



COUNCIL    CONSEIL  
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**Regional Conference on  
« Migration of unaccompanied minors: acting in the  
best interests of the child »**

Torremolinos, Málaga - Spain

27-28 October 2005

**PROCEEDINGS**





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## OPENING SESSION

Maud de Boer-Buquicchio

### Deputy Secretary General of the Council of Europe

Many of us here are parents and have, on occasion, sent our children travelling on their own. Sometimes for a day trip with their school, sometimes for a longer period to a holiday camp, for a visit to a family living abroad, or even, when they were older, to explore other countries with the Council of Europe's Inter-rail. We all know the mixture of excitement and dread which accompanies their departure, the moment when we wave them off and mentally check the very long list of just about every measure meant to get them to their destination and back as safely as possible. Travel documents, appropriate clothes, food, money, vaccinations, medicine, names of responsible adults accompanying or waiting for them at the end of their journey, a list of consular representatives and so on and so forth. And with all this planning and protection we are still going to be anguished and suffer insomnia until they return home safely.

We should keep this image in mind when discussing and deciding policies on migration of unaccompanied minors, which is a bureaucratic name for children who are left on their own to deal with very difficult and often dangerous situations. They are unlikely to have travel documents, or appropriate clothes, or enough food or even shelter. They are traumatised by the separation from their family and by the risks resulting from their hazardous journey. Their vulnerability makes them an easy prey to all sorts of human predators and they will, more often than not, perceive an adult as a source of threat rather than protection. In this respect, the term "unaccompanied minors" is perhaps not the most appropriate, because many of these children are in fact worse off than being alone - they are accompanied by the wrong kind of people.

Malaga is a very appropriate setting to discuss issues of migration because Spain is one of the countries which is, because of its geographic location, facing a particularly difficult challenge and where – as we have recently seen in the Spanish enclaves of Ceuta and Mellila – illegal immigration may take dramatic and even tragic proportions.

I should like to thank the Spanish authorities for inviting the Council of Europe to organise this conference here, and I believe that this is a sign of their effort to tackle the difficult issue of migration, including the migration of unaccompanied children in a responsible manner and in line with international humanitarian and human rights standards.

Before speaking on the specific subject matter of this conference, I would like to make several brief points on migration in general.

Firstly, unaccompanied children represent the most vulnerable category of migrants, and make up about 4% of total asylum-seekers in Europe. In 2003, these 4% represented some 12 800 unaccompanied children in 28 of the most economically developed European countries. The total number of migrating children is of course much higher, and in spite of the relative protection resulting from their family entourage, their rights and needs should not be forgotten either.

Secondly, I think we need to look at our approach to migration critically, both in terms of policies in place as well as the manner in which this subject is treated in the political debate in many of our member states. We must make it clear to our citizens that migration is not a war, that migrants, be they legal or illegal, are not enemies and that, consequently, migration is something we should strive to manage, not fight. Migration should not be considered as a threat and an exclusively negative phenomenon, which is regrettably very often the case today. Greater opportunities for legal migration are not only in the interest of potential migrants, but our fast-ageing societies as well.

Thirdly, successful management of migratory flows requires, simultaneously, more resources and efforts at national level but above all international co-operation between all concerned: countries of origin, countries of transit, countries of destination. The key word in dealing with migration is solidarity, starting with solidarity towards migrants, but also towards the countries of origin. Similarly, there should also be more solidarity in co-operation between the different countries of destination. Those which, like Spain, are more exposed to this problem because of their geographic location, have the right to expect and receive support from those which lie outside the main migratory flows.

Fourthly, the long-term solution to the challenges of migration can only be achieved through a substantial improvement of living conditions in the countries of origin. They will not be able to do this quickly and they cannot do it alone. Paradoxically, it is precisely the migrants who by supporting their relatives at home can make a substantial contribution to this process.

This, however, cannot substitute the need for development aid. Helping them is in the interest of the countries of destination because there are no borders which could effectively stop desperate people who are escaping from the horrors of war, persecution, hunger and disease. At the same time, much more must be done to promote the social and legal integration of immigrants - a failure to do so turns a demographic, social and economic opportunity into a time-bomb. When they enter our countries migrants – regardless of whether they are entering legally or illegally – are also entitled to a full protection of their human rights.

Finally, our efforts aimed at long-term solutions must be accompanied by a better, speedier and more humane approach to emergencies. Tragedies such as the ones recently observed in Ceuta and Melilla should simply no longer occur.

The conclusion we may draw from the points made above is that we need a two-fold approach if we want to improve the precarious situation of unaccompanied migrating children. On the one hand, we must introduce child-friendly policies into all our existing migration policies, on the other, we must also critically examine these policies and their objectives, in order to make them more efficient, more humane and more respectful of human rights.

In recent years, the Council of Europe has produced a number of important legal instruments and recommendations on how member states should approach the problem of migration in general, while the process of systematically introducing specific child-



friendly provisions into all relevant policy recommendations has been accelerated following the Council of Europe's Third Summit which took place in Warsaw in May.

The backbone of our children-related activities for the period between 2006 and 2008 is a three-year Action Programme "Building a Europe for and with Children", with the aim to streamline a child rights perspective into all of the Council of Europe activities.

The underlying idea is that children are not mini-persons with mini-human rights.

As the name of the Action Programme indicates, our activities will not only be conducted for children, they will be discussed, designed and implemented with their active participation.

As part of this broader initiative, the Third Council of Europe Summit endorsed a Programme of Action for the promotion of the Rights of the Child and their protection against all forms of violence. It is therefore clear that the Council of Europe Programme of Action "Europe for and with children" is based on child-rights approach". I particularly appreciate that this approach has been adopted by this conference here.

It is my understanding that the Council of Europe's Committee on Migration has already decided to use the results of this conference to review existing migration policies in Council of Europe member states and prepare specific guidelines on how to deal with the migration of unaccompanied children, which will possibly be on the agenda of the next Ministerial Conference on Migration planned for 2007. This is in tune with the objectives of the Action Programme and also provides for a concrete follow-up to your work here in Malaga.

I will not pre-empt your debates and conclusions, but would like to offer an example from my own country, the Netherlands. In recent years, a number of experts and non-governmental organisations alleged that the government policy on unaccompanied minors has shifted its priorities from protection to deterrence. One of the symptoms of this trend has been the introduction of new rules refusing the right to asylum on the grounds of lies or silence during the processing of the demand. I will leave it to you to judge on the appropriateness of deciding on the fate of a child or an adolescent on the basis of how willing, able or free he or she is to tell the truth – or even to remember the facts! Only after considerable pressure, the authorities agreed to waive interviews for children under six years of age.

I believe that there are many similar problems in many of our member states and there is a clear need to act to protect the interests and the rights of children. In many respects, there is no need to reinvent the wheel. All of our member states are parties to the United Nations Convention on the Rights of the Child, which includes all the key principles which should guide our policies in this field; namely the principle of the best interest of the child, the principle of non-discrimination, including on grounds of nationality, the facilitation of family reunion and the right of the child to be consulted on all matters that may affect him or her. The challenge is to effectively apply these principles in our policies. And there is still much to do.

To this I would also add the urgent need for our member states which do not yet recognise child-specific forms of persecution - such as forced recruitment in armed forces, forced child labour, female genital mutilation or forced marriages or pregnancies, as grounds for seeking asylum - to revise their approach and end the double jeopardy which is denying children fleeing such appalling practices the right to seek refuge in our countries.

Our objective must not be to process and return all children to their countries of origin because, in many cases, this would expose them to huge risks including death. We must always act in the best interest of the child. For some, this may well mean a return to where they came from, but others must be given the possibility and be helped to rebuild their lives, benefit from education and find a new home in our countries.

We must also act together to combat trafficking in human beings, being careful to distinguish between this phenomenon and illegal migration. The Council of Europe has done so by opening to signature at the Third Summit of Heads of State and Government the ground-breaking Council of Europe Convention on action against trafficking in human beings. This Convention, which is centred on the protection of fundamental human rights of the victims of trafficking and on the prosecution of traffickers, contains specific provision for the protection of children, victims of trafficking. Law enforcement should be alerted to this problem which is taking on epidemic proportions in Europe and in the world.

I have great expectations from this conference, because what is at stake is not only the protection and well-being of thousands of children exposed to tremendous risks to their physical and mental integrity, but also a judgment on who we are and who we want to be as societies – humane, open and tolerant, or selfishly turned towards ourselves and our own narrow interests. The objective is to design policies which will offer every child the kind of assistance we would hope to be available if ever our own children were in such desperate need for help and protection.

## Amparo Marzal Martínez

### Director General of Family and Childhood, Ministry of Labour and Social Affairs, Spain

*Ladies and Gentlemen,*

Thank you for inviting me to speak here today. I should like to stress the importance of the opportunity given to us by this Council of Europe Regional Conference on a particularly vulnerable sector of the immigrant population - unaccompanied foreign minors - whose numbers are unfortunately increasing in Spain.

In the framework of the Convention on the Rights of the Child and Spain's own constitution, section 3 of Organic Law 1/96, on the Legal Protection of Minors, of 15 January 1996, stipulates that "minors shall enjoy the rights granted to them by the Constitution and the International Treaties to which Spain is party, especially the Convention, and the other rights guaranteed by the legal system, without any discrimination on grounds of birth, nationality, race, gender, disability or disease, religion, language, culture, opinion or any other personal, family or social circumstance. The public authorities shall guarantee that minors' rights are respected and take the necessary action in keeping with this law and the aforesaid international standards". Section 10, para. 3 of Law 1/96 also stipulates that foreign minors in Spain have the right to education.

Organic Law 8/2000, of 22 December 2000, reforming Organic Law 4/2000, of 11 January 2000, on the rights and freedoms of foreigners in Spain and their social integration, guarantees foreigners the same respect for the rights and freedoms enshrined in the Spanish Constitution as Spanish nationals, always in keeping with the international treaties and agreements signed by Spain. Similarly, section 92 of Royal Decree 2393/2004, of 30 December 2004, approving the Regulations implementing Organic Law 4/2000, as amended by Organic Law 8/2000, on "Foreign minors", establishes the fundamental nature of the principle of family reunification.

Because of its geographical situation, in recent years Spain has seen a steady increase in the number of foreign minors under 18 years of age, mainly from North Africa, entering the country with no legal representation. Most of them come from Morocco, Algeria and Tunisia.

In 1998 a total of 811 were detected in the whole country. By 2001 the figure had risen to 2,548 foreign minors, and in 2002 it reached 6,329. In 2003 unaccompanied foreign minors numbered 6,846 and at the end of 2004 the figure stood at 9,117 (4,650 of these were from North Africa).

These minors, mostly boys, who arrive in our country after a supreme effort, often at the risk of their own lives, are part of a family migration project. Their aim is to find work. They come from fairly normally balanced families, who care and provide for them, so there is no socio-cultural need driving them from their homes. Instead the conditions of extreme poverty they live in cause the families to encourage their children to leave in the hope of forging a better future.

Other cases exist, of course: minors who were already street urchins in their own countries, who have broken away from, or never known their families, and survived on

the streets. Some of them have serious health problems. It is not easy to work with and educate these children.

These young people are generally very mobile and have been away from home for a long time, travelling round Spain and other parts of Europe. There is always a danger that they will get involved in high-risk social networks, such as mafia groups engaged in drug trafficking or prostitution, or criminal gangs.

Another problem is the shock when they find out that the realities of life in our country are far from what they expected. Only then do they realise how difficult their adventure is going to be; they are unprepared for this, lonely, vulnerable, scared and wary, with no-one to turn to for care and support. As a result, when they are taken into the care of the Autonomous Communities, many react in an aggressive and conflictual manner, not to mention the communication problems they encounter because of their poor command of the language, lack of education and socio-cultural differences.

All these factors, together with their vulnerability as minors or adolescents who have experienced exclusion, poverty and ill-treatment in the family, who find themselves in the care of a protection system which does not cater for their real needs, motivations and expectations, who are illegal immigrants until they are issued with papers that allow them to work and live a normal, independent life, etc. – all these things confirm the need for special treatment until these minors manage to overcome these obstacles and adopt a more normal behaviour as they find their place in society and prepare to lead their own lives.

From the Ministry of Labour and Social Affairs, within the co-operation arrangements set in place with the Autonomous Communities, which are responsible for protecting minors, and of a common accord, technical committees have been working since 1999 to analyse the more worrying aspects of the steady flow of paperless foreign minors into our country, as legal responsibility for minors in Spain lies with the corresponding public authorities in each Autonomous Community and in the Autonomous cities of Ceuta and Melilla.

With the creation of the Childhood Observatory, a joint body reporting to the Ministry of Labour and Social Affairs, this subject was studied by a working group set up to look into the situation of these minors in our country and contribute to the drafting of Organic Law 8/2000, reforming Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, and the actual Regulations concerning the situation of foreign minors.

Work has also been going on for a number of years on a joint action protocol or procedure for use in all the Autonomous Communities by all officials involved in the protection of unaccompanied foreign minors. In addition to representatives of the Autonomous Communities and the public authorities responsible for the protection of minors, the State Prosecutor's Office and representatives of the Ministry of the Interior (State Secretariat for Security and General Directorate of Police), the Spanish Federation of Municipalities and Provinces, the "Platform" and other child protection organisations also took part in the drafting.

This joint action protocol, which has been approved by the Observatory in plenary, explains what action the relevant bodies should take when the state security forces report the presence of unaccompanied foreign minors to the State Prosecutor's Office, the legal formalities to be carried out in order to identify them, determine their age and locate their families, with a view to their integration into the community or,

where appropriate, their repatriation for reunification with their families or placement in the care of the child protection authorities in the country of origin.

At the present time this working group is called the "Intervention group on foreign minors in Spain and their social integration", and its aim is to facilitate the social and occupational integration of minors in the care of the protection centres, so it is essential to continue monitoring and evaluating the application of the protocol, and to identify and disseminate best practices in the field of social and occupational integration.

Within the powers vested in the Ministry I represent, we undertake to continue to foster co-ordination with other Ministries active in this field, and to encourage co-operation with the Autonomous Communities to harmonise procedures under the action protocol for unaccompanied foreign minors. We shall also promote research into the phenomenon, professional training, the exchange of experiences and general public awareness of the problem. Special mention should be given to the research co-financed by the Ministry of Labour and Social Affairs and the Autonomous Community of Valencia under the experimental programmes to combat child abuse, on the use of biometry to determine age, adjusting the age standards to the population under study.

There is an urgent need to find practical, consensual solutions within the procedure laid down by law to resolve the problems raised by these minors. In some cases the answer lies in family reunification, subject to the guarantees provided for by law. We must work on the idea of assisted return, on programmes that offer alternative accommodation, board and socio-occupational integration in the country of origin. This means co-operating with the Moroccan authorities to obtain information to help identify these minors and locate their families.

In other cases, where circumstances and the children's best interests so require, we shall provide them with proper care and attention and help them to obtain residence permits to make it easier for them to find their place in society and the labour market.

A series of co-operation measures is therefore necessary to support development, in co-ordination with the Foreign Ministry's Spanish International Co-operation Agency, with analysis of the progress made in the medium term, to improve the situation of families, children and young people in Morocco and strengthen social protection there.

Spain and Morocco also need to reach agreements, in the form of conventions and/or memoranda, which include transnational activities (in a spirit of international co-operation), with a view to fostering more active co-operation between the Moroccan and Spanish authorities, to help locate the minors' families in their country of origin or, where appropriate, facilitate their placement in the care of Morocco's child protection services.

There is also a need, in the children's countries of origin, for efforts to increase social and institutional awareness, and also prevention, to avoid the risks involved in emigrating at too young an age.

We shall also continue with our own task of supporting the work of the Autonomous Communities and children's NGOs, subsidising the programmes to provide residential care facilities for minors, through grants to NGOs financed by income tax, priority being given to programmes specially aimed at unaccompanied foreign minors, and other programmes under the general scheme to provide adolescents

with flats where they can learn to fend for themselves, thereby preparing them for social and work integration.

Through these programmes developed with the Autonomous Communities with a high percentage of unaccompanied foreign minors, we address these young people's need for fulfilment and emancipation, like any other children, taking into account their cultural characteristics, their social situations and their migration plan.

The social reality of the group is changing and will change much more in the near future. For this reason we must look at the present and see what measures are likely to make a positive contribution to the society of tomorrow.

We accordingly offer our efforts and those of the members of the Childhood Observatory to improve our country's action in favour of unaccompanied foreign minors, and we will be taking a close interest in the conclusions your conference will be reaching, in the hope of achieving greater efficacy by implementing joint solutions.

## Micaela Navarro Garzón

### Adviser on Equality and on social wellbeing, Autonomous Regional Government of Andalusia, Spain

Minors are a social group who need to be guaranteed the protection of the public authorities. This is stated both in the 1959 Declaration of the Rights of the Child and the 1989 Convention on the Rights of the Child, which promotes a catalogue of fundamental rights for girls and boys.

In keeping with the convention, the Regional Government of Andalusia undertakes to “combat the illicit transfer and non-return of children abroad” and recognises that the child, “for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”, this being the most suitable environment for the child’s full development.

Accordingly, it will continue to promote family reunion for immigrant minors as a first step following protection through the network of residential facilities, in the same way as for Spanish minors. Making it a principle that unaccompanied immigrant minors must not return to their families is tantamount to discrimination on grounds of origin.

Should it not be possible for them to return to their families, we think it would be preferable to set up child protection centres in their countries of origin which would enable them to return in cases where it has not been possible to locate and assess the family within a short period of time.

On this point, it should be noted that the law does not preclude the return of minors to protection centres. The implementing regulations of the Immigration Act state that “in accordance with the principle of the child’s best interests, it will only be decided to return the child to his or her country of origin if the conditions are met for effective family reunion, or for proper protection by the child welfare services in the country of origin”.

The opposite would mean infringing the right of children to remain in their country and with or close to their family, and that of countries themselves to protect their children. In the majority of cases, the problem facing these children is not a lack of affection or attention on the part of their parents, but serious financial hardship in their families.

It is therefore necessary to prioritise family reunion and the setting up of new welfare centres in the countries of origin that take due account of children’s rights, and this calls for financial, technical and training assistance from the Spanish Government and the European Union.

Nevertheless, the Regional Government of Andalusia reiterates that unaccompanied foreign minors on the territory of our Autonomous Community are fully eligible for the child welfare system.

This is the principle underlying the placement of unaccompanied immigrant minors in child welfare centres, where they will be fully cared for and their basic needs in terms of food, health, education, leisure and culture will be met.

They are cared for in accordance with the same principle of priority to the child's best interests, in accordance with the same criteria, and with the same resources as Andalusian or other Spanish children. If possible, they receive additional care, depending on their specific needs, special diet, cultural and religious observances, need for interpreters and intercultural mediators, etc.

Among other things, this equality of treatment means that all unaccompanied immigrant minors under the age of 16 are given a place in the Andalusian education system. This also applies to older children in some cases. They also qualify for vocational training and occupational integration measures under the Age of Majority Plan, designed to enable them to achieve full financial, occupational and social independence upon reaching the age of majority.

To provide immediate care for these children, the Department for Equality and Social Wellbeing of the Regional Government of Andalusia, via its network of child welfare centres, can call on 19 centres in Andalusia that are specially qualified to cater for unaccompanied immigrant minors.

These are special centres for children which, like the others, receive both Spanish and immigrant children, but which also possess human and technical resources tailored to the cultural characteristics of the children for whom they are intended. These centres have a theoretical capacity of 322 places, and it therefore comes as no surprise that the facilities were saturated last year.

Just to give you a few figures, in the first nine months of this year 1,398 children were admitted to child welfare centres in the Autonomous Community, while the figure for the same period in 2004 was 685, which means an increase of 104%. There has been a similar increase – 99% - in the number of children cared for: a total of 1,884 compared with 946 last year.

For this reason, the Regional Government of Andalusia introduced an emergency plan in June 2005 in response to the obvious substantial increase in the number of unaccompanied immigrant minors arriving in our community.

This plan involves making the system's other residential facilities available to these children: this includes both special centres for unaccompanied immigrant minors in other Andalusian provinces and other publicly run welfare centres that are not specialised in this field.

So, in addition to the 19 specialised centres, with a total of 322 places, there are another 11 with a further 238 planned places, making a total of 30 centres and 560 places.

To date, the plan has had to be activated on six occasions, on which all the available resources functioned properly, ensuring that all the children were provided with all the necessary care.

On the other hand, at the meeting of the Spain-Morocco Permanent Working Group on Immigration of Minors, held in Madrid on 18 July, in which the Andalusian Government took part, it was agreed to step up border control and joint patrols to prevent people traffickers from using minors as merchandise.

This measure led to a substantial reduction in the number of immigrants arriving on our coasts in August and September. But the problem remains latent.



A further agreement was reached on a bilateral project involving the construction and operation of up to four child protection centres in Morocco, with the Regional Government of Andalusia offering specifically to provide support in the form of training and human resources.

We believe that this is the path to be followed, that of regional co-operation across the Mediterranean basin, because it is an issue that goes beyond a border matter between two states: it is a question of human rights.

We in the Regional Government of Andalusia intend to continue promoting family reunion for these children or, failing that, making use of the new protection centres which are to be set up in Morocco, so that they are close to their families, provided their rights are fully guaranteed.

In the meantime, we in the Regional Government of Andalusia will continue working to secure the wellbeing and rights of these girls and boys, regardless of their origins.



Consuelo Rumí

Secretary of State to Immigration and Emigration,  
Ministry of Labour and Social Affairs, Spain

*Dear friends,*

I would first like to bid you a very warm welcome to our country. I trust that, in the course of these two days, as well as accomplishing useful work, you will also be able to get to know the region of Andalusia which, throughout history, has been a land of welcome and of co-existence between different cultures.

On behalf of the Government, I would like to extend sincere thanks to the Council of Europe for its initiative in holding this regional conference on unaccompanied immigrant minors here in Spain. As well as being a true honour, this choice on the part of the Council of Europe – and I would like to stress this to the Council of Europe officials present here – also gives a great boost to those of us, whether in the various Spanish government bodies or in the non-governmental organisations working with minors, who are joining forces and devising strategies to address the phenomenon of trafficking in minors in a country which, as everyone knows, is subject to considerable migratory pressure.

I do not intend to speak at length because I am convinced that the value of the conference will derive principally from the exchange of experience and ideas in which experts from many countries will be engaging over these two days. I will confine myself to outlining the way the Spanish Government views the problem under consideration and the strategies we are devising and putting into practice in such a way as to achieve effectiveness in our actions while at the same time upholding the rights of the child as protected by the International Convention of 1989 and the European Charter of 1997, as well as by a range of Spanish legislative instruments.

I would therefore like to begin by acknowledging the seriousness of the problem with which we are faced. Over the last few years, in parallel with the growth in migratory pressure towards Spain, there has been a marked increase in the number of unaccompanied immigrant minors, the majority of whom are undoubtedly brought in through illegal people trafficking networks.

The phenomenon is increasing as Spain reinforces its systems for detecting and intercepting, for example, boats heading for its Mediterranean or Atlantic coasts, and at a time when effective co-operation has been established between Spain and Morocco in combating illegal immigration. In other words, when the possibilities for adults are reduced and the outlook is virtually immediate repatriation, the traffickers have recourse to minors to continue reaping profits from the organisation of illegal entries.

Against this background, I would like to put this first thought to you: the illegal immigration of minors is not a problem that can be solved by adopting maximalist positions, in other words by having recourse to expulsions of doubtful legality or by consolidating this mode of migration as a sure path to legality in the destination country. Accepting either of the two options which I have presented in simplified terms here would quite simply mean losing the battle against a phenomenon which, in a nutshell, is

a head-on violation of the rights of the child and a matter of serious, and timely, concern to the countries of origin and the destination countries.

It is therefore necessary to devise and implement a wide-ranging and complex strategy. May I digress for a moment to say that my Government's plan is based on a comprehensive approach to immigration policy since it has become clear that its various aspects are closely interlinked. Hence, in our experience, it is impossible for the active fight against illegal immigration to achieve any significant success if, at the same time, we are incapable of managing legal entries both intelligently and effectively: these must be matched to each country's demand for labour and they ultimately provide valuable evidence of the fact that illegality is a risky and unnecessary venture and that alternatives do exist.

Where immigration by unaccompanied minors is concerned, it is too late to rely on unilateral solutions and I believe a comprehensive approach must be adopted, comprising early prevention, safeguards as to the protection of minors and, lastly, their assisted return where possible. You know very well that there are no simple recipes and I am convinced that if we are capable of striking an ever difficult balance between the three principles which I have just mentioned, then we shall be advancing in the search for realistic solutions to this problem.

I am laying particular emphasis on the prevention aspect as it is the most powerful instrument we have at our disposal for combating organised trafficking in minors and it must include effective co-operation between the countries of origin and the destination countries in such areas as support for social and economic development in the children's regions of origin and steps to make children, families and society at large aware of the risks of emigration in general.

Repatriation should be a prime objective because the minor's return to his or her family represents an imperative goal for public policy, to which all the legal instruments available to us must be harnessed. Of course, as I have already mentioned, this must be done with strict regard to the child's best interests, which is the supreme criterion.

However, particular importance must be attached to the assistance aspect to ensure the success of the return process. We might therefore say that, contrary to what is usually assumed, the repatriation process has hardly begun at the time when the minor is returned to his or her environment, but continues until fully satisfactory integration has been achieved. This requires care and support, and a key role in this falls to the non-governmental organisations, which possess a fund of knowledge and skills which must not be wasted.

In my opinion, this is the only possible ground on which we can and must operate to address one of the most serious major problems accompanying the upsurge in migratory flows, which have intensified in the age of globalisation. I suggest that we should avoid undue alarmism and adopt a positive outlook based on the need for co-operation between the countries affected to ensure the success of our strategies, which – and I would like to lay particular emphasis on this – must never lose sight of the fact that repatriation must be the preferred outcome for these children, whose loneliness is the most obvious reflection of a collective failure.

In this connection, I should like to talk to you briefly about the experience of co-operation between the Governments of Spain and Morocco, who have identified the problems and are making what I would venture to describe as highly satisfactory progress in establishing effective solutions. For months we have been working together

in an ad hoc committee. I am in a position to announce that, barely a week ago, this committee reached some very important agreements regarding the new legal instruments which we shall have at our disposal – with a bilateral agreement replacing the memorandum in force hitherto – and the implementation of solutions in terms of the provision of more centres and assistance in the area of training.

However, without underestimating the importance of the agreements reached, what seems more crucial to me is the fact that both governments see eye to eye on the diagnosis of the situation and the comprehensive strategy, to which I have already referred, for jointly tackling this undesirable phenomenon. This is a vitally important step forward which proves that the experience of the last few years and the thinking to which it has inevitably given rise have led us to draw very similar conclusions which, I feel, are inevitably going to become increasingly difficult to ignore in all fields.

I am coming to my conclusion. Immigration, and I am sure you all share this view with me, represents a wealth of opportunities which, nevertheless, entails risks which it is impossible to overlook and which confront public policies with inescapable challenges. Properly channelling the flows which give rise to migratory pressure is the primary task of a responsible policy which we must pursue with all due determination.

The sudden emergence of the problem of unaccompanied immigrant minors is a reality on which we cannot turn our backs and which we cannot try to resolve in ways that violate the principle of legality. Making sure that minors do not leave the country is the first and most valuable contribution towards reducing its scale. Framing a comprehensive policy that is based on early prevention and also includes assisted return along with full guarantees is the essential pre-condition for following that path successfully.

In any event, the issue of unaccompanied immigrant minors is no longer just a secondary issue and has become a priority in terms of the institutional attention focused on it. To be precise, it has become a high-profile issue in our societies and therefore needs to be placed higher on the national and international political agenda. So that is a serious and very firm commitment on the part of my government.

I wish you every success in your work over the coming two days. Be assured that we shall be looking carefully at your conclusions.

Thank you very much.



# SESSION 1 – MAIN CHARACTERISTICS OF MIGRATION OF UNACCOMPANIED MINORS

## Keynote speech

George Moschos, Deputy Children’s Ombudsman (Greece)

*Honourable conference participants,*

First of all, I would like to thank warmly the Council of Europe for honouring me with the invitation to make a keynote speech in this conference, and the Spanish government co-organisers for generously hosting this important event.

Please, allow me to start my presentation with a few words about the institution, which I represent, and which will contribute to explaining the reason for my presence in this conference.

I am the Deputy Ombudsman, Head of Children Right’ Department at the Independent Authority of the Greek Ombudsman. Our institution was established in 1998, but a special Department for Children’s Rights was only created in 2003, with a special Law amendment voted by the Greek Parliament, following the Standards set by the European Network of Ombudsmen for Children and thus becoming one of Europe’s Children’s Ombudsmen.

### **The institution of the Children’s Ombudsman**

The Children’s Ombudsman is an independent mediating institution, on the basis of the general tradition of Ombudsmen, but specialising in the protection and promotion of children’s rights. The first ever Children’s Ombudsman was established in Norway (1981). “Ombudwork” for children was spread around Europe, especially after the adoption of the Convention for the Rights of the Child (CRC) by UN member states (1989).

The European network of Ombudsmen for Children (ENOC), which was created in 1997, to link, coordinate and empower the activities of its members, set out a number of requirements, called the “ENOC Standards”<sup>1</sup>(2000) that had to be fulfilled by any institution wishing to be regarded as a Children’s Ombudsman. Among else, these standards included a requirement that the institution would be:

- *Founded by legislation and be independent from government*
- *Specially focussing on children’s rights*
- *Investigating violations after complaints or on its own initiative*
- *Accessed by children*
- *Listening to children’s voice*
- *Presenting Annual Reports to the parliament*

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<sup>1</sup> The whole text of ENOC Standards can be found on the ENOC website, [www.ombudsnet.org](http://www.ombudsnet.org).

- *Observing the implementation of CRC*
- *Promoting children's rights.*

Nowadays there are two kinds of independent institutions in Europe acting as Children's Ombudsmen:

- *Independent Children's Rights offices (Ombudsmen or Commissioners for children's rights)*
- *Special Departments for Children's Rights operating within Human Rights Institutions or General Ombudsmen.*

ENOC holds an annual conference where its members meet, exchange information and produce common statements. Currently there are 29 different institutions participating in ENOC activities, coming from various countries of the Council of Europe. Unfortunately not every member state in the region has yet a Children's Ombudsman.

### **The experience of the Greek Ombudsman in unaccompanied minors' issues**

For more than two years, since my appointment as a Deputy Ombudsman for Children's Rights in the independent authority of the Greek Ombudsman - in July 2003 - our Department has been involved with a large number of cases and activities regarding the protection of unaccompanied children's rights, as I will later explain to you in more detail.

Coming from that part of Europe that neighbours to Asia and to northeast Africa, but also to those countries of southeast Europe that have witnessed enormous political and socio-economic changes in the last two decades, Greece is a country that has received a large number of immigrants. Nowadays it has the largest percentage of immigrants in EU reaching around 10% (perhaps even more) of its total population.

Before moving further on with my subject, and speaking from the point of view of a Children's Ombudsman, I would like to share with you an experience I had, in the past year, with a group of unaccompanied children, who had been trafficked to Greece.

In September 2004, six children from Albania were identified by the police in Athens, as exploitation and trafficking victims. The trafficker was arrested. The prosecutor for minors placed the children initially into a hospital and then into the shelter of a Greek non governmental organisation. I visited those children twice, and spoke with them, in an attempt to follow up the implementation of a recent law, regarding the treatment of trafficking victims (law 3064/02). They were frightened after their experience, and they were really worried about their future. These children were the first ones to be repatriated to the country of their origin according to the provisions of the new law and the international standards on repatriation of minors. A few months later, while visiting Albania, in co-operation with the institution of the Albanian Ombudsman, and the international N.G.O. "Terre des Hommes", I had the opportunity to visit some of these children in their family environment and to talk with them and with their parents. This time, I could see a completely different picture. The children were back at their homes; they were going to school and were meeting regularly with social workers. Of course they were living in poverty, as they were in the past, but this time they were together with their parents. They told me that they planned and wished to come back to Greece one day, but this time with legal papers, with work and stay permits.



## Unaccompanied children and the Convention for the Rights of the Child

We all know well that there are thousands of children in all European countries, originating from different countries of Europe or from other continents, who have been separated from their parents and from those people who were responsible for them by law, for various reasons, moving to another country and looking for a better future in life.

Since the early 90s the number of these children has increased sharply in the European countries, along with the social and political developments in our region, as well as in other neighbouring regions of the world, and the rise of immigration.

Immigration laws and policies have become stricter, in order to restrict and discourage the immigrants' movements. However, all governments committed themselves to protecting the rights of children, especially of those who have been separated from their families. Their rights derive mostly from the UN Convention for the Rights of the Child, but also from other national and international legal texts, producing an obligation for all member states to take special measures for the unaccompanied and separated children. In particular, the CRC establishes national governments' obligations through the following articles (among others):

- Articles:     2: *on avoiding discrimination*  
                   3: *on considering the best interest of the child*  
                   10: *on the right for family reunification,*  
                   12: *on the right of children to be heard,*  
                   20: *on the right to special protection, when the child is deprived of his/her family,*  
                   22: *on the rights of children refugees,*  
                   19 and 32: *on protection from exploitation.* This conference

brings together the point of view from various countries in our region, regarding national legal and institutional frameworks, good practices, positive steps, shortcomings and needs for restructuring of national policies. But most importantly it contributes to the strengthening of an international approach to the protection of the rights of unaccompanied children.

Although so far there have been some important legal texts concerning unaccompanied minors, both binding and non binding, everyone involved directly in the existing institutional frameworks, knows well that there is a need for re-examination of some existing provisions on a national level and for the improvement and harmonisation of others. And in order to promote such changes, one needs strong international support.

The evidence brought in this conference and the discussions about to take place in the following two days are expected to contribute to the production of new tools that we all need.

In my presentation I will try to illustrate the Children's Ombudsman point of view, our powers and efforts to contribute to the improvement of services provided for unaccompanied minors.

## **Definitions and categories**

Firstly, let me refer to the definition of the term *unaccompanied minors*. In law, in international reports, guidelines and bibliography, there have been various definitions of the term. Actually the term is even defined differently in the context of various national legal frameworks in the countries of the Council of Europe!

Also, may I note that recently, the term “separated children” has been introduced alternatively or additionally to refer to “*children under 18 years of age who are separated from both parents or from their previous legal or customary primary caregiver.*” (definition used by UNHCR).

To skip the questions about the correct definition, I have chosen to use in my presentation the definition used by E.U. legal texts, included in the recent Council DIRECTIVE 2004/81/EC:

*“Unaccompanied minors are third-country nationals, below the age of 18, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State”.*

Some children are totally alone, while others may be living with extended family members, friends, other adults or groups of peers, who, however, are not responsible of them by law or custom.

All such children are entitled to international protection under a broad range of legal provisions

Some particular categories of unaccompanied children are:

- Unaccompanied children refugees, (who have left their countries of origin, because their or their families’ freedom was threatened on account of their race, religion, nationality, membership in a particular social group or political opinion;)
- Unaccompanied children immigrants (moving deliberately to a foreign country, alone or with friends / relatives, in order to find work, to look for a new fortune or to escape from an unwanted – but not threatening for their freedom - situation).
- Unaccompanied children victims of trafficking (who have been forced or misled to move to another country, where they are exploited by third persons).

As a particular category we can also mention the unaccompanied young offenders, who may belong to one of the above categories, but they are faced with special provisions regarding their treatment, especially if they have been imprisoned.

## **International legal provisions**

Following these definitions, I would like to summarise the existing international legal provisions, binding and non binding, on unaccompanied minors.

We could thus refer to the following texts:

- *International Law for Refugees (Geneva Conventions and Protocols I and II)*
- *CRC (followed by recommendations of UN Committee for Children's Rights to member states) and Optional Protocol 2000 on the sale of children, child prostitution and child pornography.*
- *E.U. Conventions, Regulations and Directives (e.g. Dublin Regulation II on the examination of application for asylum, Directives: 2002/90/EC, defining the facilitation of unauthorised entry, transit and residence, 2003/9/EC laying down minimum standards for the reception of asylum seekers, 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings)*
- *Council of Europe Recommendations (e.g.1596/03, 1703/05)*
- *and Convention on Action against Trafficking in Human Beings (2005)*
- *Non-binding Guidelines: E.g. Inter-agency Guiding Principles on Unaccompanied and Separated Children (2004), UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking in SE Europe, (2003), etc.*

### **Some facts and figures concerning Greece**

In Greece, the estimated population of immigrants is over 1.000.000 persons, representing 10% of the total population. Less than half of them have official stay permits.

The number of asylum applications during the last years varied between 6.000 and 8.000 annually. 200 – 350 applications are made by unaccompanied minors (these are unofficial figures provided by UNHCR).

More than 99% of the applications are finally rejected by the Greek state. However, a considerable number of asylum applicants are provided with a “pink card” while waiting for their application to be examined by the authorities. This card operates as a temporary stay and work permit. Asylum applications may be rejected very quickly, if they are considered to be excessive. Otherwise it may take even a few years, including the time of the examination of the applicant's appeal against a rejection decision. When an application and appeal against it are both finally rejected, then asylum applicants have to leave the country, otherwise they may be arrested and imprisoned. There are no special provisions for minors regarding these procedures.

Refugees entering Greece and not applying for asylum (either because they do not know the procedure or because they want to move to another country and submit their application there) are estimated to be more than double than the official applicants. They are all treated like illegal immigrants, whether adults or minors, (if they are arrested, they are deported with an administrative order, or, alternatively, if they come from a country where they cannot be officially expelled, they are asked to leave the country by a set date).

The Greek police arrest every year at least around 200 – 300 unaccompanied minors aged 12-18 for being illegally in the country (these are the officially provided numbers).

When an unaccompanied minor is arrested by immigration authorities for entering illegally the country, he/she is detained in “reception – holding centres” for up to 3 months. There are no special arrangements for children (they are only occasionally separated).

