

## Alternative Models of Return

Models exist that put the best interest of children first. The following models should be used as references for the development of systems and procedures that treat all children fairly—regardless of their immigration status.

### **State Child Welfare Systems: Repatriation Based on Best Interest**

Any child in the United States, including an undocumented child, may be taken into state custody if found to be in an unsafe environment or situation. Undocumented children in the care of state child protective systems can fit the definition of an unaccompanied child in instances of abandonment or the termination of parental rights. Several states maintain special agreements with Mexican child welfare agencies for the safe repatriation of unaccompanied Mexican national children in U.S. state care. These states include Illinois, California, and Texas.

In custody cases where family reunification or placement is a viable option, state child protective services may pursue the repatriation of undocumented children for the purpose of reunification.<sup>1</sup> State child protective services routinely work with country-of-origin consulates and protective services to achieve repatriation. In these cases, children are returned and repatriated under the authority of the state's protection and without notification of the immigration system.<sup>2</sup>

Child Protective Services routinely requires a home study prior to approving family reunification. Many countries will provide home studies to state protective services. Non-government entities, such as International Social Services, may also provide these services.<sup>3</sup> These studies provide the information that courts need to determine whether and in what manner repatriation serves the child's best interest. Children are escorted by social workers, family members with special visas, or consulate officials— not law enforcement officers.

### **The European Union**

The European Union provides another useful model. In fact, the receipt of undocumented unaccompanied children is not unique to the U.S. Industrialized countries across the globe have struggled with this phenomenon for years. In the European Union, policy makers and advocates have a comparatively longer history than the U.S. in directly and openly addressing the issues surrounding the return of

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<sup>1</sup> State agencies will place U.S. Citizen children in international placements, if it is deemed in the child's best interest to do so.

<sup>2</sup> The authority for this practice is based in part on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, stating that "services and assistance relating to child protection (and) adult protection services are deemed 'necessary for the protection of life or safety' and as such are exempt from restrictions relating to immigration status so long as only in-kind services are provided and no income restrictions are imposed."; in conjunction with federal law 42 U.S.C. ss 629a(a)(7)(B)(vi) and 671(a)(15)(B) authorizing state protective services to provide family reunification services including transportation services.

<sup>3</sup> <http://www.iss-usa.org/site/index.asp?IdSection=10>

unaccompanied children. Conclusions developed through European dialogue and research may serve as tools in the development and analysis of policy in the U.S.

The 1997 *EU Resolution on Unaccompanied Minors Who are Nationals of Third Countries*<sup>4</sup> outlines guiding principles for the development of policies related to the return of unaccompanied children, including:

- A child must not be returned when return would be contrary to the Convention relating to the Status of Refugees, the European Convention on Human Rights, the Convention against Torture or the Convention on the Rights of the Child (CRC);
- A child may be returned only if adequate reception and care are available;
- Family tracing should be undertaken as soon as possible, on a confidential basis and without prejudging the merits of any application for residence; and
- An independent legal guardian should be appointed as soon as possible.<sup>5</sup>

These guidelines are based on an understanding of international norms and research specific to the situation of migrant children.

### **The Separated Children in Europe Programme (SCEP)**

Since 1997, the Separated Children in Europe Programme has engaged in the research and development of policy related to separated and unaccompanied migrant children in the EU. The SCEP is a collaborative initiative among members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees, with non-governmental organization (NGO) partners from each member country of the European Union. The Programme informs EU- level policy related to migrant and immigrant children and reviews the individual immigration policies of EU member states for compliance with EU guidelines

Recognizing the variations in policies among EU member nations, SCEP has developed a list of policy guidelines for the return of unaccompanied children. These guidelines include areas of consideration for ensuring that returns are conducted within the frame of the child's best interest, procedures for deciding on removal, and standards for the enforcement of removal policies.<sup>6</sup>

Considerations related to the child's best interest include safety; family reunification/ willingness, and ability of family to receive child; the child's view and volition; the legal

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<sup>4</sup> The Council of the European Union, Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03) Official Journal C 221, 19/07/1997 p. 0023 – 0027; The phenomenon of what the EU refers to as children of “third countries” is analogous to the situation of children apprehended along the U.S./ Mexico border, who are from third country of origin (e.g. Honduras, or China).

