



Position paper on the return of separated children¹ to reception houses in countries of origin

Defence for Children-ECPAT the Netherlands and UNICEF-the Netherlands

April 22nd 2010

Summary

The Dutch government finances reception houses for separated children in countries of origin in order to be able to return these children when they do not qualify for an asylum permit. This Dutch practice is followed by several European countries. Defence for Children-ECPAT the Netherlands and UNICEF-the Netherlands urge the European States to adjust this practice in line with the Convention on the Rights of the Child (CRC). It is essential that child specific elements are researched when a child applies for asylum before a decision on return is made. When a child does not qualify for an asylum residence permit it is necessary to make an individual assessment to decide whether a durable solution is to return to the country of origin or integration in the country of residence. When a child is returned to a reception house in the country of origin it is essential that the child's wellbeing is monitored effectively. A careful assessment must be made when a child is reunited with family members. The family members must proof their identity and provide appropriate long term care in the best interest of the child. A guardian in the country of origin should assess during the first months if the child is safe and if the family members take good care of the child. This will provide a safety net for returned children.

¹ In this position paper the term 'separated child' is used instead of 'unaccompanied minor asylum seeking child' because a child can be accompanied but not by their parent or legal care giver. A separated child is a child under 18 years of age who is outside his country of origin and separated from both parents, or previous/legal customary primary care giver, see also: http://www.separated-children-europe-programme.org/separated_children/index.html.

Since 2005 the Dutch government finances reception houses (often referred to as orphanages) in Angola and Congo in order to be able to return separated children to their country of origin.² In 2009 a reception house in Sierra Leone was added. For this reason every request for a residence permit of a separated child is refused (when he or she does not need protection under the Refugee Convention) because there is according to the government a safe and adequate place to return to for the minor. Norway, Denmark, the UK and recently the Swedish government follow the example of the Dutch government and are financing houses in countries of origin or are planning to do this.³ The Dutch practice for the return of separated children is seen as a 'good practice' because there has been a decrease of inflow since the financing of these reception houses. However, at this moment the practice to return children to reception houses is not a good practice for the children concerned and the practice is not in line with the Convention on the Rights of the Child (CRC). With this position paper Defence for Children-ECPAT the Netherlands and UNICEF-the Netherlands will comment on the Dutch practice. The various forms of return will be discussed and recommendations will be made in order to adjust the return of separated children so it will be in line with the CRC. All European States have ratified the CRC and have according to article 20 and 22 CRC special obligations towards separated children whose vulnerability is threefold: they are a child, they often seek asylum and are in a country they do not know without the company of their legal caregiver. The special obligation to protect these children and their rights does not end at the border.

Best interest assessment and a durable solution for the child

Defence for Children-ECPAT the Netherlands and UNICEF-the Netherlands are not against the return of separated children to their country of origin if this appears to be in the best interest of the child and an individual assessment has been made. Every child and every story is different. Before making a decision on return it is essential that in accordance to article 22 CRC child specific elements are researched when a child applies for asylum.⁴

When a child does not qualify for an asylum residence permit an individual assessment must be made to decide whether a durable solution for the child is to return to the country of origin or to integrate in the country of residence. According to article 3 CRC this assessment of the best interests of the child should be made on a real individual base. A tool that could be used to make this assessment is the Best Interest of the Child model of ms. Kalverboer (University of Groningen-the Netherlands).⁵ Special attention must be paid to the period of stay in the host country (after a period of multiple years a child is integrated in the host country and it would damage his development to return to the country of origin), the medical condition of the child and specific circumstances of the child.⁶ It is essential to involve the legal guardian of the separated child of the host country in accordance with article 5 CRC to make this best interest assessment. The guardian should have

² The orphanages in Angola and Congo sponsored by the Netherlands are 'not frequently' used by the Dutch authorities for the return of separated children. In fact the Ministry is only familiar with one case of a minor who actually returned and was placed in Mulemba (Angola). No children returned to Congo.

