



Save the Children and The Separated Children in Europe
Programme Position Paper on:

Transit Processing Centres Outside the EU

Further information from:

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Background

In March 2003 the UK Government put forward proposals on the creation of 'transit processing centres' (TPCs) outside the EU. The UK was forced to drop these proposals following opposition from several European governments including Sweden, and France who stated that such plans would be against international law.

In June 2004 the European Commission issued a "Communication on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity in the regions of origin - improving access to durable solutions." (COM (2004) 410 final).

Germany (despite former opposition to the issue) and Italy revived the issue in late 2004 and proposed the creation of transit camps in North Africa to stop irregular migration.

In February 2005, UNHCR has launched a one-year project to look into the complex issue of transit migration from sub-Saharan Africa into Europe and its impact on refugee protection. Financed by the European Commission, the project will focus on the North Africa region. It has three main objectives: to increase the knowledge and understanding of transit migration in North Africa, to strengthen protection mechanisms for refugees and asylum seekers in the region, and to develop a multilateral strategy to address the consequences of rescue and interception at sea of boats carrying people trying to reach Europe.

In April 2005, a spokesman for Justice, Liberty and Security Commissioner Franco Frattini denied that the Commission had any plans for such camps. He said "We need to be very clear about this. There are no definite plans or even intentions to create such camps". In a press interview on 22 April, the spokesman, Friso Roscam Abbing, noted that the Hague Programme invites the Commission to carry out a feasibility study on processing applications for asylum outside of the EU.

However, there is no formal proposal for transit processing centres under discussion at present.

Implications for Children

Save the Children has serious concerns on numerous grounds relating to the possible inclusion of children. These concerns relate to both separated children and children in families. The original proposal from the UK Government stated "We envisage that there will always be certain categories of people such as disabled persons or minors, who would never be sent to a transit centre." (Letter to European Council from Tony Blair - 10 March 2003).

Incompatibility with Member states obligations under International Law

The EU consistent with its commitments to human rights must comply with its obligations under the 1951 Geneva Convention relating to the status of refugees and not reject persons in need of international protection.

Moreover EU member states must ensure that they are respecting the Convention on the Rights of the Child and that the best interests of the child is a primary consideration.

Concerns for separated children

Separated children are a very vulnerable group with specific needs and rights under the UN Convention on the Rights of the Child. Presently, separated children in Europe commonly face problems related to the determination of their age by the authorities. Despite UNHCR Guidelines that the benefit of the doubt should be allowed in unclear cases, the asylum applications of children are often processed as those of adults.

Under the original proposals from the UK to establish transit processing there is no mention of whether, how and when an age assessment process would be undertaken so that children, who are currently exempt from removal to a TPC, can be properly identified. The risk of separated children being sent to a TPC is therefore a very real one, and the EU state responsible would risk breaching the rights of those children. Some of the key reasons for this are:

Best Interests

In all actions concerning children...the best interest of children shall be the primary consideration" (CRC Art.3(1))

The stated aims of the proposals (better management of the asylum process, reduction of unfounded applications and more equitable protection for genuine refugees) are in no way compatible with the primacy of the best interests of the child.

Non-discrimination

Separated children are entitled to the same treatment and rights as national or resident children. They must be treated as children first and foremost and all considerations of their immigration status must be secondary. (Cf. CRC Arts. 2 & 22 (1)) Separated children would obviously not have access to the same treatment and rights of national children in a TPC.

Asylum Determination Process

Separated children should be exempt from alternative procedures including those relating to 'safe third country', 'manifestly unfounded' or 'safe country of origin'.

The stated purpose of TPCs is to deal with 'manifestly unfounded' claims and so as such are form of accelerated procedure.

At all stages of the asylum process, separated children should have a legal representative.

There is no detail of how claims would be assessed but no mention of legal representation being made available.

Children who receive a negative first decision should have a right of appeal.
The proposal states that 'failed applicants could not remain in the TPC' and the majority would be 'returned to their countries of origin'. There is no mention of access to the right of appeal and this is unlikely as this is considered a fast-track procedure.

Return

Before a separated child can be returned to a country of origin many safeguards must be in place – (for details refer to SCEP Statement of Good Practice, 2004 and SC/SCEP Position Paper on Returns and Separated Children, September 2004)

There are no details of how returns would be carried out but such safeguards are unlikely to be in place.

Guardian or Adviser

As soon as a separated child is identified, a guardian or adviser should be appointed to advise and protect separated children. (Cf. CRC Arts. 18 & 20)

There is no indication that this sort of assistance would be available.

Detention

Separated children should never be detained for reasons related to their immigration status. (Cf CRC Art 37 (a) & (b))

It is likely that, in order to achieve the stated aims of the proposals, these TPCs would have to restrict freedom of movement and act as detention centres. This would meet the presumed need to prevent people from absconding to avoid removal and the needs of the host country for minimum impact on local populations.

Interim Care

Separated children should be found suitable care placements as soon as possible after arrival and should be cared for by suitable professionals who understand their various needs. (cf CRC Arts. 19, 20(3), 26, 27, 34,35,36)

TPCs, as currently described, would not qualify as suitable care placements.

Sexual Exploitation and Trafficking

States are responsible for protecting children from all forms of sexual exploitation and abuse, and trafficking. (Cf CRC Art.34& 35)

The placing of separated children in TPCs, which could become large refugee camp-like entities, would pose serious child protection problems and challenges.

Health

Separated children should have access to health care on an equal basis with national children. For many access to counselling is vital to assist their recovery.

Access to such health care cannot by definition be made available in TPCs.

Education

Separated children should have access to the same statutory education as national children.

Access to such education cannot by definition be made available in TPCs.

In addition there is clearly the possibility that if the application of a head of household is deemed to be manifestly unfounded, that applicant, together with his/her family, would be sent to a TPC. Save the Children believes that the rights of **children in families** would equally be breached if placed in a TPC. In their case this relates particularly to the following rights:

- ❑ Best interests of the child;
- ❑ Non-discrimination principle;
- ❑ Right not to be detained;
- ❑ Right to health care;
- ❑ Right to education.

Recommendations

Save the Children believes that, *under no circumstances whatsoever*, should separated children or children in families ever be involved in the new asylum processing procedures under consideration.

This also applies to the adult family members of asylum seeking children, in respect of the principle of the right to family life.

EU Member States should therefore ensure that concrete safeguards will be put in place to guarantee that no child (child as defined by the UNCRC to which all EU Member States are signatories) can ever be sent to such transit processing centres.

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