<sup>5</sup> *Save the Children and The Separated Children in Europe Programme Position Paper on: Returns and Separated Children.* (2004). Separated Children in Europe Programme, [http://www.savethechildren.net/separated\\_children/publications/reports/index.html#returns](http://www.savethechildren.net/separated_children/publications/reports/index.html#returns). Summation of 1997 resolution available on page 2

<sup>6</sup> *Ibid*

guardian's opinion; socio-economic conditions in the country of origin; the child's level of integration in the host country;<sup>7</sup> and the child's age and level of maturity.

Procedures for Determination (as laid out by the Separated Children in Europe Programme):<sup>8</sup>

1. The determination to return a child to their country of origin should be made by a child welfare authority, i.e., a judge specializing in child welfare, taking into account the above consideration;
2. A legal guardian should be appointed to ensure attention to the child's interest and support the child's understanding and assessment of the situation;
3. A professional independent (NGO) entity should assess the country of origin conditions and identify and locate family members;
4. The child should be involved at all stages of planning regarding their return and reintegration to ensure that their return is a durable solution;
5. The child's opinion must be heard at any judicial or administrative proceedings that will affect their return;
6. Unaccompanied children should never be returned under accelerated procedures, such as those related to the concept of a "safe country of origin." Unaccompanied children should never be refused entry at a port of entry as such procedures deny determination of the child's best interest;
7. Decisions related to a child's return should be made in a timely manner to avoid the threat of related consequences to the child's development. Procedural measures to ensure the timeliness of a decision must not compromise the child's legal or individual rights;
8. Children should have legal representation provided at no cost to them and should have the right to appeal;
9. If removal of the child is determined to be against their best interest, a durable solution should be provided by the host country, such as long-term residence;
10. Age assessment should be carried out by independent professionals; and
11. All persons involved in the removal and return of unaccompanied children should have training on the special needs and rights of unaccompanied children.

Standards for Enforcement (as laid out by the Separated Children in Europe Programme):<sup>9</sup>

- Unaccompanied children should never be returned via forced group removal, (i.e. such as JPAT deportation flights in the US);
- Children should be accompanied by a child care professional familiar to the child (to ensure that the child is safely delivered and to respond to emotional trauma associated with return);

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<sup>7</sup> The SCEP guidelines recognize that children who migrated at so young an age as to have little or no recollection of their country of origin are deeply affected by removal. This experience can have lasting developmental and emotional effects.

<sup>8</sup> The guidelines are presented in paraphrased form to avoid confusion over regional variations in language.

<sup>9</sup> Standards are paraphrased to avoid confusion over variations in terms between U.S. and European systems.

- Children should never be released to border authorities unless the mechanisms for the continued and appropriate care of the child are certain; and
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- The child's country-of-origin caregiver should receive any information relevant to the child's well-being.

**Italy as a model of how the above guidelines can be implemented.** Italian law provides that separated children can only be returned to their country of origin by means of "assisted repatriation" in order to be reunited with their family.

Before a child may be returned, an assessment is conducted to trace the child's family and to assess whether the child's return to the country of origin would be safe. The child must be consulted during this process. The child's reaction and opinions fully informs the assessment of their safety, while including them in the process supports their acceptance of return as an option. The Committee for Foreign Minors (part of the Ministry of Labour and Social Welfare) whether to return to the child in accordance with the U.N. Convention on the Rights of the Child (CRC). This mandate ensures that the considerations concerning the safety and well-being of the child will be balanced against the interest of any non child welfare based agencies.

Italy contracts with six different NGOs to provide family tracing and assessments in the child's country of origin. Reintegration services are then offered to returned children to ensure that the child's placement is stable and to guard against repeat migration.

### **NGO Contracts**

NGOs, such as the International Social Services (ISS) organization, can facilitate the return process and ensure attention to best interest of the child principles.. European countries contract with ISS to assess the viability of and assist in the child's return to country of origin.<sup>10</sup> ISS provides research services on the situation in the child's home country and traces family members to identify potential guardians.

U.S. collaboration with ISS is not unprecedented. The U.S. contracts with ISS to assist in the repatriation of U.S. citizens, including children abroad.<sup>11</sup> At the state level, child protection and welfare agencies contract with ISS to conduct home studies for placement of child protective services clients in countries that are unable to provide a viable analysis for child welfare purpose.

### **Bi-national Collaboration**

In some regions along the U.S./ Mexico border, local authorities on both sides have attempted to mitigate the situation of childhood migration and identified related conflicts between jurisdictional policies through the creation of joint initiatives and agreements with their counterparts.

