

The Best Interests of the Child & The Protection System

*Looking to the future for unaccompanied minors in Ireland and
Europe*

EMN Conference
4 December 2018

Global Trends 2017

52% CHILDREN

Children below 18 years of age constituted about half of the refugee population in 2017, up from 41 per cent in 2009 but similar to more recent years.

4M

Four million **refugee children** are out of school. An increase of **half a million** in one year.

Source: UNHCR (2017)

Global Trends 2017

173,800

UNACCOMPANIED
AND SEPARATED
CHILDREN

This conservative estimate takes into account new applications, asylum-seekers and refugees. It includes 45,500 unaccompanied and separated children who sought asylum on an individual basis in 2017 as reported by 67 countries and 138,700 unaccompanied and separated child refugees and asylum-seekers as reported by 63 UNHCR operations, with reductions to avoid possible double-counting.

- Known to be an underestimate due to under-reporting
- Most applications were from children aged 15 to 17 (33,300)
- Substantial minority of applications (12,200) from unaccompanied and separated children aged 14 or younger

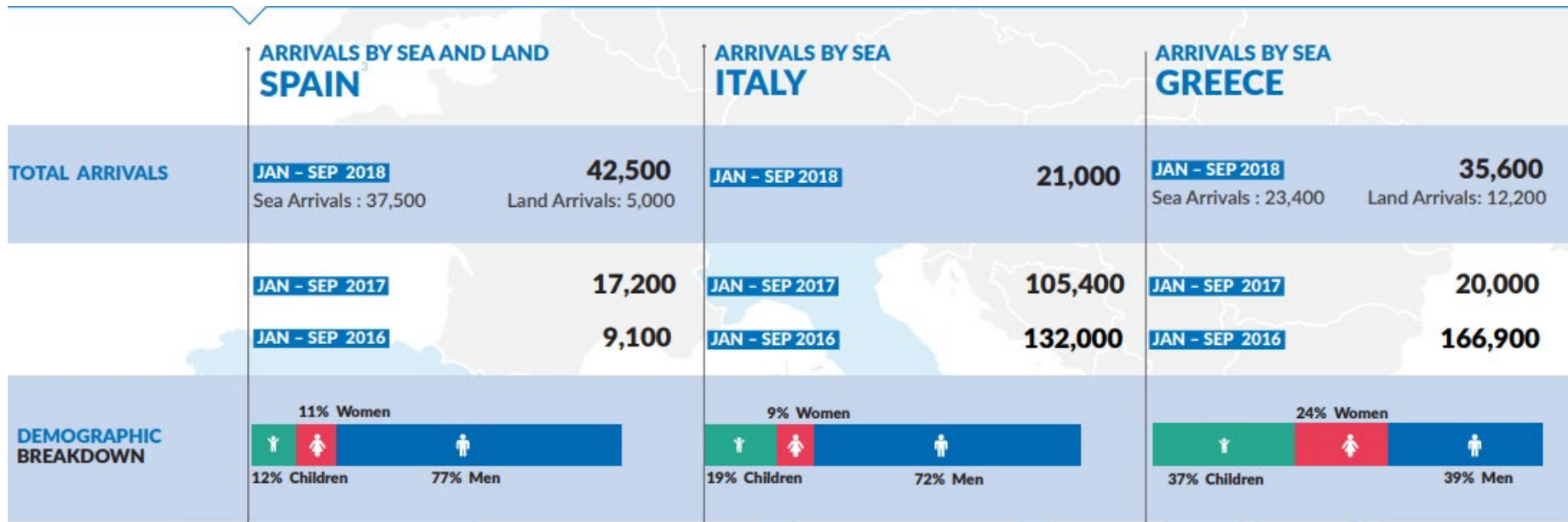
Mediterranean Situation – daily updates 2018

Previous years	Sea arrivals	Dead and missing
2017	172,301	3,139
2016	362,753	5,096
2015	1,015,078	3,771
2014	216,054	3,538

109,073 arrivals to 23 Nov 2018. **2,075** dead or missing

21% of arrivals are children

Mediterranean Situation



Protection risks, faced by refugee and migrant children in Europe

- Sexual and Gender-Based Violence and Abuse
- Exploitation
- Physical and Psychological Harm
- Detention
- Harm to Child's Fullest Development (limited access to education and recreational activities)
- Family Separation and Challenges to Family Unity
- Smuggling and Trafficking
- Financial Dependency
- Security Risks

