whether it includes safe third country (Dublin) returns or children in families as well. Finally, the United Kingdom figures are not given in the table as its total includes children in families and it is unclear whether it includes Dublin returns.

TABLE 3 Children returned outside of the EU where data are available (2010)

Country	forced	voluntary	total
Belgium	-	9	9
Denmark	-	-	-
Netherlands	6	19	25
Norway	158	-	-
Sweden	20	48	68
United Kingdom	n.a.		

Note: the only numbers available include children in families.

Source: European Council on Refugees and Exiles and Save the Children, '[Comparative Study on Practices in the Field of Return of Minors: Final Report](#)', European Commission, Brussels, 2011.

Overall, two conclusions can be drawn: first, the number of unaccompanied and separate children who leave voluntarily before they turn 18 is at most a few per cent of all children who arrive and ask for asylum each year; second, if institutional reception in Afghanistan or any other country is established and used in any scenario, this will likely affect many thousands of unaccompanied children (either through the decision on their permit, the consequence of being returned or the potential choice of an irregular situation).



6

Considerations for government practice

UNICEF emphasizes that the best interests of the child should be considered closely as a primary consideration in general policy as well as in the emerging actions and practices that affect children.⁶⁶ To ensure respect for the rights of the unaccompanied and separated children concerned, Governments should consider the following actions:

- 1 Assess the security situation carefully, on a country and local basis and specifically for children**
 - Conduct individual assessments to safeguard respect for the principle of non-refoulement.

- Carry out careful screening of the security information in the country and region of origin and the stability of that situation before working on return in practice.
- Support further development of better child-specific country of origin information to be used in asylum as well as in return decisions.⁶⁷ While available documents⁶⁸ deliver information on the general situation as well as the situation of specific groups and regions, unaccompanied and separated children's security situations – nationally as well as regionally – are not always the same as those of adults.
- Consider working on return of unaccompanied and separated children to Afghanistan and Iraq as not viable under current circumstances, given the security constraints.

2 Carry out a Best Interests Determination (BID) to identify a durable solution for every separated child

- Properly weigh the best interests of individual children through conducting a BID to identify a durable solution for every unaccompanied or separated child that considers his or her individual needs, rights and views.⁶⁹ Guidance on BID is available.⁷⁰
- Ensure unaccompanied and separated children are not returned unless it has been documented that their best interests have been considered as a primary consideration in the decision-making.
- Systematically monitor the situation of unaccompanied and separated children who are returned. Return decisions as well as policy effectiveness cannot be evaluated without independent monitoring aimed at the wellbeing of the child (as opposed to only the process of return support) and linked to CRC criteria.

3 Develop and use child rights-based procedures for tracing and contacting families

- Continue to develop practices and methodologies for family tracing (ensuring effective mechanisms, tools for evaluating family and social environments on a case-by-case basis, consular assistance, etc.).⁷¹

- Only start family tracing when it is certain that the child and members of the child's family in the country of origin are not endangered (i.e., after the child is no longer in an asylum procedure, unless an immediate start of the tracing is in the child's best interests beforehand).
- Inform and consult unaccompanied and separated children on the tracing of their families, take their views into account and share the results with the child and his/her legal guardian.
- Develop and apply child's rights-based (operational) procedures for tracing and contacting the family.

4 Respect the best interests of children in returning to families

- Assess the capacity of a family to take care of the child before any return, as the mere existence of family should not be the single condition base on which (forced or voluntary) return is justified. Currently such assessments are either not undertaken, are conducted in a superficial manner, or by an actor who is not independent (i.e., by the organization implementing return).
- Use methodologies for the assessment of families in countries of origin more widely and, where necessary, make them better adapted to the process of return.

5 Work on possibilities for long-term development and durable solutions

- Clarify how the reception system will guarantee the child's long-term prospects and ability to live independently when ageing out.⁷² The development needs of the child and the long-term prospects (durable solution) that are offered are central to adequate reception. An unaccompanied or separated child has to be able to live independently when reaching maturity.



6 Conduct public consultations now on policy provisions needed to accompany emerging practices

- Hold open debates and public consultations on the development of the right policy conditions in the States involved and at the European level to ensure legitimized and child rights-based policy.
- Ensure the development of policies goes hand in hand with putting the practical conditions – the actions initiated within the framework of ERPUM – in place.