There is no official mechanism of age assessment.

No guardian is appointed (the prosecutor acts as such, according to the law).

Children asylum seekers are rarely sent to special shelters (only 25 places are available in a shelter run by a semi-public authority).

Unaccompanied minors over 12 years old, when identified by the police, will be arrested, detained and deported.

Children under 12, which are characterised as victims of trafficking, are placed in care institutions under protection. The law provides for the victims’ repatriation, according to a minors’ prosecutor decision.

### **Activities of the Ombudsman of Greece for unaccompanied minors**

In order to depict how an Ombudsman can act for the protection and promotion of unaccompanied children’s rights, I will set as an example a number of activities that have been undertaken by the Greek Ombudsman, Department for Children’s Rights, during the last 2 years:

- Following submitted complaints or investigations carried out by the Ombudsman’s own initiative, visits have taken place and conditions have been investigated in reception and detention centres, in hospitals, in shelters and in care institutions. The results of these investigations were submitted to the government and to particular administrative authorities (such as police departments, care institutions or local authorities sharing responsibilities for reception centres) in the form of recommendations. Such an example is a case examined after a submitted complaint regarding the operation of a public care institution (“Agia Varvara”), where street children had been placed, but eventually a large number of them had escaped due to functional inefficiencies. The Ombudsman’s report to the government included observations and proposals and led to the government’s commitment to revise and reorganise the system of care provision for children victims of exploitation. We have prepared Special Reports which were submitted to both the parliament and to the government (e.g. “Detention and Deportation of unaccompanied minors”, 2005, “Care and welfare services for unaccompanied children refugees” – *under preparation*-). We have contributed to monitoring of CRC implementation and other legal provisions on children’s rights, by collecting, elaborating and presenting data on unaccompanied minors, in co-operation with public agencies and N.G.Os.
- We have participated in an open dialogue (through conferences, working groups, articles, etc)

- We have co-organised seminars for professionals (in co-operation with appropriate agencies, such as UNHCR and Greek N.G.Os)
- We have issued and publicised directives – guidelines for the treatment of unaccompanied minors (in 2005 together with UNHCR)
- We have presented legislative proposals to the parliament and the government (Comments on new immigration law, 2005)
- We have issued press releases and given press conferences. Media coverage of the Ombudsman's Special Reports contributes to sensitisation of the public and acts as a pressure to the government.

The recent Special Report of the Greek Ombudsman, which revealed that unaccompanied minors were treated like adults and were – according to current legal provisions - detained (in inappropriate cells) and deported (they were handed to foreign immigration authorities without any mediation of social services and any contact with their families), opened a public debate, and there are currently discussions taking place on changing the existing legislation and adjusting it to the requirements and provisions of CRC.

### **Principles to be adopted by every member state**

In the last ENOC Conference (September 2005 in Poland) we held a discussion about guidelines and principles, regarding the treatment of unaccompanied minors, which should be applied in all our countries. During this conference, I explained the Greek Ombudsman's views concerning a number of principles, based on CRC provisions, on guidelines (mentioned above) and on recommendations of the Council of Europe, that should be supported by ENOC and promoted in all European member states, and be incorporated in their legal and institutional framework. Within ENOC we have decided that we are going to open a discussion forum among members, so that a relevant statement would be produced in next years' conference and be promoted internationally later.

In this final part of my presentation I will display you briefly the basic principles that have been included in my proposals.

- Detention of unaccompanied minors for reasons other than committing criminal acts should be abolished. Detention should be replaced with hosting in appropriate reception centres, with living conditions suitable for children's needs (concerning nutrition, health, hygiene, education, leisure, etc) and for the minimum of time needed. Children should be placed in reception centres separately from adults.
- Clear rules, instruments and systems of identification and investigation of needs of every unaccompanied minor should be established. The conditions of entering the country of destination should also be examined. A formal register of personal details should ensure their protection from the various forms of exploitation and assist the member states in having a more clear picture of the phenomenon.
- *Age* assessment should be systematic, using experts and modern technological tools. Any doubt concerning the age of the involved person, should result in favour of his/her age declaration.

- *All* interviews concerning information on personal details and background of an unaccompanied minor should be conducted by specialised staff.
- While in the hands of public authorities, all minors should be *informed* about their *rights* in a language that they can understand. All unaccompanied children should be informed about their right to apply for asylum and its consequences (*Dublin II regulation*).
- In all relevant procedures, the *child's opinion* should be heard and taken into consideration, in accordance to his/her age and maturity.
- *Free* interpreters *and legal advisers* should be provided by the state during the period that the minor's case is under examination by the judicial and police authorities.
- A reliable *procedure of appeals* against authority decisions should be available and accessible to children.
- Every case of unaccompanied minor should be notified to the respective judiciary authorities and a *temporary skilled guardian* should be appointed for every minor, until he/she is reunited with his/her family or receives an appropriate care placement.
- Unaccompanied minors should never be deported / expelled from the country of destination. The only procedure to return them to the country of origin, if this is considered to be the best solution according to their interests, is the assistant voluntary repatriation.
- International co-operation should assist quick and efficient *family tracing* and background social investigation, if needed, of all unaccompanied minors, aiming at their safe family reunion and reintegration.
- If it is decided by the competent services that family reunion is possible and intended, and children can be repatriated, they should be *accompanied* to the borders by special staff and be handed to the respective public authorities of the country of origin.
- When children are not repatriated, following their asylum application or a decision according to their best interest, special residence permits should be provided and integration into the hosting society should be facilitated, by appropriate educational and welfare placements (in social services, integration projects, educational and training programmes, homes, shelters, foster families, etc. as needed), responding to the children's social and cultural needs. Long term residence and social support provisions should encourage the minors' social integration. Children who stay for a long time in the country of destination should be offered residence permits when they reach adulthood.
- Personnel dealing with unaccompanied children (interviewers, interpreters, social and youth workers, etc) should be properly *trained* and informed to respect children's rights.

**ENOC actions to support international principles**

As I mentioned earlier, the European Network of Ombudsmen for Children is committed to steadily protect and promote children's rights. In particular, regarding unaccompanied children's rights we continuously co-operate through:

- Exchanging information between national children's ombudsmen
- Collaborating in handling cases of international character
- Investigating available data and defining needs and deficiencies in national policies/ practices
- Preparing a public statement of policy principles for unaccompanied minors to be adopted in the forthcoming annual conference (Athens, September 2006)

After all, as Ombudsmen for Children, we should strengthen our efforts to make sure that the rights and interests of each and every child separated from his family should be safeguarded by the state!





# FIVE CASE STUDIES

## Situation of unaccompanied migrant minors in Morocco

Najat M'Jid<sup>1</sup>

### Introduction

The Council of the European Union has defined unaccompanied foreign minors as “third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State”.

While the subject of unaccompanied foreign minors has been on the political and social agenda for a number of years, the responses to it have so far been sectoral and inadequate and have tended to approach it from a security point of view, often violating the rights of the child and taking into account neither the opinions nor the best interests of the child.

This is a real tragedy with incalculable human costs: deaths, shipwrecks, rootlessness, breakdown, etc.

Was not the Euro-Mediterranean Partnership based on “shared peace and prosperity” on both sides of the Mediterranean? To the North are rich nations that virtually want to padlock their doors and, to the South, poor nations unable to prevent their young and not-so-young people from trying to reach the European El Dorado, thus helping to boost the profits of the smuggling networks present on both sides.

Morocco is situated at the crossroads of ever greater migratory flows. It is a country of emigration, transit and also of immigration. It should not be forgotten that Morocco's geographical position makes it a target of growing migration from sub-Saharan Africa. Is Morocco to be the policeman of Europe, responsible for controlling 3500 kilometres of coastline as well as its land borders?

Taking an approach based on the rights of the child, this study will analyse the migratory cycle of Moroccan minors in order to try to answer the following questions:

- What policies should be conducted in order to understand the migration of unaccompanied minors and help them by taking their needs/interests into account (the best interests of the child)?
- How could international cooperation strengthen member states' capacities to improve management of the migration of unaccompanied minors in Europe?

The study is divided into four parts:

- analysis of the situation of lone children in Morocco: “street children”
- analysis of the migratory cycle of unaccompanied foreign minors

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<sup>1</sup> President of the Association BAYTI, Morocco.

- analysis of the legal framework for the reception and care of unaccompanied foreign minors
- analysis of reception and care methods in Morocco and destination countries.

## Chapter 1 - Analysis of the situation of lone children in Morocco “Street children”

### 1. Scale and forms of the “street children” phenomenon

The term “street children” includes children who sometimes or always live on the street and are therefore not supported or protected by their families.

It is, however, important to stress that not all street children are candidates for clandestine migration.

On the other hand, minors who have been time and again sent back from Europe squat the northern ports waiting for another opportunity to leave and end up becoming “street children”.

In 1999 the State Secretariat for Children, Women and the Family, in partnership with local authorities, conducted a preliminary study in most of the Kingdom’s medium-sized and large cities. The study, which found there to be between 14,000 and 16,000 street children in Morocco, showed how difficult it is to give exact figures because of the mobility of children who live or wander in the street.

City	Under 9		10 – 14		15 – 18		Total
			28.22%				
Marrakesh	217	35.15%	171		218	35.97%	606
Safi	793	34.15%	985	42.42%	544	23.43%	2322
El Jadida	132	26.19%	182	36.11%	190	37.70%	504
Beni Mellal	598	35.47%	547	32.44%	541	32.08%	1686
Tangier / Assila	121	24.69%	239	48.78%	130	26.53%	490
Tetouan	10	16.67%	23	38.33%	27	45%	60
Fez	272	16%	867	51%	561	33%	1700
Meknès	449	31.80%	473	33.50%	490	34.70%	1412
Casablanca							5430

Their number is now officially estimated at between 10,000 and 30,000.

The invasion of the streets by children is the result of several factors:

- socio-economic factors (cf. Chapter 2): poverty, the flight from the land, uncontrolled urbanisation, unemployment, under-achievement at and dropping-out of school, economic exploitation of children;
- family factors: single-parent families (divorce, single mothers), domestic violence, families that have given up, lack of affection.

The street has become an alternative for these children: freedom, informal economy solidarity, clan, etc.

Street children are not a homogeneous group. A number of street typologies have been identified:

- permanent residents who have lived full-time on the street for years;
- working children: hawking, washing windscreens, working as packers in ports, shoe-shining, etc.

- sexually exploited children (prostitution);
- beggars;
- those who want to migrate clandestinely or have already been turned back and are awaiting another departure to Europe;
- offenders;
- runaways;
- child maids escaping violent employers.

Their age varies from 6 to 25, most being pre-adolescents (11-14). There are now almost as many girls as boys, girls being increasingly visible on the streets (48% girls and 52% boys, according to BAYTI, a Moroccan NGO involved in the protection, rehabilitation and social reintegration of street children).

The street affects its inhabitants, sometimes irreversibly. According to profile, age, time spent and way of life on the street, the following are observed to varying degrees:

- Behavioural problems:
  - loss of temporal-spatial reference-points: the notion of time and space is gradually lost; cold, hunger, fear of roundups and the need for solidarity become their only reference-points;
  - loss of self-esteem; loss of self-confidence and of confidence in others;
  - rejection of any form of institutionalisation;
  - rootlessness: they move from squat to squat and from town to town according to their mood and needs. They can no longer bear to settle in one place;
  - physical, verbal and sexual violence becomes a way of life, violence leading to crime in some cases;
  - behavioural instability;
  - delinquency: thefts, using a knife, rape. These youngsters are often caught up in a vicious circle: street – prison – street.
- Drug and alcohol dependency
  - 95% sniff glue or thinners (tshamkir). The effects of sniffing are:
    - loss of conscience: no longer responsible for their acts;
    - courage: ability to confront others, beg and bear humiliation;
    - means of survival: no longer feel hungry or cold and sink into a deep sleep;
    - escape, access to a fantasy world of fiction, incoherence, delirium;
    - mental sluggishness (neurological effect of inhaling glue);
    - acting out: fights, self-mutilation, suicide attempts.

They become dependent very quickly. Some sniff as many as ten tins of glue a day.

Some young people take other types of drug: cough mixture, antidepressants, hashish. They are relatively few in number because of the cost.

A great many are dependent on tobacco.

Fewer use alcohol, which is mainly the preserve of young adults.

In addition, because of the living conditions on the street (lack of hygiene, malnutrition, deficiencies, violence) many youngsters have health problems: tuberculosis, stunted growth, sexually transmitted diseases.

## **2. Analysis of responses to the problem**

### **a) The legal response**

Morocco ratified the Convention on the Rights of the Child in 1993. In order to bring national law into line with the various international conventions and protocols ratified, the New Code of Criminal Procedure was introduced in 2002.

This revision of the law included the reform and reorganisation of juvenile justice. In the context of this reform, particular emphasis was placed on the protection of:

- young offenders (Articles 512 to 517)
- young victims of crime (Articles 510 to 511)
- minors in difficulty exposed to offending (Articles 512 to 517).

Street children are considered children in difficulty and therefore at risk. Under Article 513, "A child under 16 shall be considered to be in difficulty where his/her physical, mental, psychological or moral security or his/her education is at risk because he/she associates with offenders, persons of ill-repute or persons with criminal records, where he/she rebels against the authority of his/her parents, the person who has custody of him/her, his/her guardian or family-council guardian, the person who cares for him/her, the person or institution in whose care he/she has been placed, where he/she habitually runs away from the place where he/she is being educated or trained, where he/she leaves his/her home or has no adequate shelter".

The juvenile judge of the first instance court may, at the public prosecutor's request, apply one of the following measures to minors:

- hand them over to their parents, guardian, family-council appointed guardian or the person who cares for or has custody of them;
- hand them over to the reception section of a public or private institution authorised for this purpose;
- hand them over to a public service or public institution responsible for assisting children or to a hospital, in particular where treatment for drug dependency is required;
- hand them over to a government vocational training or care facility or an appropriate public department or registered institution;
- hand them over to a government-approved association authorised for this purpose.

If the juvenile judge considers that the child's state of health, psychological state or behaviour requires thorough examination, he may order him/her to be placed in a registered, recognised centre for a maximum period of three months.

These measures are applied under the probation system and a probation officer is appointed.

The juvenile judge may at any time order the cancellation or modification of measures in accordance with the child's interests. He will make this decision either of his own motion or at the request of the public prosecutor or the person or institution who has custody of the child. If it is not the prosecutor who has made the request, his opinion must be sought.

Measures taken with respect to a minor end on the date provided for in the decision and in all cases when the child reaches the age of 16. In exceptional cases, where the child's interest so requires, the judge may decide to extend the measures until the child is 18.

Under the New Code of Criminal Procedure the age of criminal responsibility is 18. In the criminal sense of the term, a minor is any person under the age of 18. Minors under 12 years of age are considered to have no responsibility whatsoever for their actions. No sentence may be imposed on them. Only protective and rehabilitative measures may be taken in their regard. Between 12 and 16 years of age, minors are considered partially responsible. Protective and rehabilitative measures may be taken in their regard and, in exceptional cases, a mitigated sentence may be imposed.

b) Public policy

Essentially three ministries have powers with respect to children: the Ministry of Social Development, the Family and Solidarity, of which the State Secretariat for the Protection of Children, the Family and the Disabled is part; the Ministry of Justice; the State Secretariat for Youth.

Other ministerial departments are also involved: the Interior Ministry (police), which has replaced the young offenders squad with police officers responsible for the protection of minors; the Ministry of Health with respect to the care of child victims of violence and to forensics (examination and description); the Ministry of Education with respect to compulsory schooling and non-formal education; the Ministry of Employment and Vocational Training with respect to combating child labour (labour inspectorate).

At present government reception centres and institutions caring for street children are managed by the State Secretariat for Youth. There are 16 such centres scattered throughout the Kingdom. In January 2002 King Mohammed VI established the Mohammed VI Foundation for the rehabilitation and reintegration of adult and young offenders. Its mission is:

- to equip centres to care for children well and humanely;
- to control the cycle of prevention, protection, rehabilitation and reintegration of minors;
- to develop follow-up methods in order to prevent reoffending and to consolidate reintegration.

A draft decree on the opening of social protection establishments is at present being examined by the Government Secretariat-General. It concerns ways and means of

managing and supervising social protection establishments; it also refers to standards and norms on reception structures, with respect to infrastructure, capacity, target population, quality of programmes and staffing, evaluation and follow-up.

Five years ago the National Rights of the Child Observatory introduced a telephone hot-line and a children's parliament; ten medical units were set up in hospitals for child victims of violence.

A mobile emergency medical service for the homeless has just been launched in Casablanca for action in the street, initially for children and women.

Training programmes for judges, police officers and others working with children have been introduced since the introduction of the New Code of Criminal Procedure.

A draft law on the status of social workers is currently under examination.

With respect to promoting and protecting the rights of the child, the responsibilities of the Consultative Council for Human Rights include "examining on its own initiative or at the request of the party concerned the cases of human rights violations referred to it and making the necessary recommendations to the relevant authority" (Article 2 of the Royal Decree regulating it). The Council can therefore intervene whenever a violation of the rights of the child is referred to it.

c) The voluntary sector

NGOs initiated programmes for street children as early as 1995: street workshops, "street-screening", reception centres, education and training and family support programmes, etc.

They are present in Casablanca, Safi, Mohammedia, Tangier, Tetouan, Fez, Marrakesh, Salé, Meknès and Essaouira.

Public-NGO partnerships are proliferating with a view to strengthening actions and synergies. For example, BAYTI, the first Moroccan NGO to work in the streets of Casablanca, Meknès and Essaouira, has cared for 17,000 children over a ten-year period (1995-2005).

d) The best interests of the child

Not all methods of receiving and caring for street children take the best interests of the child into account.

While national child protection legislation has advanced considerably, its implementation is still piecemeal and suffers from lack of:

- human resources
- conceptual tools (methodology, approach, programmes)
- rigorous follow-up and supervisory mechanisms
- coordination and clarification of the roles of the various agencies involved.

## Chapter 2 - Analysis of the migratory cycle of unaccompanied minors

### 1. Underlying causes of migration of unaccompanied minors

#### a) Socio-economic, political and cultural context in the country of origin

Morocco is a constitutional monarchy with an elected parliament.

Socio-demographic data from the last census, taken in 2004 by the High Commission for the Plan (HCP):

Population: 29,891,708 (20.9.2004, HCP Morocco): 16,463,634 in towns and 13,428,174 in rural areas, i.e. 55.1% in towns. The profile of the age pyramid shows it to be a young population: 31.6% are under 15.

Density: 13 per km<sup>2</sup>

Male life expectancy: 68.08 (in 2004)

Female life expectancy: (72.74 (in 2004)

Population growth rate: 1.61% (in 2004)

Birth rate: 22.79% (in 2004)

Mortality rate: 5.71% (in 2004)

Infant mortality rate: 43.25% (in 2004)

Fertility rate: 2.82 (in 2004)

#### **Political and social situation**

Morocco is distinguished in the Middle East and North Africa region by its political openness which was initiated in the mid-1990s and gathered pace with King Mohammed VI's accession to the throne in 1999: free, transparent elections, the emergence of a flourishing civil society and a lively press. A great many legislative reforms have been introduced in order to bring the country into line with the conventions, protocols and other international instruments the country has ratified. The most remarkable reform has been that of the Family Code (Mudawwana) which has contributed to the recognition of women's rights.

In response to the terrorist attacks in Casablanca on 16 May 2003 committed by radical Islamists living in urban shantytowns, initiatives to improve the social conditions in urban, suburban and rural areas were strengthened, at the same time as more stringent security measures were introduced.

Many challenges remain, however:

- Poverty and economic insecurity

About 15% of the population is currently considered poor. Some two-thirds of the poor live in rural areas but the percentage in urban areas is rising. Recent analytical studies by the World Bank and the Moroccan Government showed there to be considerable variations in poverty levels in different districts (and even within the same province or region), and found pockets of poverty in both urban and rural areas.

Apart from the segment of the population that is below the poverty line, about one-quarter of the population is considered economically vulnerable. This population lives on the poverty line or at least 50% above the poverty line and is therefore not in a

position to deal with crises such as illness, drought or loss of employment. This group presents a considerable challenge to social stability.

Taken together, the “poor” and the “vulnerable” account for around 40% of the population of Morocco and should have greater opportunities to benefit from growth and access to basic services and infrastructure.

- *While with respect to education*, the indicators have improved significantly, particularly for girls and women, with a net national primary education enrolment rate of 92% (boys: 82%; girls: 89%), the large number of drop-outs and pupils repeating a year, as well as geographic disparities, underline the internal inefficiency of the education system. More than 48% of the population of 15 years and over are illiterate.
- *The flight from the land* is in part the result of the gradual desertification of the southern regions of the country and of successive years of drought. It has led to:
  - an annual 4% increase in the working population in towns
  - uncontrolled urbanisation: overpopulation of conurbations unprepared to receive such an influx and the mushrooming of shantytowns and insalubrious dwellings in suburban areas without basic infrastructure or social services.
- *Unemployment*: as economic growth is relatively low (4.5%), new arrivals on the job market, particularly young people and women, have difficulty finding employment. The consequent increase in urban unemployment has led to more exclusion. The increase is particularly marked among the young and the educated, the rates being 34% and 26% respectively.

In order to meet these challenges, King Mohammed VI has since his accession constantly made the social dimension of development and poverty eradication his priorities. This was recently reiterated when the NHDI, National Human Development Initiative, was launched, a comprehensive, integrated strategy based on respect for social, economic and cultural rights.

The Government has also launched a wide-ranging reform and investment programme on both the economic and social levels.

b) What are the decisive factors underlying unaccompanied minors' migration plans?

What numbers are involved? What is their age and gender distribution? Which regions do they come from? Where do they go?

It is difficult to reply exactly to these questions precisely because the migration is illegal. The figures vary according to country and sources. As an example, in the first quarter of 2005, some 300 Moroccan minors arrived in Spain, the majority them boys, most between 13 and 16 years of age (Spanish authorities).

European officials constantly refer to a massive and growing influx of African minors but do not give precise figures.

Intra-European mobility makes any estimate still more difficult.

Boys still form the majority; girls are less visible and less frequently apprehended because they arrive in Europe with forged passports (family reunification) or sponsorship or with forged employment contracts. They are therefore invisible



because they lie low or are shut away in “host” families (slavery) or by trafficking networks (prostitution). They are often discovered in the context of particular events (escape, violence, suicide attempt).

These minors come from every region and city of Morocco. It is hard to establish which regions are dominant.

The main European countries of destination are Spain, France, Italy and Belgium.

*Why do they migrate?*

In order to understand the processes underlying emigration, the aspirations and expectation of each migrant have to be examined, since each weighs the pros and cons before taking a decision.

Despite this individual decision-making process, a number of common characteristics of the conditions in which migrants live can be identified. Migrants develop in economic, social and political structures that fashion their existence and in a sense drive them from their country: these are what are termed the push factors. There are also elements that attract them to a new home base: these are the pull factors.

This is why, while migrants are in a sense pushed towards other places by the economic and social impasse in which they find themselves, their perception of the (real or imagined) economic possibilities in host countries is an element that is at least as important in their decision to leave, as is the network they may use to implement their emigration plan.

*Push factors in the country of origin*

The current socio-economic context of the country, which faces the many challenges described earlier, does not offer minors all the guarantees required for them to project themselves into a Moroccan future. Children are the first victims of poverty, economic insecurity and exclusion.

Parents who are victims of poverty, who are struggling to survive and who have given up no longer know how to fulfil their role. Helped by fatalism, they give up and resignedly wait for assistance from the Welfare State. The status of fathers has changed: they are gradually losing their parental authority as a result of losing their essential role as family breadwinners. Because they find it more and more difficult to impose their will through words, they use violence or simply give in.

Children are often the only source of income for a whole family. Families' very low socio-economic level forces parents to put their children to work when they are very young. The initiative to work sometimes comes from the children themselves who approach the various craftsmen on their own since school is no longer a sure option in their view (school is no longer seen as a means of social promotion in view of the high rate of unemployment among qualified people) and since they see the prospect of speedy financial autonomy through a job enabling them to look after themselves and support their families.

Despite the Employment Code passed that makes it illegal for children under 15 to work and the various programmes to combat child labour initiated in recent years, many children (600,000) aged between 7 and 14 still work in the informal sectors of agriculture, crafts and textiles. The number of girls working as domestics is estimated at

60,000 (study conducted by the ILO, UNICEF and the World Bank, UCW Project 2000).

The complete idleness of a large number of young people can be explained by the lack of appropriate community infrastructure and socio-cultural programmes taking their needs and expectations into account.

What is most serious is that these young people lose any illusion as to the possibility of a future in Morocco. The myth of the European El Dorado becomes their dream and migration to Europe their life plan, whatever price they have to pay. These young people think they have nothing more to lose since in any case they have no life.

#### *Pull factors in destination countries*

The European El Dorado – so near, yet inaccessible by legal means – is tempting and becomes the only alternative for these young people, who play their last card: double or quits.

They, and sometimes their families, have an idealised image of Europe: rich, democratic, respectful of human rights and therefore of the rights of the child, a consumer society guaranteeing quality of life, education, basic social services and employment.

The arrival of legal migrants in the summer, conveying an image of financial success (nice cars, presents, the latest young fashions), regular currency transfers by Moroccans living abroad to help their families who have stayed in Morocco and the European media made accessible by satellite dishes in every corner of the country, simply strengthen this perception.

The historic memory linking Morocco to Europe should above all not be forgotten:

- the Spanish and French protectorates that had a great impact on the socio-cultural heritage of Morocco;
- successive waves of legal economic migration in response to the needs of European countries (Italy, the Netherlands, Belgium, France, Spain, etc.);

Precedent plays its part: earlier migrations and the links maintained between the emigrant community and the country of origin may create a dynamic that pushes others to emigrate in their turn.

Migration presupposes mobility: changes in the means and costs of transport and technological progress foster such mobility.

The presence of relatives or acquaintances in host countries, of a social network, can cause a veritable chain reaction.

## **2. Migration networks as facilitators of migration plans**

### a) Factors pushing minors into traffickers' hands

It goes without saying that the decision to emigrate is also influenced by the means of access to a country. The rules governing entering and leaving a territory constitute a mechanism that regulates migratory flows:

- European policy on the granting of visas that seeks to be increasingly restrictive and very demanding is also a factor encouraging irregular migration.

- The status of minors, who may not be deported, plays a not insignificant role in the migration of minors.

One last point, as clandestine migration has become a lucrative market for smuggling networks on both sides of the Mediterranean, minors and their families are approached by those networks which, in return for a fee, hold out the prospect of their plans being realised.

b) Network modus operandi

The smugglers offer various means of transport:

- pateras, the most popular, leave from all along the north coast of Morocco from Al-Hoceima to Kenitra, as well as from the Saharan coast opposite the Canary Isles from Tarfaya to Dakhla: 5 000 to 10 000 dirhams (€500 to €1 000);
- boats from the major freight ports;
- goods lorries going to Europe from exporting Moroccan cities: 10 000 to 15 000 dirhams (€1 000 to €1 500);
- cars;
- planes, more seldom;
- land borders between Tetouan, Nador and, respectively, Ceuta and Melilla, the two Spanish enclaves in Morocco that are increasingly difficult of access (because of the triple barbed-wire hedges, thermal cameras and watchtowers);
- more seldom, craft leaving the 1 300-kilometre-long Tunisian coastline for the Italian coast: €700 to €1 200 per person.

Differing packages

Some networks only guarantee the crossing: once they have arrived in Europe the minors have to fend for themselves.

Others arrange everything from departure to final destination, providing a real chain of transport and accommodation in transit. Others approach parents and/or minors offering a complete migration package:

- family reunification assistance, the minor being declared related to someone legally resident in Europe;
- sponsorships, legal guardian papers, enabling families who are or who are not related to have mainly young children and especially girls working as domestics;
- forged employment contracts: 5 000 to 10 000 dirhams (€500 to €1 000);
- forged papers to obtain tourist visas;
- forged residence permits: 5000 dirhams (€500).

This trade is said to bring smuggling networks more than 200 million dirhams a year (H. Kenzeddine, Atlasvista, 2005)

According to statistics provided by the International Labour Organisation, the annual income of traffickers in the European Union is between 2 000 and 4 000 billion euros.

The crossing of the Straits of Gibraltar by Moroccan minors is now one of the smugglers' most profitable businesses: about €800 per child (Amnesty International, 2005).

c) Strategies to combat all forms of trafficking in and exploitation of unaccompanied minors

In the framework of the Euro-Mediterranean Partnership, the European Union has recently granted Morocco €40 million for a project to improve the management and control of borders: provision of mobile means of detection, identification, surveillance, intervention, transport and assistance; training programme for units responsible for combating illegal emigration.

Bilateral cooperation between Morocco and Spain has considerably reduced the number of candidates for illegal emigration using makeshift craft: 18% fewer than in 2003. In other words, 15 675 illegal immigrants on board 740 craft were intercepted on the coasts of Andalusia or the Canary Isles, as against 19 176 on 924 craft in 2003. The number of minors is not given.

On the Moroccan side, attempts to tackle illegal emigration networks have had some significant results:

- in 2004: 27% fall in the number of candidates for illegal emigration, compared with 2003; 61% more networks dismantled than in 2003.
- more than 26,000 illegal emigration attempts failed.
- in the first six months of 2005, the number of craft that successfully crossed the Straits of Gibraltar fell by 20%; in the direction of the Canaries, there was a 41% fall.
- the number of clandestine emigrants arrested in the first six months of 2005 was up by 13% for Moroccans and 27% for people from sub-Saharan Africa (Interior Ministry of Morocco, 2005).

Between Morocco and Spain, the number of smugglers arrested rose by 26% between 2003 and 2004.

Law 2/2003 on entry to and residence in Morocco by foreigners and irregular emigration and immigration, which came into force in November 2003, made trafficking in minors a criminal offence; it made sleeping partners and corrupt officials liable to heavy fines and prison sentences of up to 10 years or, in the event of murder, life.

The Minister of the Interior recently established two bodies with a view to combating illegal migration effectively: the Migration Observatory and the Migration and Border Surveillance Directorate.

It should be noted that, while security has been greatly strengthened in the attempt to tackle illegal migration, the issue of protecting the rights of the child has been ignored.

### 3. **Situation of unaccompanied minors in host countries**

#### a) Reception methods and procedures, agencies involved

It should first be emphasised that many attempts to emigrate clandestinely end in death through the use of flimsy craft. Migrants drown in the Mediterranean and their bodies are fished out by Spanish coastguards. Others are reported missing, probably drowned or thrown overboard.

For example, in 2004 at least 290 would-be clandestine emigrants drowned in the sea separating Morocco and Spain: 150 of them died soon after leaving the Moroccan coast in the grip of general panic, but also because of the lack of rescue equipment (Pro Derechos Humanos Association, Andalusia, 2004). The exact number of minors who died is not given.

Minors arrested at borders are placed in waiting areas (Algeciras, Fuerteventura, Lanzarote, Roissy, etc.) or in closed detention centres with extraterritorial status located near the border (Belgium: Centres 127 and 127bis).

Unaccompanied minors are then questioned, in most cases with the assistance of an interpreter, to determine their age, country of origin, the means of transport and whether a network was used.

In most host countries their elbows and wrists are x-rayed in order to determine their osseous age.

*Those lucky enough not to be deported to their country of origin* because they have the status of unaccompanied minors are placed by the juvenile court in a reception centre according to the protection procedures in force in the host country.

The reception centres, whether they are emergency, day, night, open or closed centres, either come under the direct authority of government departments responsible for children or government-recognised and subsidised NGOs.

After a period of time in waiting areas or detention centres, some minors are deported to Morocco in the framework of assisted repatriation (Morocco-Spain Memorandum) or simply because the x-rays show them to be adults.

Some of those who manage to get through the security net join a family member or acquaintance who is expecting them, while others simply pass through the first country to reach the true destination country. In the end they are often arrested by the police and sent back to square one.

#### b) Networks exploiting unaccompanied minors (illegal work, prostitution, drugs, etc.)

The fact that crossings are a very lucrative market with fares varying according to the minor's nationality and points of departure and arrival is no longer disputed. Smuggling and trafficking networks are extremely well-organised and well-structured in countries of origin, transit and destination and are aided and abetted by some public officials.

Therefore, in parallel to the official system, unaccompanied minors arriving in Europe are also faced with a profitable and extremely well-organised illegal system lying in wait for victims (drug-trafficking, prostitution and theft networks). The factors that lead unaccompanied minors to fall into the hands of these organised crime networks are:

- fear of being arrested by the police and deported;
- financial gain;
- they are nearing or have reached their majority.

This is not to forget the unaccompanied minors who, having been accompanied from Morocco by a spurious guardian or “relative” who takes their papers from them, then find themselves hostages of economic exploitation (illegal work, slavery), sexual exploitation or drug-trafficking networks.

### **Chapter 3 : Analysis of the legal framework governing the reception and care of unaccompanied minors.**

#### **1. International instruments, conventions and mechanisms**

Morocco and all the European Union countries have ratified the Convention on the Rights of the Child and therefore accept its founding principles: the best interests of the child; the right to life, survival and development; non-discrimination and respect for the child’s opinions.

Protection is a cross-cutting theme found throughout the Convention on the Rights of the Child and particularly in Articles 20 (children deprived of their family environment), 22 (refugee children) and 37 (torture, degrading treatment and deprivation of liberty).

Morocco and the European Union are also parties to the following treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention relating to the Status of Refugees and its Optional Protocol.

Morocco and the European Union have also ratified ILO Conventions 138 and 182, as well as the two Optional Protocols to the Convention on the Rights of the Child (the involvement of children in armed conflicts; the sale of children, child prostitution and child pornography).

With a view to bringing its legislation into line with the Conventions on the Rights of the Child, as well as all the other international instruments it has ratified, Morocco has introduced wide-ranging legislative reform in recent years: Family Code, Code of Criminal Procedure, Press Code, Sponsorship Act, Prisons Act, Employment Code, Nationality Code, Migration Act, etc.

## 2. National legislation on regular and irregular migration

Mention should be made of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It entered into force in July 2003 and has been ratified by Morocco, which is therefore bound by its provisions. The convention reaffirms the fundamental rights of all migrant workers and members of their families (right to life, liberty and security of person, freedom of opinion, religion, etc.).

Articles 29 and 30, which concern all migrant workers, whether or not their situation is *regular*, affirms the right to a name, to registration of birth and to a nationality (Article 29), as well as the right to education on the basis of equality of treatment with nationals of the State concerned. Access to educational institutions may not be refused by reason of an *irregular* situation (Article 30).

Where migrants are in a regular situation, Article 45 of the convention provides that members of their families shall have access to educational institutions and services, vocational guidance and training, social and health services and access to and participation in cultural life. States are required to pursue a policy aimed at facilitating the integration of children in the local school system and the teaching of their mother tongue.

Taken together, the provisions of the convention are such as to provide effective protection to migrants and their families. For States Parties to the Convention, however, they represent protection of immigrants but not emigrants.

At regional level, Morocco has ratified the Convention Governing the Specific Aspects of Refugee Problems in Africa.

Act 2/2003 (November 2003) on entry to and residence in Morocco by foreigners and irregular emigration and immigration is much concerned with emigration and immigration. As regards children, Sections 26 and 29 stipulate that foreign minors, like pregnant women, cannot be deported.

With respect to emigrant minors, the problem arises of young people who have left the national territory without legal travel documents and have been deported to Morocco by the authorities of the State they have entered illegally. The new Act sets out punishments for irregular emigration (Section 50: any person who leaves Moroccan territory illegally is liable to one to six months' imprisonment and/or a fine of from 3 000 to 10 000 dirhams). Repatriated minors therefore run the risk of prosecution and conviction. The Act makes no provision for their reintegration in Morocco. This is one of the observations made by the Committee on the Rights of the Child concerning, in particular, children deported from Ceuta and Melilla.

Here, however, the problem is not so much the inadequacy of the law as the absence of suitable facilities for caring for such children. Such care should be organised at the level of the border guards to whom children are handed, by social workers able to find and implement appropriate reception measures adapted to each such child. As for prosecution for irregular emigration, the prosecuting authorities may decide not to prosecute, if this is in the child's interest, on the basis of the principle of discretionary prosecution provided for in the Moroccan Code of Criminal Procedure.

The Memorandum of Understanding between Morocco and Spain on the assisted repatriation of unaccompanied minors, signed on 23 December 2004, provides that Spain may deport Moroccan minors once they have been identified and their family has been located. Where this is not the case, the children are handed over to the Moroccan authorities who are responsible for finding their families. The repatriation procedure does not take into account the best interests of the child.

### **3. Rights of unaccompanied minors**

According to the Convention on the Rights of the Child (Articles 2, 3, 6, 12, 20, 22) and the Office of the UN High Commissioner for Refugees (Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997), because of their vulnerability, unaccompanied minors:

- should not be refused access to the territory
- have the right to special assistance and protection
- have the right to healthy living conditions
- have the right to education that recognises their culture, language and need for integration
- have the right to necessary health care
- should not be placed in detention centres
- should be speedily identified
- should be legally represented (guardian or responsible person familiar with the principles of assisting children in order to see that their best interests are served)
- should be informed of their rights in their own language
- may be questioned only by professionally qualified persons in the presence of professional interpreters
- have the right to express their opinions, which must be heard and taken into account.

All subsequent decisions should be taken in the child's best interests.

However, while all these principles are clearly stated in the legislation of the various host countries, they are not fully applied and are applied to varying degrees in different countries. The degree of respect for the rights of unaccompanied minors also varies within any given country, from region to region, town to town, even one care structure to another.

### **4. Links with Families**

In compliance with the conventions referred to above, States Parties have undertaken to make every effort to find the families of these children. Since the children fear expulsion, however, they do not give their identity initially, although the first thing they do when they arrive is contact their parents and particularly their mother in order to reassure her.

Many of them do not carry papers or hide them and will only reveal their true identity when they feel they can trust those with whom they are speaking.



