

UNHCR UN Refugee Agency unicef



## SAFE & SOUND

WHAT STATES CAN DO TO ENSURE RESPECT FOR  
THE BEST INTERESTS OF UNACCOMPANIED AND  
SEPARATED CHILDREN IN EUROPE



# Best interest of unaccompanied and separated children in transnational cooperation

Presentation for the CBSS 4th  
Expert Meeting  
Riga 26 November 2014

Samarie Wijekoon Löfvendahl  
UNHCR

# Setting the scene

## Global trends:

- By mid 2013, **over 51 million** people **forcibly displaced worldwide** as a result of persecution, conflict, generalized violence and human rights violations
- Over **15 million** people were **refugees**
- Almost **50%** of those forcibly displaced were children (incl. children in families)

**In the EU 32%** increase in asylum applications in 2013 compared to 2012

- Ca. **3 % of applications lodged by children (UASC)**
- Only fraction of those arriving apply in 1<sup>st</sup> country of arrival.
- Most move further afield to join relatives, communities; others are (re)trafficked
- Mixed migratory flows, children often take dangerous routes
- Many children arrive through smugglers (exploitation, abuse)
- Need to speedily identify those in need of protection
- UASC should always be granted access to territory

# Unaccompanied and separated child asylum applicants in the European Union as a proportion of all applicants (source EUROSTAT)

Year	2009	2010	2011	2012	2013
UASC applicants	12,225	10,620	11,695	12,475	12,430
All asylum applicants	266,395	260,835	309,820	336,015	435,105
UASC %	4.6%	4.1%	3.8%	3.7%	2.8%



**A BID is not required for all decisions affecting children**

**The more important the decision for the child the more rigorous the safeguards (GC 14)**

**BI process= BIA + process planning and BID**

**• Best Interest Assessments [BIA]:**

– Continuous treatment and must fit closely with existing child protection systems – BIA to inform and manage cases

**• Process planning**

• To decide on the immigration pathway (multidisciplinary: lawyer, guardian, expert) to enhance efficiency (frontloading)

**• Best Interests Determination [BID]**

– Relates to decisions affecting the child's future and therefore requires special/enhanced procedural safeguards

# Ensuring well-functioning child protection and asylum and immigration systems in receiving countries

- ... which respect best interest of the child from arrival / identification to durable solution in line with UN CRC General Comments 6, 12 and 14
  - *Proper procedural safeguards (guardian, legal advice),*
  - *Increase in safeguards as decision takes on more importance (BID)*
  - *Child sensitive procedures including interview techniques (forthcoming UNHCR guidelines)*
  - *Development + use of child specific country of origin information (COI)*
  - *Proper recognition of child specific forms of persecution*
  - *Improved quality of credibility assessments (CREDO II, UNHCR)*
    - *Departure from a culture of disbelief around claims lodged by children, using a multi-disciplinary approach)*

# Safeguards

- **Independent Representative/guardian** (recast Asylum Procedures Directive, recast Reception Conditions Directive, Dublin III, Anti Trafficking Directive)
- **Child-friendly information** enabling the child to express its views (CRC GC 14).
- **Interpretation** (Asylum Procedures Directive, Dublin III Regulation)
- **Priority processing** in the best interests of the child (
  - Time factor pertinent but no expedited process)
- **Legal counsel** (APD, Dublin III, RCD, ATD)
- **Written, reasoned decisions** (CRC GC 14)
- **Review of decisions** CRC, ICCPR Art 13 and Art 14(5).

# Sources of information

- Elements to explore:
  - Views of the child (in line with age and maturity)
  - Identity
  - Family history,
  - Information about experiences during journey and reasons for departure
  - Care, protection and safety; history, needs and options
  - Situations of vulnerability, currently and possibly developing
  - Education history and needs
  - Health history and needs

# Sources of information (continued)

- The child
- Asylum/immigration decision
- Expert reports (psychological, medical, educational)
- Family tracing results
- Home/family study reports (including information on family/care givers' willingness and ability to protect, care for the child)
- Child- / gender-specific Country of Origin Information
- The information gathering and sharing should respect national data protection laws and regulations

# Establishing trust

- Establish trust and how to deal with children who are “not cooperating”
- A child will need **time and reasons why** they should trust the adult in front of her/him.
- Child have many reasons to be **fearful of adults** ; (smuggler or trafficker).
- The **mistrustful child** may not access protection it needs and may, for e.g. try to move on

# Establishing trust (cntnd.)

- Offering **information** to the child **to rectify any misinformation** available from other influences on the child (migrant communities, family, smugglers, traffickers, other unaccompanied or separated children) requires **early investment in establishing a trusting relationship**.
- **A conscious strategy**
- **Avoid situations of pressure**
- Several **short interviews** and **more informal interactions**
- In **re-establishing contact with family**, **full agreement and trusting relationship** are necessary preconditions to avoid unexpected consequences