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<sup>10</sup> See service information on ISS website [http://www.issuk.org.uk/what\\_we\\_do/asylum.htm](http://www.issuk.org.uk/what_we_do/asylum.htm)

<sup>11</sup> See service information on ISS website <http://www.iss-usa.org/site/index.asp?IdSection>

The area of Matamoros, Mexico and Cameron County, Texas has engaged in a number of such efforts, to which they attribute lowered regional migration rates. The area developed a bi-national education program in which law enforcement and child welfare agencies present at local schools to inform children of the risks and consequences associated with unauthorized migration.

The Matamoros/Cameron County area has also developed agreements between local Texas law enforcement and the local Mexican child welfare agency for collaboration on the removal of unaccompanied Mexican national children who are convicted through the juvenile justice system. This system allows the local Mexican child welfare agency to serve as the child's probation officer upon repatriation. This is a great benefit to children who live in border communities. Removed children with U.S. parole officers can not comply with U.S. parole requirements, as they cannot report to their officer in the U.S. As a result, these children would have to contend with a parole violation if they ever visited the U.S. in the future.

Examples of bi-national, albeit at the local level, collaboration to directly address the roots of child migration should be analyzed in the development of national initiatives.

### **UNHCR's Best Interest Determination (BID)**

UNHCR recently released its process for determining the best interest of refugee and unaccompanied children.<sup>12</sup> The process is reserved for decisions with far-reaching consequences, requiring enhanced procedural safeguards, and involves multiple expert decision makers. UNHCR reserves the BID process for three situations, each of which is analogous to the situation of unaccompanied children in the U.S..

1. **Identifying durable solutions** for unaccompanied and separated refugee children;
2. **Identifying temporary care arrangements** for unaccompanied or separated children at particular risk (i.e. in instances of doubt related to the planned care arrangements, or in instances that the child involved has a disability); and
3. **Addressing situations in which the children are separated from their parents** and their will (i.e. the parents return to the country of origin without their children).

Situation 1 is analogous to that of unaccompanied children in the U.S. immigration system, awaiting a ruling that will determine their permanent placement. Situation 2 is analogous to both the situation of unaccompanied children in state or U.S. custody that are at risk in their temporary placement and to the situation of children ordered removed to countries of origin with no known plan for continued protection or service. Finally, situation 3 is similar to instances in which undocumented children are separated from their parents or guardians via the detention or removal of the adult.

UNHCR has procedural guidelines for each scenario. The guidelines are based on the input and expertise of various agencies including UNICEF, Save the Children, and

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<sup>12</sup> *UNHCR Guidelines on Determining the Best Interests of the Child*. United Nations High Commissioner for Refugees. May 2008.

Lutheran Immigration and Refugee Services. Key among the supporting documents for UNHCR's model is the International Rescue Committee's Interagency Guiding Principles for Unaccompanied and Separated Children, which calls for an "overall framework of protection" when dealing with unaccompanied and separated children, as well as "complementarity and cooperation" between all agencies involved in such cases.<sup>13</sup> These guidelines should be explored and considered as the U.S. develops policies to secure the safe repatriation of unaccompanied children.

### **Summary**

Child migration is a global phenomenon. Many industrialized nations have begun to address the issue of child migration with a prioritized concern for the welfare of the unaccompanied child, as opposed to focusing solely on immigration and law-enforcement considerations. In the U.S., the response to this phenomenon varies between regions with fragmented local, state, and federal policies. In some instances U.S. authorities agree to focus on the situation of the individual child, but in far too many children slip through the cracks in our decision making processes, vulnerable to the myriad dangers of continued or repeated migration.

Our humanity as a people is inextricably linked to our security as a nation. How we treat the most vulnerable visitors to our country affects our credibility and standing in the world. The extent to which the policies of the U.S. compare with the standards that the international community has set for itself greatly determines the extent to which the US can be viewed as a leader in this larger community. The U.S. needs a cohesive child welfare focused policy for the return of unaccompanied children. In the development of this policy it is essential to assess all available "lessons learned". The U.S. must look not only at the international conventions to which it is a party, but to the proven successes and shortcomings of other nations in addressing the plight of unaccompanied children. We must also assess the areas where we have already succeeded and failed in the protection and service of these children.