In some reception structures for unaccompanied children the right to telephone their parents or receive phone calls from their families is respected.

In order to renew or maintain family ties, some centres allow such children to stay with their families during the holidays, accompanied by their educator. Return to the centre is of course ensured (Arco Iris, Spain Young Itinerants, Marseille).

Moroccan Embassies and Consulates are also asked to help to identify and locate families, but the attempts are often fruitless. A process of revitalising and rehabilitating the diplomatic and consular services available has been started by accrediting economic and social advisers, simplifying administrative procedures and strengthening legal assistance services.

Agreements between European reception bodies (Spain, Italy, France) and Moroccan NGOs (BAYTI, AFVIC, DARNA) have enabled families to be identified and located, but above all the family situation to be analysed in socio-economic, affective and educational terms, and this has had tangible results. Family reunification has often been doomed to failure because neither the child nor the family wanted it. In such circumstances, the return is forced and the child's one aim is to go back to Europe.

Family reunification is provided for in countries' national legislation in the form of assisted repatriation. Unfortunately, this often means forced return that does not take into account either the child's consent or the approval of the family, which is frequently not notified.

## **5. Interpretation of the best interests of the child in the practice of host countries**

While all legislation on children is permeated with "best interests", in practice, the principle is only waveringly applied.

There is a conflict between the child's interests and those of the host country's authorities or policies.

The concepts of vulnerable child, child at risk, are also variously interpreted, resulting in contradictory approaches, now favouring the selective aspect, now the protective. Children are therefore not systematically placed in the care of a guardian, although it is this that allows the steps "decisive" for the child's future to be taken.

The "distrust" provoked by unaccompanied children and their possible mendacity about their past also has to be taken into account. Foreign unaccompanied children are far from being perceived as "children like any others", so much so that the "childhood" dimension is blurred and diluted by the "immigration" dimension. Educational teams are therefore faced with a sort of contradictory injunction that can be encapsulated as follows: "Integrate them temporally or as little as possible".

The rights of the child should in any case always be taken into account. It is imperative to be able to show that they have been examined, have been at the centre of concerns and that the consequences for the child of the various options have been analysed before any decisions have been taken.

## Chapter 4 : Analysis of reception and care methods

### 1. Interception by host country authorities

#### a) First contact with services

First contacts with host country authorities differ according to mode of transport: by sea in flimsy craft (pateras) or unregistered dinghies, or in cargo boats, freight lorries or cars; by air or land.

With the improvement of the technical means of detecting clandestine emigration (infrared cameras, thermal detectors, watchtowers, dogs, sophisticated patrol units, galvanised steel railings with electronic detectors of human presence, strengthened passport and visa control), many unaccompanied minors are being intercepted:

- at sea, either by the Moroccan authorities, in which case they are repatriated to Morocco, or by European authorities. As an example, the Spanish Civil Guard announced the interception off Calahonda (Mortil, south) of 66 Moroccan illegal migrants, including two women and five minors, on the night of 9 to 10 October 2005;
- on arrival in ports or airports or at the land border (Ceuta and Melilla) by customs officials or border police.

If minors are in poor health (dehydration, hypothermia, malnourishment, exhaustion), they have the right to emergency medical treatment.

The first contact with the police is not always gentle: several children have reported police violence against such minors: blows, insults, ill-treatment (Human Rights Watch, 2001; OMCT, World Organisation against Torture, alternative report Morocco, 2004).

Once they have been apprehended, unaccompanied minors are placed in “waiting areas” or detention centres, according to the facilities available for the purpose in host countries.

#### b) Analysis of the various age determination methods

The following points emerge from the various studies and analyses of methods for determining the age of unaccompanied minors conducted by the French National Committee on Ethics for Life Sciences and Health, France Terre d’Asile, Anafé and many other NGOs.

The most commonly used age evaluation method is based on an x-ray of the left hand and wrist which is compared with reference plates in tables on an American group “of Caucasian origin” described in the 1930s and 40s in Greulich and Pyle’s atlas, or a middle-class British group in the 1950s according to Tanner and Whitehouse’s method. In outline, these plates analyse the presence and size of the ossification point (sesamoid bone of the thumb) and the degree of epiphysis in the phalanxes. The plates in the atlas give statistical information but no individual information. The original purpose of those x-rays was not legal, but purely medical - so that the risk of a medical intervention (the use of hormonal treatment, for example) hindering growth could be taken into account before treatment. It can only be a matter of concern that collective data with a medical purpose is being used as an individual truth for legal purposes.

Such references also carry a major risk factor with respect to non-Caucasian children from Africa or Asia whose osseous development may be quite different from the Anglo-American reference groups and may be profoundly affected by deficiencies or pathologies unknown in the reference populations.

The technique has a margin of error of plus or minus eighteen months, which is especially problematic if the hope is to gather precise data on an adolescent aged 16 to 18, an age group particularly well-represented in waiting areas. Unaccompanied minors are seldom given the benefit of the doubt.

For this reason, other evaluation methods have long been used:

- panoramic dental x-ray to examine dental development. Such x-rays are normally used only in the context of orthodontic treatment in order to establish whether or not dental intervention is possible according to the stage of development;
- clinical examination of signs of puberty.

Neither such x-rays nor such clinical examination avoids the pitfalls already mentioned, however. Not only do dental development and the manifestation of signs of puberty vary widely from one individual to another, but the age at which they appear is also very variable, linked to a number of environmental factors, making interpretation and the establishment of actual chronological age increasingly uncertain in individual cases.

Therefore, in the current state of knowledge and techniques, the determination of a child's or adolescent's age is a procedure involving a significant degree of inaccuracy. On the basis of clinical examination of puberty, adolescents may be declared to be older or younger than they in fact are. Indeed, the uncertainty is at its greatest between the ages of 15 and 20, the ages in relation to which examinations are most often requested. Whether taken in isolation or combined, these methods do not at present provide the precise scientific information the application of legislation requires, and it is understandable that in June 2004 the Committee on the Rights of the Child at the Office of the United Nations High Commissioner for Human Rights recommended to France that it should adopt other methods for determining the age of foreign minors. The problem is that such methods do not exist. It is therefore essential that research be undertaken to determine whether it is possible to develop precise evaluation criteria based on physiological, biological and psychological methods.

The interview is in theory the first phase of examination before clinical examination. It is, however, difficult to interview a child to establish as quickly as possible whether or not he/she is a minor, when he/she often does not speak the language of the host country and arrives disorientated and in handcuffs.

From the legal point of view, in France for example, the judge may not accept the validity of such examinations and therefore will not take them into account. The Court of Cassation has stressed that judges have unfettered discretion to assess minority which means that they may rely on any means to reach a conclusion and are not required systematically to base their decision on an expert opinion on skeletal age. This is now the trend in the courts, and it was welcomed by the Children's Advocate in her 2003 report. On 12 May 2004, for example, the Limoges Court of Appeal handed down the following decision: "In the instant case, if the margin of error of 18 months is applied to the expert's conclusions indicating that the accused is over 18 years of age, one arrives at the age of 16 and a half years he himself claims .... Consequently, taking

into account both the inadequacies of the medical examination and the apparent regularity of the identity paper produced ... majority has not been proven”.

It is also important to emphasise that when they are able to present civil status documents the minority of young foreigners should not be disputed, as stipulated by Article 47 of the French Civil Code which establishes a presumption of authenticity with respect to foreign documents. The administrative or judicial authority therefore has to accept it in principle and may only make an exception where it is able to demonstrate that the document presented is not in order or is forged. It is hard to see how, where the fraudulent nature of a foreign civil status document cannot be proven, it can be called into question by expert opinions on skeletal age. The Paris Court of Appeal shares this view: an expert medical opinion is not sufficient to contradict a birth certificate establishing a young foreigner’s minority.

The UNHCR’s follow-up committee for the Convention on the Rights of the Child recommended to France in 2004 that it should abandon any reference to age, a technique that was highly suspect.

c) Situation of unaccompanied minors at borders and in the “transit areas” of ports and airports

Arrested minors are placed in waiting areas (Algeciras, Fuerteventura, Lanzarote, Roissy, etc) for a maximum of 20 days (France) and 40 days (Canaries). The waiting area is defined as a place situated between the disembarkation point and the border control post.

As an example, according to the French Interior Ministry, 728 lone foreign minors who arrived at Roissy-Charles de Gaulle Airport were placed in a waiting area in 2004. Only 165 of them were subsequently allowed to enter French territory. In two out of three cases, by the time an ad hoc representative arrived, the child had already been deported. The percentage of Moroccan minors is not given (Amnesty, 2004).

Children describe the waiting areas as overcrowded prisons (because of the increasing number of illegal migrants) in which adults and children are held together. The living conditions are poor. Brutality and violence against minors are reported. Children feel isolated, are not speedily informed of their fate and await the verdict which will be delivered after the usual investigations: determination of minority, determination of identity.

The waiting area in Roissy is described as “cramped” and “gloomy”, the bedding as “deplorable”, there is “an awful smell”, “crowding”, “inhumane” detention conditions: a sombre picture drawn by elected representatives, NGOs (Anafé, France Terre d’Asile) and some of the French media.

Unaccompanied minors held in airport facilities at Fuerteventura and Lanzarote in the Canary Isles live with no fresh air, light or physical exercise, cut off from the outside world (telephone calls, visits and sending and receiving mail are all forbidden), in dilapidated, overcrowded premises without access to information in their own languages, health care or legal representation (Human Rights Watch, 2001).

The time spent in these waiting areas, on average for a renewable period of 48 hours, may be much longer, going from 20 days in France to 40 days (Canary Isles, Spain).

“Outside observers” (parliamentarians, NGO representatives, etc) are not allowed in most such centres. Furthermore, in many cases NGOs are not permitted to

give humanitarian or legal assistance but are only allowed a limited presence, intermittent visits with the sole mission of observing the general working of waiting areas. Such visits have certainly not been entirely useless. They have even made it possible to assess the areas visited, report failure to apply the law in stations and most provincial ports and airports, the frequent violation of foreigners' rights and the often inadequate or even scandalous material conditions in which they are held.

Professional interpreters are not provided in all centres; foreign minors are not informed of their rights or of asylum application procedures.

Legal representation of foreign minors by a guardian or responsible person in order to help them is randomly available. In some countries an ad hoc statutory representative is appointed (France), but more often than not foreign minors have to manage alone or are assisted by an adult serving as an interpreter who has no training in child assistance.

The legal examination required by national and international legislation is often superficial. Judges should check the regularity of the administrative procedure and the referral of the case to them, then check that the conditions that allow the child to be kept in a waiting area obtain and lastly that this is necessary. In fact none of these things is done properly. Considering themselves to be bound by the decisions of the administration, judges do not perform their role as protectors of individual freedom and usually confirm the detention without discussion.

Decisions on the detention and expulsion of unaccompanied minors are often arbitrary and contravene both the national legislation in force and the international conventions the host country has ratified.

No remedies are available to unaccompanied minors in the event of violations of their rights or if the decisions taken run counter to their interests (expulsion).

The functioning of waiting or transit areas, whatever name they are given, should be reviewed. Such a review should include at least the introduction of the possibility of appeal against decisions to refuse entry, limiting the length of time a person may be held in a waiting area, setting a time-limit within which the judge should conduct the investigation, and freedom of access to the areas for NGOs so they can provide legal aid to the foreigners held in them.

## **2. Analysis of care procedures in countries of destination and return (Morocco)**

### **a) Detention**

Scores of children and adolescents have been and are still placed in closed detention centres for foreigners. They have not committed any offence likely to threaten public order and their presence in the territory does not in any way constitute a threat to our fellow citizens. They are deprived of their liberty for varying periods, sometimes as long as five months, only because of their or their parents' administrative situation.

The infrastructure and management of the closed centres are not adapted even to their most elementary needs. However well-meaning the staff may be, it is not their job to assist such minors in difficulty and not all of them are trained to do so. There is no education or activities programme in the centres, and the medical services provided are not geared to working with young people. The communal living system that obtains does not guarantee children's privacy and may seriously disturb their private life. The

experience of being detained without understanding why causes children great suffering. This trauma usually has lasting effects harmful to their development.

Several reports by national and international organisations describe a particularly difficult atmosphere in the centres, one of anxiety and sometimes violence.

Such tensions still further disturb children who are already disorientated by the very fact of being locked up.

The decision to lock up a foreign minor for administrative reasons minimises the duty to protect and respect the child, leaving only the foreigner liable to expulsion. This approach is contrary to the requirements of the Convention on the Rights of the Child.

Under Article 2 of the Convention, “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members”.

The resolution of the European Union Council of 26 June 1997 on unaccompanied minors who are nationals of third countries gave guidelines for the conditions of their reception, stay and possible return and, for asylum-seekers, the procedure applicable to them.

It came into force on 1 January 1999 and also encouraged member states to take the necessary measures to ensure minors were represented by a legal guardian or another appropriate representative and to treat asylum applications by unaccompanied minors as matters of urgency.

In many countries the waiting or transit areas intended to be only temporary are in fact becoming virtual medium to long-term detention centres as a result of the massive influx of illegal migrants from different countries, cumbersome procedures, inadequate staffing and unsuitable infrastructure.

For example, in Belgium, detention in centres 127 and 127bis near the airport, now suspended by the courts, was described in the annual report (2004) of a network of European experts set up by the European Commission as “incompatible with a state governed by the Rule of Law”. The European experts considered detention in the area to be a violation of the European Convention on Human Rights, stressing that “a court finding that detention is illegal does not allow it to continue, even in another place”. Belgium is not the only country to have the finger pointed at it by this report, which condemns the same practice in several other EU countries.

Eleven organisations have joined forces to call for an end to the detention of minors and launched a debate on alternatives to it. Recalling the scale of the “psychological ill-treatment” “explicable by the living conditions in closed centres alone” (detailed by psychologists and child psychiatrists), they recalled the commitment made by the Verhofstadt II government when it took power in June 2003 not to place unaccompanied minors applying for asylum in closed centres at the border. They then observed that, two years later and despite the fact that the guardianship system had entered into force on 1 May 2004, such children were still being detained, sometimes for several weeks, in Centre 127 and the two closed centres near Brussels-National

Airport. In Centre 127bis in Steenokkerzeel alone, 39 children were being held in mid-April and 17 in late May (Le Libre Belgique, 23.05.2005).

Under the national legislation in force in nearly all host countries, unaccompanied minors are considered “children in danger” and should not therefore be locked up but, on the contrary, speedily referred to child protection authorities which should interview them and provide them with security, assistance, protection, accommodation and health care, pending the decision of the juvenile judge responsible for the legal protection of decisions concerning unaccompanied minors.

Guardianship: being an unaccompanied foreign minor means the absence in the territory of persons (usually parents) exercising parental authority. By the very fact of their minority, such children do not have legal capacity, but the complex process of obtaining a residence permit means that they have to be represented.

An Act establishing a guardianship service to protect the rights of foreign unaccompanied minors was passed in Belgium in 2003 and recently came into force.

Some countries have developed other alternatives based on protecting the child’s interests. For example, in Italy, “unaccompanied” illegal minors are placed in the care of local social services pending a decision to allow them to remain in Italy or deport them to their country of origin.

Under Act 184/1983, public service officials are required to inform the Committee for Foreign Minors of the presence of unaccompanied minors so that it can take charge of them. The Committee is composed of members from the Department of Social Affairs, the Ministries of the Interior, Foreign Affairs and Justice and the Office of the High Commissioner for Refugees. The Committee’s work is principally financed by the Italian Government. Its purpose is to find solutions for minors.

In emergency situations the Committee is required to inform the Juvenile Court. Before the Court intervenes, the Committee has 60 days in which to gather as much information as possible about the child and works in collaboration with seven NGOs for this purpose.

Since 1997, the Committee has signed agreements with the International Social Service (ISS exclusively concerning children from Albania, Morocco, Romania and Moldova), the Italian Solidarity Consortium, AIBI (Children’s Friends Association), CEFA (European Committee for Agricultural Training), ENGIM (Vocational Training and Cooperation for Development), LVIA (Lay Volunteers Association) and VIS (International Development Volunteers). The collaboration has enabled a network to be established and information on minors to be found more speedily.

Through the network and collaboration with NGOs, social workers examine the family and socio-economic background of each child and in particular the reasons they left home. The family’s involvement in the process is a fundamental element in all cases.

If the investigation finds against return, the child is placed in a host family or children’s home.

At the end of the 60 days, the guardianship judge decides either to appoint a guardian or order accompanied repatriation.

There are still many disparities between countries and between regions of the same country. The dichotomy between legislation, which in most cases is intended to

protect, and politicians, who emphasise security, underlies many violations of the rights of the child, the scale of which is difficult to gauge because of the lack of precise data and failure to follow up on what happens to the minors later.

b) Placement in institutions

The courts order unaccompanied minors to be placed in reception centres managed either by state-subsidised NGOs or state social services responsible for children.

They may be placed in an emergency reception centre under the protection procedures in force in the host country.

These centres are often overcrowded and the educational assistance they provide is frequently inadequate: teams work above all to return children to their families and re-establish the links between children and parents. More than often than not, however, the foreign minors' parents are not in the country and the children do not want to return.

The length of stay in emergency reception centres may not exceed a certain time. Once that period has elapsed, the child is sent to another centre. Thus begins the shunting around from centre to centre with no real coordination, no clear plan and no follow-up.

The services these facilities offer vary and depend mainly on the quality and multidisciplinary skills of the staff:

- someone to talk to, individual interviews, focus groups
- language lessons
- health care
- hygiene and nutrition
- accommodation
- assistance with administrative procedures
- legal representation at hearings with the juvenile judge
- cultural and sports activities
- schooling
- vocational training
- psychological support
- contact with families

These services are not provided in all centres: either only some are offered or they are reduced to the bare minimum. The nature of the centres varies from one country to another: day centres, night shelters or closed centres. The accommodation also varies: reception centres, flats rented by NGOs or hotel rooms. In some countries unaccompanied minors stay with host families or are sponsored by families, often from the same country.

Staffing varies from centre to centre in terms of both numbers and quality. Through agreements with Moroccan NGOs, European NGOs working with unaccompanied minors have forged partnerships, above all in relation to identifying and locating families, obtaining identity papers and, less often, plans for the child's return taking account of his/her approval.



Some centres look after young people until they come of age in the framework of a life plan – residence permit, integration on the job market, higher education –, but such cases are rare and little reported.

Centres taking a comprehensive, systematic, rights-based approach, offering the full range of services unaccompanied minors need, are virtually non-existent.

Living conditions also vary from centre to centre depending on the country, but also in different cities in the same country.

Some centres are virtual prisons into which children are herded with no access to schooling, health care or vocational training (from the age of 16).

Children are subjected to all kinds of ill-treatment: blows, insults, racist remarks, humiliation, prohibition of any contact with the outside world, threats of expulsion, locking-up in punishment cells, sexual abuse (Human Rights Watch, Canary Isles, Ceuta and Melilla, 2001).

The reception centres lose sight of some unaccompanied minors: a study of 255 minors who had disappeared conducted in Belgium by Child Focus in April 2002 found that 64, in other words one in four, were the victims of some form of trafficking in human beings. 48 of those 64 had been exploited for prostitution, while the others were victims of economic exploitation in the footballing world, bakeries or as fruit-pickers. Of the 64 victims of trafficking in human beings, 22 were of African origin, 6 from Asia, while the majority – 36 – were from central and east European countries. Of the 22 African victims, 20 were exploited for prostitution. Eighteen of the 20 were girls. Of the six victims from Asia and the Middle East, three were victims of economic exploitation and three of sexual exploitation. Eleven (17%) of the victims of trafficking in human beings were 13 or under. 25 children in this age bracket were victims of trafficking in human beings. Most of the victims of trafficking, 53 children, were between 14 and 17 years old; 28 were 16.

Intra-European migration (from country to country and city to city) is the fate of many children, constantly in search of a legal, economically profitable situation.

For many of them disillusion is not slow in coming: Europe is not the El Dorado they imagined, expulsion is imminent. Disillusion, despair and a sense of failure lead to:

- violence (self-mutilation, violence, attempted suicide)
- absconding, rootlessness
- delinquency
- marginalisation and a life on the streets of Europe

There are no mechanisms for monitoring what happens to unaccompanied minors nor any impact studies of programmes: What becomes of them? Where are they now? How many children's life plans have been carried through? And what happens once they are 18?

c) Expulsion, forced return and repatriation

Arbitrary expulsion and forced return are the fate of many unaccompanied minors, even before the age of 18. Their rights are flouted and they are deported from the host country with no guarantees whatsoever, although the law guarantees children the right for investigations to be conducted to identify their parents and the host country

is required to ensure the best possible reception conditions for them if it is decided to send them back to their country, Morocco.

It is rare for assisted repatriation to be well-prepared, have the child's consent and involve an appropriate life plan.

There have been complaints of aggressive expulsions of Moroccan minors aged between 14 and 18, with no guarantee and against their will since 2000 after the first patera arrived in Tarifa with 24 children on board. In 2004, 28 minors were deported from Spain to Morocco in violation of the rights of the child and Spanish legislation (Federation SOS Racismo, General Lawyers' Council of Spain, 2005).

d) Reception and care of minors returned to Morocco

When they arrive in Morocco they are arrested by the Moroccan police; they are then either simply released, because they seem capable of looking after themselves, or are taken before a court which places them in state centres supervised by the State Secretariat for Youth while waiting to be handed over to their families.

Neither the police nor the judicial system has a social wing able to assist returned children, find their families and take them back to them. Furthermore, the educational services provided by such centres (cf. Chapter 1) are not geared to dealing with them.

Such children stay for a short time with their families and abscond at the first opportunity. For some, this is their sixth attempt and they join the other children living in Moroccan ports, left to themselves, waiting for the next departure.

Morocco's European partners conduct a migration policy based principally on control and exert pressure on Morocco to establish reception centres and strengthen border controls. Morocco thus plays the role of the policeman of Europe, which is outsourcing its waiting areas.

At the same time as trying to tackle the socio-economic factors that have pushed young Moroccans to emigrate to Europe, Morocco is also having to deal with a substantial flow of adult migrants from sub-Saharan Africa (Nigeria, Mali, Senegal, Guinea, Congo, etc).

The living conditions and fundamental rights violations of which sub-Saharan migrants are victim living in the forests of Bel Younes and Gourougou near the Spanish enclaves, are consequences of the restrictive European immigration policy (Cimade, 2004).

The management of migratory flows should be dealt with in the framework of socio-economic development and respect for human rights, and partnership needs to be based on cooperation strategies through technical assistance and sustainable co-development programmes.

e) "The best interests of the child" in reception and care procedures

While the best interests of the child are present in much national legislation and procedure, they are diluted to the point of invisibility in their implementation.

In order to evaluate the extent to which the child's best interests are taken into account in the reception and care of unaccompanied minors, the questions listed below need to be answered.

Have the following been considered:

- Informing unaccompanied minors of their rights under the country's legislation and of asylum application procedure (leaflets in Arabic, availability of interpreters for those who cannot read) immediately they are intercepted?
- Authorising NGOs, humanitarian organisations and representatives of migrants' groups to visit unaccompanied minors detained in waiting areas or detention centres in order to give them humanitarian and legal assistance and to monitor the conditions in which they are being held?
- Remediating overcrowding in centres?
- Creating alternatives to detention (accountability or guarantor)?
- Ending the prohibition on contact with the outside imposed on detainees: access to a telephone and personal visits?
- Putting up notices in detention centres in several languages describing the rights of unaccompanied minors and giving telephone numbers of organisations that may be able to help them (lawyers, local services, etc)?
- Promptly giving unaccompanied minors the opportunity to challenge the lawfulness of their detention and/or expulsion?
- Facilitating access to free legal advice?
- Setting up a complaints procedure on conditions of detention?
- Establishing remedies for ill-treatment, violence and torture suffered by unaccompanied minors?
- Providing satisfactory living conditions: hygiene, nutrition, accommodation?
- Providing access to necessary medical care?
- Providing appropriate education?
- Seeing that unaccompanied minors, whether or not they are seeking asylum, have the practical means to do so, without any hindrance from the authorities?
- Training everyone working with unaccompanied minors in the latter's rights and asylum?
- Ensuring regular monitoring of waiting areas and detention centres by administrative procedure judges?
- Appointing a legal guardian or representative for minors?
- Reviewing age determination methods by giving unaccompanied minors the benefit of the doubt and not immediately questioning the validity of documents presented?
- Regularly inspecting reception centres and producing public reports on the conditions of care?

- Investigating police abuse on the basis of complaints?
- Investigating illegal expulsions?
- Guaranteeing that no unaccompanied minor is repatriated or deported without prior guarantees: family located and prepared to care for the child or an appropriate social services body found?
- Issuing temporary residence documents and, if possible, work permits to unaccompanied minors of working age?
- Acting on applications for permanent residence, giving priority treatment to unaccompanied minors nearing the age of majority?
- Ensuring special care for unaccompanied minors who are victims of trafficking?
- Listening to and taking into account unaccompanied minors' opinions before any decision is taken?
- Developing co-ordination and follow-up mechanisms with respect to unaccompanied minors among the various agencies involved?
- Ensuring that minors returned to Morocco are followed up regularly?

Implementing the principle of the best interests of the child would mean developing a coherent European socio-economic policy based on respect of the rights of the child.

At present security considerations and the control of migratory flows predominate.

The socio-economic and human aspects of managing migratory flows boil down to hasty responses often connected with election campaigns.

### **Conclusions**

The migration of unaccompanied minors is now a Europe-wide problem experienced by almost all Council of Europe member states. It can be explained in part by the fact that it is more difficult for adults to immigrate to Europe. It is generally thought that children have a far greater chance of staying in Europe, even if they enter illegally. Smuggling networks have been very quick to exploit this heaven-sent opportunity. The result is that many children are subjected to ill-treatment and serious abuse.

Such children are in an insecure situation and need the help and protection host country authorities can provide.

The best interests of unaccompanied minors should be the cornerstone of national policies on unaccompanied children without papers. The United Nations Convention is a good reference as regards protection of the rights of the child. It is therefore important constantly to reassess host country policies on such minors in order to avoid any ill-treatment.

Reception centres could become a firm basis on which to develop "life plans" for the children. Various programmes could be implemented in them to encourage children to build on their assets and acquire skills that will be useful whether they remain in the host country or return to their country of origin.

However, the effectiveness of such programmes depends on the adoption of an integrated approach supplemented by co-operation with countries of origin. The latter is particularly important since “life plans” should not be restricted to measures taken in destination countries, but also offer attractive prospects for personal development in countries of origin. They should in particular include the possibility for children to go abroad temporarily to acquire vocational skills and attend training programmes.

The implementation of programmes designed to offer a range of attractive “life plans” should be linked with co-development initiatives. This would make it possible to treat the fundamental cause of the clandestine migration of minors, namely the unfavourable economic situation in the country of origin. Children often carry the burden of having to support their families by looking for work abroad and sending money home.

Various “life plans” developed for and with the children should be set up in order to enable them either to build their lives in the host country or to become reintegrated in the society of their countries of origin. “Life plans” should be conceived from an overall perspective incorporating the various issues of cooperation between countries of origin, transit and destination. In order for them to be implemented successfully, it is important that European countries accept that not all migrant children will return to their countries of origin.

It is now imperative to adopt a comprehensive, balanced approach to the management of migratory flows.

A common migratory policy needs to be established by two continents, Africa and Europe, as the countries on the southern shores of the Mediterranean are becoming countries of transit.

This socio-economic policy based on respect for human rights, should include:

- upstream (in Africa), treatment of the fundamental causes of the migration of unaccompanied minors. This means, in particular, developing national policies to strengthen families, but above all putting in place sustainable co-development policies.
- downstream (European Union), European migration policies need to be re-assessed, taking into account the best interests and protection of unaccompanied minors and the development and implementation of their life plans.

Let us never forget that these are minors who have put their lives at risk – and sometimes paid with their lives – in order to fulfil their migration plan.

Migration policies for once need to be reviewed from the point of view of the human cost: How many youngsters have died? How many have ruined their lives? How many have disappeared? How many have become successfully integrated?

**Illegal immigrants, but above all children!**

## **MIGRATORY PATHS**

### **OMAR**

Born in a village in the Nador region (northern Morocco), he arrived in Bastia, Corsica, with his twin brother, Youssef, at the age of 15.

They entered French territory legally since they were on their father's passport; he had been living in Bastia for some time.

Since their father had no income, the two boys were placed in a reception centre in Bastia when they were 16, on the order of the juvenile court.

There was only one contact with the father throughout the placement period. The father repeatedly promised the centre staff that he would find a job in France that would enable him to reunify the whole family, his wife and four other children having stayed in the village.

During his time in the centre, Omar, who had a primary level education (acquired in Morocco), served an apprenticeship that included work experience. When this was finished he obtained an apprenticeship contract in a patisserie.

When he reached 18 and had no residence permit, however, he had to go back to Morocco. In order to be able to legalise his employment and residence, his employer and the reception centre undertook to take the necessary administrative steps for reception and legal residence with the immigration office and other relevant departments.

The Bastia centre then contacted the Moroccan NGO BAYTI to ask them to take care of him temporarily (four months) while the necessary steps were taken. Omar, confident that he would soon be able to return to Bastia with a residence permit and an employment contract, accepted the deal. The deadline passed; the procedure was never completed and the French reception centre broke off all contact with the young man and the NGO.

The steps BAYTI took with Omar's family were unsuccessful: because he felt he had failed, Omar refused to face his family and village, while his elder brother would not accept his return. Great disillusion! After a period of instability and depression, Omar, who was being cared for by BAYTI, began training as a pastry-cook.

### **OTHMAN**

His father was dead and he lived with his mother and four brothers and sisters in the medina of Casablanca. Under pressure from his friends, when he was only 16 he suddenly decided to drop out of school (3<sup>rd</sup> year secondary) and leave Morocco clandestinely with three other youngsters in a boat leaving Casablanca for Marseille.

After ten days wandering round Marseille he was picked up by the association Jeunes Errants with which he stayed for four months. Finding it difficult to adapt and realising that he had absolutely no prospects, a return plan was negotiated with him: the French association undertook to pay for a training course in accountancy, while in Morocco he would be followed up by BAYTI.

However, as he did not have the necessary educational background, despite a special remedial programme, he dropped out of the course. A year after his return he was full of regrets and bitter: return to zero:

- No work.
- No money to help his family or provide for himself.

He has no self-esteem and an overwhelming feeling of failure and disillusion. Paradoxically, his plans for the future are still directed towards Europe, at whatever cost. It is a real obsession.

### **RASHID**

When he was 15, living in a shantytown in Meknès, never having been to school, from a poor family (the father received a monthly pension of 1200 dirhams, ie €120) with many children (seven brothers and sisters), he decided to go to Spain, helped by a trafficker in return for 10,000 dirhams (€1000).

He wandered the streets of Andalusia for a few months, suffered the cold of winter, fell seriously ill and found himself in hospital. When he recovered, he was sent back to Morocco. He has returned to his shantytown, disillusioned and having lost all hope.

### **KARIM**

He arrived in Spain at the age of 14 and has suffered three violent expulsions, all of them followed by a return to Spain. The last occasion was particularly violent: his hands and feet were tied, he was handcuffed and violently beaten by the police when he resisted expulsion.

Once more in Spain, Karim was placed in an adult prison by the prosecuting authorities, despite the fact that he was a minor, the reason given being “offence against security” because of his violence.

### **YOUSSEF**

14 years old, has been violently deported (blows and insults) from Cordoba to Ceuta many times. Back again after being beaten and sexually assaulted by the police, then placed in a closed centre.

### **AHMED**

15, has suffered unimaginable violence: when he refused to cooperate, the Civil Guard fired in the air to stop him. Once he was in their hands, he was beaten on the head and face with a rifle butt until he lost consciousness. When he appeared in court he was found guilty and immediately deported to Morocco. The judge did not order an investigation into the police brutality.

### **RASHID**

14, left his village in southern Morocco with two other boys of the same age, paid smugglers who hid them for 12 days in the neighbouring mountains with other would-be emigrants: 67 in all, including five minors and a pregnant woman. They left at night. A three-hour walk to the beach where they boarded a dinghy which drifted for 18 hours until it was spotted by an air patrol which accompanied it to the port of Motril (Spain).

They spent the night in a police station with the adults. Next day Rashid and the four other minors, their hands tied with rope, were taken to Granada police station and from there to the airport en route to Melilla.

Once in Melilla, the five minors were escorted to the Moroccan border at Beni Anzar and handed over to the Moroccan police. After 24 hours in custody, packed into a room with no facilities and no food, they were taken before the court in Nador and released. Rashid had to borrow money from another child in order to get home.



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# Situation of unaccompanied migrant minors in Spain

Rosa María Bravo Rodríguez<sup>1</sup>

## 1. Introduction

The migration phenomenon, including unaccompanied foreign minors, must be placed in the context of the increase in economic, social, cultural and technological exchanges that has occurred in recent decades with the advance of globalisation.

The constant flow of goods, capital, people and information between countries is affecting the diversity of the flows and bringing new social groups of migrants whose presence was previously insignificant.

The migration of unaccompanied foreign minors is closely related to the effects of economic transition, the decreasing power of states to control cross-border movements and the resulting permeability of borders, as well as the increase in the flow of information all over the world.

Spain has not watched this increase in world migration flows from the sidelines. On the contrary, it occupies a key position on migration routes.

According to information contained in the comparative report drawn up under the CONRED I project, in 2001, the number of unaccompanied minors in Europe increased between 1980 and 1990.

In Spain it was in the mid-1990s that significant numbers of unaccompanied foreign minors, especially from Morocco, began to be detected. The turning point came at the end of the 1990s, when unusually large numbers of arrivals made Spain one of the countries in Europe with the largest population of unaccompanied foreign minors.

The arrival of these young people took politicians and Spanish society en general by surprise. The services responsible for the protection of minors were not prepared to deal with minors with such different needs and characteristics. Their capacity was no longer sufficient.

In a very short space of time a network of resources and new mechanisms had to be set in place to deal with the situation.

The emigration patterns of the young migrants are largely determined by the distance between the countries of departure and arrival, relations with the receiving country and the existence of migration routes established by adults which the minors follow. In Spain the main countries of origin are Algeria, Morocco, Romania and sub-Saharan Africa.

This phenomenon is one of the major challenges facing Spanish society and a constant source of concern for the authorities and society in general.

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## 2. Sociodemographic characteristics of unaccompanied foreign minors in Spain

### *Quantification of the phenomenon*

In 2004 9,117 arrivals of unaccompanied foreign minors were registered in Spain. For the first six months of 2005 the figure was 2,471.

### *Geographical distribution in Spain*

In 2004 their geographical distribution was very uneven, with concentrations in a few Autonomous Communities. Andalusia, the entry point, is the Community that received most minors, with 26.71% of the total, followed by Valencia (20.35%), Madrid (17.93%) and Catalonia (12.93%). The other Communities, with the exception of Ceuta and Melilla, other entry points together with the Basque Country, received less than 2%. They showed a preference for the more prosperous areas, with the most resources, and in these areas, for the larger towns and cities. In the first half of 2005 the same general trend was observed.

**Table 1 – Registered arrivals of unaccompanied foreign minors in each Autonomous Community in 2004**

	TOTAL	% of national total
Andalusia	2,435	26.71
Aragon	87	0.95
Asturias	11	0.12
Balearic Islands	96	1.05
Canaries	131	1.44
Cantabria	55	0.6
Castille La Mancha	127	1.39
Castille-Leon	183	2
Catalonia	1,178	12.92
Valencia	1,855	20.35
Extremadura	15	0.16
Galicia	24	0.26
Madrid	1,635	17.93
Murcia	46	0.5
Navarra	38	0.42
Basque Country	425	4.66
Rioja	3	0.03
Ceuta	442	4.85
Melilla	331	3.63
TOTAL	9,117	100

Source:

Statistical report "Arrivals of unaccompanied foreign minors in Spain"  
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### *Places of origin*

The main geographical origin of these young immigrants was Africa. In 2004 7,036 of the arrivals registered, or 77% of the total, were from Africa. A long way behind, immigrant minors from European countries numbered 1,213, or 13.40% of the total, while unaccompanied minors from Latin America accounted for 2.30% and from Asia and North America an insignificant 0.71% and 0.05% respectively. The origin of 508 (5.25%) of the minors was unknown.

4,650 of the minors from Africa (54% of the total) came from the Maghreb region, mainly Morocco and Algeria. Those from sub-Saharan Africa accounted for 22% of the total, placing them second in terms of geographical regions, but with a relatively small number from each country, with the exception of Ghana.

In 2004 minors from Morocco and Romania accounted for more than half of the arrivals registered (57.26%), with 48.71% from Morocco and 8.55% from Romania. Other nationalities barely accounted for 2% each. The countries of origin were numerous, but few were statistically significant. The most significant were Algeria, Ghana, Ecuador, Bulgaria, Moldova, Brazil, Croatia, Colombia, Nigeria, Cape Verde, Guinea, Congo, Cameroon and Sierra Leone.

**Table 2 - Distribution of arrivals in 2004 by geographic region of origin**

	National total	Percentage
Europe	1213	13.4
America	272	2.98
Africa	7.039	77.2
Asia	65	0.71
Unknown origin	508	5.25
TOTAL	9117	100

Source:

Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004 - Directorate General of Immigration

***Distribution by gender***

The unaccompanied minors who emigrate are mainly males (89.49%).

The percentage of girls is relatively higher among young immigrants from Latin America and Europe: 38% of immigrant minors from Latin America and 37% of those from Europe were girls. But they account for only a small minority of child immigrants from Africa (6%) and Asia (10%).

It is interesting to note that 38% of the young girls who immigrated came from Romania, while the percentages for other countries were small, with the exception of Morocco, which accounts for such a large percentage of all child immigration.

The distribution of these young female immigrants in Spain is less widespread than that of their male counterparts, and they are concentrated in different areas, such as Aragon, the Canaries, Murcia and Ceuta. Boys tend to prefer large towns and cities in the more prosperous regions.