³ The Commissioner for Human Rights, Thomas Hammarberg, has expressed his concern about the return of separated children to institutions in countries of origin in a comment published on April 20th 2010, available at: http://commissioner.cws.coe.int/tiki-view_blog.php?blogId=1.

⁴ See UNHCR 22 December 2009 'UNHCR: *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

⁵ Available at: http://www.dei-france.org/lettres_divers/2009/Best%20Interest%20Child.pdf.

⁶ See also the Statement of Good Practice from the Separated Children in Europe Programme, available at: http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html.

adequate knowledge of the situation in the country of origin and the specific circumstances in order to assess whether it is in the best interest of the child to return to the country of origin.

When, after the individual best interest assessment, it is decided that the durable solution for the child is to return to the country of origin three situations can occur:

1. The child is returned to a reception house in the country of origin;
2. The child is reunited with parents in the country of origin;
3. The child returns voluntarily to the country of origin.

In the next paragraphs these situations will be discussed and recommendations are made to ensure that the return of the child is in line with the CRC.

1. Return to a reception house: monitoring essential

The Dutch Ministry of Justice is familiar with only one case of a minor who actually returned and was placed in the reception house in Mulemba (Angola).⁷ No children returned to the reception houses in Congo. Most of the children returning to their country of origin are picked up by people who claim to be a family member (see also 'family reunification'). According to Defence for Children-ECPAT the Netherlands, UNICEF-the Netherlands and thirty other NGO's represented in the *Separated Children in Europe Programme*, residential care is the least preferred form of substitute care for any separated child. The reason for this is that it fails to recreate the normal conditions in which children should grow up and develop. Return to a reception facility in the country of origin or a third country must only take place if several conditions are met:

- The return is part of an agreed plan to reunite with family in a timely fashion or if there are exceptional reasons why it is in an individual child's best interests.
- When a child is returned to a reception house in the country of origin a careful assessment is undertaken concerning access to food, health care, education, vocational training and employment opportunities.
- The child is fully informed and consulted at all stages and his views on return are taken into consideration, in accordance with his age and maturity.
- A reintegration plan is drawn prior to return in collaboration with the guardian of the separated child in the country of origin and the child protection agency or guardian in the country of destination.
- The separated child is properly accompanied during his journey by a person with whom he has a trusting relationship, for example a legal guardian or social worker.
- Mechanisms are established to effectively monitor the ongoing wellbeing of the child.⁸

⁷ No official data are available about the return of separated children and the return to reception houses.

⁸ See Statement of Good Practice, p. 42.

In general it is important that the authorities evaluate and assess the effectiveness of financing the reception houses in relation to the best interest of children.

2. Family reunification

When a parent of a separated child is present in the country of origin the Dutch government always finds it in the best interest of the child to return this child to his or her parent. In article 9 CRC it is stated that parents and their children have the right to live with each other as long as it is in the best interest of the child. Defence for Children-ECPAT the Netherlands and UNICEF the Netherlands want to stress that the right to family life between parents and children is very important. Currently however an individual assessment of the best interest of the child is missing. There needs to be a risk and security assessment formalized through an in-depth family and social investigation. These steps must be undertaken to allow an informed decision on what the best interests of the child are:⁹

- A careful social assessment must be made of the family situation in country of origin. Parents must prove their identity and it is necessary to investigate the willingness and ability of the child's family (parents or other family members) or other carers to provide appropriate care.
- The child's parents, relatives or other adult carers must agree to provide long term care upon the child's arrival in the country of origin.
- The family's views on the child's return, must be investigated and taken into consideration.¹⁰

When a child is currently picked up by family members at the reception houses in the country of origin it is not always clear if these people are really the parents or family members of the child. Furthermore it is not assessed if the parents or family members have the best interest of the child in mind. They could have been the ones responsible for the child travelling to Europe or even be responsible for the child being trafficked. UNHCR recently emphasized this need for a careful assessment of the family situation:

"In asylum cases involving child victims of trafficking, decision makers will need to pay particular attention to indications of possible complicity of the child's parents, other family members or caregivers in arranging the trafficking of consenting to it. In such cases, the State's ability and willingness to protect the child must be assessed carefully. Children at risk of being (re-)trafficked or of serious reprisals should be considered as having a well-founded fear of prosecution within in the meaning of the refugee definition".¹¹

⁹ See UNICEF Guidelines for the Protection of the Rights of Child Victims of Trafficking, available at: http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf.