7 Do not return children to institutional reception unless the recommended safeguards are in place

- Ensure no separated children are returned to institutional reception unless CRC-based monitoring models are in place and the impact of policy on children’s wellbeing can be assessed. Validated CRC-based monitoring models are already being developed (with regard to children in families but applicable to unaccompanied and separated children).⁷³

ENDNOTES

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- 2 European Migration Network National Contact Points, presented by the European Commission at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/uam/uam_infographic_a4_en.pdf, page 4
- 3 Migration Board, 'European Return Platform for Unaccompanied Minors (ERPUM)', <www.migrationsverket.se/info/4597_en.html>, accessed 10 March 2014.
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- 6 Return Directive, art. 10(1); UN Convention on the Rights of the Child, art. 3; UN Committee of the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)', CRC/C/GC/14, 29 May 2013.
- 7 ERPUM is carried out by the applicant (the Swedish Migration Board) and three partners (the Departure and Repatriation Service of the Ministry of Justice from the Netherlands, the Norwegian Directorate of Immigration and the UK Border Agency).
- 8 For example: Belgium – answers to parliamentary questions asked to Maggie de Block, Secretary of State, 23 October 2012, <www.emnbelgium.be/news/maggie-de-block-answers-parliamentary-questions-related-erpum-and-other-asylum-and-migration-is>, accessed 14 March 2014; Denmark – reported in several media, mentioned to be present as an observer in the final report from the ERPUM secretariat to the European Commission.
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- 13 Convention on the Rights of the Child, art. 9, 10 and 22; UN Committee on the Rights of the Child, 'General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin', CRC/GC/2005/6, 1 September 2005, para. 80.
- 14 See: UN Refugee Agency, 'Children: BID Guidelines information sheet', UNHCR, June 2008, <www.refworld.org/docid/49103ece2.html>, accessed 12 March 2014.
- 15 Achmad, Claire, 'Return of Separated Children to Return Houses in Countries of Origin', UNICEF the Netherlands, Voorburg, May 2012, <http://uitgezet.vara.nl/fileadmin/uploads/Uitgezet/Rapport_Return_of_separated_children_Unicef.pdf>, accessed 10 March 2014.
- 16 Separated Children in Europe Programme, 'SCEP Statement of Good Practice', 4th ed., March 2010, <www.scepnetwork.org/p/1/69/statement-of-good-practice>, accessed 11 March 2014.
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- 18 United Nations Children's Fund the Netherlands, 'Child Notice Afghanistan 2013', UNICEF the Netherlands, Voorburg, January 2013, <www.refworld.org/pdfid/5124c09e2.pdf>, accessed 17 March 2014.
- 19 UN High Commissioner for Refugees (UNHCR) and United Nations Children's Fund (UNICEF), *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014.
- 20 UN Committee of the Rights of the Child, 2013, op. cit.
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- 23 Established by the International Committee of the Red Cross, UNHCR, UNICEF, the International Rescue Committee, Save the Children and World Vision, <www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf>.
- 24 Separated Children in Europe Programme, 2010, op. cit., p. 27.
- 25 Convention of the Rights of the Child, art. 9.
- 26 Separated Children in Europe Programme, 'Statement of Good Practice,' 3rd ed., 2004, p. 15, <www.unhcr.org/4d9474399.pdf>, accessed 13 March 2014.
- 27 Separated Children in Europe Programme, 2010, op. cit., p. 27.

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- 29 The Council of Europe Commissioner, 'Human Rights Comment: Decisions concerning migrant children should always be based on their best interests', 19 September 2013, <<http://humanrightscomment.org/2013/09/19/decisions-concerning-migrant-children-must-always-be-based-on-their-best-interests/>> accessed 14 March 2014.
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- 64 European Council on Refugees and Exiles and Save the Children, op. cit.
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- 68 Such as the UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan.
- 69 Including the right of the child to be heard in all matters affecting the child and the fact that his/her views should be given due weight in accordance with the age and maturity of the child (CRC art. 12).
- 70 For example, The forthcoming UNHCR-UNICEF best interests good practice document, op. cit., Rijksuniversiteit Groningen in the Netherlands and the SCEP Statement of Good Practice.
- 71 United Nations Children's Fund and National University of Lanús, op. cit.
- 72 For example, how is art. 5 of the Convention on the Rights of the Child on parental guidance respected?
- 73 Several projects under the European Commission's European Return Fund work on this subject, such as Monitoring Return of Minors (HIT Foundation) and Monitoring the Situation of Children Returned from EU Member States (Terre des Hommes Hungary).

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