**Table 3 – Arrivals of minors in 2004 by gender**

	National total	
	Numbers	Percentage
Boys	8,147	89.49%
Girls	970	10.51
TOTAL	9,117	100

Source:

Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004 - Directorate General of Immigration

***Duration of stay in protective care***

While 9,117 minors had been taken into care in 2004, by 31 December only 2,004 (90.47% boys and 9.53% girls) remained in the care of the services for the protection of minors in the Autonomous Communities. Once again, minors of African origin made up a large majority of these: 1,685, or 84.04% of the total.

Explanations for this small percentage of minors still in the care of the authorities include that fact that many of these young immigrants tend to run away, others come of age and some are repatriated, although the number is small, as we shall see later.

About a third of the minors in care are in Andalusia, 15.41% in Valencia, 10.07% in Madrid, 10.07% in the Canaries and 9.13% in Castille la Mancha .

**Table 4 – Foreign minors still in care on 31 December 2004 in each Autonomous Community**

	<b>TOTAL</b>	<b>PERCENTAGE</b>
Andalusia	487	24.3
Aragon	20	0.99
Asturias	4	0.19
Balearic Islands	4	0.19
Canaries	202	10.07
Cantabria	14	0.69
Castille La Mancha	183	9.13
Castille-Leon	46	2.29
Catalonia	114	5.68
Valencia	309	15.41
Extremadura	5	0.24
Galicia	7	0.34
Madrid	221	11.02
Murcia	0	0
Navarra	6	0.29
Basque Country	145	7.23
Rioja	0	0
Ceuta	91	4.54
Melilla	146	7.28
<b>TOTAL</b>	<b>2,004</b>	<b>100</b>

Source:

Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004 - Directorate General of Immigration



**Table 5 - Foreign minors still in care on 31 December 2004 by geographical region of origin**

Geographical origin	Total	
	Number	Percentage
Europe	129	6.45
America	70	3.49
Africa	1790	89.32
Asia	15	0.74
TOTAL	2004	100

Source:

Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004 - Directorate General of Immigration

The relative share for each continent remains the same as for arrivals.

### 3. Profile of the foreign minors who arrive in Spain

The group of unaccompanied foreign minors arriving in Spain is an extremely vulnerable group made up mainly of teenage boys between 14 and 18 years of age, who come to Spain by different routes and means and have different social profiles. Although they form a heterogeneous mix, studies have identified some prevalent characteristics that may be summarised as follows:

- They are predominantly males.
- They generally have numerous siblings.
- Most come from Morocco.
- The average age is about sixteen.
- They are mature for their age.
- They keep in touch with their families on a normally regular basis.
- They want to improve their personal and family situation.
- Their purpose is generally clear: to obtain papers and find work as soon as possible.
- They are very mobile, both in Spain, moving from one part of the country to another, and in the European Union. Where they choose to settle depends largely on where they feel they are most likely to be able to achieve their goals.
- They usually have networks of fellow countrymen who can lend a helping hand.
- They reject the official protection offered in favour of the greater freedom of living in a flat, for example.
- They are largely unskilled, with a few years of schooling but without having completed compulsory education.
- They usually have some form of work experience.

- They tend to reject school and prefer forms of learning that give them access to employment.
- They tend not to mix with young Spanish people.
- The difference between their expectations and the reality when they arrive in Spain comes as a great shock to them.
- Returning to their country of origin is not an option.
- They know the law and the protection system and use them to their advantage.

For Moroccan minors, according to a study conducted in Tangiers,<sup>2</sup> the family situations in the country of origin can be very briefly summarised as follows:

- 1.- Minors who live with their families in a caring and economically stable environment make up 10% of the unaccompanied minors who come to Spain.
- 2.- Minors who live with their families in a caring atmosphere but with economic difficulties, and spend a lot of time in the street but without making a way of life, make up 40%.
- 3.- Minors who live in poor or very poor and unstable families make up 35%.
- 4.- And finally, street children, minors who have drifted away from their families and live in the streets, make up 15% of the total.

#### ***Reasons that drive these minors to emigrate to Europe***

The main reasons are political and economic. Spain and France in particular attract minors for economic reasons, while Switzerland, Denmark and Belgium are often destinations for minors fleeing the political situation in their country of origin and seeking asylum. In Spain the number of asylum seekers is insignificant.

The prototype of the minor arriving in Spain is someone who has emigrated with a clear "project" in mind: to obtain papers and work. This aim is so uppermost in their minds that it largely shapes their relationship with the protection system.

The decision to emigrate may have been taken individually or as a family or social decision; individual decisions are usually based on socio-economic factors, while family decisions may be taken to protect the minor or send them where a brighter future awaits them, as well as for the money the minor will be able to send the family from the country of destination, and the possibility of subsequent family reunification.

Many of the young people from the main countries of origin of emigration to Spain have been brought up in a "culture of emigration", fuelled by exposure to the western way of life and standard of living via the media and the tales of fellow countrymen who have emigrated and, at the same time, by the mafia of people-traffickers, who are the first to benefit from this situation. The economic problems many families are going through as a result of structural changes in the economies of these countries often make the emigration of the son or daughter a family project.

It should be noted that the protection of minors' rights and the fact that chances of succeeding in one's emigration project and being able to stay in the chosen country are much greater for children under 18 years of age are used by people-trafficking

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<sup>2</sup> Jiménez Álvarez, M. (2005) "Migration of minors in Morocco. Reflections from Europe's southern border", in "Las otras migraciones: la emigración de menores marroquíes no acompañados a España", Madrid, Akal. pp 115-133.

networks to hook their "clients". And many immigrants who are no longer minors try to pass themselves off as such in order to qualify for access and protection.

### ***Entry routes and strategies***

In Europe, according to the CONRED-I report, two groups of countries can be distinguished when it comes to the means of access used.

In the first group (Denmark, Switzerland and Belgium), new arrivals tend to request asylum. To justify refugee status, they bring the 1951 Convention on the Status of Refugees into play.

Spain and France fall into the second group. Minors tend to enter the country illegally, with no identification papers. When detected, they are placed in the hands of the authorities responsible for the protection of minors. Very few tend to apply for asylum.

Most Moroccan minors, who form the predominant group in our country, tend to arrive alone. Many cross the border between Ceuta and Melilla hidden under lorries, others stow away on boats or cross the Straits of Gibraltar in small flat-bottomed boats. Another route used by people-traffickers, brings them from the Canaries, also in small boats, while yet another possibility is to arrive with an adult – a member or friend of the family – and stay behind to fend for oneself when the adult leaves.

When visas are no longer required for entry into the Schengen area, it is quite likely that Romanian minors, another large group, will be able to enter legally at border crossings. Some of these Romanian children are in the hands of traffickers and mafia organisations, as a number of police operations have revealed.

Many minors use existing networks between their countries of origin and Spain, with the help of family members, friends and neighbours already established in our country.

### ***Minors outside the protection circuits***

In addition to the unaccompanied foreign minors identified by the authorities, nobody knows how many more unaccompanied children there are in the country fending for themselves without any help from the authorities.

There are no reliable statistics on the number of children living in the streets in Spain or elsewhere in Europe.

In Spain these children are mainly boys (only 3% are girls) from 10 to 17 years of age (the average age is 15), and 92% of them come from Morocco and 4% from Algeria, and more than a third of them come from Tangiers (Morocco). By contrast, half of the 50 "street girls" detected in the last four years came from European countries. 20% of these children are illiterate and have come looking for work, with all the difficulties that entails, and 77% of them were never street children in their own country.

They are mainly minors whose expectations have been disappointed and who run away from the reception centres and are caught up in a spiral of exclusion and crime, swelling the ranks of illegal immigrants.

A small number are minors who lived in the street in their countries of origin and adopt the same lifestyle in Spain

In Madrid and Barcelona "*street education*" programmes have been introduced to provide these children with informal education and try to bring them into the care of the child protection authorities.

### ***Relations with the social protection system***

Those minors who have a clear idea what they want, which is generally papers and work, will often go to any lengths to achieve their aims. They are familiar with the Spanish protection system and laws on minors and make use of the system. Driven by the quest for papers, they travel Spain from one centre to another, based on the information they receive from other minors about where they are most likely to be issued with papers soonest. According to a study carried out last year by the Ararteko (ombudsman) for the Basque Parliament, many of the minors who arrive in the Basque Autonomous Community came from Catalonia, where they were told that it was easier to get papers in the Basque Country. Some experts speak of geographical "corridors": from Andalusia, Ceuta or Melilla, the entry points, to Catalonia, from where some move on to the Basque Country. Another of these corridors leads straight from the entry points to Madrid.

Minors thus frequently run away from the care centres. According to the report mentioned above, the average length of stay of 40% of them is less than a week. Another 40%, however, stay more than 6 months. So most of them stay either for a very short time or for a very long time.

Mobility is encouraged by what they see as the urgent need to legalise their situation. But this urgency clashes with the realities of administrative red tape and the labour market, making it difficult to achieve integration. As a result, they tend to reject schooling in favour of more practical vocational training.

The clash between their expectations and reality is a source of great frustration and personal conflict. The situation is worse when the family expects them to send money to support them.

The fact that these minors' lives and circumstances have made them "grow up" faster than other children makes it difficult for them to accept and adapt to a protection system that treats them as minors rather than adults.

Another group is made up of younger minors and/or those without a clear plan to guide them. The tendency to run away from care centres and the psycho-social disturbances caused by the migration experience make it hard for the welfare services to assist them and considerably increases the risk of them becoming social misfits.

## **4. Legislative framework**

Unaccompanied foreign minors enjoy legal protection in Spain as well as the rights enshrined in the International Convention on the Rights of the Child, which Spain has ratified, and all the rights embodied in national law on the protection of minors and aliens and in the laws of the autonomous communities.<sup>3</sup>

There is no discrimination whatsoever between Spanish and foreign children, regardless of whether they are in Spain legally or illegally. Under Section 12 of Law 1/1996, on the Legal Protection of Minors, and Section 92 of the Law implementing

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<sup>3</sup> Law 1/1996, of 15 January, on the Legal Protection of Minors, partially amending the Civil Code and the Law on Civil Procedure, and Organic Law 4/2000, on the rights and freedoms of foreigners in Spain, as amended by Implementing Act 8/2000, and RD 2393/2004, of 30 December 2004, regulating Implementing Act 4/2000.

Aliens Act 4/2000, all dealings with minors must be conducted in the best interests of the child.

So these minors are covered both by the laws on the protection of minors and by those on migration and aliens, the main legislation in these areas being:

***Legislation on the protection of minors***

- Law 1/1996, of 15 January 1996, on the Legal Protection of Minors, partially amending the Civil Code and the Law on Civil Procedure.

***Legislation on aliens***

- Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain, as amended by Implementing Act 8/2000;
- RD 2393/2004, of 30 December 2004, regulating Implementing Act 4/2000.

***Legislation on asylum***

- Law 9/1994, of 19 May 1994;
- Implementing Act, approved by RD 203/1995, of 10 February 1995.

***Autonomous Community laws on the protection of minors***

**5. Political framework**

Various central and autonomous government departments deal with unaccompanied foreign minors, as well as the State Prosecutor's Office, NGOs, municipal councils and others.

The bulk of responsibility for minors in Spain lies with the Autonomous Communities, in conformity with the constitutional distribution of responsibilities and those assumed by them in their respective Statutes. However, aliens and foreign relations are the responsibility of central government.

The State Prosecutor's Office is responsible for protecting the rights and interests of minors in legal proceedings.

The need for co-ordination of the actions of the various administrative services and private bodies involved led the Ministry of Labour and Social Affairs to set up a working group to analyse and address this issue in the framework of a Children's Observatory that had been set up earlier. As a consequence of the work done by this group, an Institutional Co-ordination Protocol on Unaccompanied Foreign Minors was produced, specifying the duties of the various authorities concerned.

Similarly, in policy planning and implementation, in state and autonomous community action plans in favour of children and the social integration of immigrants, there are measures and programmes for the benefit of these foreign minors.

As part of general government policy, the State Secretariat for Immigration and Emigration has adopted two strategic priorities for assisting these minors:

- Financial support for programmes implemented by the Autonomous Communities and NGOs.
- Co-operation with the minors' countries of origin.

Central government, the Autonomous Communities and local authorities have all implemented and financed numerous schemes in the countries of origin to help underprivileged minors and, in some cases, returned minors.

## **6. Provision for unaccompanied foreign minors en Spain**

### Phase 1: location and investigation

Once on Spanish soil the minor is generally detected by the law enforcement agencies, with only a small number located by private individuals, judicial authorities, NGOs, etc. Sometimes the minors themselves report to the welfare services in the Autonomous Communities, or to the police.

The law enforcement agencies have a group specialised in dealing with minors, called the GRUME. The municipal police also have special officers responsible for dealing with minors.

Once the children are detected, the law enforcement agencies inform the State Prosecutor's Office, which issues orders for the minor to be given the requisite assistance by the Child Protection Services and, if necessary, authorises medical examinations to determine the child's age.<sup>4</sup>

Young adults frequently claim to be minors in order to enjoy the protection to which minors are entitled. In Spain the authorities try to verify their age before giving them access to protection, in keeping with Instruction 2/2001 of the State Prosecutor's Office, dated 28 June 2001. The idea is to allow the centre for the protection of minors to do its work properly and ensure the safety of resident minors.

Sometimes, however, these tests can take a long time and, pending the results, the subjects receive care in the protection centres.

Osteometry is the method used to determine age. It involves X-rays of the hand and wrist. Because of the problems of reliability inherent in this method, the above-mentioned Public Prosecutor's Instruction 2/2001 recommends that the authorities take into account the lowest age in the likely range indicated by the test results.

At present these tests are given *priority* in the network of public hospitals in the National Health System which have emergency radiology units.

The Public Prosecutor is informed of the test results and, if they confirm that the subject is a minor, he or she is placed in the care of the child protection services, in accordance with the law on the legal protection of minors.

Before or while the tests are carried out, the law enforcement agencies attempt to identify the minor and include the data in the Register of Unaccompanied Foreign Minors.<sup>5</sup>

This is a difficult task as most of the minors have no papers and often conceal their identity to avoid being sent home. Some even register under different names in the Registers kept by the Autonomous Communities they pass through.

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<sup>4</sup> Section 35 of Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain, as amended by Implementing Act 8/2000 and Section 92.1 of the Regulation on Implementing Act 4/2000, of January, on the rights and freedoms of foreigners in Spain and their social integration.

<sup>5</sup> Under Section 111 of the Regulation of 30 December 2004 on Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, the General Directorate of Police is required to keep a register.

The competent authorities are therefore obliged to take steps to ascertain the real identity of the minors and gather information about their social and family circumstances.

The results of these measures determine the final decision whether to send the minor back home or to let him or her stay in Spain.

### ***Repatriation***

The government is legally responsible for repatriating unprotected foreign minors, through its Delegations and Sub-delegations. The General Commissioner's Office for Aliens and Documentation is responsible for all the formalities to verify the identity and personal and family circumstances of the minor. It does this with the help of the corresponding embassies and consulates. The usual procedure is to report the arrival of the minors and request help to verify their identity and locate their families or, failing that, the child protection services in the country of origin which may have been responsible for them. If the country has no diplomatic representation in Spain, the formalities are carried out by the Ministry for Foreign Affairs and Co-operation.<sup>6</sup>

In general these efforts go unrewarded as the only information available is that obtained by the Child Protection Services in whose care the minor happens to be. As the legal guardians of the minors these services are obliged to assist with the investigation and contribute any relevant information.

This information is obtained mainly by talking to the minors and being with them on a daily basis, and through telephone conversations with their families in their countries of origin.

When the minors come from the Maghreb the authorities often manage to locate their families. With minors from other regions, however, such as sub-Saharan Africa, it is often difficult, if not impossible, to establish any contact.

At present there is no other means of gathering this information.

It usually takes between three and six months to identify the family, although it may take longer as the Child Protection Services have to present a report that will be taken into account when the decision is made whether to send the child back to their family or allow them to remain in Spain.

It is worth noting that whether or not the Child Protection Services have taken any steps to protect the minor has no effect on the decision concerning the child's fate.

### **Phase 2: the decision**

Once the requisite information has been gathered, it is for the central government authorities to decide whether to send the child back to their family or to allow them to remain in Spain.

The reasons for the decision must be duly documented and, according to the legislation governing aliens, the main criterion must be the best interest of the child. This means that repatriation is ordered only in those cases "where the child can be reunited with his or her family or placed in the care of the child protection services of the country of origin" (Section 92.4 of RD 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000).

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<sup>6</sup> Section 92 of the Regulation of 30 December 2004, on Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration.

The approval of the new Regulation<sup>7</sup> and the adoption of Instruction 6/2004 of the State Prosecutor, dated 26 November 2004, on the legal treatment of unaccompanied foreign minors, somewhat changed the criteria for deciding on the advisability of reuniting unaccompanied foreign minors with their families. Under the new provisions family reunification is not necessarily the ultimate aim; other factors are taken into consideration that may sway the balance of the child's best interest in favour of allowing them to remain in Spain.

The decision must also be taken after hearing the minor and consulting the report drawn up by the Child Protection Services.

There is also a control system requiring the Children's Judge to be informed of all the steps taken during the repatriation process.<sup>8</sup>

Reaching the right decision about repatriation means assessing the personal and family circumstances of each minor individually, not only in the country of origin but also in the receiving country. Their participation in the integration process, their plans and their chances of carrying them out in our country and leading a normal, socially integrated life are all factors that must be taken into consideration. Thought must also be given to potential factors of exclusion that can lead to some minors, as they form such a heterogeneous group, falling by the wayside and turning to crime.

The problem that arises when assessing their circumstances is the lack of information on the situation in their country of origin. New machinery and schemes are needed for locating the families through bodies operating in the countries concerned.

In keeping with the legislation on aliens,<sup>9</sup> the repatriations are carried out by the National Police, who hand the minors over to the border control authorities in the country to which they are returned.

The number of repatriations is very small. In 2004 they numbered 111, of whom 10.51% were women, and in the first half of 2005 there were only 11 repatriations, and 29.03% of those were women.

**Table 6 - Repatriations carried out in 2004 and the first half of 2005**

	year 2004	Jan.-June 2005
<b>Total</b>	111	31

Source:

Statistical report on "Unaccompanied foreign minors" - Directorate General of Immigration State Secretariat for Immigration and Emigration

<sup>7</sup> Royal Decree 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000.

<sup>8</sup> Section 92.4 of RD 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000.

<sup>9</sup> Section 92.4 of RD 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000.



### Phase 3 - Access to the legal protection given to minors

Once the minor is placed in the care of the Child Protection Services, the legal protection machinery goes into action, with a declaration of the child's need for protection and the assumption of guardianship.

This state of need exists when the minors are deprived of the necessary moral and material assistance through failure or inability to provide the care and protection to which minors are entitled by law.

The legal concept of need (*desamparo* or 'lack of protection' in Spanish) is based on the same fundamental principles as the whole legal system for the protection of minors in Spain.

From the time of the formal declaration or the *de facto* recognition of the state of need, our legal system calls for the assumption of guardianship and the immediate, effective protection of the minor by the public authority responsible in the Autonomous Community where the minor is located, which must take the minor into its care, accompany and feed the child and provide him or her with a proper education.<sup>10</sup>

The guarantees and procedures linked to the declaration of need are the same for foreign minors as for nationals.

This formal declaration for unaccompanied foreign minors is not a uniform practice all over the country. In some territories minors are given legal protection as soon as they are located, while others receive *de facto* protection which is not formalised until some time later, when it seems likely that the minor will stay in our country.

Running away from a protection centre does not affect the validity of the declaration of need.

Once the declaration has been made, arrangements for guardianship follow, but only if it is not possible and fitting for the minor to return to his or her family.

Guardianship entails the following responsibilities:

- Protecting and promoting the child's interest.
- Guaranteeing proper care: food, clothes, a home and health care.
- Guaranteeing that the minor has access to a proper education and upbringing.
- Helping the child to find his or her place in society.
- Providing legal assistance and/or interpretation whenever necessary.
- Allowing the minor to take part in all decisions affecting him or her.
- Legally representing the child.

Guardianship is provided by the Child Protection Services in the Autonomous Community where the minor is living.

Under Spanish law guardianship actually involves care or custody, i.e. the effective provision of protection. **Custody** may be delegated, but guardianship remains the responsibility of the authorities concerned. These authorities tend to grant **custody**

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<sup>10</sup> Section 172 of the Civil Code

either to directors of centres or to non-profit associations, whose work they finance and supervise.

The public authorities remain responsible for ensuring that the minor is well looked after and protected. So a specific guardian is appointed.

National and autonomous community laws lay down the conditions in which guardianship may be terminated<sup>11</sup>, which include the end of the circumstances that warranted the guardianship, transfer to another protection service or repatriation.

### ***Papers***

The legislation governing foreigners in Spain considers foreign minors under the guardianship of the public authorities as legal residents.<sup>12</sup>

Residence permits are issued to foreign minors under official guardianship following application by the guardianship authority.

The effect is retroactive, to the time when the minor was first placed at the disposal of the competent child protection services.

The legislation on aliens<sup>13</sup> provides for a time limit of nine months from the moment the minor was placed at the disposal of the child protection services, following which, if it has not been possible, or considered appropriate, to send the child back to his or her family, a residence permit is issued. This retroactive effect is in the minor's interest when it comes to applying for Spanish citizenship, and it means that minors are considered as legal residents from the time when they are taken into care.

Formalities to issue the minor with papers begin at different stages in the procedure in different parts of the country. While some regions set the process in motion immediately, others wait until the possibility of repatriation has been excluded and the minor has agreed to the principle of integration through the channels proposed by the guardianship authority.

One of the main problems with these minors in Spain is the excessive duration of the formalities to provide them with papers.

This affects the minors in different ways, especially those nearing adulthood who come of age before their papers are ready.

To solve this problem the legislation governing aliens<sup>14</sup> provides for a temporary residence permit to be issued for exceptional circumstances if so requested by the guardianship authority when the minor has undergone training with a view to his or her social integration.

Minors over 16 years of age who wish to work may not do so without papers.

The residence permits issued to minors under the protection of the authorities expire when the Child Protection Service ceases to be the child's guardian.

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<sup>11</sup> Sections 276 and 277 of the Civil Code

<sup>12</sup> Section 35.4 of Aliens Act 4/2000, of 13 January

<sup>13</sup> Section 92.5 RD 2393/2004, of 30 December, implementing the Aliens Act 4/2000

<sup>14</sup> Section 92.5 RD 2393/2004, of 30 December, implementing the Aliens Act 4/2000

If the application for a residence permit is being processed and the minor leaves the Autonomous Community concerned, the permit is automatically denied.

Foreign minors under the protection of the Spanish authorities may acquire Spanish citizenship after two years of guardianship followed by one year of legal residence without interruption.<sup>15</sup>

In order to obtain a work permit, minors over 16 years of age must apply, with the job offer, to the Guardianship Committee, which studies the issue and, if it considers it favourably, forwards the application to the Ministry of Labour.

The Regulation implementing the Aliens Act<sup>16</sup> provides for residence permits, but not work permits, to be issued to foreign minors for as long as they remain in the care of the Spanish authorities, to allow them to participate in activities conducive to their social integration, at the recommendation of the guardianship authority.

The work permit does not expire when legal guardianship comes to an end.

#### Phase 4: Social action

In Spain, depending on their individual circumstances, unaccompanied foreign minors have access to the same services and programmes as other needy minors.

As mentioned earlier, the main problem facing the authorities responsible for their integration is that they form a highly mobile group, who often run away from care centres, which makes it difficult to provide them with a full assistance programme.

Some of the minors only pass through the initial reception centre, while others move on to long-stay centres.

The arrival of unaccompanied foreign minors in Spain is a new phenomenon and one which is taking on unexpected proportions. It is a real challenge for the authorities concerned. The urgency of the situation and the need for action have made it difficult to set aside the necessary resources. Lack of experience has led to changes of tack and changes in the resource network to deal with changing situations and the changing needs and profiles of the minors concerned.

Furthermore there is no single social action model in Spain but a number of different models because of the decentralisation of responsibilities in these matters. This decentralisation has made it possible to develop forms of action and resources tailored to the characteristics of the minors arriving in the different regions of Spain and also to the geographic, social, economic and cultural specificities of the regions concerned.

Decentralisation also causes problems and occasional malfunctions, however, accentuated by the high mobility of the minors. It is difficult to define common criteria or a common approach to this migration phenomenon, and to achieve a balanced distribution between the various Communities, with the result that some have reached saturation point, making it hard to provide the best possible care.

What is needed is a stronger co-ordination effort by the competent authorities, with the help of the various public and private players involved in the protection of unaccompanied foreign minors.

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<sup>15</sup> Section 22.2 of the Civil Code

<sup>16</sup> Section 68 of the Regulation of 30 December 2004 implementing Aliens Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration

The intentions of the minors, whether they mean to stay for a shorter or a longer period in a given area, as well as their number, affect the approaches adopted and the resources provided.

As a rule, each Autonomous Community draws up an *Action Protocol for all Centres*.

Broadly speaking there are three phases in approaches to dealing with unaccompanied foreign minors in Spain: the reception phase, the long-stay care phase and the emancipation phase. Each stage involves action programmes in such fields as language learning, health, education, vocational training, employment and social integration.

### 1. Reception phase

Reception centres cater for urgent situations. The length of stay is 2 to 3 months.

These Centres differ from place to place, some being run by the public authorities and others by private bodies under agreements with the authorities concerned.

Initially these minors were placed in general facilities which they shared with Spanish children in need of protection, but various communities have gradually opted for facilities specifically devoted to unaccompanied foreign minors. They felt that the general, shared facilities could not cater properly for the needs of unaccompanied foreign minors as they did not have sufficient staff and found it difficult to run special programmes for them, to teach them the rudiments of the Spanish language, culture and social values. Some Autonomous Communities still use general facilities, however, depending on the number of minors and the capacity of the network. Girls are always placed in general facilities because there are so few of them.

Experience has shown the wisdom of using special facilities in the reception phase, as it is easier to cater for the special needs of these children when the actions are properly planned. These Centres generally offer Personalised Education Projects, in which the minors have a say. They also have rules and regulations.

The purpose of this reception phase is to prepare the minor for life in the host society. Once this is accomplished, they are immediately handed over to general care facilities.

The preparation for life in Spain focuses in particular on:

- Learning the language of the host country
- Learning the rudiments of its culture
- Learning its social customs and traditions.

Cultural mediators have proved to be important figures in these reception centres, helping the minors to assimilate the basic rules of the host society, while providing staff in the centres with essential cultural tools for working with these minors and avoiding conflicts.

Based on a psychosocial interview with the minors, and with their help, personalised action plans are drawn up and they are sent on to another centre capable of providing the stable care they need.

## 2. Long-stay residential phase

The minors sent to these centres have previously shown a certain willingness to settle down.

Now a series of steps begin aimed at providing them with the cognitive, social and vocational skills they need to become independent. These measures form part of a long-term life project.

Residential care rather than placement in families is preferred because it is not easy to find families to take the children in.

The main obstacles are:

- Most of the minors are over 14 years of age
- They do not speak Spanish
- Cultural differences.
- Social stereotypes that brand these minors as troublemakers.

Having said that, some Autonomous Communities have developed or financed projects where minors have been placed in families of the same cultural origin and in autochthonous families who have demonstrated special openness to and aptitude for intercultural relations.

For residential care a varied network of facilities has been developed. The different backgrounds, characteristics and numbers of the children arriving in different parts of the country have produced this diversity of resources. As a result, some Autonomous Communities which used to use general facilities have opted to use specialised facilities in this phase, while others continue to use general facilities.

In general it seems to be preferable in this phase to share general, standard facilities. Once these foreign minors have acquired certain basic skills to help them fend for themselves in our country, living with autochthonous children facilitates their integration, whereas housing them in specialised facilities tends to heighten their segregation.

While in some areas large centres are still used, this approach has generally been superseded by the opening of smaller centres and facilities more reminiscent of family homes, with 8 to 10 places. These may be public or private facilities.

The minors are expected to help with the cleaning and other chores.

Some Autonomous Communities have set up programmes to find lodgings for minors who have particular difficulty adapting to normal centres, with the assistance of Day Centres which provide guidance and vocational training.

In all the Autonomous Communities an integral approach to social assistance to these minors is adopted. The personalised action plans reflect this approach, with a series of actions in at least the following fields:

- Language and culture
- Health
- Education/vocational training
- Integration in the labour market

Many obstacles have been encountered, and continue to be encountered in dealing with these minors. They can be summarised as follows:

- The unpredictability of the arrivals sometimes results in saturation of the protection networks in some parts of the country. Action is taken according to the urgency of the situation and the capacity of the centres, but sometimes the children have to be sent to facilities which are not really equipped for them.
- The fact that they frequently run away makes it difficult to see a project through.
- Because this is a fairly recent phenomenon, little is known about these minors and their problems.
- Many minors who enter the residential centres are close to adulthood, so there is little time to put a personalised development plan into practice.
- Where the younger minors have no migration and education project, it is harder to persuade them to keep to the programmes.
- They have difficulty accepting situations of control and protection.
- In some centres there is a high turnover of staff, which makes it more difficult to work with these young people.
- Sometimes the educators and staff attending to these minors have not received enough specialised training.
- Some minors have behavioural problems or consume harmful substances and need special medical and psychological treatment, for which there are insufficient resources.

### 3. Emancipation phase

The idea here is to prepare the young people to fend for themselves. When they come of age, a special emancipation programme is set in motion to help them make the transition to an independent life.

The aim is to prepare the minor to lead a normal and independent life.

Resources are increasingly being assigned to this transition phase, such as halfway houses between residential care and complete independence. The focus during this period is on acquiring certain basic skills the young people will need in order to join the social mainstream:

- Learning to look after themselves.
- Fitting into the neighbourhood.
- Making the most of community resources.
- Finding and taking care of accommodation.
- Occupational skills.
- How to find and keep a job.

The young people have a high opinion of these resources and programmes, which are perfectly in keeping with their expectations.

Upon coming of age, some of the young people need professional advice and assistance in their transition to a normal life because they lack the wherewithal to succeed on their own. Special "adult life" plans have been developed which provide this assistance, then gradually phase it out as it becomes unnecessary. In this manner the young person receives the right degree of support at all times.

One example of an intensive support programme is a housing network where the young people can find shelter for a while when they are no longer in the charge of the child protection authorities.

This goes hand in hand with support and guidance from educators in various matters, vocational training, or help finding work, as well as help with everyday chores.

Less intensive programmes include help in finding shared or alternative housing, and mediation in the renting of accommodation, for example.

Finally, once the young people are fully independent, there are day centres they can turn to if need be for all sorts of personalised assistance designed to help them achieve full social and occupational integration.

#### *Health care*

The right of unaccompanied foreign minors to health care is enshrined in the legislation on the protection of minors and on aliens. Unlike adults, minors are not required to register with the municipal registrar. On arriving in Spain they receive medical care if necessary, which it usually is. When they arrive at a reception centre they are given a check-up.

During their stay they have access to health care facilities on an equal footing with Spanish minors.

Those minors who are mentally disturbed or have a drug habit are channelled into the general health care system, although agreements are sometimes concluded with private bodies to take care of them.

#### *Education*

The right to education, which is also enshrined in the legislation on the protection of minors and on aliens, entails free access to the public education system between the ages of 6 and 16, and also access to grants and assistance.

The main problems encountered in providing these minors with an education are:

- The fact that they arrive after the school year has started.
- Their low level of schooling.
- The fact that they do not speak Spanish.
- Their lack of interest in a school education.

Once they have joined the general education system, they are entitled to the same special support which other foreign pupils receive (Spanish language, support with the syllabus, school supplies, psycho-educational support).

#### *Vocational training*

Vocational training is a very suitable option for these minors as their average age on arrival in Spain is about 16, they are generally unskilled and their main aim is to become legal residents and find work.

There are special social programmes for young people who fail to successfully complete compulsory schooling. They provide them with real work experience. These programmes are only open to those foreigners with an Alien Identification Number.

To increase and diversify the training available and open it up to minors who do not yet have an Alien Identification Number, the Autonomous Communities have introduced vocational training and work integration programmes run by public and private bodies, using ordinary or special facilities.

Day Centres are general facilities designed with this same aim in mind. As well as guidance and advice, they provide access to training workshops.

Minors between 16 and 18 years of age who wish to work must apply, with a job offer, to the Guardianship Committee, which forwards the application to the Ministry of Labour.

#### *Leisure activities*

Educators encourage the minors to take up leisure activities using community facilities in order to speed up their social integration, but it is not easy for them to mix with young Spanish people of the same age.

### **Conclusions**

The immigration of unaccompanied minors to Spain is just one sign of the transformations migration processes have undergone in recent years.

The flow of young immigrants into our country began in earnest in the latter half of the 1990s. Since then, it has steadily increased in volume and intensity. At present Spain is one of the countries which receive the largest numbers of foreign minors, mainly because it is an entry point into the European Union.

Most of the minors concerned come from Africa, especially from Morocco. They are part of the great South-North migration pattern: from Morocco to Spain and from the sub-Saharan countries to Morocco and from there on to Spain.

Although they form a motley group, the general profile of the minors who arrive in Spain is that of a male, between 15 and 17 years old, hoping to become a legal resident and find work. They have often been imbued with a veritable culture of emigration in their countries of origin.

It is interesting to note that some of these minors do not seem to be driven by pressing economic problems in their countries of origin. They simply seem to have got it into their heads that there is no hope for them in life unless they emigrate. It is a belief shared by many young people, around which members of their community shape a system of values, and it is often fuelled by families counting on the son's emigration for their survival. For some families emigration is an alternative to schooling as a means of social ascension.

This migration of minors is part of a broader economic scheme that connects certain regions with others. The migration process seems to be supported by family or peer networks which help to perpetuate the culture of emigration.

It is in this broader context that the phenomenon must be analysed and answers sought with a view to proposing long-term solutions. One way of avoiding the problem would be to put a stop to the state of dependence of the countries of origin on the receiving countries, saying no a development strategy that hinges on emigration. What



is needed, on the contrary, are sustainable development strategies that do not deprive these countries of the potential and capabilities of these young people, who are the life-blood of their development.

It is a complex subject, then, which must be approached not only in bilateral terms but also in a multilateral perspective.

Concerning the legal situation of these minors in Spain, once they have entered the country the child protection machinery goes into action and they are treated in the same way as Spanish minors.

There is a contradiction, however, between the protection offered by the system and the desire for emancipation and work expressed by many of the minors which makes the protection process difficult to implement. The minors frequently run away from the care centres, for example.

Accordingly, it was decided to adjust the resources and programmes to the actual characteristics and needs of this population group.

This and the inexperience of the existing child protection system in Spain in dealing with these particular minors led to the diversification of the resources, in many cases encouraging the children's independence, while at the same time applying full assistance programmes.

The main conclusion that can be drawn from this experience is the need to open up the protection systems to the cultural diversity which already exists in Spanish society. It has been necessary to diversify the network of resources, to make the channels used more flexible and to incorporate mediators and educators from the countries of origin into the protection services. It has also been necessary to develop special training for the people working in this previously uncharted field. And all this has had to be done in a very short space of time because of the urgency of the situation.

Furthermore, the decentralisation of our protection system has highlighted the need to foster co-ordination between the different departments and bodies involved in order to make their efforts more coherent and effective.

Finally, protecting these minors really requires a case-by-case study in order to identify the basic parameters for reaching decisions on whether to repatriate them or let them stay in Spain. The decision-making process must objectively consider the family and social circumstances in the countries of origin, but also the real possibilities of a brighter future our country may offer these children, always bearing in mind the best interest of the child.

The disparity between the expectations of these minors and the reality that awaits them confirms this conclusion and calls for governments to assume their responsibilities and take the necessary steps to obtain the relevant information about the minors, and in particular to locate their families and assess the situation at the origin of the emigration.

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**LEGISLATION**

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Implementing Act 5/2000, of 12 January 2000, regulating the criminal liability of minors.

Law 5/1984, of 26 March 1984, amended by Law 9/1994, regulating the right to asylum and refugee status.

Implementing Act 4/2000, of 11 January 2000, amended by Implementing Act 8/2000 and Law 14/2003, on the rights and freedoms of foreigners in Spain and their social integration.

Law 62/2003, of 30 December 2003, on fiscal, administrative and social measures, chapter 3 on measures for applying equal treatment.

Law 3/2005, of 18 February 2005, on care and protection for children and adolescents.

Royal Decree 864/2001, of 10 February 2001, approving the Regulation implementing Law 5/1984, regulating the right to asylum and refugee status.

Royal Decree 2393/2004, of 30 December 2004, approving the Regulation on Implementing Act 4/2000 on the rights and freedoms of foreigners in Spain and their social integration.

Instruction 2/2001, of 28 June 2001, of the General State Prosecutor, on the interpretation of Section 35 of Implementing Act 4/2000 on the rights and freedoms of foreigners in Spain and their social integration.

Instruction 6/2004, of 26 November 2004, of the General State Prosecutor, on the legal treatment of unaccompanied foreign minors.

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# Situation of unaccompanied migrant minors in the United Kingdom

Eugenia M. Markova<sup>1</sup>

## 1. Migration cycle of unaccompanied minors in the UK

In a decade or so, the largely invisible previously component of the irregular migration flows, have attracted much public attention and concern: children who embark to cross borders alone or accompanied by 'agents' to be later exploited in the host country, either for prostitution, domestic servitude or other forms of labour exploitation. Children are sometimes even sold by their poverty stricken parents but the majority are sent away with the hope that they will have better life. Often families may not be able to pay for the parents' travel costs and have to make the difficult decision to send a child alone, in some other cases the child might be at risk in the family. Factors that affect separated children becoming part of the irregular migration flows vary. They may involve coercion (trafficking in minors) but they can be voluntary as well with many complex variations of both variables. These include the death of their parents, detention and torture, forced recruitment into the armed forces, persecution due to ethnic group or political activities of the family, abuse and/or abandonment by parents, poverty, lack of opportunity and debt bondage<sup>2</sup>

The issue of child trafficking was first noticed in the UK in 1995 by social workers in West Sussex Social Services, after a child went missing. Soon after this case a pattern emerged and it became known that the children, mainly Nigerian girls, were being taken to Europe to be prostituted. Ten years since the first known case of a trafficked minor in the UK, yet very little is known about the actual size of the problem or the operating methods of trafficked channels. ECPAT UK carried out research in 2001 and 2003 respectively into the trafficking of children for sexual purposes<sup>3</sup>.