¹⁰ See the Statement of Good Practice, p. 41, available at: <http://www.separated-children-europe-programme.org/separated-children/good-practice/index.html>.

¹¹ Guidelines on international Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees' (UN Doc HCR/GIP/09/08, 22 December 2009), para. 28.

State parties invest in the prevention of trafficking whilst not determining the best interest of the child in the process of returning or assessing the family members of the child.¹² Defence for Children-ECPAT the Netherlands and UNICEF- the Netherlands strongly recommend a monitoring system. Not only will this protect the child in line with the CRC but it will also have financial benefits because children will not be trafficked to Europe again. This monitoring system should include the establishment of a guardianship system in the countries of origin. The guardian of the child in the country of destination should hand over the responsibilities to the guardian in the country of origin. When family members are found, the guardian in the country of origin should assess during the first months if the child is safe and if the family members take good care of the child. This will provide for a safety net for returned children. In this period family members can be identified who do not have the best interest of the child in mind.

Girl returned to dead mother

An example of a case where the authorities did not consider the best interest of a separated child was a case of May 7th 2009. A girl from Burundi requested a residence permit in the Netherlands. Her permit was revoked after adequate care became available for the child in November 2006 in Burundi. The State Secretary of Justice stated that adequate care was available because the mother of the child was residing in Burundi. The girl stated that her mother was not able to take care of her and that she didn't have a permanent address. According to the State Secretary of Justice the child could be returned because it was not the responsibility of the State Secretary of Justice to actually organize the reunification with the mother. During the procedure the girl showed a death certificate of her mother who recently passed away.

According to the State Secretary of Justice the girl should have shown this death certificate in an earlier stage of the procedure. Because it was a copy, the authenticity could not be determined. The girl called upon the Convention on the Rights of the Child and stated that the authorities were disregarding her best interest. However, the Council of State Administrative Jurisdiction Division judged that the decision of the State Secretary of Justice did not show that enough account was given to the interests of the girl.¹³

This example shows that there is a high risk in the current Dutch policy that the best interest of the child assessment is not made.

3. Voluntary return

Defence for Children-ECPAT the Netherlands and UNICEF-the Netherlands subscribe the Statement of Good Practice of the Separated Children in Europe Programme, in which it is stated that *'The best way for returns, transfers and resettlement to be carried out is on a voluntary basis if this is in the best interests of the child. Children must be fully informed, consulted and their views taken into account at all stages of the process. The length of time a child has been absent from their country of origin or their connection to the country where it is proposed to resettle or transfer them and their age are important factors to consider in this process.'*¹⁴

¹² There are no official data available concerning (re) trafficking of children to Europe.

¹³ Available at: www.rechtspraak.nl, LJN: BI4038.

¹⁴ Statement of Good Practice available at: http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html.

Lessons must be learned from successful voluntary return projects. From these projects issues of concern appear to be the relationship with family members, good psycho-social support, future perspective and monitoring. The monitoring in relation to these projects should be twofold. First of all monitoring is necessary to assess if the child receives adequate care and support and secondly monitoring is necessary to assess if the money the children receive when they return is sufficient for the plans the children had when they decided to return.

Return in line with the CRC

Defence for Children-ECPAT the Netherlands and UNICEF-the Netherlands want to urge the European countries to assess the return of separated children to their country of origin in line with the CRC. It is only by an individual best interest assessment, monitoring and prevention of (re) trafficking that return is in the best interest of the child. This would result in a 'good practice' for the States and the children involved.

For more information contact:

Martine Goeman, Defence for Children-ECPAT the Netherlands
email: m.goeman@defenceforchildren.nl, phone: 0031-71 51 60 980

Karin Kloosterboer, UNICEF-the Netherlands
email: kkloosterboer@unicef.nl, phone: 0031- 7033 39 431