# Ageing out

- **Noting that the largest group of children are in the age range of 16-17**
- **For children, reaching majority at 18 means i.a.:**
  - Loss of official guardian/representative
  - Loss of the right to accommodation in special homes for young people or foster care arrangements
  - Loss of social, economic and educational rights
  - Risk of detention
  - Risk of deportation to countries they may no longer remember, where they may no longer have any contacts
  - Lack of information about rights as adults

# Ageing out (continued)

- Uncertainties of current **age assessment** methods, erroneous age determination may play an aggravating role.
- Council of Europe UNHCR research and draft resolution (2014)
- States should consider establishing a **transition category**,
  - welfare assistance and education,
  - access to information,
  - extension of housing assistance until solutions are found,
  - access to health care,
- Train social workers
- Peer support groups

# Weighing best interests

- A BID can rarely be reached by **reference to a single factor**
- According to GC 6 and 14 necessary **to identify:**
  - **the relevant elements** in a best-interest assessment
  - **assign a weight to each in relation to one another.**
- the **assessment and determination process** involves **evaluating and balancing all the elements** necessary to make a decision for a specific child.



In ranking different elements, there may be competing concerns to consider....

- **Possibility of harm** usually **outweighs other factors**
- The child's right to be brought up by her/his **parents** is fundamental principle
  - Except where there **are issues of safety**, a child's best interests can generally best be met with her/his **family**.
- The **survival** and **development** of the child, generally best met by remaining in or **maintaining close contacts** with the **family** and the child's **social and cultural network**.
- **Health and vulnerability** issues need to be assigned weight
- **Continuity** and **stability** of the child's present situation.

# Features of a BID

ensure **child participation** through **child-friendly procedures** & **proper information and support**;

be **holistic**

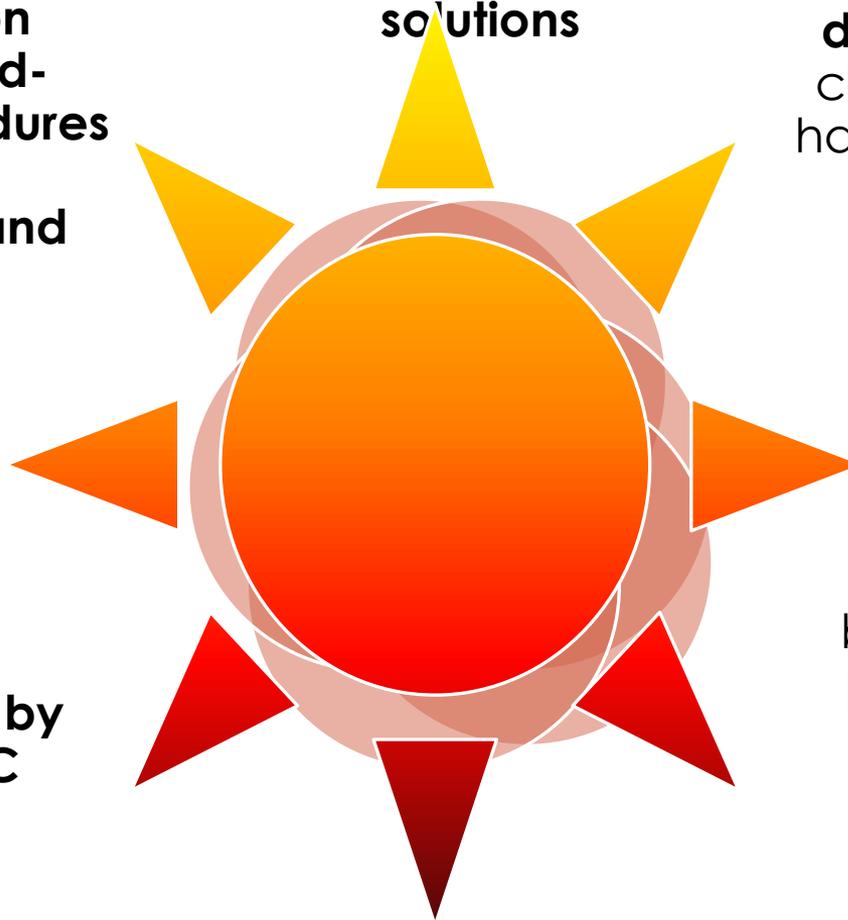
be **informed by the UN CRC**

should **consider a range of solutions**

**demonstrate and document** that the child's best interests have been a primary consideration

be **multi-disciplinary**

be **an independent process that is** with all due process safeguards





**Thank you for your  
attention**

**Samarie Wijekoon Löfvendahl**  
**UNHCR Regional Representation for Northern Europe**

**[wijekoon@unhcr.org](mailto:wijekoon@unhcr.org)**

**[www.unhcr-northerneurope.org](http://www.unhcr-northerneurope.org)**