In the case of Eastern European girls, the evidence from those rescued by the police or in testimonies against the traffickers, becomes evident that the girls often come into the UK accompanied by the trafficker or met the trafficker soon after arriving. Before arriving, a relationship was often started by the trafficker with the girl believing that she is the girlfriend of her soon to be pimp. These relationships were characterised by violence, rape and threats to the girl's family to ensure she does not leave. African children, on the other hand, were found to enter the UK as unaccompanied minors or with adults purporting to be relatives. The ECPAT UK research into child trafficking in 2001 revealed that the main group being trafficked were West African children (mainly

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The assistance by Ms. Rupal Mistry and Ms. Jelena Djordjevic is greatly acknowledged.

<sup>2</sup> Ayotte, W., 2000. *Separated children coming to Western Europe: Why they travel and how they arrive*. Save the Children.

<sup>3</sup> Somerset, C., 2001. *What the Professionals Know: The Trafficking of Children into and through the UK for Sexual Purposes*. ECPAT UK; Somerset, C., 2004. *Update on the Trafficking of Children into the UK for Sexual Purposes*. Unpublished, both cited in the Somerset, C., 2004. *Cause for concern? London social services and child trafficking*. ECPAT: UK

Nigerian girls) for prostitution. The pattern appeared to be that they arrive at Gatwick airport as unaccompanied minors and claim asylum at the airport. Because of their age, they were taken into care by the nearest social services, in this case, West Sussex Social Services. Once in care, they followed pre-arranged plans to contact their traffickers and then would go missing from one day to six months after they initially arrived. Evidence from two rescued girls indicated that they were destined to be prostituted in Europe, although some appeared to have been exploited in the UK. The girls were controlled by voodoo and the fear that if they told anyone about their traffickers, they and their families would die. The only way they could lift the curse was to pay 20-40,000 pounds 'debt' that they owed the trafficker for bringing them in the UK. This research also revealed significant concerns about children coming into the country with adults purporting to be their relatives and disappearing into the unknown. This form of trafficking has become more evident over the last five-six years, and has revealed that children, particularly from Central Africa, are being brought into the UK to be exploited in domestic work or prostitution.

ECPAT UK research provides also evidence of children trafficked into the UK to deal drugs, or bring drugs and other contraband into the country and, are also brought here so that the trafficker can live off their benefits, often to the detriment of the child. Other children are trafficked to commit street crimes or for work in restaurants and sweatshops. Evidence indicate that Chinese and Vietnamese boys are brought here for restaurant work.

In December 2001, ECPAT UK launched a campaign to prevent the trafficking of children into the UK for sexual purposes<sup>4</sup>.

The UK now has legislation against the trafficking of people for sexual exploitation. It came into force in May 2004, in the Sexual Offences Act 2003 and makes trafficking into, within and out of the UK for a relevant sexual offence a criminal act. It clearly states that the prostitution of a minor is a criminal offence and also carries higher sentences than the equivalent offences relating to adults. There are even age differentials: for example, the sentence is higher for someone paying for sex with a child below 16 than someone paying for sex with a child below 18 years. Overall, the offences recognise a child as someone below the age of 18 and not 16 years as previously stated in the Sexual Offences Act 1956. Additionally, the maximum sentence has been raised to 14 years.

Among the strategies to effectively combat the trafficking and exploitation of unaccompanied minors in the UK is the one targeting child sex tourism. On 13 November 2001, the first UK tour operator, Thomson Holidays, signed up to an International Code of Conduct for the Protection of Children for Sexual Exploitation in Travel and Tourism. Since then ECPAT UK has been working with Thomson (now Tui UK), the largest UK tour operator, to implement the Code. Thomson has focused its work on training of tour representatives in tourist destinations, working in five target countries: Dominican Republic, Cuba, Mexico, Goa and Thailand, developing training manuals and briefing destination managers on how to perform the training<sup>5</sup>.

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<sup>4</sup> Since the launch of the campaign and up until July 2004, over 6,500 'End Child Trafficking' post cards had been distributed by supporters to their MPs (ECPAT UK Campaigner, July 2004)

<sup>5</sup> ECPAT UK Campaigner May 2003; For more information on the implementation of the Code, check at [www.thecode.org](http://www.thecode.org).

In the aftermath of the Tsunami in December 2004 and the subsequent media reports relating to potential child abuse in the region, the Metropolitan Police Child Abuse Investigation Command took the national lead in collecting intelligence on child trafficking to the UK and travelling sex offenders. The intelligence unit brought together a number of NGOs, including ECPAT UK and its coalition partners UNICEF UK and World Vision UK, to widen its intelligence gathering resources. In February this year, UK police from the National Criminal Intelligence Service travelled to Thailand to take part in training 50 police from 11 countries on investigating sex offenders. The training, in co-operation with FBI and Australian Federal Police, was to help the police better investigate paedophiles and sex tourists, with UK police particularly focusing on interviewing techniques and evidence gathering<sup>6</sup>.

The Statement of Good Practice defines separated children and young people as:

*“children under 18 years of age who are outside their country of origin and separated from both parents or their legal/custody primary caregiver. Some children are totally alone while others who are also the concern of the SCEP may be living with extended family members.*

*All such children are separated children and entitled to international protection under a broad range of international and regional instruments [Statement of Good Practice, para 2.1]*

Based on recent and previous research by ECPAT UK, it is evident that children have been trafficked in the UK. Whilst it is recognised that the issue of separated children in general and trafficked children in particular can only be dealt with from a multi-agency approach, incorporating the police, immigration, social services and voluntary organisations, it is the responsibility of those who come into contact with such children, to identify them and for social services to provide the care that is needed. One of the recent positive developments are the plans in some boroughs for Child Asylum Teams to become part of the mainstream children’s services. By ensuring that the issue of trafficking becomes part of the mainstream social services, more social workers will become aware of the problem and help with identifying trafficked children.

## **2. Legal framework for reception and care of unaccompanied minors in the UK**

The term “an unaccompanied minor” is most commonly used in the UK, emphasizing the fact that a child travels or flees alone. The Home Office definition on “an unaccompanied minor” is restricted to an unaccompanied asylum-seeking child and, according to it, “an unaccompanied asylum seeking child is a person who, at the time of making an asylum application is, or (if there is no proof) appears to be, under eighteen; is applying for asylum in his or her own right; and has no adult relative or guardian to turn to in this country”.

The Immigration and Nationality Directorate (IND) does not consider a child to be unaccompanied if he or she is being cared by an adult prepared to take responsibility

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<sup>6</sup> ECPAT UK Newsletter, February 2005 (<http://www.ecpat.org.uk/news0206.htm>).

for them. IND staff will involve social services in any case where there is concern about the child's relationship with the 'responsible adult'<sup>7</sup>.

The Home Office definition clearly excludes children who are accompanied by an adult who is not their parent or legal/customary carer, and children reaching the UK immigration controls with an adult that subsequently abandons them. For this reason, the term "separated children" was proposed in a joint initiative of the International Save the Children Alliance and the United Nations High Commissioner for Refugees known as the Separated Children in Europe Programme (SCEP). In its Statement of Good Practice, a broader definition is offered that includes not only asylum-seeking children but also children who may not apply for asylum such as children who have been smuggled for exploitation or who have fled conditions of serious poverty and deprivation. The term "separated children" covers the "unaccompanied minors" group as well as the extended group of children that may have been separated from their parents or usual caregivers but still be accompanied by or living with relatives, neighbours or other adults, therefore, not 'truly unaccompanied', and reaffirms their need for protection and assistance.

However, the term "separated children" can not be easily applied in the UK where the support systems differ for children who have even nominally some sort of carer. Children in the UK come under the UN Convention on the Rights of the Child 1989 (CRC89), but these rights are not guaranteed for asylum – seeking and non-citizen children. On the ratification of the Child Rights Convention in 1991, the UK government entered a reservation allowing it to operate its immigration controls without regard to the Convention. The reservation states: "The United Kingdom reserves the right to apply such legislation, in so far it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time". The current government maintains the reservation to the CRC, which certifies of a long-standing conflict between immigration law and children's best interest. In 1999, the Government submitted its second report to the UN Committee on the Rights of the Child, the body which oversees the implementation of the Convention. The report asserts that UK immigration and asylum policies are in general consistent with the UN Convention on the Rights of the Child. However, research and practice have shown the position in the report to be untenable. There are no moves for the incorporation of the CRC89 into the UK law which could mean that the rights contained therein could be enforceable in UK courts<sup>8</sup>. A year ago, the Mayor of London joined forces with charities and groups campaigning for the rights of children, such as Save the Children, Children's Rights Alliance and the Refugee Children's Consortium, in an attempt to urge the government to remove its reservation on applying the CRC89 to asylum-seeking and non-citizen children<sup>9</sup>.

During the mid 1990s there were a number of policy developments, which sought to ensure the best interest of separated children. For example, since 1994, the

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<sup>7</sup> Home Office Note on Unaccompanied Minors at [http://www.ind.homeoffice.gov.uk/ind/en/home/applying/asylum\\_applications/unaccompanied\\_asylum.html?](http://www.ind.homeoffice.gov.uk/ind/en/home/applying/asylum_applications/unaccompanied_asylum.html?)

<sup>8</sup> Russell, S., 1999. "Unaccompanied Refugee Children in the United Kingdom". *International Journal of Refugee Law*, vol.11 (1); Ayotte, W. and L. Williamson, 2001. *Separated Children in the UK: An overview of the current situation*. Save the Children.

<sup>9</sup> Mayor of London, 2004. *Offering more than they borrow: Refugee Children in London*. Greater London Authority.



Home Office has funded the Refugee Council's Panel of Advisors, a non-statutory service that provides assistance and advocacy for separated children.

Even at EU level, there is still little evidence of a strong rights-based approach to children as immigration control and security considerations appear to take precedence over the 'best interest' of the child principle in the CRC. Although the EU adopted a Resolution on 'unaccompanied minors who are nationals of third countries' in 1997 it is relatively weak and does not provide a framework for improved protection and care. Moreover, some aspects of the Resolution are quite unsatisfactory. For example, while the Resolution makes it clear that the CRC applies to separated children, it also allows for the refusal of admission and detention of separated children<sup>10</sup>.

The UK Human Rights Act 1998 is a significant piece of legislation that incorporates the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR50) into UK law. The principle of *non-refoulement* in European Convention Law is extremely important for those facing a serious risk of torture if removed. The incorporation has a particular significance for children; most of its articles are relevant to them. Some articles are of potential benefit to separated children, such as Article 2 on the right to life and Article 3 on torture and degrading treatment, Article 5 on deprivation of liberty (children in immigration detention) and Article 8 on the right to family life (family tracing, contact and reunification)<sup>11</sup>.

The care of separated children in the UK is primarily regulated by children's law. The Children Act 1989 (CA), provides a basic definition of a 'child in need' and separated children fall within this category. The CA89 also specifies the duties owed by a local authority to 'a child in need' in its borough. Once social services have established that a child is 'in need', they then determine the level of care and support to be provided either under Section 17 or Section 20 of CA. Section 17 outlines a local authority's duty to care for children in need and provide a service appropriate to the child's needs. Section 20 is explicit about the local authorities' duty to provide accommodation. All unaccompanied children should be cared for under this section as it applies to children who are without a parent or guardian who is able to care for them. In the past, most unaccompanied children, including asylum seeking children, received the less protective level of support under Section 17 of the CA.

The majority of separated young people will be entitled to leaving care services under the Children (Leaving Care) Act 2000 when they reach 18 years of age. This Act came into force in October 2001 and builds on and amends the CA89. It imposes duties on the local authorities in respect of children who have been 'looked after' by them. It sought to improve support to care leavers in a number of ways, including: to ensure that young people do not leave care until they are ready and, to ensure that they receive more effective support once they have left. Young people in education and training can be supported until the end of the programme, even if this means they will be over 21<sup>12</sup>.

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<sup>10</sup> Sutton, D. and T. Smith, 2005. "Is Europe failing separated children?". Forced Migration Review, issue 23, May (<http://www.fmreview.org/mags1.htm>); Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children

<sup>11</sup> Russell, S., 1999. "Unaccompanied Refugee Children in the United Kingdom". International Journal of Refugee Law, vol.11 (1); Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

<sup>12</sup> Save the Children, 2005. Young refugees: A guide to the rights and entitlements of separated refugee children. Published by Save the Children England Programme.

Over the past couple of years there have been a number of legal and policy developments, which provided clarity on the social services protection and support entitlements of separated children and young people. In June 2003, the Department of Health issued a Local Authority Circular, LAC (2003) 13 following an amendment to the CA89. LAC 13 stated that support should be based on a needs assessment and that the majority of separated young people are likely to be assessed as requiring Section 20 support under the CA89. Additionally, in August 2003, the High Court reviewed the use of Section 17 (rather than Section 20) to support unaccompanied children. The judgement is commonly referred to as the Hillingdon judgement as it relates to the case of four young people supported by the London Borough of Hillingdon. In this case, the judge found that whether a child had been accommodated determined whether they were entitled to leaving care services. Until the Hillingdon case, the distinction between whether a child is supported under Section 17 or Section 20 of the Children Act had a major impact when they turned 18. Prior to this case, only unaccompanied children supported under Section 20 were considered to be eligible for leaving care services. This judgement therefore brought clarity to this previously confused area of policy. Services provided to unaccompanied children seeking asylum would largely be delivered through Section 20 of the CA (such as taking them into public care), thus increasing the responsibilities of local authorities to this group<sup>13</sup>.

Local education authorities have a duty to provide full-time education for all children of compulsory school age (5-16 year- olds) resident in that area and irrespective of the child's immigration status, as outlined in Section 14 of the Education Act 1996 and in the Home Office note on unaccompanied minors. There is no obligation for local authorities to provide school places for 16-18 year- olds. Between 16 and 19 years, a young person is only accepted at school at the discretion of the headteacher. However, decisions on school places must comply with race-relations legislation. "They are entirely supported under the Children Act 1989, which is maintained by the Department of Health."<sup>14</sup>The Local Authority in all its functions has a corporate parenting responsibility for them". Schooling is free for asylum seekers, those with leave to remain and refugee status.

Unaccompanied asylum-seeking children are entitled to medical treatment on the NHS. Despite having full entitlement to healthcare, separated children may have to overcome considerable barriers when seeking medical treatment, including access to a GP, interpreting support and mental health services.

The UK childcare legislation provides children with opportunities to express their wishes and views about the provision of substitute care. Review procedures under the legislation enables separated children who are 'looked after' to express their views at review meeting. However, it is quite unlikely that the views and wishes of separated children will be taken into account if there is a language barrier and where no proper assessments are carried out.

A young person will need to find a legal representative to make his or her case for asylum to the Home Office. Even though, there is no requirement under the current asylum legislation that claimants have legal representatives, it is strongly advised, given the complexity of legal issues, particularly in dealing with claims by separated

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<sup>13</sup> Refugee Council, 2005. Ringing the changes: The impact of the guidance on the use of Section 17 and 20 of the Children Act 1989 to support unaccompanied asylum-seeking children. January 2005.

<sup>14</sup> Home Office note on unaccompanied minors (20.1)

children<sup>15</sup>. In contrast to many other European countries, separated children applying for asylum have access to legal aid to pay for the services of legal representatives. Good legal representation is essential in assisting the child to articulate their reasons for applying for asylum<sup>16</sup>.

The right to family life is stated in the Article 8 of the ECHR<sup>50</sup>, incorporated in the UK law. Despite the crucial importance of this issue, there is little information available about family tracing and reunification activities carried out by UK agencies. The British Red Cross, International Social Service, Refugee Community Organisations and UK Consulates Abroad deal with establishing family contact and conduct tracing. The British Red Cross uses two methods for family tracing and contact: the message service whereby the individuals can send messages out and tracing requests. Assistance with family tracing is one of the mandatory services offered by the local branches of the British Red Cross. The Red Cross always ensures that the child has consented to the tracing before proceeding. International Social Service can assist with making contacts with family members in another country and in obtaining a social report abroad in regard to family reunification. Separated children have no clear entitlements to family reunification in the UK, regardless of their immigration status, because the official policy is based on bringing spouses and children into the UK. In special cases, separated children may apply to bring their parents to the UK but this is outside the family reunification policy and it is entirely based on compelling compassionate considerations. Even though, it may happen that applications for family reunion made by separated children are granted, this is exceptional and outside the migration rules.<sup>17</sup>

### **3. Arrangements for reception and care of unaccompanied minors in the UK**

#### *Initial contact with services*

It is claimed that every month, over 200 children enter the UK on their own and claim asylum. However, it is possible that many more separated children arrive but do not come to the attention of the authorities. And, by definition, these children will almost certainly have experienced situations where their safety and welfare were at extreme risk. They become then responsibility of the local authority where they arrive or where they first present their needs as unaccompanied asylum seeking children.

There is a growing awareness amongst specialist agencies that many children and young people are brought to the UK for the purposes of exploitation in the various niches of the black economy, including the sex industry. Most of these children will never claim asylum or come to the attention of the authorities at all. Their presence in the UK is illegal and they form one of the most vulnerable groups of children and young people.

Save the Children did a research on the experiences of the unaccompanied asylum-seeking children on arrival in the UK. The main problems the unaccompanied children shared were: delays at ports when the young people sometimes had to sleep on the concourse overnight alone; incorrectly recorded personal details, including name and date of birth, causing further difficulties when accessing services or filing asylum

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<sup>15</sup> Save the Children, 2005. Young refugees: A guide to the rights and entitlements of separated refugee children. Published by Save the Children England Programme: London.

<sup>16</sup> Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

<sup>17</sup> Ibid.

claims; people were not believing what they were saying and, feeling confused by the unfamiliar environment and unsure about what was going to happen next<sup>18</sup>.

Save the Children in the UK has designed a guide to assist immigration officers working with unaccompanied children at ports of entry. Particular attention in it is given to the situation of the young children upon arrival. They are usually tired, scared and confused. They may have even been instructed by an 'agent' what exactly to say and how to behave with the authorities when they arrive. For example, they may have been told to hide in the toilets for sometime before presenting themselves to the immigration officers thus confusing the authorities about the flight the young person has been on and ensuring the agent's route could not be tracked. The young person or their family back home may be threatened by the agent if they divulge flight details or other information that may expose the routes and mechanisms of entry into the UK. The guide provides important tips for the immigration officials who are the first to interact and establish contact with separated children on their arrival in the UK. The first recommendation is for the immigration officials to be friendly as children are usually frightened and unsure about what will happen to them next. Officials are advised to use body language like smile, eye contact, positioning at their level rather than standing over them. Then, the basic needs of the children should be met. It is reminded that children will often wait to be asked what they need rather than asking themselves. Simple and descriptive language is recommended for use by the immigration officers as children may not know the English language at all or they may have a very poor knowledge of it, not being familiar with words like wc or sandwich. Once their basic needs are satisfied, children may feel more ready to answer questions.

As noted by Save the Children, UK, in their October 2002 campaign<sup>19</sup> against child trafficking, the only option that most unaccompanied children have to stay in the UK is by applying for asylum. This has not changed much since then. Applying for an asylum by a child can be stressful and even unnecessary as their claims are often rejected.

However, if minors are allowed to apply for a short-term permit (known as reflection delay) instead of applying for an asylum, they will have enough time to receive the appropriate services and at the end of the six-month period they can apply either for asylum or exceptional/indefinite leave to remain. It would also allow the child to decide whether they want to return home and how safe it would be for them to do so<sup>20</sup>.

Unaccompanied asylum-seeking children are the responsibility of the social services and should be referred to the relevant social services team as soon as possible after arrival. However, it may take a while until the social services arrive. Immigration officers are often in the difficult position of finding a place for the young people to sleep and lack of facilities and regulations have often meant that young people were left on the concourse overnight. Therefore, timely refers to social services avoid the need for young people to sleep at ports overnight<sup>21</sup>.

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<sup>18</sup> Stanley, K., 2001. Cold Comfort: Young Separated refugees in England, Save the Children.

<sup>19</sup> Save the Children, 2002. The Campaigner. October 2002.

<sup>20</sup> Ibid.

<sup>21</sup> Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports.

All unaccompanied asylum-seeking children (including those whose age is being disputed) should also be referred by an immigration officer to the Panel of Advisors at the Refugee Council. An Advisor can listen to the child's problems, help them with finding a legal representative to assist with their asylum application, make sure that they are protected and cared for as well as help the child make a contact with their family back home if they want. Needless to say, an Advisor would not make a child do or say anything that they do not want to.

*Identification of unaccompanied minors: methods of determining age*

At ports, the process of identification of an unaccompanied child is crucial for whether a child will be referred to the social services or not. Some unaccompanied children may attach themselves to another family and pass unnoticed. In other cases, children may come with other brothers or sisters who are not able to care for them. If in doubt about the child's relationship to a person, the immigration officer refers to social services and let them make the decision.

Many young people have been trafficked from countries in West Africa and Eastern Europe, and from South Africa, China and Vietnam<sup>22</sup>. Some of these children have been told by the traffickers to claim asylum on arrival in the UK. Others may come in on false passports and claiming to be adults seeking for an asylum. Some other young people may come together with an adult that is the trafficker. They are all very vulnerable and need the immediate protection and support of the authorities. A profile of people at risk of being trafficked has been put together at some ports in the UK, including Gatwick and Heathrow airports. Protocols for dealing with trafficked people have also been established at some ports, which is to help immigration officials identify people who are potentially being trafficked and refer them to social services, the police, or a specialist branch, such as the Human Smuggling Unit at Heathrow Airport.<sup>23</sup>

The assessment of the age of a young person claiming to be a separated child is a very crucial issue particularly in relation to immigration detention, the provision of social services and, whether an individual's application for an asylum will be treated as minor's. As the first priority in ensuring that the rights set out in CRC89 are respected, it is to identify the child as a child and that the child is unaccompanied in ensuring their survival and protection<sup>24</sup>

It is generally recognised, however, that the assessment of age is a very complex task and not an exact science. Even when based on medical evidence, it is impossible to identify a child's exact age and the margin of error can be five years either way<sup>25</sup>. It is further complicated by the fact that many unaccompanied minors arrive in the UK without any identification documentation. Sometimes, they may not even know their age or have been instructed by their 'agent' to lie about their age and say a certain age. In some places, dates of birth are not important and birthdays are not celebrated. In

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<sup>22</sup> ECPAT What the Professionals Know, Nov. 2001 (cited in Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports).

<sup>23</sup> Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports.

<sup>24</sup> Russell, S., 1999. "Unaccompanied refugee children in the United Kingdom". International Journal of Refugee Law, vol. 11 (1).

<sup>25</sup> Kings Fund, 1999. The Health of Refugee Children: Guidelines for paediatricians.

some places, calendars are not even used or different calendars are used and converting from one calendar to the other can be difficult and produce wrong dates.

Some children may look older because of the experiences they went through to get to the UK or because of their experiences in their country of origin. Also, boys in some parts of the world grow facial hair earlier than boys in Europe. For example, in some parts of Afghanistan it is common to grow a beard at the age of 13 or 14<sup>26</sup>.

Often, it is the Immigration or Home Office official who makes the assessment of a minor's age on arrival even though it is the social worker who should make this assessment. If the Home Office has any doubt it is required to refer to social services for a detailed age assessment. Social services have the right to override a decision made by Immigration officers. This is valid in both cases: a) when the Immigration and Nationality Directorate (IND) of the Home Office, has referred an applicant to the social services department for care as a minor but the social services believe the applicant is an adult. Then, the social services department contacts IND and IND amends the case record to show that the applicant is an adult. b) and, when the IND has decided to treat the applicant as an adult (and referred to NASS as appropriate) but the social services department assesses the applicant as a minor. The social services then inform IND who amend the case record to show that the applicant is to be treated as an Unaccompanied Asylum Seeking Child<sup>27</sup>.

“Age assessment is a process, not a single event”<sup>28</sup>. A judgement on the age group of a child can only be made through direct work with the young person or the child over time and an holistic assessment of their experience, skills and needs.

Some social services departments investigate the age of separated asylum-seekers by making enquiries in their countries of origin. While age determination is a complex process and social services do need to protect the children in their care from adults claiming to be younger than they are, this practice is of serious concern as argued in a report by Save the Children of 2005. If a person claims asylum, it means that they are claiming to have fled from persecution from state actors, or persecution by non-state actors from which the state in the origin country has failed to protect them. There is concern that when social services make enquires about a particular child they are quite likely to divulge information, such as the whereabouts or even their name or the fact that they are claiming asylum, which may endanger the child or any of their family members. Therefore, this method of age assessment should be applied with extreme caution especially when enquires are made in the country of origin, particularly, though not exclusively, in relation to state actors.

The age of a young person affects most of all the level and type of social support they receive and determines whether it should be from social services or the National Asylum Support Service (NASS). The Home Office's policy “where an applicant claims to be a child but his/her appearance suggests that he/she is over 18”, is to “treat the applicant as an adult and offer NASS support (if applicable) until there is credible documentary or medical evidence to demonstrate the age claimed”. Young people whose age is disputed by the Home Office are issued with a letter confirming that she or

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<sup>26</sup> Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports.

<sup>27</sup> Home Office Note on Unaccompanied Minors, July 2002 [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

<sup>28</sup> Ibid.

he is being treated as an adult for asylum purposes and is referred to NASS, if they need support. If the applicant can verify their age as being under 18 at a later date, NASS should refer them back to the local authority where they first presented. Many of these young people are fast tracked through the system and risk being returned before being found to be children.

In the UK, the identification of the unaccompanied refugee child involves a referral not only to the local social services but also to the Children's Panel at the Refugee Council. The Children's Panel acts as a liaison for the child in the first stages of the determination procedure. "Details of all applicants who are unaccompanied minors, including those whose claim to be under 18 IND disputes (and who were therefore treat as adults) are passed to the Children's Panel of the Refugee Council within 24 hours of the claim being lodged. However, the details provided by the Home Office are often insufficient for the Panel to make contact with the child and for this reason, other agencies are also encouraged to refer young people to the Panel. The Panel is a Home Office funded body administered by the Refugee Council. Its role is to provide independent guidance and support to ensure that the child is aware of his/her rights and the services to which he/she is entitled throughout the asylum process. The Panel does not offer legal advice"<sup>29</sup>. Its primary role though is to assist the child in accessing quality legal representation and guide them through the complexities of the asylum procedures. The Children's Panel consists of about 20 advisors that travel all over the country to support unaccompanied minors. By law, an asylum application can be made at any UK port to an Immigration Officer. As soon as the Immigration and Nationality Directorate (IND) receives an application, the Home Office obtains the following details about the child: name, nationality, date of birth and family details as well as information about how the applicant travelled to the UK. The home Office also "fingerprint and photograph the child in the presence of a responsible adult (not IND staff)" This is done either on the day the application is made or on a later date. Children under 5 are not fingerprinted. Following this, the child is given "a questionnaire – the Statement of Evidence Form (Minor); a Human Rights Form; and, a letter asking the applicant to return to the Asylum Screening Unit in one month with the completed questionnaire and form". At this stage, an Application Registration Card is produced, confirming that the application has been made.

#### *Detention of unaccompanied minors*

Current government policy is to detain separated young people only in the most exceptional cases. If, for example, they arrive in the UK 'out of hours' then the only option that the Immigration Service may have is to keep them overnight until they can be collected by a social worker in the morning. Applicants who claim to be children but whom IND are treating as adults (the age-dispute cases) are subject to detention in the same way as any other adult<sup>30</sup>.

Since 22 September 2004, it is a criminal offence under Section 2 of the Asylum and Immigration Act 2004 for someone not to have proper immigration documents on arrival (i.e., a passport). A person convicted of this crime can be fined and/or imprisoned for a maximum of two years. Separated children over the age of ten are not excluded from being charged under Section 2. However, the Home Office guidelines on Section 2 acknowledge that special consideration should be given to the age and

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

maturity of separated children in assessing their case and that children may not understand that need a passport or the consequences from destroying it. In particular, the guideline says that consideration should be given as to whether the child could be expected not to comply with instructions given by an 'agent' who may have told them to destroy their documents. Other vulnerable people to whom special consideration should be given include women and victims of trafficking. There have been instances where separated young people have been charged and detained under Section 2 and for his reason it is important that advocates support a young person in this situation.

In a report by Save the Children of 2001, concerns are expressed about the detention of separated children in immigration detention, young offender and prison facilities. It is argued that the detention of separated children because of their immigration status or entry into the UK is incompatible with the principles of the Children Act, with the 1984 Police and Criminal Evidence Act and, in particular with Articles 3(3) and 37 of the UNCRC (the deprivation of liberty). Since 1994, when the Panel of Advisors started its service, and up until the time this report was written, the Panel had seen over 220 children who were in detention. Young people were detained in a number of centres such as Campsfield (Oxfordshire), Oakington Reception Centre (Cambridgeshire), Tinsley House (Gatwick), in Haslar and Rochester prisons and Feltham young offender facility. In most cases children were detained on the assumption that they were adults. This was caused by the fact that children were travelling on false documents certifying them to be of an adult age. Many children who were smuggled for exploitation were told by the traffickers that they had to stick to the stories they had been given and threatened with dire consequences if they did not. Often children would eventually confide in a detention visitor that they were in fact under 18. With the child's permission, the visitor would contact the Panel who would work with the young person. If a young person appeared to be under 18 and had good legal representation, they would normally be released within a few weeks or less. If not, a medical assessment was required and the Immigration Service would normally give credibility to reports from the Medical Foundation pediatricians who were not always available. Furthermore, the Immigration Service would not in any event release a child on the strength of a positive medical assessment so, the case had to go before an adjudicator. If the medical report strongly favoured the view that the person was under 18, then she/he would be released but it was more difficult if the medical report only stated that she/he could be under 18. Some young people did not know their exact age due to lack of birth certificates or cultural differences in celebrating birthdays. One boy had lived in a refugee camp since the age of six without any family members to tell him his age. Thus, separated children could be kept in detention for as long as three months or more, which, for a child is a very long period. The reception detained children received on release depended very much on the attitudes of the local authority where the detention centre was located.

Recent research by Save the Children provided evidence that the number of age-disputed cases among asylum seekers have increased, and that a significant proportion of the detainees were found to be children who were separated from their parents/carers<sup>31</sup>. This report raised significant concerns about the detention of the unaccompanied minors, including mental health problems, lack of access to education

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<sup>31</sup> Save the Children, 2005. No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards.



and child protection issues. The research also found that the Home Office did not always take social services age assessments into account, contrary to state policies.

Another report by Save the Children expresses concern about young people who have turned 18 and who have been refused asylum or any other form of legal status in the country, and have exhausted their appeals process, there is an increased likelihood that they will be detained prior to removal given that the UK Government has increased the number of immigration removal centres. Failure to report regularly, which the Home Office considers ‘absconding’, is one of the main reasons for detention<sup>32</sup>.

Immigration detainees have the right to apply for bail if they have been in the UK for more than seven days. While in detention, they also have the right to receive visitors, make and receive phone calls and send, and receive faxes.

#### *Placement in an institution*

The responsibility for caring for unaccompanied children, including unaccompanied asylum-seeking children, is of the local authority in whose geographical area they seek help. There is a statutory duty placed on the local authority under the Children Act 1989 to assist ‘children in need’ and to provide accommodation for certain groups of ‘children in need’.

Among the various care options for separated children, is the placement of children in different types of residential homes or centres where it is not possible to arrange for a family-based care. In the Action for the Rights of Children (ARC) Resource Pack, it is argued that institutional forms of care should be avoided where possible as they may not necessarily work in the best interest of the child. They may not work towards returning children to their families, even if this is considered in the child’s best interest, they may not behave in a responsible or protective way towards the children and thus causing them emotional or physical harm.

The unaccompanied children in the UK fall in two categories: asylum-seeking and non-asylum seeking. Non-asylum seeking children are looked after or supported by mainstream social services teams, such as Children in Need teams, whilst asylum-seeking children are often supported by specialised teams. Most of the available information is on the latter group. This may be due to the fact that non-asylum seeking unaccompanied children are often staying with families that they have either come into the country with, or have later joined. These families are not the child’s nuclear family. However, although many of the children are being looked after by these families, they are not always registered with social services and are sometimes not in contact with other authorities or schools. These children are therefore in the UK without the knowledge of anyone and are potentially at risk of exploitation and abuse<sup>33</sup>.

A research by Save the Children and the Refugee Council in the UK, in 2001, identified six main ways that unaccompanied children come to the attention of social services. These include: referral from a third party, such as the Asylum Screening Unit, the Refugee Council, police, school, doctors or neighbours; self referral; child brought in by an agent and then ‘abandoned’; child brought in by a ‘stranger’ who found the child, has been accommodating them and now asks for financial support by a stranger; child brought in by a ‘stranger’; and, child found to be in a unsuitable/questionable

<sup>32</sup> Save the Children, 2005. *Young Refugees: A guide to the rights and entitlements of separated refugee children*, second edition.

<sup>33</sup> Somerset, C., 2004. *Cause for concern? London social services and child trafficking*. ECPAT: UK.

foster arrangements. How a social worker comes into contact with a separated child depends very much on the team they work in.

All separated children, once with the social services, should receive a full needs assessment, in line with the Department of Health's national framework for assessment<sup>34</sup>. This provides a systematic approach to establishing the needs of a child and stresses that particular care and attention is required in the assessment of separated refugee and asylum-seeking children. Services should be then provided in line with needs identified using Section 17 and Section 20 of the Children Act 1989. The section of the Children Act that the separated child is supported under is very important as it determines the level of support they are provided with as a child but also affects whether they are entitled to leaving care support from social services once they are 18.

#### *Support provided under Section 20*

Often, unaccompanied asylum-seeking children who are under 16 and supported under Section 20 will be placed in foster care or sometimes, in residential accommodation. For older children, some form of semi-independent accommodation may be used. While many social services departments would prefer to provide foster care, they often find it in short supply, particularly in London, and especially culturally appropriate care. Many social services have no other option but to use private fostering agencies, which considerably increases the cost.

In general, refugee children are not placed in residential homes, as their needs are very different to those of other children placed in care. One alternative is a residential home exclusively for refugee children. Save the Children found that children interviewed in one Borough who were accommodated in a residential home exclusively for refugee children while waiting to be fostered expressed a high level of satisfaction. Their main concern was about the eventual transition to semi-independent living. Children supported under this section are also entitled to leaving care services when they turn 18.

Trafficked children are entitled to support under Section 20 of the Children Act 1989, as children in need of accommodation and without an adult in the UK with parental responsibility to them., and should be provided with safe accommodation. If there is a risk that they will suffer significant harm if recaptured by the trafficker, they should be taken into care under Section 31 of the Children Act 1989.

#### *Support provided under Section 17*

Generally, unaccompanied asylum-seeking children who are 16 or 17 years old on arrival in the UK are supported under Section 17. They are often accommodated in an unsuitable bed and breakfast or hostel type accommodation or private shared housing with very poor quality accommodation. Results from a survey by the Audit Commission suggested that 50 percent of the unaccompanied asylum-seeking children over 16 years of age and 12 percent of those under 16 were in bed and breakfast, hostel and hotel accommodation in October 1999<sup>35</sup>. Save the Children found that children placed in bed

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<sup>34</sup> Department of Health, 2000. Framework for the Assessment of Children in Need and their Families. The Stationary Office.

<sup>35</sup> Audit Commission, 2000. Another Country: implementing dispersal under the Immigration and Asylum Act 1999, cited in Mayor of London, 2004. Offering more than they borrow: Refugee Children in London. Greater London Authority.

and breakfast hostels or private rented accommodation received a considerably lower standard of care than those placed in foster care or residential accommodation<sup>36</sup>.

In a survey of local authority services to separated children in July 2000, conducted by Barnardos and cited in the Report by Save the Children and the Refugee Council, 63 percent of local authorities in England and Wales responded while Scottish authorities replied that they did not have any separated children in their care. Some of the key findings of the report can be summarised as follows: approximately 70-80 percent of the separated children in the UK receiving services from local authorities are aged 16 and 17, although poor data keeping means that this figure can not be definitive; the vast majority of 16-17 olds are receiving services under section 17 of the Children Act, consisting mainly of housing and payments in cash, kind and vouchers. They are not therefore 'looked after' children like those who are accommodated under section 20 of the CA and benefit from a number of safeguards and provisions; a considerable number of 16 and 17 year old separated young people are placed in unsupported Bed and Breakfast housing and may or may not be visited by a social worker.

Separated children are also expected to budget without help and it is very difficult for them to maintain a proper diet on the limited sums on offer, particularly when vouchers have been issued to the young person by the local authority. No change can be given when the cost of the purchased items is less than the amount of the voucher. Also, access to culturally specific foods is likely to be very limited or non-existent since only some retailers will accept the vouchers. Using vouchers identifies the separated children as asylum seekers and may expose children to prejudice on the part of the shop personnel. Issuing vouchers is claimed to be discriminatory in terms of Children Act provision by Save the Children and the Refugee Council. Thus a significant number of 16 and 17 year olds are living alone in unsupported housing conditions without the care of a responsible adult. They are facing the hard adaptation to a strange culture and new language and, the pain of being alone, away from family without any adult support. Many of the young people in this situation are not getting access to education and are quite vulnerable to exploitation, especially in the sex industry<sup>37</sup>.

Agencies working with separated children have reported quite disturbing instances of children under 16 being housed in bed and breakfast or hostel accommodation. And, under these inappropriate housing conditions where the child is in contact with unknown adults who may place the child at risk of abuse or exploitation, it is impossible for a local authority to act as a good parent.