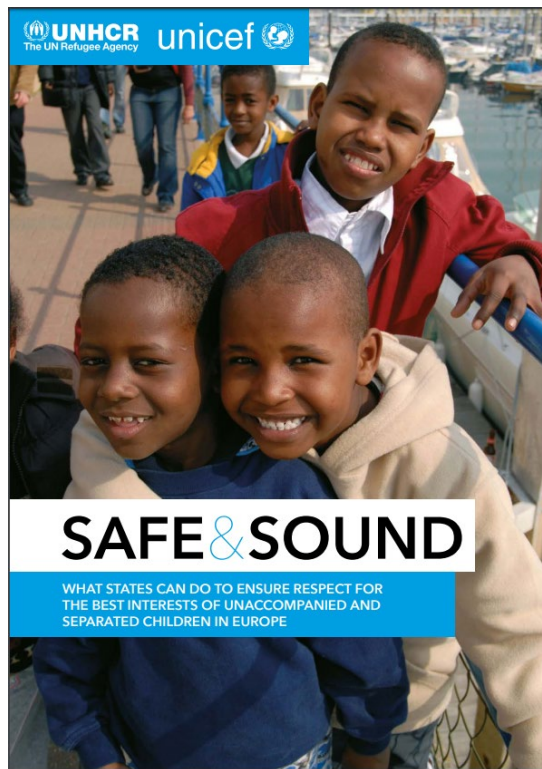
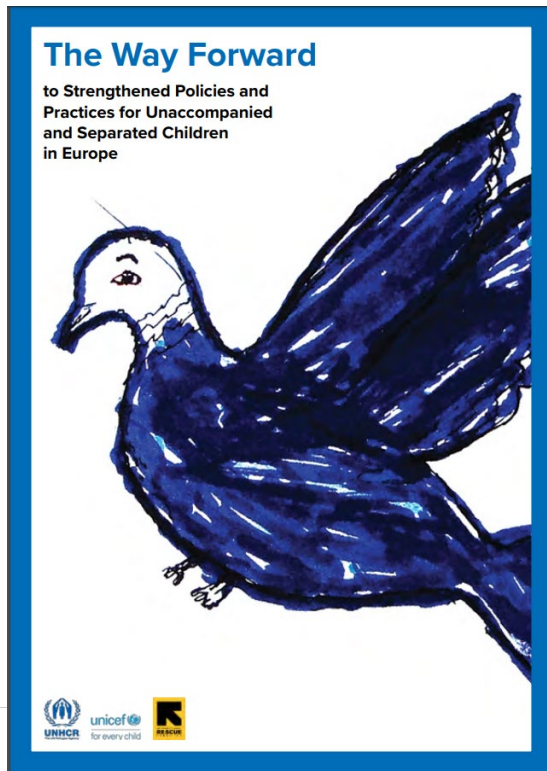
Source: factsheet jointly produced by UNHCR, UNICEF and IOM

Best Interest of the Child

- Article 3(1) UN Convention on the Rights of the Child

“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”

Together with article 2 (non discrimination), article 6 (right to life), article 12 (right to be heard) it forms the basis of the international child protection regime.



UNACCOMPANIED AND SEPARATED ASYLUM-SEEKING AND REFUGEE CHILDREN TURNING EIGHTEEN: WHAT TO CELEBRATE?

UNHCR / Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum-seeking and refugee children



Relevant elements to consider in determining the best interests of a child

- Views of the child
- Identity
- Family environment
- Care, protection & safety incl. well-being & development
- Situations of vulnerability
- Child's rights & needs incl health & education



Refugee Children & the UNCRC

Article 22:

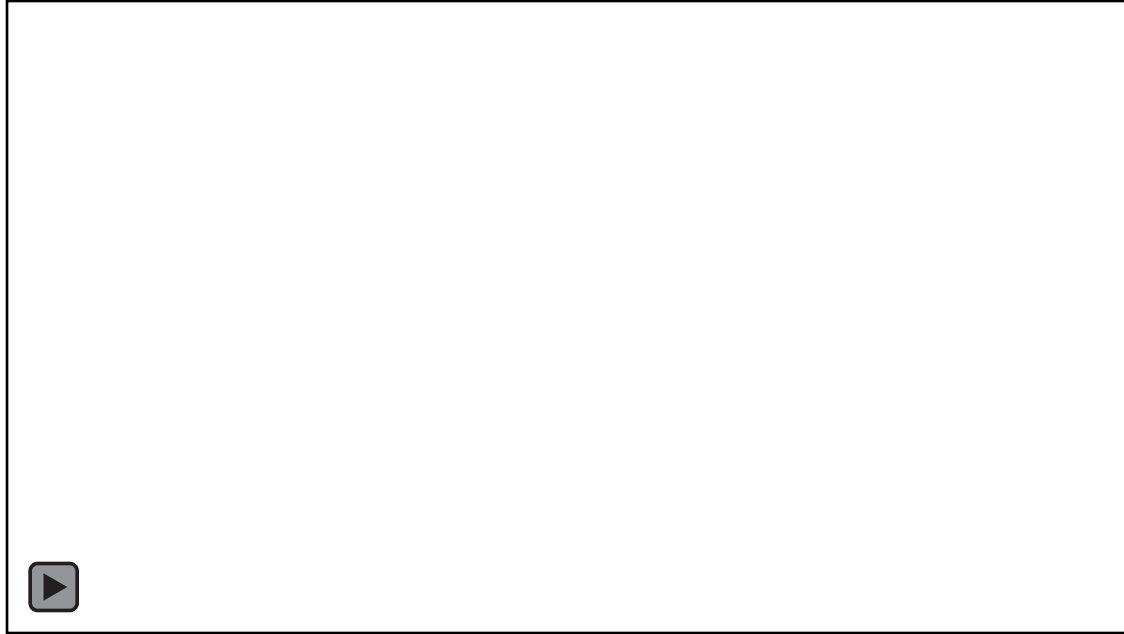
“ States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

- Co-operation & family tracing

Key points - ensuring best interest of the child in the International Protection Procedure

- Access to the procedure – BIA
- Views of the child – involvement in key decisions & views given due weight – Art. 12 UNCRC/Art. 8(3) UNCRPD
- Engagement of qualified staff: Expertise – both child-specific & asylum law
- Independent review for all decisions e.g. UNCRC *N.B.F. v Spain* decision (age assessment)

Provision of child friendly information



Key points - ensuring best interest of the child in the International Protection Procedure

- Prioritisation - *timefactor for children
- Independent legal representative & guardian
- UN Committee on the Rights of the Child: interpret the refugee definition in an age-sensitive and gender- sensitive manner
 - Rights specific to children
 - Child-specific forms of persecution (child-specific COI)
 - Knowledge and/or memory of conditions in the country of origin
 - Vulnerability
- Legal reasoning

Credibility Assessment

The Heart of the Matter: Assessing credibility when children apply for asylum in the European Union
(Credo II)

Section 28(5) International Protection Act –*level of understanding that could reasonably be expected of a child of that age*



Turning 18

- Clear & transparent information about the consequences of reach the age of majority should be provided incl. rights & responsibilities they will have after that age.
- Adequate psychosocial support – transition to adulthood
- Specific guarantees in the asylum procedure should be extended
- Family reunification: C-550/16 CJEU A & S
- Access to appropriate accommodation, education

Reception conditions & best interests

S.I. 203 of 2018 European Communities (Reception Conditions) Regulations 2018:

- Best interests = a primary consideration
- Due account shall be taken of the following:
 - Possibility of family unity
 - Minor's well-being & social development, taking into account the minor's background
 - Safety & security considerations (victim of human trafficking)
 - Views of the minor in accordance with age & maturity
- Family tracing

Upcoming – UNHCR Best Interest Procedure Guidelines

Expected late 2018 / early 2019. Build on:

- the practice of domestic child protection systems
- the first 10 years of implementation of UNHCR's Guidelines on Determining the Best Interests of the Child

Replace both the 2008 UNHCR Guidelines on Determining the BIC and the 2011 Field Handbook for the Implementation of UNHCR BID Guidelines.

Upcoming – UNHCR Best Interest Procedure Guidelines

Include:

- Overview of history and scope of UNHCR's work on the Best Interests Procedure (BIP)
- Guidance on how to apply the best interests principle in practice
- Explanation of how to undertake child protection case management within the framework of the BIP, including the systematic use of the BIA

“Regardless of the circumstances and reasons why they are on the move, all children need special protection and support

Children on the move are first and foremost children, and should be treated as such.”

Filippo Grandi

UN High Commissioner for Refugees