At the same time, local authorities, particularly where the housing costs are high have complained about the inadequate levels of funding for accommodation for unaccompanied asylum-seeking children. The Home Office special grant paid to local authorities for the care of these children has also encouraged this division in the provision of accommodation. Local authorities have been able to claim more money for children under 16 than for those aged 16 and 17. The Home Office restructured its special grant in 2002 and local authorities can now make claims based on the unit costs of the previous year rather than being based on limits set by the Home Office<sup>38</sup>.

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<sup>36</sup> Stanley, K., 2001. Cold Comfort: Young Separated refugees in England, Save the Children.

<sup>37</sup> Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

<sup>38</sup> Home Office, Local Authority Letter INDLAL02/04, 13 June 2002.

However, it is not expected to immediately improve the provisions of services to children 16 and 17 years of age.

#### *'Out of Boroughs' Placements*

The housing of children in local authorities other than the one, which has responsibility for them, has been causing particular concern. This is the result of arrangements with private rental agencies and inter-borough housing agreements concerning the accommodation of separated children, including asylum-seekers. Most of the local authorities do retain responsibility for the child and continue to provide appropriate follow-up and support following the transfer. In many instances however problems such as protection issues and poor quality of accommodation are further exacerbated. One consequence of this placement is the lack of planning for school admissions that leaves some children out of education. Separated children housed out of the borough may be isolated in a community where they have no contacts, friends or relevant community organisations.

A number of local authorities in the south-east make placements out-of-borough, often long distance placements with private companies and as far away as Manchester and Hull. A scheme transferring the responsibility of care for the young person to the local authority they are placed in is about to be piloted and is known as 'safe case transfer'. It is expected that this pilot will involve transferring young people from the care of the Department of Social Services in Kent to Manchester, Bolton and Bury. All young people transferred under this safe scheme will be supported under Section 20 of the Children Act 1989, and be assigned a social worker and have access to independent advocacy support<sup>39</sup>

The Mayor of London, in a report on *Offering more than they borrow: Refugee Children in London*, March 2004, emphasised that the UK government should be reminded of the principals governing the Children Act of the putting the wishes and best interest of the child first when considering case transfer outside a borough.

Despite the EU Directive requiring that "a guardian for each of the unaccompanied minor is appointed who shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive"<sup>40</sup> and the recommendations of the UN Committee on the rights of the Child to the UK government that they consider a system of independent guardians, most refugee children have limited or no access to an independent advisor or a guardian.

While some children may manage to contact a social worker for help with accessing services and resolving problems, the absence of this system of independent visitors or guardians raises concerns about their access to a meaningful complaints procedure. It is therefore highly recommended that all separated children including unaccompanied asylum-seeking children and children who are accompanied but not with parents or their customary carer are secured access to an independent guardian.

#### *Dispersal and After Care Provision*

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<sup>39</sup> Save the Children, 2005. *Young Refugees: A guide to the rights and entitlements of separated refugee children*, second edition.

<sup>40</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (cited in Mayor of London, 2004. *Offering more than they borrow: Refugee Children in London*. Greater London Authority).

Under the Asylum and Immigration Act 1999, the Government introduced a new system for the reception of asylum seekers involving their dispersal throughout the country including areas where previously few or no asylum seekers had gone. The new system is administered by the National Asylum Support System (NASS) within the Home Office. As a result of lobbying during the passage of the Act, separated children aged 16-17 were exempt from the provisions of the scheme and it was re-emphasised that they should remain being subject to the provisions of child care legislation. However, in practice, many separated children assessed as being in need under the Children Act are dealt with not child care teams within the Social Services Departments but usually teams working with adult asylum – seekers. They may end up being dispersed along with adults even if their costs are covered by a different budget. Thus dispersal may be wrongly described by local authorities as ‘out of borough’ placements.

#### *Safe accommodation*

In a recent research by Save the Children, a serious concern was raised about the lack of appropriate accommodation for separated children, victims of trafficking. In the cases that the child was under 16, it was generally felt that trafficked victims should be placed in foster care, and with foster carers who have been trained to deal with vulnerable children. However, the research found that they had not been trained to care for children who have been trafficked. In relation to over 16 year olds, it was found that safer and more appropriate accommodation was needed than was available. In one case of a trafficked girl found in prostitution, it was reported by social workers that she was placed in a residential home, as there was no other accommodation available. It was an inappropriate accommodation as the staff had not been trained to deal with the specific issues around trafficking and the girl was put together with younger children than her who would not understand her situation. However, there were cases of under 16 year olds and victims of trafficking who were placed in carefully selected foster homes. However, not all social workers interviewed for the research agreed that there was a need for safe houses, i.e. a house just for trafficked children with specific security features. Those who had dealt with cases where they were responsible about the child’s safety, supported the need for safe houses. In some cases, the lack of designated accommodation has meant that the social workers had spent a disproportionate amount of time trying to find appropriate accommodation<sup>41</sup>.

#### **4. The way ahead**

Local authorities together with the Government should join efforts to consider how the duties contained in the Children Act can be implemented into services for the unaccompanied minors, mainly, a thorough assessment of need for every child and, support under Section 20 of the Children Act unless there are exceptional circumstances or the young person requests or requires alternative support.

The Government should ensure that any scheme for care and support of unaccompanied minors is sufficiently resourced. Last but not least, the government should be reminded of governing principles of the Children Act namely of putting the wishes and best interest of the child first when considering care options and ‘out-of-the-borough’ case transfers.

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<sup>41</sup> Somerset, C., 2004. Cause for concern? London social services and child trafficking. ECPAT: UK



# Situation of isolated migrant minors in France

Elizabeth Johnston<sup>1</sup>

Unaccompanied foreign minors are a definite part of the French scene, and indeed a political issue, but little research has been done on them, and some aspects of the problem, e.g. the special situation of under-age girls, have barely been considered. In what follows, we shall be relying on the studies regarded as basic in France, and particularly two reports, one prepared for the Directorate of Population and Migration (DPM) by Angelina Etiemble in 2001, and the other submitted to the Government by the General Inspectorate of Social Affairs (IGAS) in January 2005, as well as surveys and research based on field-workers' activity.

We shall do our best to give an accurate picture of the situation of unaccompanied foreign minors in France. We shall start by describing them in general terms, and then look at the laws which apply to them. Next, we shall discuss the procedures and facilities which have been set up to help them. Finally, we shall focus on some of the issues which are now being discussed, and which make this whole question politically sensitive and controversial.

## **I. Unaccompanied foreign minors in France – characteristics**

There is nothing new about foreign minors' coming to France, but their numbers have been growing in recent years. They come from countries where war and its aftermath, political tensions, poverty and family problems are spurs to emigration. Travelling by air, sea or land, they take hours, days or weeks to reach France. Some are stopped at frontiers and placed in holding areas, others enter undetected. Some are accompanied, others arrive on their own.

Different countries apply different terms to them, reflecting different approaches to dealing with and protecting them. "Unaccompanied foreign minor", chosen as being neutral and legal, is the one most used in France today. The concepts it subsumes put them at the nexus of the law on endangered minors and the law on aliens – which, as we shall see, seem to apply successively.

### **1. Getting figures – the problems**

The presence of unaccompanied foreign minors in France is a fact, and their number is definitely growing, but counting them remains very difficult, if not actually impossible.

The IGAS survey starts by warning readers that "giving a figure for unaccompanied foreign minors raises definite problems of method".

Similarly, Angelina Etiemble<sup>2</sup> says: "The figures we have for unaccompanied minors are vague and contradictory. Apart from the local figures provided by various authorities (social, judicial, police, administrative), it is hard to say reliably how many of them there are in France".

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<sup>1</sup> Deputy Director, European Forum for Urban Safety, France.

<sup>2</sup> *Quelle protection pour les mineurs isolés en France ?* Angelina Etiemble, *Hommes et Migrations* No. 1251 Sept.-Oct. 2004

To get some kind of general picture, we have to start by collating information from a wide range of sources. “Statistics” tend to be haphazard: unaccompanied minors may be registered when they are placed in holding areas, when they ask for asylum at frontiers or within the country, or when schooling and/or crime prevention measures are applied to them. This means that some may be counted several times, others never.

Assessing the number of unaccompanied foreign minors raises other problems too. One is a tendency to use figures loosely to produce a shock effect, reflecting the public’s growing interest in this problem (which may be deliberately played up or down for political reasons). The use of different definitions is another.

In short, unaccompanied foreign minors are hard to quantify. The work done so far suffers from a lack of properly systematized data, transfrontier studies, individual monitoring, and multidisciplinary teams.

## 2. Quantitative estimates

It is estimated that a total of 4,000-5,000 unaccompanied minors enter France every year.

The figures we have come from the asylum and immigration authorities, the frontier police, the Directorate of Public Liberties and Legal Affairs (Ministry of the Interior) and the Ofpra (Ministry of Foreign Affairs).

In 2001, it is estimated that 1,416 unaccompanied minors were detained in the holding area at Roissy<sup>3</sup>, that 1,152 applied for asylum at frontiers and that 1,100 of these were allowed to enter the country. In 2004, there were only 231 asylum applications.

In 2004, according to the Ministry of the Interior, 728 unaccompanied foreign minors who had arrived at Roissy-Charles de Gaulle by air were placed in the holding area for persons awaiting processing (*Zone d’attente pour personnes en instance* = ZAPI). Only 165 of these were subsequently allowed to enter the country.

Figures are also available from the child welfare services (*Aide Sociale à l’Enfance* = ASE) and *Protection Judiciaire de la Jeunesse*, which deal with unaccompanied minors from the schooling or crime prevention angle.

In 2000, some 2,700 unaccompanied foreign minors - 60% of them over 16, and 80% of them boys - were referred to the courts. Unfortunately, prosecutors’ offices and *Protection Judiciaire de la Jeunesse* do not keep regular figures, and this makes changes and trends hard to spot.

In an attempt to get some detailed figures, questionnaires<sup>4</sup> were sent to the Regional Councils (*Conseils Généraux*), which are responsible for child welfare (ASE). Not all were equally diligent in replying, but the figures supplied do give us a fuller picture of unaccompanied minors in France.

The Regions (*Départements*) report that they took charge of 1,974 unaccompanied minors in 2001. Some 3,100 were covered by ASE in 2003, and 2,300 in the first nine months of 2004, and over 3,600 are currently being followed by the

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<sup>3</sup> Estimate by the General Inspectorate of Social Affairs, *Analyses et propositions relatives à la prise en charge des demandeurs d’asile*, IGAS Report No. 2001-150, December 2001.

<sup>4</sup> In connection with the DPM and IGAS surveys.



social services. According to the DPM survey, the number of minors trebled between 1999 and 2001.

### **3. Uneven distribution**

In 2001, over 50 of France's 100 Regions took in unaccompanied foreign minors, but the actual numbers varied greatly. Concentration is heavy in certain areas, rendered attractive by airports or ports, or proximity to the capital. In 2001, 50% of such minors were concentrated in Paris and Seine-Saint-Denis (Paris region). Marseilles is another major centre.

In recent years, a trend towards wider distribution has gradually emerged. Twenty-five Regions are responsible for 90% of unaccompanied foreign minors, and some ten had placed over 50 at 30 September 2004.

The distribution pattern reflects migration flows, and also differences between local policies, some of which are more favourable to unaccompanied foreign minors and protect them better. In other words, Regions which treat them generously get more of them.

### **4. Unaccompanied foreign minors in France - who are they?**

The various studies and surveys conducted in France give us some idea of the main trends for unaccompanied foreign minors.

As the number of such minors has increased, so has the range of their nationalities: some 30 in 1999, 75 in 2001.

In 2001, the Etiemble report identified five main nationalities<sup>5</sup>

- Romania (16.76% of all unaccompanied minors)
- China (12.83%)
- Morocco (11.05%)
- Albania (7.19%)
- Congo (6.52%).

Geopolitical events in home countries or regions are often the cause of unaccompanied minors' coming to France. This explains, for example, the high figure for Angolans in recent years.

The main countries of origin cited in the IGAS survey are the Congo, Angola and China, followed by Romania, Morocco and Albania.

Different areas get minors from different countries. Most of those who make for Marseilles, for example, are Moroccans. In the Paris region, origins are extremely varied, reflecting the wide range of migrants who enter via Roissy. In 2003, 62 nationalities were represented in applications received by the Paris ASE. Romanian and Chinese minors are particularly numerous in the Paris region. A significant proportion of the minors registered in the Rhône-Alpes Region come from the Congo - which may have something to do with the presence of Congolese communities and churches in Lyons and Grenoble.

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<sup>5</sup> It should, however, be noted that most nationalities (76%) are represented by fewer than ten or so minors – which makes it even harder to look after them.

In 2001, 15-16 year-olds accounted for nearly 40% of minors, 17-18 year-olds for 34%, 13-14 year-olds for 16%, and under-12s for 8%.

A very large majority of foreign minors (approximately 80%) seem to be boys, and this applies particularly to those involved in petty crime. However, the DPM survey shows that some nationalities – Romanian, Angolan, Congolese – have more girls. Most minors who get involved in prostitution are girls.

## 5. Their stories

Unaccompanied foreign minors have very diverse backgrounds, and follow very diverse paths on arriving in France. Each has his/her own story, and these stories cannot be summed up in a few lines, particularly since – as we have seen above – our data are fragmentary.

The people who deal directly with young migrants can best understand their reasons for leaving home. Their information on this point is not collated regularly, but emerges from specific surveys, studies or initiatives. In 2003, the Marseilles association, “Jeunes Errants”, produced a typology of the minors it deals with, and we shall use part of it below.

Also worth noting is “Casa Marseille Inch’Allah”<sup>6</sup>, a book and documentary film on the lives of four Moroccan children illegally resident in Marseilles, where “Jeunes Errants” looks after them. Bruno Ulmer, who made the film, brings out the motives, dreams and constraints which led them to cross the Mediterranean - and also the problems and disappointments they encountered on arrival.

In her 2001 study for the Directorate of Population and Migration, Angelina Etiemble divided these minors into five categories, and her typology has been generally adopted by French writers and researchers.

Her categories are not watertight, since minors may move from one to another at different times and in different circumstances. Without proper care and supervision, they can fall prey to exploitation by networks or individuals.

The five main types identified and described by Angelina Etiemble are:

### a) Exiles – fleeing wars, or ethnic or religious conflicts

*“Their parents have been killed or have vanished. Some have been in refugee camps. Some have been taken in by relatives or religious or humanitarian organisations, and placed on ships or aircraft, in an effort to ‘get them to safety’. Others are fleeing conscription by government or rebel forces.”*

### b) Emissaries - sent abroad by families to get money or succeed there

*“Impoverished families encourage them to get away and go to Europe. Some are expected to find work and send money home. Others are expected to study and learn a trade or profession, with social and economic success as their goal. The latter were already at school in their home countries, but political and economic crises disrupted their studies. Well-off to start with, their families have spent all their savings on the journey.”*

This category includes many Chinese and Indian children.

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<sup>6</sup> Images en Manœuvre éditions, Arte, extracts from a documentary film made by Bruno Ulmer.

Concerning these “emissaries”, “Jeunes Errants” notes: *“At the age of 13 or 14, when people at home count as semi-adult, they launch into the unknown, at risk to their lives. Invariably, by the time we get to know them, they are traumatised by the discrepancy between France as they imagined it and France as they find it, and by the journey, which may have taken weeks, and exposed them to violence and ill-treatment.*

*They may seem to accept their situation, but actually need help badly, since homesickness, and often the debts incurred by their families and the secrecy surrounding their arrival, are real problems for them. They have been told to say nothing, and this frustrates the authorities’ efforts to contact their families, and obtain the identity papers they need to regularise their situation temporarily. Following a code of their own, they make a show of co-operating with the people who are trying to help them, but nothing comes of it. They need to be dealt with jointly by the welfare services and by the police, who must try to seal the channels they used to reach France.”*

**c) Victims - of trafficking for purposes of prostitution, domestic slavery, juvenile delinquency**

*“These minors are in the hands of traffickers of all kinds, sometimes with their parents’ connivance and even before they reach France. There are many forms of exploitation: prostitution, illegal labour, begging and crime. Children’s vulnerability makes them a prime target for traffickers.”*

Most minors in this category come from eastern Europe and the Balkans.

Jean-Marie Rolland<sup>7</sup>, author of a parliamentary report on unaccompanied minors, says: *“There is much discussion as to whether there really are Mafia-type networks (of people-smugglers and/or exploiters of young people for criminal purposes) in France, and as to what they actually do. [...] (Specialists believe) that these networks are often more family and clan-based than Mafia-related. For example, in the case of girls from eastern Europe who get involved in prostitution, it is hard to distinguish those who have genuinely been misled or indeed kidnapped by traffickers, from those sent more or less knowingly abroad by their families, and those who have simply gone astray”*<sup>8</sup>.

**d) Transfrontier runaways**

*“Some minors run away from their homes or orphanages because of conflict with their families (or institutions), or because of ill-treatment, and end up in other countries.”*

As far as “Jeunes Errants” is concerned, *“these children are no different from the others who are normally housed and cared for in child welfare centres. Now that travel and trade are globalised, a child who might have gone 50 kilometres 50 years ago can easily go several thousand today. In recent years, a very high percentage of the young people we deal with have been in this category.”*

Many of these minors come from North Africa.

<sup>7</sup> Opinion on the 2005 Finance Bill, submitted by Mr Jean-Marie Rolland, member of the National Assembly, on behalf of the Committee on Cultural, Family and Social Affairs.

<sup>8</sup> He does insist, however, that “uncertainty concerning the extent to which the networks which smuggle and exploit minors are criminally structured must not be taken as a pretext for failing to provide havens for those who are trying to escape them, and particularly prostitution rings. Such havens are cruelly lacking today.”

**e) Vagrants - who are already vagrants in their own country and remain vagrants in the new one**

*“Some minors were already vagrants in their own countries, sometimes for months or years before leaving. They lived on begging, odd jobs, and even prostitution, before deciding to try their luck in one of the rich countries. Essentially, they are ‘children in the street’, not ‘street children’ (the latter live entirely on the streets from the age of five or six, lack purpose and drive, and rarely go abroad}. Vagrants hang out ‘in the street’ when they leave orphanages, or when their parents cannot afford to send them to school or feed them. Going abroad is just another stage in the process. A few become ‘full-time vagrants’, switching towns and countries in short order. Many are into drugs and crime.”<sup>9</sup> .*

The historical background, and the tradition of migration to France from certain regions, are also part of the picture. In many North African countries, the example set by fathers and grandfathers, who went to France (often to join the army in wartime, later to work) has turned that journey into something akin to a rite of passage. Crossing the Mediterranean is seen as a constructive stage in the life – and particularly the working life – of young people. Many social workers speak of the fascination which the West holds for young Moroccans, Algerians or Tunisians, who see it as a place where they can get away from community supervision, and lead comfortable lives.

Countries like Romania and China have a long tradition of emigration, and specific regions (Wenzhou in China, Satu-Mare in Romania) have developed the habit of sending their children to France.

Unaccompanied foreign minors in France are a heterogeneous group, with very different backgrounds, motives and stories – which are reflected in varied attitudes to the French authorities and the help offered them.

**II. The legal framework: the laws on help for unaccompanied foreign minors**

- Under the current laws on the right of aliens to enter and reside in France, and on the right of asylum (Order of 2 November 1945, amended, on conditions of entry and residence for aliens in France, and Act of 25 July 1952 on the right of asylum), foreign minors have no absolute right to enter France.
- For minors as for adults, conditions of return must be carefully looked at and the right to request asylum be respected. To make that right effective, an ad hoc administrator is appointed to act as the minor’s legal representative in the holding area. This function was introduced by the Act of 4 March 2002 on parental authority. It should be noted that the Act is not concerned with unaccompanied minors who have entered France, but only with under-age asylum-seekers in holding areas.
- Once they actually enter France, foreign minors may not be deported. Article 26 of the Order of 2 November 1945 provides that “foreign minors below the age of 18 may not be served with expulsion orders or removed”.

Foreign minors on French territory are not required to have residence permits.

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<sup>9</sup> Typology of minors cared for, “Jeunes Errants”, Marseilles, 2003.

- In emergencies, Article L223-2 of the Social Welfare and Family Code provides for administrative protection of unaccompanied minors who lack legal representatives. These children are provisionally taken into care, pending a court decision.
- Article 228-5 of the Social Welfare and Family Code covers care for foreign minors in special cases. Thus the state may fund care for minors with major humanitarian problems in their home countries.
- French law treats unaccompanied minors as, above all, endangered minors, and makes no distinction between foreign and French children. Under Article 375 of the Civil Code, danger exists “when health, safety, morals and schooling are seriously compromised”. Articles 375-3 and 375-5 explain that danger may come, not just from the child’s family, but also from his/her environment.
- Unaccompanied foreign minors are thus covered by the ordinary laws on:
  - public order and juvenile courts;
  - social welfare;
  - child welfare.

The ordinary child welfare services are legally responsible for assisting unaccompanied foreign minors.

- The international texts recommend that unaccompanied minors receive special attention and assistance. Minimum measures include: establishing their identity, trying to locate families and arrange reunion, providing them with basic protection and care, and suitable representation, and giving them the right to apply for asylum.

After ratifying the UN Convention on the Rights of the Child, France passed various laws to make it applicable internally, although some provisions have still to be incorporated into French law - which means that courts may differ on them.

Article 20 of the Convention states, for example, that “a child temporarily or permanently deprived of his or her environment [...] shall be entitled to special protection and assistance provided by the state”. In practice, this article is not uniformly respected in France, since, as we shall see, the country has no general policy on unaccompanied foreign minors.

The Act of 2 January 2004 on help and protection for children introduces the concept of the “overriding interest of the child” in its provisions on court decisions: juvenile court judges are now expressly required to take account of the child’s interest in the matter of educational assistance.

- A necessary part of promoting the overriding interest of the child is giving him/her genuine access to law, health, schooling, training and contacts with the home country. Among other things, Article 24 of the Convention on the Rights of the Child lays down the principle that children must enjoy the highest obtainable standard of health, and also medical services and health education. This article is genuinely respected in France, where universal health cover has given children

fuller access to care. However, other rights, such as the right to training, are less effectively guaranteed.

### **III. Reception facilities for unaccompanied foreign minors in France**

One of two things may happen to unaccompanied minors when they reach France: they may be arrested while trying to enter, or they may succeed in entering illegally (in which case they may, of course, be arrested later).

#### ***1) Minors arrested by the frontier police***

##### **a) Holding areas**

Minors arrested without passports or visas by the frontier police are placed in holding areas (at airports, ports or railway stations) – and may be kept there if they apply for asylum.

In France, conditions in holding areas are the same for minors as for adults<sup>10</sup>. This is incompatible with the international treaties ratified by France<sup>11</sup>. Many associations and officials, such as the National Association to Assist Foreigners at Frontiers (*Association nationale d'assistance aux frontières pour étrangers* = ANAFE) and the National Child Protection Commissioner, have complained of the dangers this presents to unaccompanied minors, who receive no special protection in practice<sup>12</sup>. They can be kept in holding areas for up to 20 days.

At any point during that period, the authorities may decide to send them back, not to their home country, but to the last country passed through on their way to France. The danger here is that, lacking connections in that country, they may fall into the clutches of mafia-type networks.

The placing of minors in holding areas is a highly contentious political issue, and a major source of disagreement between those for whom children's rights are all-important, and those for whom the laws on admission and residence of aliens take precedence. The Advisory Committee on Human Rights and the National Child Protection Commissioner suggest that minors in this situation are endangered by definition, and should be admitted automatically under the child welfare laws and the UN Convention. Other people fear that the child welfare laws may be used to evade the laws on admission and residence of aliens, and attract more unaccompanied minors to France. At the moment, this is the dominant view.

##### **b) Ad hoc representatives**

Unaccompanied minors in holding areas have no legal status. To overcome this problem, ad hoc representatives may be appointed to help them to apply for asylum.

Under the Act of 4 March 2002 on parental authority, an ad hoc representative must be appointed as soon as an unaccompanied minor is placed in a holding area. Appointed by the Public Prosecutor, these representatives are responsible for protecting minors and representing them in all administrative and judicial proceedings concerned

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<sup>10</sup> The Act of 6 July 1992, which introduced holding areas, makes no distinction between minors and adults.

<sup>11</sup> Including the Convention on the Rights of the Child, ratified in 1990.

<sup>12</sup> The National Commission to Monitor Detention Centres and Holding Areas, provided for in the Act of 26 November 2003, has yet to be established.

with keeping them in the holding area or with applications for asylum. These responsibilities cease once a minor is allowed to enter France.

These ad hoc representatives have been operating since 2003. Although this counts as a definite advance, many of those involved feel that the conditions in which they work could be improved. The IGAS Mission takes the view, for example, that they should be given more methodological support, and also more time to do their job properly.

An expert may be asked to confirm that a young person is indeed under-age.

If this is confirmed, the public prosecutor's office normally (see below) notifies the juvenile court that a minor is in the holding area. The court may then decide to provide him/her with educational support and involve the child welfare services (ASE).

Young people who are not under-age, and apply for asylum, are covered by the normal laws on asylum. If they do not seek asylum, they may be deported.

## **2) *Minors who succeed in entering France***

Young people who enter France without being arrested by the frontier police may be questioned by the ordinary police (whether or not they have committed an offence), or spotted and approached by the (public or private) social welfare services. They may not be deported, but are dealt with by the child welfare services (endangered minors) or crime prevention services (young offenders).

Whatever the circumstances which first bring young people into touch with the authorities, experience shows that, if future assistance measures are to work, the latter must approach them in the right way, win their confidence and initiate dialogue.

All too often, marginalised minors on the loose in France get arrested by the police and referred to the public prosecutor, appear before the juvenile courts, are placed in approved schools and then run away. Some may go through this whole process several times, exclusion having reached a point where normal support measures cannot help.

Long and patient efforts are needed to identify these minors, protect them and put them in touch with the authorities. All of this is done in piecemeal fashion today, principally by voluntary workers, who bring special skills and working methods (street-work, night-work, etc.) to bear on the problem.

Since 1995, "Jeunes Errants" in Marseilles has been running a preventive monitoring scheme, the aim being to spot and "catch" minors on the loose in problem areas, and offer them "alternatives to hand-to-mouth survival and petty crime". Winning their trust starts on the streets, and can then be taken further at a special day centre.

In Paris, help facilities for unaccompanied foreign minors, established by the State Secretariat for Action against Poverty and Exclusion, led, in June 2003, to the conclusion of a framework agreement between the Paris Directorate of Health and Social Welfare and a number of local associations. This scheme received 2.1 million euros from the state in 2004, and provides help and guidance for some 300 minors every year.

In principle, it operates before the child welfare services intervene, and has four emphases:

- identifying unaccompanied minors: this is done during the day and at night by street operatives. The associations involved, *Hors la Rue*<sup>13</sup> and *Arc 75*, sometimes ask other associations (*Samu Social*, *Bus des femmes*, etc.) to help;
- winning their trust, chiefly with the help of day-centre activities; *Hors la Rue* and *Enfants du Monde-Droits de l'Homme* are involved here;
- providing temporary shelter: *Enfants du Monde-Droits de l'Homme*, *France-Terre d'Asile* and *Arc 75* have 15, 10 and 3 beds respectively. At Kremlin-Bicêtre, *Enfants du Monde-Droits de l'Homme* runs a hostel which is open round-the-clock and has night accommodation for 16 young people; an average of 25 to 40 young people are dealt with every day, and most of them are given social and educational assistance. The average period covered is three weeks. The hostel has a staff of 18;
- helping minors to obtain aid from normal sources (i.e. the child welfare services). Their health, psychological, educational and legal situation is assessed for several days or weeks, with a view to steering them in the right direction.

**a) Help from the normal sources**

The associations involved set out to help unaccompanied foreign minors, who are excluded and marginalised, to obtain educational and other help from the so-called normal sources.

“Unaccompanied foreign minors spotted in France must be referred to the courts, be given the same protection as other endangered children, and be placed in normal support structures”, says Ms Lodwick, Director of “Jeunes Errants”.

**b) Provisional care by the child welfare services**

The regulations<sup>14</sup> provide that, in emergencies, the child welfare services may provisionally take charge of minors who have no legal representatives (for not more than five days): this also applies to foreign minors. Those services must notify the courts at once and involve them officially when five days have passed – although provisional care may sometimes be extended in certain regions.

**c) Referral to the public prosecutor's office**

Minors may be referred to the public prosecutor's office by the child welfare services, the police (who took them into custody, whether or not they were breaking the law) or specialised associations.

The prosecutor's office may consult an expert to establish that the child is indeed under-age, or may make rapid enquiries to find out more about him/her.

It may then order an emergency protection measure. This sometimes prompts the child to abscond, and so serves no purpose. Practices also differ: some prosecutors' offices still make provisional placement orders (Article 375-5 of the Civil Code), while others refuse to do so in any but special cases.

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<sup>13</sup> An association particularly familiar with Romanian children.

<sup>14</sup> Article 223-2 of the Social Welfare Code.



**d) Consulting an expert to determine age**

Bone examination is sometimes used in an effort to determine a minor's age.

Many experts question whether this technique, sometimes combined with examination of the teeth, can determine age reliably. It involves comparing the subject's wrist with x-rays, dating from the 1930s, of white, well-off North Americans. There is no reference material for young people from France or other countries today, and no allowance can be made for the effects of malnutrition or the different rates at which the bones of girls and boys mature. There is reportedly an 18-month margin of error.

Courts are not bound by the results of these tests, but must weigh them against other evidence and the statements made by those concerned.

**e) Rapid enquiries**

The prosecutor's office may ask for rapid enquiries to obtain more information on the young person concerned: identity, nationality, background, possible connections in France, etc. This helps it to decide whether he/she is in danger, and select a course of action.

These enquiries may be carried out by the educational services attached to the courts, although these often lack the resources and specialised staff needed to do the job thoroughly. They may also be entrusted to approved associations with investigation departments, like "Jeunes Errants" in Marseilles.

It is vital to have socio-educational data on unaccompanied foreign minors, but collection is too often skimmed or hasty.

**f) Referral to the juvenile court by the prosecutor's office**

The prosecutors' offices surveyed by the IGAS Mission proceed differently, depending on how they view the respective roles of juvenile court and guardianship judges.

Whether or not they have made prior placement orders, most refer these cases rapidly to the juvenile courts, feeling that unaccompanied foreign minors need support measures, insofar as "their health, safety or morality are jeopardised, or conditions for their education seriously compromised".

Some prosecutors' offices leave the child welfare services to refer these cases to the guardianship courts, feeling that support measures should apply only in cases where parents are a danger to their children. The guardianship courts are the right authority to deal with minors who are unaccompanied and have no legal representatives.

Others rarely deal with unaccompanied foreign minors, and simply ask the services which are helping them, or have taken them into care, to refer them directly to the juvenile courts.

**g) Inconsistency of judicial practice**

France's administrative and judicial arrangements for dealing with unaccompanied minors are clearly very varied, not to say haphazard. For one thing, there are no judicial or administrative regulations, and this makes for discrepancies in treatment. Every prosecutor's office has its own views on whether to apply the law on support measures, on whether to involve the juvenile or guardianship courts, and on what a "dangerous situation" is.

The IGAS Mission accordingly recommends “that a circular should remind prosecutors’ offices that there is a general obligation to protect children, and standardise their practice by:

- insisting that minors must not be left in “provisional care”
- laying down clear rules on ordering and using age estimates
- devising, when this seems useful, special systems for the collection of socio-educational data,
- clarifying the criteria for referral to the juvenile or guardianship courts.”

**h) Decisions by the juvenile courts**

In cases referred to them by prosecutors’ offices, minors themselves or the social services, juvenile court judges normally order placement via the child welfare services.

Some judges realise that ordinary placement is not necessarily best for these minors, and may seek to place them in special facilities, when these exist.

**i) State guardianship**

Unaccompanied minors lack legal capacity, and so guardianship measures are needed when enquiry shows that they have no legal representatives. In the absence of relatives, guardianship passes to the Regional Council, which entrusts it to its child welfare service<sup>15</sup>. This ensures that such minors are legally represented.

**j) Emergency aid on arrival and evaluation to determine the right course of action**

The arrival of unaccompanied foreign minors often places an excessive burden on emergency aid services - already stretched in most major cities. Having to cope with these newcomers may interfere with their work for other endangered minors, and so generate an unfortunate rivalry between the two groups.

Places in medium-stay facilities are also hard to find, so stays in emergency centres may last longer than planned. In such cases, when there are reasons, practical or legal (e.g. connected with changes in a young person’s status), why ordinary care cannot be arranged, these centres must continue to take charge, but without losing sight of their primary task<sup>16</sup>.

Assessing and counselling these minors raise special problems - language difficulties, ignorance of their background, distrust on their part, etc. – and special skills are needed to solve them. People working for the ordinary child welfare services do not necessarily have these skills: some acquire them and others adjust, e.g. by establishing partnerships with specialised associations.

This phase is vital, but is handled more effectively in some places than in others.

**k) At national level, two assessment and guidance centres**

In 1999, the French Government responded to the influx of unaccompanied foreign minors in the Paris region, and to the need to provide assessment and guidance for minors discharged from holding areas or seeking asylum, by setting up a reception

<sup>15</sup> State guardianship of this kind is provided for in Article 433 of the Civil Code.

<sup>16</sup> The reception and guidance centre for young people discharged from the holding area at Roissy has this problem. Officially set at two months, length of stay averages 102 days in practice.

and guidance centre for under-age asylum seekers (*Centre d'accueil et d'orientation pour mineurs demandeurs d'asile* = Caomida) at Boissy-Saint-Léger (Val-de-Marne), and in 2002, a reception and guidance facility (*Lieu d'Accueil et d'Orientation* = LAO) at Taverny (Val-d'Oise).

The LAO, which is run by the Red Cross, provides accommodation only for minors leaving Roissy. Its maximum capacity is thirty, and minors normally remain for two months.

Apart from providing accommodation, and health, schooling and medical facilities, the LAO has the task of assessing each minor's situation and finding the right solution for him/her. The first stage is to explore the possibility of restoring the child to his/her family, in the home country, in France or in some other European country. This involves making enquiries in the home country, and the International Migration Office is asked to help if all the parties agree to a return. If family reunion proves impossible, the minor's needs and skills are assessed, covering health, psychology, schooling, legal situation, etc. The next stage is arranging an ordinary placement, so that he/she can remain in France.

Of the 78 young people who left the centre between September 2003 and September 2004, 59 were successfully "guided" (the others "vanished", i.e. absconded): four were sent back to their country of origin, eleven handed over to their families in France or the Schengen Area, two placed in establishments close to their families, and 42 placed by the juvenile courts. Placement is effected by direct placement order in a specific establishment (negotiated with the Regional Council).

In its first year (September 2002 to September 2003), the LAO catered mainly for young Chinese (60%) and Africans (25%). The number of Chinese has now fallen sharply, and Africans, particularly from Congo-Kinshasa, are the dominant group.

The state makes an operating grant of 1.533 million euros.

The Caomida was established at Boissy-Saint-Léger in November 1999. It is run by *France Terre d'Asile* and caters only for young asylum-seekers who have been in France for less than three months. It works with various partners in assessing them, and its legal experts help them to prepare asylum applications and find fall-back solutions if these are unsuccessful.

Minors stay for twelve months (maximum) in theory, but the average is fifteen in practice.

Caomida has some fifteen staff and 33 places. Since 1999, it has helped some 110 adolescents from 22 countries and three continents. Of these, 73 were boys, and 83 came from Africa, principally Angola and Sierra Leone. Its annual budget of 1.327 million euros comes mainly from the state, but also from the Regional Councils<sup>17</sup>.

#### **D) Provision of aid by the Regional Councils, which are responsible for child welfare**

Apart from these two state-funded structures, the Regional Councils are responsible in practice for assessment and guidance, and for helping unaccompanied minors. Child welfare is part of their remit, and they have gradually extended it to include these minors.

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<sup>17</sup> State: 1.115 million euros, Regional Councils: 140,000 euros.

The IGAS Mission noted that “some Regional Councils are more open than others: most do all they can to protect these young people, like others, and help them to integrate; others take them on reluctantly, often in smaller numbers, fearing they will aggravate any structural problems the relevant services may have, or place added financial strain on the community”<sup>18</sup>.

Some Regional Councils have set up special units, with staff specifically trained to deal with these minors’ problems. An example is the help unit for unaccompanied foreign minors (*Cellule d’Accueil des Mineurs Isolés Etrangers* = CAMIE) in Paris, which has been operating since October 2003, and has five social workers, a part-time psychologist, an administrator and a socio-educational assistant. It takes charge of these minors on arrival and, over a two-month period, assesses their situation and coordinates examination of medical, educational, legal and other aspects. After this assessment/guidance phase, the child welfare services, for which the Regional Council is also responsible, take over.

Other Regions rely on partnerships with specialised associations, such as “Jeunes Errants” in Marseilles, which has multidisciplinary and multicultural teams, and is particularly good at investigation and guidance. To reconstruct migrant children’s background, it makes extensive enquiries in home towns (Algiers, Oran, Annaba, Casablanca, Tangiers) and transit countries (Spain and Italy).

“Children don’t fall from the trees. Most of them have families and parents, either in their own country or in France. How can you help them if you don’t know their background? Until we know why they are here, and what’s behind it all, we can’t start to put them on the right track”, says Dominique Lodwick, director of “Jeunes Errants”.

“Jeunes Errants”, which is authorised to carry out investigations and provide educational guidance by *Protection Judiciaire de la Jeunesse*, mediates between the various partners involved in helping young people, within the child welfare or judicial protection services. As deputy prosecutor Emmanuel Merlin puts it, “Jeunes Errants’ helps to fill the gaps left by the courts and the child welfare services”<sup>19</sup>, which have neither the resources nor the social workers needed. “There’s nothing we can do for these young people”, says Catherine Richardson of the ASE. “The child welfare inspectors and the Regional Council’s education officers are not used to working with children who don’t speak French, particularly when the parents aren’t around”.<sup>20</sup>

The Regional Council has concluded an agreement with “Jeunes Errants” on looking after these young people in its hostels. In fact, as Dominique Lodwick emphasises, “If we don’t help them, particularly at the beginning, they just run away”.

Whatever their legal arrangements and structures, the Regional Councils’ experience shows that operational partnerships, and a broad range of skills, are needed for investigation and assessment.

According to the IGAS Mission “all the institutions concerned have the greatest difficulty in reconstructing these young people’s background, trying to put them back in touch with their families, working on their possible return and, by elucidating the family

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<sup>18</sup> IGAS Mission, p. 12.

<sup>19</sup> Quoted in *Le Monde*, see ref.

<sup>20</sup> *Ibid.*

context, putting the educational work on a solid foundation. At this stage, international investigation is the biggest problem. In spite of the Franco-Romanian agreement, which provides for enquiries in Romania at the request of local authorities, in spite of the efforts made to mobilise the international networks of the Red Cross (LAO) or the SSAE (SSI), and in spite of the help with contacts which the French diplomatic network may be able to provide, this international dimension remains a weak point”.<sup>21</sup>

**m) After emergency action, longer-term care**

We need to remember that the ordinary child welfare services are legally responsible for looking after unaccompanied foreign minors. Nonetheless, care in this case is special, since it has to allow for the extreme diversity – cultural, linguistic, historical – of this group and, in effect, adjust from case to case. Providing socio-educational support for these minors is a challenge for social workers trained to handle children at risk with very different problems. This is why extra training, and partnerships with specialised educators and practitioners, may prove necessary.

● **Accommodation**

It is often hard to find accommodation for unaccompanied minors discharged from emergency centres – mainly because the ordinary facilities are already saturated. Moreover, these minors have certain special characteristics which make some centres unsuitable and/or unwilling to take them.

Many of these children run away, and people often say that this destabilises support teams by preventing them from doing their job. It also highlights the special problems of these young people, many from eastern Europe, who are marginalised and reluctant to accept long-term help. This is where the contact-making and confidence-winning process, referred to above, becomes really important.

Centres which provide accommodation *and* vocational training are probably best suited to the needs of these young people, who – as we shall see - often learn trades. When normal structures are either unsuitable or saturated, there are also associations which can provide suitable accommodation, by agreement with the Regions concerned.

Other types of non-institutional accommodation are also possible:

- Placement in host families. This is favoured by certain Regions, but often hard to organise.
- Hotels. Widely used in certain Regions, this solution runs the risk of marginalising and excluding these minors even further, unless there is solid day-centre backing.

Some unaccompanied minors, mainly young offenders, are accommodated in facilities run by the judicial protection services.<sup>22</sup>

● **Schooling – Training**

Unaccompanied foreign minors have very different levels of schooling, ranging from illiteracy to partial completion of a school course. Obviously, whether they know French depends on their country of origin.

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<sup>21</sup> IGAS Mission, p. 37.

<sup>22</sup> Ministry of Justice.

Integrating them into the French school system is often difficult, since there are few places in suitable classes. They have special needs, and these call for special measures, like those devised for first-generation immigrants.

School integration is even harder for the over-16s, this being the age at which compulsory schooling ends.

Because of language problems or gaps in their earlier schooling, vocational training seems the best answer for many over-16s. Until recently, however, this was not available to them, since apprenticeships, sandwich courses and skills contracts are all based on the assumption that those they cover will be allowed to work. Lacking the status needed to secure a work contract, they could lay no plans for a career. Among other observers, the UN Committee of Experts highlighted this failing in the French system in June 2004.<sup>23</sup>

On 2 May 2005, after years of protest by field workers, the Minister of the Interior sent the *Préfets* a circular, asking them to look carefully, case by case, at the files on minors covered by integration measures. This circular allows them to issue foreign minors or young adults, who are on the child welfare services' books - "having regard to their integration process" - with one-year, renewable residence permits, marked "student" or "wage-earner".

Although its effects have yet to be felt, this circular seems to mark an advance on the previous, chaotic situation. These minors can now complete training or schooling begun as part of the assistance given them in France.

- **Legal status: what happens at age 18?**

On reaching 18, unaccompanied foreign minors have three main options: refugee status, acquisition of French nationality and obtention of a residence permit. A fourth option, the young adult's contract, is highly precarious.

Up to November 2003, unaccompanied foreign minors dealt with by the child welfare services were entitled to apply for French nationality on reaching the age of 18. But the Act of 26 November 2003 on controlling migration flows (the so-called Sarkozy Act) has put an end to this: on reaching the age of majority, young people may apply for French nationality only if they have been on the child welfare services' books for three years, i.e. came to France below the age of 15. However, as we have seen, most unaccompanied foreign minors are between the ages of 16 and 18 on arrival. The circular of 20 January 2004 on application of the Act explains that the change is intended to restrict the "illegal immigration of unaccompanied minors".

Some field workers claim that making nationality at 18 conditional on a previous period of residence has the undesired effect of attracting ever-younger children to France. Above all, says the IGAS report, it has "profoundly shaken the teams who look after these young people", by making it harder to plan training for people who, on turning 18, at once become illegal residents.

Some Regional Councils offer young people a "young adult's contract", which allows them to complete an integration programme and acquire a diploma or recognised qualification<sup>24</sup>. Officially, these young people are illegally resident, but the contract

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<sup>23</sup> <http://www.dei-france.org>

<sup>24</sup> (at 30 September 2004, over 1,200 such contracts had been concluded with young adults who had arrived as unaccompanied foreign minors.

ensures that they are treated with some leniency. In certain cases, the judicial protection services may take over from the child welfare services and provide judicial protection measures for young adults.

Under the circular issued in May 2005, some young people who are following training programmes may be given one-year residence permits which, though renewable, remain precarious. Fear of being left without papers, and the long, uncertain wait for a decision - which remains discretionary – on regularisation of their situation, do not make integration any easier.

Interviewed by *Le Monde*<sup>25</sup> when this circular was published, an official from the Ministry of the Interior explained that “It is not a question of replacing an automatic right to nationality with an automatic right of residence. Entering France must be no easier for a minor than an adult”.

#### **IV. Unanswered questions, current issues**

Regardless of political or professional position, most French commentators agree that present arrangements for unaccompanied foreign minors in France are inadequate and/or unsuitable.

Since the figure for these minors does not exceed 5,000 (highest estimates), looking after and protecting them should not present insoluble problems. The relevant French laws and measures may need adjusting and strengthening, but are still, on the whole, very effective, and France should be able to comply fully with its commitments under the UN Convention on the Rights of the Child.

However, political decision-makers and institutional protagonists are facing a dilemma. They want to solve the problems - but not to spark a new influx. They fear that providing better protection for minors may play into the hands of the people-smugglers and traffickers. Some are even afraid that extending the child protection system to unaccompanied minors may allow criminals to abuse it for their own purposes. Jean-Pierre Rosenczeig, President of the Bobigny Juvenile Court says: “The people-smugglers are the problem! They see that children are well looked after here – and they’ll use that to send us even more”.<sup>26</sup> Conversely, the Deputy Mayor of Marseilles in charge of crime prevention<sup>27</sup> denies that his city’s new measures are attracting more unaccompanied minors: “Today, the results are plain. In effect, these young people have stopped committing crimes, and we don’t get them hanging about in the streets. And Marseilles itself isn’t the target for the people-smugglers it used to be”.

If France is now getting more unaccompanied foreign minors, is this due to “better” facilities on arrival, or to a worsening of the political and economic situation in the home countries? Only genuine pluri-annual, inter-institutional research, tracing what happens to individuals, can really answer that question.

##### **a) On what level should a policy for unaccompanied minors in France be framed?**

As we have seen, the task of looking after unaccompanied foreign minors essentially falls to the Regional Councils, which are responsible for child welfare. This

<sup>25</sup> Article, *Une circulaire autorise l’attribution de titres de séjour aux mieux «insérés»*, Laetitia Van Eeckhout, *Le Monde*, 31 May 2005.

<sup>26</sup> Quoted in *Témoignage Chrétien*, No. 3088 of 23 December 2003.

<sup>27</sup> *Le Monde*, 31 May 2005.

brief is a recent one, and some Councils tackle it more conscientiously than others. As we have seen, the result is practices which vary, and sometimes contradict one another, from Region to Region. Moreover, since these minors are unevenly distributed, some Regional Councils have more to do than others. This is why they are calling for national solidarity and looking to the state for funds. But the need to ensure equal treatment throughout France is the main reason why associations, elected representatives and social workers want a policy which is genuinely national, comprehensive and consistent. This policy should cover the administrative and judicial treatment of unaccompanied minors, and put an end to the huge discrepancies which exist between the approaches followed by different prosecutors' offices and Regional Councils.

In a parliamentary report submitted in November 2004, Jean-Marie Rolland, a parliamentarian (UMP) from the Yonne, says that he was "struck by the lack of any sign of an overall political vision. Horizons are narrow, and most government authorities seem to deal with unaccompanied foreign minors from their own angle only: the welfare authorities think only of reception facilities, the Ministry of the Interior thinks only of papers, and so on".<sup>28</sup>

Like the associations, the public authorities have come up with various answers to the problem of unaccompanied minors in France, but those answers are still incomplete.

The only way of solving that problem is to put child protection measures in a new territorial and institutional framework. New synergies and partnerships are needed to allow for the mobility, and sometimes illegality, which are characteristic of this group.

It is also because it is responsible for immigration policy and frontier control that the state is regularly required to deal with unaccompanied foreign minors.

**b) A final issue – lack of a European strategy**

It is regrettable that the European Union regards harmonising juvenile court systems as more important than harmonising asylum systems, since this would make it possible to guarantee equal protection throughout the EU and co-ordinate field initiatives more effectively.

The problem is essentially international, but the solutions adopted so far have always been national, and indeed regional. International co-operation has mainly focused on sending minors home (cf. A); today it needs to focus increasingly on stopping them from leaving (cf. B) and on co-ordinating help measures.

We still have to decide on what level to co-operate. National initiatives, such as the agreement negotiated by the French and Romanian Governments, might be usefully complemented by contacts between the regional and local authorities directly involved in looking after minors.

This was the thinking which led a number of European local and regional authorities<sup>29</sup> to get together, with the support of various specialised associations and the

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<sup>28</sup> Opinion on the 2005 Finance Bill (No. 1800), Employment, Labour and Social Cohesion, Anti-Exclusion Measures and Cities, submitted by Mr Jean-Marie ROLLAND, member of the National Assembly, on behalf of the Committee on Cultural, Family and Social Affairs.

<sup>29</sup> The local and regional authorities which signed the REMI Charter at the launching conference were: the Provence-Alpes Côte D'Azur Region, the Region of Tuscany, the Region of Campania, the



European Forum for Urban Safety, and set up the Euro-Mediterranean Isolated Minors Network (*Réseau euro-méditerranéen pour la protection des mineurs isolés* = REMI).

The participants at the launching conference for the REMI network<sup>30</sup> suggested several areas for decentralised co-operation. These include practical co-operation between professionals, the training and setting-up of teams on both sides of the Mediterranean to look after children, and harmonisation of procedures to make the action taken more rapid and effective. The interest roused by the network has already shown how necessary it is to involve local and regional authorities in all parts of Europe, and help them to overcome national institutional obstacles in “the overriding interests of the child”,

**c) Organised return**

The first priority is to intercept, protect and help unaccompanied minors, ensuring that they do not become vagrants or fall into the hands of criminal networks, but another is to pave the way for a “dignified and happy” return to their home country and family<sup>31</sup>. Tracing parents, and possibly restoring children to them in a manner consistent with their “overriding interests”, is the medium or long-term objective of all those who today take care of unaccompanied minors in France.

However, return can be envisaged only when the child’s safety and protection are guaranteed. This must be separately assessed in each case, and return must be voluntary, both for children and families. UNICEF makes the point that automatically sending a child home without trying to establish his/her reasons for running away, with no alternative and with no protection, is inconsistent with the standards and principles of the UN Convention.<sup>32</sup>

As we have seen, public authorities and associations have great difficulty in establishing strong, operational links with their counterparts in countries of origin and with minors’ families. This lack of effective international co-operation makes it hard to organise the return of unaccompanied minors. The IGAS report notes that “Even for Romanian minors, the special arrangements based on the governmental agreement of 4 October 2002<sup>33</sup> have led to only a very limited number of repatriations. When families can be found, the investigations carried out by the welfare authorities are mediocre and rarely give a reliable picture of conditions on arrival. In the case of minors sent abroad by their families, organised return often leads only to their leaving again”.<sup>34</sup>

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Generalidad de Catalunya, the Regional Council of the Bouches-du-Rhone, the Regional Council of Vaucluse, the Council of Paris, the Province of Lucca, the City of Rome and the City of Marseilles. Others joined them later.

<sup>30</sup> REMI launching conference, jointly organised by the Provence-Alpes Côte D’Azur Region, “Jeunes Errants” and the European Forum for Urban Safety.

<sup>31</sup> Article 22 of the International Convention on the Rights of the Child specifically covers family reunion for unaccompanied children.

<sup>32</sup> Making children count: implementing the Convention on the Rights of the Child, UNICEF, Geneva, 1999.

<sup>33</sup> Inter-ministerial partnership with countries of origin is intended to make it easier to eliminate mafia-type or paedophile networks in France, but also to reduce the influx and “promote the return of children in good conditions”.

<sup>34</sup> IGAS Mission, p. 58.

Even when they are not compelled to leave, it is vital that young people take “something” home with them – ideally training, which then helps them to reintegrate in their own country.

**d) Preventing departure**

International co-operation is needed, not just to help minors to return, but also to stop them from leaving. To achieve lasting effects on the situation of unaccompanied minors in France, we need an intensive preventive policy, based on co-operation between the towns, regions or states of departure and arrival.

In this spirit, officials from the Seine-Saint-Denis Region (France) and the Satu-Mare Region (Romania) met in May 2005.<sup>35</sup> Satu-Mare is the prime “supplier” of emigrants to France, while Seine-Saint-Denis gets - with Paris - the greatest number of unaccompanied foreign minors. Preventing departure was recognised as the issue on which co-operation between them was most needed. Gilles Garnier, Vice-President of the Regional Council, which is responsible for the welfare of mothers and children, said that: “All the children who come knocking on our door must have a right to our protection - but we must also be able to warn them of the risks they run by turning up here without any safeguards”. Claude Roméo, Director responsible for children and families on the Seine-Saint-Denis Regional Council, insisted on the importance of “making people understand that France is not an Eldorado”.<sup>36</sup>

Stefan Szabo, President of the Satu-Mare Region, connected this preventive policy with wider issues of development: “Children feel the lure – it is hard to stop them going. We can try to make things better for them, but we can’t protect all the groups who are likely to leave. I hope that economic growth and Romania’s imminent admission to the EU will allow the ones who have gone to come back - and stop further haemorrhaging.”<sup>37</sup>

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<sup>35</sup> Quoted in *l’Humanité*, 24 May 2005.

<sup>36</sup> *Le Monde*, 31 May 2005.

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# Situation of unaccompanied migrant minors in Switzerland

Sylvain Vité<sup>1</sup>

## Introduction

The Swiss authorities first became aware of the presence of unaccompanied minors in the late 1980s, as one of the increasing side-effects of the asylum procedure. Each year, several hundred children apply for refugee status in order to be entitled to settle in Switzerland.

Under Swiss law, a minor is someone who has not yet reached the age of 18<sup>2</sup>. This corresponds to the definition of a child in international law. According to the United Nations Convention on the Rights of the Child, to which Switzerland has been a party since 26 March 1997, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". Minors are considered to be unaccompanied if they are not accompanied by their legal representative and their legal representative is not in Switzerland<sup>3</sup>. The Swiss Asylum Appeals Commission does not recognise brothers or sisters aged over 18 as exercising parental authority over minors. This means that even if the latter are present in Switzerland when the application is made, the minor will still be considered to be unaccompanied<sup>4</sup>.

However, unaccompanied minors are not solely an aspect of the refugee situation. Some of them have no intention of lodging an asylum application on arrival in Switzerland. They do not therefore claim to have suffered violence or persecution in their countries of origin. They settle in Switzerland without formal permission, and as such have no legal status and form part of the illegal immigrant population.

The processing of unaccompanied minors in Switzerland is a federal responsibility. Under Article 121 of the Swiss federal constitution<sup>5</sup>, asylum legislation is enacted by the parliament of the Confederation. On the other hand, responsibility for the care of asylum seekers, particularly unaccompanied minors, is shared by the central authorities and the cantons. The latter have considerable discretion in carrying out this responsibility. The treatment of unaccompanied minors can therefore vary from one part of Switzerland to another.

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<sup>2</sup> Art. 14 Swiss Civil Code. See also Art. 1 d of Asylum Procedure Order 1.

<sup>3</sup> Art. 7 para.. 2 of Asylum Procedure Order 1.

<sup>4</sup> Swiss Asylum Appeals Commission – legal information service, 2004/9.

<sup>5</sup> <http://www.admin.ch/ch/f/rs/101/> (in French).

## 1. The migratory cycle of unaccompanied minors

### 1.1 Main features

In absolute terms, there has been a steep decline in the number of registered unaccompanied minors under the Swiss asylum procedure. Between 2002 and 2004 it fell by more than a half, from 1673 to 824. This trend reflects a more general decline in the total number of asylum seekers registered each year. The number of unaccompanied minors as a percentage of total asylum seekers remains more or less unchanged: 6.4% in 2002, 6.9 % in 2003 and 5.7% in 2004<sup>6</sup>

The Swiss authorities estimate that between 10 and 20% of these applicants claiming to be unaccompanied minors do not really fall into this category, either because it is established in the course of proceedings that they are over 18 or because they have a legal representative in Switzerland<sup>7</sup>.

In recent years the majority of unaccompanied minors identified in Switzerland in the course of asylum proceedings, to the extent that their identity could be established, have come from Africa. The main countries of origin include Guinea, Nigeria, Sierra Leone and Somalia. The great majority were aged between 15 and 18 and male. The percentages of girls were 10.4 in 2002, 13.6 in 2003 and 14 in 2004<sup>8</sup>.

It is more difficult to establish the situation of unaccompanied minors who do not lodge asylum applications and who settle in Switzerland illegally. Illegal immigration is by its nature a very imprecise phenomenon. Estimates of the total number of adults and children in this category in Switzerland vary widely. The figures range from 70 000 to 300 000<sup>9</sup>. In particular, the Federal Migration Office has recently estimated that there are about 90 000 illegal residents in Switzerland<sup>10</sup>. The percentage of these who are aged under 18 is not known. Suffice it to say that there are clearly illegal unaccompanied minors in Switzerland<sup>11</sup>, and the number is probably even increasing. Since asylum policy is becoming more restrictive, it is possible that those concerned, particularly ones under 18, are tending to opt for illegal immigration rather than the asylum procedure<sup>12</sup>.

Another emerging trend in migration into Switzerland is the significant increase in the number of women arriving, and their changing role<sup>13</sup>. Whereas in the past, they mainly accompanied their husbands, it is now quite common to find illegal female migrants who are either alone or accompanied by a child. Many are from South America and work as domestic employees: with children, on household work or looking after the elderly<sup>14</sup>. Female employees in the domestic sector probably account for about

<sup>6</sup> According to Federal Migration Office statistics.

<sup>7</sup> Federal Refugee Office, final report of the unaccompanied minors project group, 20.10.2004, p. 5.

<sup>8</sup> According to Federal Migration Office statistics.

<sup>9</sup> Valli M, *Les migrants sans permis de séjour à Lausanne*, Lausanne 2003, p. 27.

<sup>10</sup> Federal Migration Office, press release, 26 April 2005.

<sup>11</sup> Wata A., *La situation des mineurs non-accompagnés en Suisse*, in conjunction with Terre des Hommes, the Swiss Foundation of the International Social Service and the Kurt Bösch university institute, 2003, p. 48.

<sup>12</sup> Daniel Burnat, Interview, 3 August 2005. Christoph Braunschweig, Interview, 5 August 2005

<sup>13</sup> Valli M, *op. cit.*, p. 3.

<sup>14</sup> *Ibid.*, pp. 33ff.

half of all those without proper documentation<sup>15</sup>. According to a study carried out in Lausanne, these women were aged between 17 and 30<sup>16</sup>, which shows that some were minors, although it is impossible to know exactly what proportion. So although the majority of unaccompanied minors passing through the asylum procedure are boys, among illegally resident foreigners the proportion of girls seems to be rising.

The reality of illegal immigration into Switzerland therefore implies a need for a policy on the reception and treatment of illegal unaccompanied minors, with particular attention to the needs of girls. The first stage of such a policy should be to carry out a detailed assessment of the phenomenon.

Recently, the United Nations Committee on the Rights of the Child recommended that the countries concerned should develop national systems for collecting data on unaccompanied minors. This data should be detailed and integrated. It should include basic biographical data on each child, their legal status (asylum-seeker, refugee, illegal immigrant and so on), living arrangements and enrolment in school or training, number of legal representatives assigned, number refused entry, family reunifications and number returned to their country of origin. The Committee urges states to pay particular attention to unaccompanied minors who disappear and to the risks and impact of trafficking<sup>17</sup>.

## **1.2 Reasons for the migration of unaccompanied minors**

Much uncertainty surrounds the underlying causes of the migration to Switzerland of unaccompanied minors. There has never been a systematic study of the precise factors that impel these young persons to leave their families and their countries<sup>18</sup>. Although certain recurrent themes emerge from discussions with unaccompanied minors themselves and the professionals who work with them, it is difficult to quantify the relative significance of each or to determine how they might combine. Whether or not they are asylum seekers, unaccompanied minors are often motivated by several factors.

Clearly, these issues call for detailed study based on statistical data to provide the information necessary to prevent and deal with this type of migration.

One of the most frequently cited reasons, particularly by the young persons themselves, is the violence in their countries of origin<sup>19</sup>. They are rarely the personal targets of government orchestrated persecution, which would entitle them to refugee status in Switzerland<sup>20</sup>. However, many have left their countries to escape wars and domestic disorders affecting their particular communities. These children become unaccompanied because their parents deliberately send them abroad for their protection, because they have lost contact with their families as a result of the very chaos they are trying to flee, or because their parents are dead.

<sup>15</sup> Travail Suisse, "Clandestines de l'économie domestique: régularisons leur situation", Press release, May 2005.

<sup>16</sup> Valli M, *op. cit.*, p. 39.

<sup>17</sup> *Treatment of unaccompanied and separated children outside their country of origin*, General Comment no 6 (2005), 3 June 2005, CRC/GC/2005/6.

<sup>18</sup> Bolzman C., Rossel L., Felder A., "Jeunes requérants d'asile séparés de leurs parents: quelle transition vers la vie adulte?", *Interdialogos*, 2004, p. 3.

<sup>19</sup> Wata A., *op. cit.*, p. 5.

<sup>20</sup> Rossel L., "Protection des enfants migrants: un statut d'exception", *Interdialogos*, no 2, 2004, p. 16.

Economic and social factors are also important<sup>21</sup>. Many unaccompanied minors leave their countries because of lack of income and employment prospects. The statistics show that practically all of them come from countries that are experiencing major crises.

In many cases, these young people bear the expectations of an entire family, which has assembled the necessary funds to enable them to come to Europe and to whom they are indebted. This places them under strong psychological pressure, which many of them are unable to cope with<sup>22</sup>. Their life in Switzerland and how it evolves does not just concern them but must satisfy the hopes and expectations of a whole community in their country of origin. Failure, in the form of their rapid return, can not only damage their self-esteem but also marginalise them within their own social circle.

In some cases unaccompanied minors arrive in Switzerland with a specific plan in mind, particularly that of studying. Generally, these young persons are looked after by families whom they already know. This is particularly the case with ones from Ethiopia, Eritrea and Latin American countries<sup>23</sup>. They often find it difficult to adapt to a different education system from that of their home country. As a result they may be placed in classes that correspond to their actual educational level and therefore find themselves alongside children much younger than they are. These problems can lead to their becoming discouraged and rejecting their environment, particularly in adolescence<sup>24</sup>.

Finally, many unaccompanied minors arrive in Switzerland without any particular stated reasons. Their aim is simply to “leave their country” or to “come to Europe”<sup>25</sup>.

Unaccompanied minors in Switzerland are therefore a very diverse group. They include persons of different levels of education and cultural backgrounds whose motives reflect widely varying needs that are difficult to compare. Any political response to this problem must therefore take account of these differences. Thus, the priority for refugees from violence is likely to be protection and possibly medical and psychological care whereas other unaccompanied minors should be offered what is essentially a window onto the future, particularly in the form of education or vocational training. The asylum procedure by itself cannot cover all these eventualities.

### 1.3 Entry into Switzerland

Unaccompanied minors arrive in Switzerland in two main ways. Some enter through illegal immigration channels while others are taken in by relatives or close friends in the country<sup>26</sup>. In the former case, the majority of young persons concerned come from west Africa. They probably travel overland and across the Mediterranean via north Africa and southern Europe. They then enter Switzerland with the aid of people

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<sup>21</sup> wata A., *op. cit.*, pp. 6 ff. see also VALLI M., *op. cit.*, p. 16.

<sup>22</sup> Mireille Chervaz Dramé, interview, 3 August 2005.

<sup>23</sup> See the example of Margarita, a young Mexican who lived in England and then Italy before settling in Switzerland: *Interdialogos*, no 2, 2004, p. 41.

<sup>24</sup> Mireille Chervaz Dramé, interview, 3 August 2005.

<sup>25</sup> Mireille Chervaz Dramé, Daniel Burnat, interview, 3 August 2005.

<sup>26</sup> For a detailed analysis of these processes, see Valli M., *op. cit.*



smugglers<sup>27</sup>. The journey can last for several months or even years<sup>28</sup>. On the other hand they never arrive in Switzerland by air.

The children who enter via illegal immigration channels are the most vulnerable. Throughout their journey they face the risk of recruitment by networks concerned with economic or sexual exploitation<sup>29</sup>. In general, it is these young people who seek asylum in Switzerland.

However, Switzerland's federal structure makes it difficult to provide a clear picture. There are still substantial gaps in co-operation between the relevant federal and cantonal authorities. The main problems are unwillingness to share information at cantonal level, lack of communication and absence of evaluation<sup>30</sup>. In particular, there are no statistics on the subject.

Other unaccompanied minors are invited by family members or other relatives of friends living in Switzerland. They usually enter on a tourist visa and then remain once the visa has expired. In many cases, these unaccompanied minors represent a second generation of migrants in Switzerland. Their hosts are families who were part of a first wave of migration in the 1970s and 80s. This is the case, for example, of young people from Chile, Peru and Vietnam. Others come from new sources of immigration, for example unaccompanied minors from Bolivia<sup>31</sup>.

Children in this category do not apply for asylum. They come to Switzerland to work or study.

## **2. The law governing the reception and care of unaccompanied minors in Switzerland**

The reception and care of unaccompanied minors in Switzerland is the subject of international, federal and cantonal law.

### **2.1 The main treaties and other international texts**

The Convention on the Rights of the Child of 20 November 1989 came into force in Switzerland on 26 March 1997. It makes the best interests of the child the basic principle of any government action concerning children (Article 3). Children temporarily or permanently deprived of their family environment are entitled to all necessary protection and assistance (Articles 3 and 20). Turning to asylum, Article 22 states that:

*"1. 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*

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<sup>27</sup> Wata A., *op. cit.*, p. 14.

<sup>28</sup> Frieden J., "L'Afrique en Suisse", *Asile et migration: Eléments d'analyse et de politique*, Berne, 2002, p. 3.

<sup>29</sup> Widmer R., "Comment prévoir un projet de vie pour les enfants réfugiés", *Interdialogos*, no 2, 2004, pp. 28ff.

<sup>30</sup> *Report on illegal immigration*, IMES (Swiss immigration, integration and emigration office), the federal refugee office, Fedpol and the border guards service, 23 June 2004, pp. 33 ff.

<sup>31</sup> Mireille Chervaz Dramé, interview, 3 August 2005.

*in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

*2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."*

According to the Swiss Asylum Appeals Commission, this Article only applies to young asylum seekers and those who have obtained refugee status. Young persons whose asylum applications have been rejected are not therefore entitled to this protection<sup>32</sup>.

Other relevant principles in the Convention include those of non-discrimination (Article 2), the right to life, survival and development (Article 6), and the right to be heard (Article 12).

Of more direct relevance to unaccompanied minors, the Convention's supervisory body, the Committee on the Rights of the Child, has recently published a document entitled "Treatment of unaccompanied and separated children outside their country of origin"<sup>33</sup>. Although this is not formally binding on parties to the Convention, it does represent an authorised interpretation of the relevant articles. It applies firstly to "unaccompanied children" that is ones who "have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so"<sup>34</sup>. Secondly, it covers "separated children", that is ones who "have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives"<sup>35</sup>. It also only concerns unaccompanied or separated children outside their country of origin, that is their country of nationality or, if stateless, their country of habitual residence.

The general commentary therefore offers a systematic overview of the principles and rules arising from the Convention that are applicable to these children, whether or not they are the subject of asylum proceedings. It also considers its application to certain specific areas, such as the prevention of trafficking, family reunion, reintegration in the country of origin and international adoption.

Finally, the parties to the Convention have undertaken to submit reports to the Committee on the Rights of the Child at regular intervals on measures taken to apply the Convention in their countries. On the basis of these reports and of a dialogue on their content, the Committee publishes "concluding observations" on each country

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<sup>32</sup> Swiss Asylum Appeals Commission – legal information service, 1998/13.

<sup>33</sup> *Treatment of unaccompanied and separated children outside their country of origin*, General Comment no 6 (2005), 3 June 2005, CRC/GC/2005/6 (en anglais uniquement).

<sup>34</sup> Chapter III.

<sup>35</sup> *Ibid.*

concerned. Its most recent observations on Switzerland appeared in June 2006<sup>36</sup>, and were based on the initial Swiss report of 1 November 2000<sup>37</sup>. The Committee made the following recommendations to the Swiss government concerning refugee, asylum-seeking and unaccompanied children:

*Refugee, asylum-seeking and unaccompanied children*

"50. While welcoming the entry into force of the federal asylum legislation (Federal Asylum Act and Ordinance 1 on Asylum Procedure) on 1 October 1999, the Committee remains concerned that the procedure used for unaccompanied minors is not always in their best interests nor fully in line with relevant provisions of the Convention. In addition, in relation to the reservation made to article 10 of the Convention, the Committee is concerned that the right to family reunification is too restricted.

51. The Committee recommends that the State party simplify its approach regarding the procedures for requesting asylum and take all necessary measures to expedite them and to ensure they take into account the special needs and requirements of children, in particular unaccompanied children; these include the designation of a legal representative, the placement of such children in centres, and their access to health care and education. In addition, the Committee recommends that the State party review its system for family reunification, notably for refugees who stay for a long period in the State party."

Other more general human rights conventions also apply to unaccompanied minors in Switzerland. The most obvious examples are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights<sup>38</sup> and the European Convention on Human Rights.

Switzerland is also a party to the Convention relating to the Status of Refugees of 28 July 1951. This is of general application and has nothing specific to say on unaccompanied minors. Nevertheless, it has been interpreted and clarified by the United Nations High Commissioner for Refugees in the form of a series of UNHCR policy guidelines. These cover such topics as the protection and care of refugee children<sup>39</sup>, interviewing unaccompanied minors and preparing social histories<sup>40</sup> and policies and procedures in dealing with unaccompanied children seeking asylum<sup>41</sup>.

Finally, international law also lays down rules governing conflicts of law that might apply to unaccompanied minors, in the form of the so-called Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of minors<sup>42</sup>.

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<sup>36</sup> Swiss Asylum Appeals Commission – legal information service.

<sup>37</sup> *Initial report of the Swiss Government on the Application of the Convention on the Rights of the Child (Initial Report of Switzerland)*, Berne, 1 November 2000, UN Doc. CRC/C/78/Add.3

<sup>38</sup> These two treaties, adopted by the United Nations General Assembly on 16 December 1966, came into force in Switzerland on 18 September 1992.

<sup>39</sup> HCR guidelines on the protection and care of refugee children, 1994.

<sup>40</sup> HCR Guidelines on hearings for unaccompanied minors and the preparation of social history reports, April 1990.

<sup>41</sup> HCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997.

<sup>42</sup> Entered into force in Switzerland on 28 November 1974.

## 2.2 Federal law

The Swiss Civil Code<sup>43</sup> offers general protection to children, and thus to unaccompanied minors. Articles 11 ff. (enjoyment and exercise of civil rights), 307 ff. (protection of children) and 360 ff. (guardianship and other supervision measures) are particularly relevant.

Under Article 121 of the Federal Constitution legislation on the residence and domicile of foreigners, and on granting asylum are federal matters.

The main legislation on the subject is the Residence and Domicile of Foreigners Act of 26 March 1931.<sup>44</sup>

Similarly, the Federal Asylum Act of 26 June 1998, which came into force on 1 October 1999, is the centrepiece of asylum legislation in Switzerland. Section 17 is specifically concerned with unaccompanied minors. It makes the Swiss government (the Federal Council) responsible for the rules governing the treatment of children and young persons in asylum proceedings. Meanwhile in each case the relevant canton must immediately appoint a "support person" to represent the child's interests throughout the proceedings<sup>45</sup>.

The delegation of powers to the Federal Council was given practical effect in the Asylum Procedure Order 1 of 11 August 1999, which came into force on 1 October 1999. This lays down rules for determining the age of and measures to protect unaccompanied minors and stipulates that persons hearing asylum applications from minors must take account of the various characteristics of children<sup>46</sup>.

Finally, a Federal Refugee Office directive is concerned with asylum requests from unaccompanied minors and adults incapable of understanding<sup>47</sup>. It offers considerable scope for flexibility. According to its opening paragraph, it is designed to clarify certain procedural aspects relating to applications of this sort and is intended for federal and cantonal authorities.

Finally, federal law also provides for conflicts of laws. The Federal Private International Law Act of 18 December 1987, which came into force on January 1989, may apply to unaccompanied minor cases. Sections 24 (stateless persons and refugees), 35 (exercise of civil rights) and 85 (guardianship and other protective measure) are particularly relevant here.

## 2.3 Cantonal law

Cantonal legislation is too extensive and varied to be summarised here.

Cantonal powers and responsibilities concerning unaccompanied minors mainly relate to child protection, particularly the establishment of guardianship arrangements. They are also responsible for education and vocational training. Cantons implement national policy on the reception of and assistance to applicants for asylum, and where necessary carry out expulsion orders.

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<sup>43</sup> <http://www.admin.ch/ch/f/rs/c210.html> (in French).

<sup>44</sup> [http://www.admin.ch/ch/f/rs/142\\_20/](http://www.admin.ch/ch/f/rs/142_20/) (in French).

<sup>45</sup> [http://www.admin.ch/ch/f/rs/c142\\_31.html](http://www.admin.ch/ch/f/rs/c142_31.html)

<sup>46</sup> Article 7, para. 7.

<sup>47</sup> Directive 23.2 of 20 September 1999, entered into force on 1 October 1999.

### 3. The organisation of the reception and care of unaccompanied minors in Switzerland

The care of unaccompanied minors in Switzerland is mainly carried out under the asylum procedure. It is therefore governed by the Federal Asylum Act and Asylum Procedure Order 1. In addition, to adapt this procedure to the requirements of the Convention on the Rights of the Child, particularly the principle of the child's best interests embodied in Article 3, the Federal Refugee Office has issued a directive on asylum requests from unaccompanied minors and adults incapable of understanding.

But as already noted, a growing number of unaccompanied minors do not fall into this category. These are mainly young persons who enter and settle in Switzerland illegally, without applying for refugee status.

#### 3.1 Reception and care of illegal unaccompanied minors

There is no real policy on the reception and care of illegal unaccompanied minors in Switzerland<sup>48</sup>. In the absence of any specific procedure, they are covered by the child protection measures established in each canton. Practice varies from one canton to another and is partly dependent on voluntary efforts.

In Geneva, for example, responsibility for these young persons devolves on the cantonal child protection department. The department permanently supervises between 80 and 100 unaccompanied minors, most of whom are aged 12 to 18. Its main task is to approve these children's place of residence. About 80% of the unaccompanied minors supervised by the department are looked after by close acquaintances living in the canton, usually members of their extended family. The department makes sure that the children attend school and exercises a form of right of oversight. The host families therefore operate as *de facto* foster parents (see Article 300 of the Swiss Civil Code)<sup>49</sup>.

There is generally no difficulty establishing contact with unaccompanied minors hosted by families officially resident in Geneva. The department is usually informed of their presence by the cantonal population office or the education department, via their school. The identification and protection of illegal unaccompanied minors hosted by families who are themselves in the country illegally raise more problems. The child protection department usually becomes aware of their presence in the canton as a result of police checks.

Still in Geneva, illegal unaccompanied minors can seek medical care from a mobile hospital unit while a voluntary network distributes medicines<sup>50</sup>. In Lausanne, they are looked after in the children's hospital, where they receive free care adapted to their particular needs. They also receive social advice and assistance. However, since these young persons do not have medical insurance, they are not always certain to receive the medicines they are prescribed. Closer collaboration with pharmacies would therefore be desirable<sup>51</sup>.

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<sup>48</sup> Wata A., *op. cit.*, p. 47.

<sup>49</sup> Mireille Chervaz Dramé and Corine Spiess, Interview, 3 August 2005.

<sup>50</sup> Wata A., *op. cit.*, p. 47.

<sup>51</sup> Valli M., *op. cit.*, pp. 37ff.

Generally speaking, the only nationally co-ordinated policy concerning illegal unaccompanied minors relates to public education<sup>52</sup>. The Swiss conference of cantonal directors of education has recommended that all foreign children be admitted to state schools. The chair and the secretary general of the conference have also stated that school and education authorities must not report such illegal immigrant children to the immigration police. These principles appear to be complied with, even though they are not incorporated into cantonal legislation<sup>53</sup>. Children without a residence permit sometimes fail to attend school, because they have not been informed of this option, are afraid of being identified by the police or have to work to survive<sup>54</sup>.

For unaccompanied minors who are over compulsory school age, the opportunities to continue their studies or enter vocational training are limited or even non-existent<sup>55</sup>. In particular, young illegal immigrants are not entitled to take up a formal apprenticeship.

### **3.2. Reception and care of unaccompanied minors seeking asylum**

#### **3.2.1 Registration of unaccompanied minors**

The right to request asylum applies strictly to the individuals concerned (Directive 23.2, chap. 2). This means that unaccompanied minors may lodge applications directly (in the case of those capable of understanding) or via a legal representative (children incapable of understanding) (Article 19 of the Swiss Civil Code)<sup>56</sup>. The authorities have no power to intervene *ex officio*.

In accordance with the principle of the child's best interests, applications lodged by unaccompanied minors should be given priority by registration centre officials. Paragraph 3.3 states that the decision to allocate an unaccompanied minor to a canton must be made within a few working days.

Applicants receive a short hearing at the local asylum applications registration centre, if they appear to have sufficient capacity for understanding. At this stage, no decision is taken on appointing a guardian or support person. Applicants' personal data and preliminary information on their reasons for leaving their country of origin are recorded. The officials must also establish children's exact age and their capacity for understanding.

This practice has been criticised by some organisations, which believe that unaccompanied minors should not be interviewed before the appointment of a legal representative or support person and that the first meeting should be as short as possible<sup>57</sup>. It appears that registration centre interviews tend to be fairly drawn out. As a result, unaccompanied minors may remain up to six weeks in facilities unsuited to

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<sup>52</sup> *Report on illegal immigration*, IMES (Swiss immigration, integration and emigration office), the federal refugee office, Fedpol and the border guards service, 23 June 2004, p. 33. ([http://www.bfm.admin.ch/fileadmin/user\\_upload/Aktuell/Pressemitteilungen\\_franz/IMES/2004/illegale1\\_f.pdf](http://www.bfm.admin.ch/fileadmin/user_upload/Aktuell/Pressemitteilungen_franz/IMES/2004/illegale1_f.pdf)).

<sup>53</sup> Ibid.

<sup>54</sup> Valli M., *op. cit.*, p. 43.

<sup>55</sup> Valli M., *op. cit.*, p. 43.

<sup>56</sup> Swiss Asylum Appeals Commission – legal information service, 1996/3, 1996/5.

<sup>57</sup> Swiss Foundation of the International Social Service, *Switzerland: Questionnaire for Country Assessment*, Save the Children (Separated Children in Europe Programme), October 1999-April 2000, par. 4.c.

their particular needs<sup>58</sup>. It has also been suggested that these interviews take place not in federal reception centres but in cantonal facilities where the presence of a legal representative can be guaranteed<sup>59</sup>.

In practice, unaccompanied minors who lack the capacity for understanding are rare. Most of them are between 15 and 18 and are therefore able to understand the purpose of the proceedings in which they are taking part.

Establishing that the young person is still a minor is a crucial aspect of the proceedings. This will determine not only what procedure will be followed but also how the applicant is accommodated and looked after.

When it is clear that applicants are under 18, they are placed in the care of a canton. However, in some cases they may be sent to a third country, if they have family there who can look after them. Repatriation procedures are governed in such cases by the readmission agreement between Switzerland and the country concerned.

When it cannot be established with certainty that young persons are under 18, for example because there is no reliable documentation, preliminary steps are taken to determine their age<sup>60</sup>. The Appeals Commission has ruled that applicants must themselves establish the "probability" that they are minors<sup>61</sup>. The burden of proof is therefore on the applicant, but it is lightened to the extent that the requirement is phrased in terms of probability rather than certainty. For example, applicants must explain why they are unable to produce their identity documents. They may also be asked how they know their age and to describe their lives so far, particularly the different stages of their education.

Where necessary, age may be estimated using scientific methods (Article 7 para. 1 of Asylum Procedure Order 1). The Swiss authorities may therefore carry out bone x-ray examinations. However, the scientific limitations of the procedure mean that the authorities can only rule that an applicant has lied at a hearing if there is more than three years' difference between the declared and estimated ages<sup>62</sup>. In such cases applicants are likely to be refused permission to stay in the country and deported. In any case the technique is of limited value because most applicants claim to be between 15 and 18 and beyond the age of 19 bone x-rays can no longer be used to determine persons' age.

Where doubts persist, the University of Zurich Institute of Forensic Medicine may be asked to carry out a more thorough examination, with the applicant's consent. In such cases, four tests are carried out: a paediatric history, a bone x-ray of the wrist, an examination of the wisdom teeth and a computerised tomography of the collarbones. The authorities will only find that an applicant is over 18 if this is confirmed by all four tests. Applicants therefore have the benefit of the doubt.

At each stage of the procedure, applicants have the right to be heard.

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<sup>58</sup> Christoph Braunschweig, Interview 5 August 2005.

<sup>59</sup> World Organisation against Torture, *The Rights of the Child in Switzerland*, May-June 2002, p. 28

<sup>60</sup> The Asylum Appeals Commission has ruled that this assessment, carried out before the hearing on the grounds for asylum and the appointment of a support person, is legal. Swiss Asylum Appeals Commission – legal information service, 2004/30.

<sup>61</sup> Swiss Asylum Appeals Commission – legal information service, 2001/23.

<sup>62</sup> According to the Commission's case-law: Swiss Asylum Appeals Commission – legal information service, 2000/19, 2001/23.

Finally, applicants are examined medically when they are registered, to identify any possible conditions that might require treatment.

### 3.2.2 Forms of protection

When unaccompanied minors are placed in the care of cantons, the cantonal authorities must immediately initiate guardianship or other supervision measures (Articles 368 ff. and 392 ff. of the Civil Code), as soon as the appeals commission makes its decision (Article 7 para. 2 of Asylum Procedure Order 1). However, if it is not possible to apply supervision measures, the cantonal authorities must immediately appoint a support person to represent the young person's interests in the proceedings (Section 17 para. 3 Federal Asylum Act, Article 7 para. 3 and 5 of Asylum Procedure Order 1). Support persons are mainly responsible for administrative and organisational matters relating to the young person concerned. If necessary, they can request the appointment of a legal representative (Directive 23.2, para. 3.4.1). A support person's mandate comes to an end when a supervisor or guardian is appointed. In other words, the appointment of a support person is a purely temporary measure, pending the introduction of supervision measures.

There are no precise qualifications for appointment as a support person. Practice varies, but the individual must be over 18 and have the necessary skills and knowledge to assist the unaccompanied minor in the asylum procedure. In theory, support persons must satisfy similar requirements to those applicable to supervisors or guardians<sup>63</sup>. The Refugee Appeals Commission has also laid down that they must have basic legal knowledge of asylum matters. However, it has also specified that this requirement should not be interpreted too strictly. For example, it has recognised that the head of a residential establishment for asylum seekers met these conditions<sup>64</sup>.

The care of unaccompanied minors in Switzerland varies widely in practice, depending on the policies adopted by each canton<sup>65</sup>. The large cantons have established specialist departments for this purpose whereas other approaches are adopted in the smaller ones, depending on the extent of the phenomenon and certain specific local factors. In Geneva and Basle Rural, for example, unaccompanied minors are entrusted to supervisors who not only keep track of the asylum proceedings but also undertake other legal tasks. In Lucerne, St Gallen and Zurich, on the other hand, care is the responsibility of a specialist department that decides, on a case by case basis, whether some form of formal supervision is required<sup>66</sup>. In Grisons, a police-appointed support person attends hearings. Where appropriate, he or she may ask the relevant authorities to order a supervision measure<sup>67</sup>.

Contrary to what is laid down in law, therefore, in practice supervision measures are not ordered systematically. The protection afforded to unaccompanied minors applying for refugee status varies from one canton to another. This means that practice

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<sup>63</sup> Philippe Tinguely, Interview, 7 July 2005.

<sup>64</sup> Swiss Asylum Appeals Commission – legal information service, 1998/13, 2003/1.

<sup>65</sup> For a description of the practice in certain cantons, see WATA A., *op. cit.*, pp. 39 ff.

<sup>66</sup> In Zurich, for example, supervision measures are ordered in about 10% of cases.

<sup>67</sup> This information on cantons was compiled by the Federal Refugee Office for a comparative study in November 2003. The conclusions cover practice in nine representative cantons. Federal Refugee Office, *op. cit.*, 21 pp.



is discriminatory and should be changed<sup>68</sup>. Some commentators believe that support persons are seen as a means of dispensing with the need for legal representation of minors prescribed in the Civil Code and may lead to the appointment of persons whose interests do not necessarily coincide with those of the young applicants<sup>69</sup>. Certain non-governmental organisations are therefore calling for supervision measures to be applied automatically to unaccompanied minors involved in asylum proceedings<sup>70</sup>. However, the refugee commission's practice is tending to reduce such inequalities since it insists that unaccompanied minors who are capable of understanding and are unrepresented must be granted legal assistance throughout the asylum procedure (at least) until the first hearing on the grounds for asylum<sup>71</sup>. This requirement derives from the right to be heard<sup>72</sup>.

At all events, whatever approach is adopted, unaccompanied minors must receive full and co-ordinated care and attention. It must not be confined to assistance during the asylum procedure but should also include any other proceedings under civil law, and other aspects of their reception, care and support. To that end<sup>73</sup>, the role and responsibilities of the support person should be clarified. This person's responsibility in terms of legal representation is not defined in either the Federal Asylum Act or Asylum Procedure Order 1. There is no guarantee therefore that this form of assistance will be forthcoming.

### 3.2.3 Reception, care and support

Arrangements for the reception, care and support of unaccompanied minors also vary from canton to canton. They may be placed in foster families, particularly the youngest ones, in specialist institutions, as in Geneva, Lausanne, St Gallen, Schaffhausen and Zurich, or in centres for asylum seekers. In the last-named case, unaccompanied minors may be accommodated with adults, for example in Jura and Grisons. They may even have to share dormitories with adults<sup>74</sup>, which is clearly quite unacceptable. It is also incompatible with Article 20 of the Convention on the Rights of the Child, according to which, "a child temporarily or permanently deprived of his or her family environment .... shall be entitled to special protection and assistance provided by the State" (para. 1). In particular such children should be placed "in suitable institutions for the care of children" (para. 3).

Swiss legislation should therefore stipulate that unaccompanied minors must be provided with specialist facilities. They should never be required to sleep in the same place as adults.

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<sup>68</sup> See, for example, the report of the Swiss NGOs: Comments on the Swiss Government report to the Committee on the Rights of the Child, p. 20.

<sup>69</sup> ROSSEL L., "Protection des enfants migrants: un statut d'exception", *Interdialogos*, no 2, 2004, p. 17. Christoph Braunschweig also notes that in some cantons support persons are appointed by the local authorities. Such persons are therefore frequently quite unaware of the interests and rights of the child (Interview, 5 August 2005).

<sup>70</sup> Swiss Refugee Aid Organisation, *Die Bedeutung der Kinderrechtskonvention im Asylbereich*, June 2000, p. 14. OMCT, *op. cit.*, p. 28.

<sup>71</sup> Swiss Asylum Appeals Commission – legal information service, 1998/13.

<sup>72</sup> Swiss Asylum Appeals Commission – legal information service, 1999/2.

<sup>73</sup> Federal Refugee Office, *op. cit.* pp 8 ff.

<sup>74</sup> In Basle Rural and Jura. Federal Refugee Office, *op. cit.*, pp. 9 and 18.

Unaccompanied minors placed in institutions or centres are looked after by persons with special professional training, mainly social workers<sup>75</sup>. However, in some cases they work with asylum seekers in general, and are not required to have specific skills in working with children<sup>76</sup>. Moreover, certain cantons do not have special regulations on the subject. A suitable form of care arrangements should therefore be adopted for the whole of Switzerland. A contact person should be appointed for each unaccompanied minor and this person's functions should be clearly defined and adapted to the young person's needs. Moreover, the ratio of professionals to young persons should be higher than that of professionals to adult asylum seekers<sup>77</sup>.

In Switzerland, asylum seekers, persons admitted temporarily and formal refugees are entitled to social assistance if they are in need. They receive a minimum subsistence income and are insured against sickness<sup>78</sup>. The Confederation pays the cantons 73 francs per day for the care of young persons. Some cantons may increase this amount<sup>79</sup>.

Social assistance for applicants who are refused permission to stay in the country or are ordered to be deported is reduced to a minimum. Since 1 April 2004, under a financial austerity plan, they are only entitled to the aid and assistance to persons in distress that the Confederation has to provide to anyone in the country under Article 12 of the Constitution. Over the first nine months that followed the entry into force of these amendments, 168 unaccompanied minors, two of whom were under 16, were informed that they would not be admitted to the country in connection with their asylum applications<sup>80</sup>.

In February 2005, the Federal Justice Office ruled that this legislation was compatible with the Convention on the Rights of the Child<sup>81</sup>. It stated that it had to be decided in accordance with the particular circumstances whether the benefits stipulated in Article 12 of the Constitution offered children the care and protection necessary for their well-being, as required by the Convention, or whether additional support was needed<sup>82</sup>. However the question arises as to whether these benefits, which are limited to situations of distress, are not, by their nature, insufficient to meet the Convention's requirements. If so, rather than assessing each individual case the authorities should automatically pay additional benefits for the children concerned. The Confederation should issue clear directives on the subject, failing which unaccompanied minors are likely to receive widely varying forms of assistance, according to the relevant assessments of each cantonal authority.

In the same document, the Federal Justice Office ruled that the necessary care and protection should be provided as a matter of course, without the need for the young

<sup>75</sup> Initial report on Switzerland, *op. cit.*, p. 150.

<sup>76</sup> Notably in Basle Rural, Jura and Thurgau.

<sup>77</sup> See Federal Refugee Office, *op. cit.*, p. 10.

<sup>78</sup> See <http://www.asyl.admin.ch/index.php?id=93&L=1>.

<sup>79</sup> Philippe Tinguely, Interview, 7 July 2005.

<sup>80</sup> Federal Migration Office, *Non-Admission Monitoring Report*, 3<sup>rd</sup> quarter 2004, p. II; *Non-Admission Monitoring Report*, 4<sup>th</sup> quarter 2004, p. 13.

<sup>81</sup> Federal Justice Office, *Rechtsgutachten über die Anforderungen des Kinderrechtskonvention an die Ausgestaltung der Hilfe in Notlagen (Art. 12 BV)*, 25 February 2005.

<sup>82</sup> See Federal Migration Office, *Non-Admission Monitoring Report*, 4<sup>th</sup> quarter 2004, p. 13.

persons concerned to request it explicitly. It also stated that cantons were obliged to apply the relevant rules relating to supervision and guardianship, even when the young persons concerned had been refused permission to stay in the country.

These principles are based on the expert opinion of an administrative department, and as such are not legally binding. The relevant authorities, in particular the Federal Migration Office, should now give them force of law.

### 3.2.4 Education and training

Education and training of unaccompanied minors are cantonal responsibilities. As a rule, they enter primary or secondary school within three months of arrival in Switzerland. However, experience shows that it can be up to a year before some of them go to school<sup>83</sup>. This is clearly far too long. Unaccompanied minors should be integrated into the school system as rapidly as possible. The Swiss NGO coalition for the rights of the child suggests a maximum delay of two weeks<sup>84</sup>.

Every canton makes education compulsory for young persons, including asylum seekers, up to the age of 15. However, if an asylum application has been turned down at first instance and expulsion is possible in the near future, the young person concerned may not be admitted to school<sup>85</sup>.

Unaccompanied minors over compulsory school age are eligible for occupational and training programmes to prepare them for the labour market and improve their employment prospects<sup>86</sup>. In practice, participation in these programmes varies greatly according to canton. In some it is very low whereas others ensure that all unaccompanied minors benefit from some measure of education or training<sup>87</sup>.

Finally, unaccompanied minors may enter an occupational apprenticeship. However, those concerned need authorisation to take part in such training. Certain cantons are more reluctant than others to grant such authorisation, which results in discrimination<sup>88</sup>. Even when these young persons do start an apprenticeship they are rarely able to complete it<sup>89</sup>. Certain employers hesitate to recruit asylum seekers as apprentices out of fear that their training efforts will come to nothing. It has therefore been suggested that unaccompanied minors who spend more than a year in Switzerland and whose expulsion is not envisaged in the short term should be entitled to vocational training, which they can complete without restriction<sup>90</sup>.

### 3.2.5 Asylum hearings

When it is considered likely that a young applicant has the requisite capacity for understanding (Directive 23.2, para. 3.4.3), he or she will be interviewed by the immigration police on the reasons for the application. Swiss law does not provide for

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<sup>83</sup> Report of the Swiss NGOs: Comments on the Swiss Government report to the Committee on the Rights of the Child, p. 20.

<sup>84</sup> Report of the Swiss NGOs, *op. cit.*, p. 21.

<sup>85</sup> Initial report on Switzerland, *op. cit.*, pp. 150 ff.

<sup>86</sup> *Ibid.* P. 151.

<sup>87</sup> Federal Refugee Office, *op. cit.*, p. 11.

<sup>88</sup> World Organisation against Torture, *op. cit.*, p. 29.

<sup>89</sup> Federal Refugee Office, *op. cit.*, pp. 11 and 19.

<sup>90</sup> Report of the Swiss NGOs, *op. cit.*, p. 21.

any particular grounds relating to minors. Like any adult, applicants must show that they are likely to suffer personal persecution in their country<sup>91</sup>. This means, for example, that the individuals concerned are active members of a political organisation and that their activities place them directly in danger. These conditions are rarely met in practice<sup>92</sup>.

Those conducting interviews must take account of the "various characteristics of children" (Article 7 para. 7 of Asylum Procedure Order 1). In particular, they must ask about young persons' family relations and their home circumstances in their country of origin (Directive 23.2, para. 3.4.3). Interviews must take place in the presence of applicants' legal representative, support person or other officially appointed representative (Article 29, para. 2 Federal Asylum Act), unless the young persons expressly waive their presence. The Asylum Appeals Commission has also stated that when those concerned are particularly young and have not explained the reasons for their application sufficiently and fully, as a matter of principle this may not be taken as a violation of their duty of collaboration<sup>93</sup>.

The Swiss NGO coalition for the rights of the child argues that in practice account is not always taken of the particular characteristics of children. The organisations concerned insist that young asylum seekers be interviewed by persons with special psychological qualifications and training that enable them to relate to young persons<sup>94</sup>. They add that the children's credibility, age and level of maturity must also be systematically assessed<sup>95</sup>.

Applicants without the capacity for understanding are not questioned on their reasons for seeking asylum. Instead, information is sought from the young person's representative to confirm the request and clarify the facts. Any close relatives in Switzerland and the relevant diplomatic representations may also be contacted<sup>96</sup>.

### 3.2.6 Expulsions decisions

When unaccompanied minors' applications are rejected, either immediately or after more detailed examination, consideration is given to their expulsion. Expulsion is only carried out if it is lawful, reasonable and possible (Section 44 para. 2 of the Federal Asylum Act).

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<sup>91</sup> See Section 3 of the Federal Asylum Act:

Definition of the term refugee

Refugees are persons who, in their state of origin or most recent country of residence, are exposed to serious harm or have good grounds for fearing to be so exposed because of their race, religion, nationality, membership of a particular social group or political opinions.

Serious harm is taken to include, in particular, threats to life, physical integrity or liberty and measures that entail unbearable psychological pressure. Account should be taken of reasons for flight pertaining specifically to women.

<sup>92</sup> Rossel L., "Protection des enfants migrants: un statut d'exception", *Interdialogos*, no 2, 2004, p. 16.

<sup>93</sup> Swiss Asylum Appeals Commission – legal information service, 1999/2.

<sup>94</sup> *Report of the Swiss NGOs, op. cit.*, p. 21. See also the Swiss Foundation of the International Social Service, *op. cit.* para. 4.c. World Organisation against Torture, *op. cit.*, p. 28.

<sup>95</sup> Report of the Swiss NGOs, *op. cit.*, p. 21.

<sup>96</sup> Initial report on Switzerland, *op. cit.*, p. 151.

Under the Residence and Domicile of Foreigners Act, it is unlawful to enforce a expulsion order if it is incompatible with Switzerland's obligations under international law (Section 14a para.3 of the Federal Residence and Domicile of Foreigners Act). These obligations derive firstly from the Convention on the Rights of the Child. Applicants can only rely on Convention provisions that are considered to be directly applicable. The Swiss Asylum Appeals Commission has ruled that Article 22 simply requires states to collaborate to encourage family reunion. They are not required to carry out investigations to identify unaccompanied minors' parents' place of residence for the purposes of expulsion<sup>97</sup>.

Switzerland's other international commitments include the non-refoulement principle laid down in Articles 33 of the Convention relating to the Status of Refugees and 3 of the Convention against Torture, and confirmed by the European Court of Human Rights.

It is not considered reasonable to enforce expulsion when this could place the person concerned in real danger<sup>98</sup>. In the particular case of unaccompanied minors, the authorities must take account of the child's best interests (Article 3 of the Convention on the Rights of the Child) in deciding whether expulsion is reasonable. Under the case-law of the Asylum Appeals Commission, this requires the authorities to take account of the following factors: age, level of maturity, level of dependence, nature and status of the child's family relationships (degree of kinship, closeness and solidity of relations) in the country of origin and host country, characteristics of contact persons (in particular their commitment to and capacity for support), level of current development/training and future potential in this area, level of integration in relation to the length of stay in Switzerland and potential for and possible obstacles to reintegration in the country of origin<sup>99</sup>.

The Asylum Appeals Commission has ruled that it is reasonable to deport a minor if the child's parents living in the country of origin can change their place of residence within that country to a safe place where they can take in the child<sup>100</sup>. The Commission has also ruled that when a child has close relatives in both host country and country of origin, subject to certain conditions such as family unity expulsion is not incompatible with the best interests of the child principle, even if living conditions are more difficult abroad than in Switzerland<sup>101</sup>. Similarly, it has also been decided that unaccompanied minors' financial situation and training opportunities are not the only key factors in determining what is in the children's interests<sup>102</sup>.

To throw light on these matters, specific investigations have been undertaken by Swiss diplomatic representatives in applicants' countries of origin. In practice, they appear to have been largely confined to the youngest unaccompanied minors and their

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<sup>97</sup> Swiss Asylum Appeals Commission – legal information service, 1998/13.

<sup>98</sup> Initial report on Switzerland, *op. cit.*, p. 152.

<sup>99</sup> Initial report on Switzerland, *op. cit.*, p. 150. The Commission has also stated that minors can only be deported if they have already been informed at the investigation stage of the possibility of being looked after following their return by a family member or a specialist institution. The guardian's presence at the hearing may be essential, Swiss Asylum Appeals Commission – legal information service, 1999/2.

<sup>100</sup> Swiss Asylum Appeals Commission – legal information service, 1999/24.

<sup>101</sup> Philippe Tinguely, Interview, 7 July 2005.

<sup>102</sup> *Ibid.*

reliability has in any case been called into question. In one particular case the Commission refused to take account of information collated by a diplomatic representation, on the grounds that the statements of the persons who supplied it to the Swiss authorities were inconsistent and unreliable<sup>103</sup>. The Swiss Foundation of Social Service International has proposed that this type of investigation be undertaken for all unaccompanied minors who need them, including the older ones, that is right up to the age of 18. It has also proposed that embassy staff be specially trained for such work, at least in countries from which there are a large number of asylum applications<sup>104</sup>.

The Swiss authorities may also ask certain international organisations, such as the International Committee of the Red Cross or the office of the United Nations High Commissioner for Refugees, to help trace young persons' relatives<sup>105</sup>.

Finally, under Section 14 para. 3 of the Federal Residence and Domicile of Foreigners Act, expulsion orders cannot be enforced if applicants cannot leave Switzerland or be deported to their country of origin, the country from which they came or another country. This is the case, for example, if the countries of origin or from which an applicant came are unknown or they refuse to accept his or her return.

If expulsions cannot be enforced, particularly in cases of serious personal distress, applicants are granted provisional admission to Switzerland (Section 14 para 1 of the Federal Residence and Domicile of Foreigners Act). Unaccompanied minors rarely obtain this type of decision. The authorities frequently notify expulsion decisions and then wait till those concerned reach the age of majority before enforcing them. This enables them to avoid the application of special safeguards for young persons<sup>106</sup>.

### 3.2.7 Enforcement of expulsion orders

If a expulsion order is enforceable, assistance may be offered, such as financial aid or help on arrival. Appeals against expulsion may be lodged with the Asylum Appeals Commission within 30 days.

Under the Federal Residence and Domicile of Foreigners Act, foreigners without permission to reside or settle in the country may be placed in administrative detention until a decision is taken on their status. Such detention is for a maximum of three months and may be imposed when, for example, those concerned refuse to reveal their identity, make several asylum applications under different identities or repeatedly refuse to respond to summonses to attend hearings with no valid reasons<sup>107</sup>.

When a expulsion order is approved at first instance three months' administrative detention may also be ordered, particularly if there are reasons to think that the individual concerned does not intend to comply with the order or his or her application is considered to be abusive (unjustified refusal to present identity documents, refusal to

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<sup>103</sup> Swiss Asylum Appeals Commission – legal information service, 27 March 2000.

<sup>104</sup> SSI-Switzerland, *op. cit.*, para. 8 b.

<sup>105</sup> Tinguely P., "Le statut de l'enfant migrant: L'avancée des pratiques. La problématique des requérants d'asile mineurs en Switzerland ", *Etrangers, migrants, réfugiés, requérants, clandestins... et les droits de l'enfant?*, Sion, IUKB/IDE, 2001, p. 152.

<sup>106</sup> World Organisation against Torture, *op. cit.*, p. 30. Wata A., *op. cit.*, p. 38. Rossel L., *op. cit.*, p. 16.

<sup>107</sup> Section 13 of the Federal Residence and Domicile of Foreigners Act.

collaborate and so on)<sup>108</sup>. Where necessary, such detention may be extended to six months on the authority of the courts<sup>109</sup>.

The Act also authorises the detention of minors from the age of 15<sup>110</sup>.

In practice it is difficult to know how far this legislation is applied to unaccompanied minors. The decision on whether to use administrative detention is a cantonal matter. Some have never applied it to young persons<sup>111</sup> whereas others do not hesitate use it to enforce expulsion orders<sup>112</sup>.

The legislation has been criticised by numerous organisations and specialists. Several have questioned its compatibility with the Convention on the Rights of the Child<sup>113</sup>, while Mr Alvaro Gil-Robles, the Council of Europe's Commissioner for Human Rights, has recently criticised a bill to extend pre-expulsion administrative detention to up to 12 months. The Commissioner has stated that such periods would be clearly "incompatible with international child protection standards"<sup>114</sup>.

Switzerland should at least amend the relevant legislation to ensure that these measures are not applicable to asylum seekers aged under 18<sup>115</sup>.

### 3.2.8 Co-ordination and co-operation between cantons

One of the problems faced by Switzerland in dealing with unaccompanied minors is its federal structure. Because of their limited structural and financial capacity, many cantons are ill-equipped to offer them adequate facilities. Jura and Grisons, for example, have had to drop plans to provide special residential accommodation for lack of financial resources. The declining number of unaccompanied minors in Switzerland is an added disincentive for cantons to provide reasonably comprehensive facilities. Alternatives must be found to this strictly proportional cantonal responsibility.

The best solution would be for certain cantons to pool their resources to be able to offer satisfactory facilities for unaccompanied minors. Guardianship services and residential establishments could be regionalised and thus serve several cantons simultaneously. Alternatively, unaccompanied minors could be allocated only to cantons with the relevant facilities. This would have to be accompanied by a reapportionment of the financial burden. Finally, as has been proposed by Thurgau<sup>116</sup>,

<sup>108</sup> Section 13a of the Federal Residence and Domicile of Foreigners Act

<sup>109</sup> Section 13b para. 2 of the Federal Residence and Domicile of Foreigners Act.

<sup>110</sup> Section 13c para. 3 of the Federal Residence and Domicile of Foreigners Act

<sup>111</sup> Daniel Burnat, Interview 3 August 2005.

<sup>112</sup> See, for example, Federal Migration Office, Non-Admission Monitoring Report, 4<sup>th</sup> quarter 2004, p. 13.

<sup>113</sup> See, in particular, Lücker-Babel M-F., "Les enfants migrants vus au travers de la Convention relative aux droits de l'enfant", *Etrangers, migrants, réfugiés, requérants, clandestins ... et les droits de l'enfant?*, Sion, 2001, p. 85. Grant Ph., *Les mesures de contraintes en droit des étrangers, Mise à jour et rapport complémentaire de l'OSAR*, Berne, 2001, p. 25. World Organisation against Torture, *op. cit.*, p. 32.

<sup>114</sup> Report of Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Switzerland, 29 November - 3 December 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly, 8 June 2005, CommDH(2005)7, para. 49.

<sup>115</sup> See Swiss Foundation of the International Social Service, *Switzerland, National Assessment*, Separated Children in Europe Programme, October 1999-April 2000, para. 6. World Organisation against Torture, *op. cit.*, p. 36.

<sup>116</sup> Federal Refugee Office, *op. cit.*, p. 13.

responsibility for the care of unaccompanied minors might be entrusted to the federal authorities, which would allow practice to be harmonised throughout the country. This would require the agreement of all the cantons.

#### **4. The treatment of unaccompanied minors: issues arising**

According to the head of Geneva's children's service, lack of prospects rather than migration as such is what underlies the problem of unaccompanied minors arriving in Switzerland<sup>117</sup>. The young people need to be offered medium or longer-term projects, either in Switzerland or in their countries of origin. This is particularly important for the youngest among them, as they have the greatest capacity for learning.

The first step is the grant unaccompanied minors in Switzerland a particular legal status. Subject to certain conditions, they could be granted a permit that reflected their situation. It would make them eligible for certain services and facilitate their contacts with family and friends in the countries of origin. Their current status often makes it difficult for unaccompanied minors to maintain their links with their families. They are frequently left to their own devices, with the risks that entails<sup>118</sup>. The young persons concerned would therefore benefit from a certain social stability, even if their stay in Switzerland was for a limited duration. It would then be possible to offer them a practical programme of activities that would subsequently be of use to them when they returned home.

Identifying the children concerned would also make it easier to rapidly assemble all the information necessary to decide on their return. Assessments of the prospects for expulsion should be based on detailed social reports on young persons' living conditions in their own country. Such social reports should be balanced by another report presenting the situation in Switzerland. Comparison of the two should then make it possible to decide, based on precise information, which solution most closely reflected a child's best interests<sup>119</sup>.

Identifying these unaccompanied minors should also greatly facilitate preparations for their return, particularly by co-ordinating with their family and offering them a reintegration programme.

The Swiss Confederation has set up a programme to encourage asylum seekers to return home. The programme, which is operated in collaboration with the International Organisation for Migration, offers an advisory service, individual assistance for returning asylum seekers, training to assist returnees to reintegrate into their countries and structural support abroad. Switzerland has also established pilot reception arrangements in certain countries. Alongside assistance to persons returning to their countries of origin, steps are also being taken to help the local population. The aim is to ensure that those who remain at home are not placed at a disadvantage compared with those who choose to emigrate to Switzerland<sup>120</sup>. Assistance to persons returning home must therefore form part of a wider development co-operation package.

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<sup>117</sup> Mireille Chervaz Dramé, interview, 3 August 2005.

<sup>118</sup> Mireille Chervaz Dramé and Corine Spiess, Interview, 3 August 2005.

<sup>119</sup> Christoph Braunschweig, Interview 5 August 2005.

<sup>120</sup> For more information, see the Federal Migration Office internet site (<http://www.asyl.admin.ch/index.php?L=1>).



In addition to these general benefits, unaccompanied minors may be entitled as particularly vulnerable persons to additional assistance, such as financial aid or assistance with finding accommodation or securing medical treatment<sup>121</sup>.

Nevertheless, many asylum seekers are not eligible for these services. They include ones who have missed their deadline for departure, whose applications are summarily dismissed or whose conduct during the asylum procedure has been "manifestly unreasonable"<sup>122</sup>.

Assistance to returnees also draws on the support of voluntary associations. The Swiss Foundation of the International Social Service, a non-profit making organisation with a network of partners in 140 countries, also tries to assist unaccompanied minors. It offers them advice and practical support to facilitate their occupational and social reintegration in their countries of origin. For example, it may meet the purchase price of tools or equipment that will enable those concerned to generate income. The International Social Service may also give young persons financial assistance to complete their studies in their country of origin<sup>123</sup>. Where appropriate, this support is monitored by a partner organisation in the country in question.

Finally, Switzerland should co-operate with other host countries in developing ways of preventing risks associated with the migration of unaccompanied minors. In particular, families in the main countries of origin should be made fully aware of these risks. They should make sure that proper arrangements are made for young persons travelling to and settling in Switzerland and that they do so in safety. At the very least, they should not send their children into potentially dangerous situations.

## **Conclusion: main proposals**

### **General recommendations**

1. What we know about unaccompanied minors in Switzerland is mainly based on those who have passed through the asylum procedure. There has never been a comprehensive national study of their counterparts without permission to reside. The Swiss authorities should therefore undertake a detailed examination of the circumstances of this second category of unaccompanied minors. This examination should be based on comprehensive statistics. Particular attention should be paid to girls who are in the country illegally.
2. This information should be used to draw up a properly thought out and co-ordinated national policy on the reception and treatment of unaccompanied minors without permission to reside. They should be granted a form of recognition to offer them protection and make it possible to meet their needs during their stay in the country and prepare for their return in satisfactory conditions. The policy should be developed in conjunction with relevant voluntary associations.
3. The Swiss authorities should take further steps to ensure that all these young persons of compulsory school age attend school as soon as possible after arriving in Switzerland. This particularly applies to ones who are illegally present.

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<sup>121</sup> See for example the assistance programme for persons returning to Angola: *phase III*, Federal Migration Office circular, Asile 62.13.2.

<sup>122</sup> Federal Migration Office internet site (<http://www.asyl.admin.ch/index.php?L=1>).

<sup>123</sup> For further information see Widmer R., "Comment prévoir un projet de vie pour les enfants réfugiés", *Interdialogos*, no 2, 2004, pp. 25ff.

4. It should also be made easier for unaccompanied minors over compulsory school age to continue studying or enter vocational training. Those who spend more than a year in Switzerland and whose expulsion is not envisaged in the short term should be entitled to vocational training, which they can complete without restriction<sup>124</sup>.

5. There should be a co-ordinated cantonal policy on the reception of unaccompanied minors. Certain cantons should pool their resources for that purpose. For example, guardianship services and residential establishments could be regionalised and thus serve several cantons simultaneously.

6. The authorities should establish a proper programme specifically designed to assist the return of unaccompanied minors. They should abandon the practice of waiting for those concerned to reach the age of 18 before enforcing their expulsion. Reception conditions in countries of origin should be integrated into existing co-operation and development programmes and developed in conjunction with other host countries concerned.

### **Specific recommendations concerning asylum procedure**

1. Unaccompanied minors should be assisted by a legal representative throughout asylum application proceedings. The authorities should not make excessive use of preliminary hearings in asylum registration centres with no legal representation.

2. Unaccompanied minors should automatically be the subject of guardianship/supervision measures. Support persons should only be appointed exceptionally and for a limited period. Moreover, their functions and responsibilities should be specified formally to ensure that their role is not confined to assisting young persons in asylum proceedings but also includes any other proceedings under civil law, and other aspects of their reception, care and support.

3. Unaccompanied minors must be provided with specialist reception facilities and accommodation. In particular, they must always be separated from adult asylum seekers. A contact person with special child-care training should be appointed for each young person.

4. The Confederation should lay down clear rules on social assistance for young asylum seekers who are refused entry or are subsequently ordered to be deported. It should require the provision of supplementary assistance in addition to the assistance to persons in distress under Article 12 of the Constitution.

5. It appears that account is not always taken of the particular characteristics of children in asylum hearings. Unaccompanied minors should therefore be questioned by persons specially trained to enable them to relate to young persons.

6. Administrative detention prior to a decision on or enforcement of expulsion should be abolished for asylum seekers aged under 18<sup>125</sup>.

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<sup>124</sup> Report of the Swiss NGOs, *op. cit.*, p. 21.

<sup>125</sup> See Swiss Foundation of the International Social Service, Switzerland, *National Assessment, Separated Children in Europe Programme*, October 1999-April 2000, para. 6. World Organisation against Torture, *op. cit.*, p. 36.

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- Mrs Corine Spiess, assessments officer, Canton of Geneva children's service – child protection department
- Mr Philippe Tinguely, Assistant Head, asylum procedure section 3, Federal Migration Office
- Mr Rolf Widmer, Director, Swiss Foundation of the International Social Service

However, the views expressed in this study are purely those of the author.



# Summary report of the five cases

## Najat M'Jid

This report will endeavour to summarise the studies presented at the Regional Conference on “Migration of Unaccompanied Minors: Acting in the Best Interests of the Child”, which took place in Malaga on 27 and 28 October 2005.

The studies were based on the following four central themes:

- identifying the main features of migration by unaccompanied minors;
- analysing the legal framework;
- analysing the arrangements for taking in and providing for unaccompanied minors;
- proposed solutions to take account of the best interests of the unaccompanied minor.

This summary will deal with the situations in Morocco, Spain, France, Switzerland, Belgium, Italy and Hungary, as described by Dr. Najat M'Jid, Ms Rosa María Bravo Rodriguez, Ms Elizabeth Johnston, Mr Sylvain Vite, Dr Ching Lin Pang, Ms Roberta Medda-Windischer and Ms Renata Rakaczki, respectively.

### **1. Main characteristics of unaccompanied migrant minors**

Unaccompanied immigrant minors are defined as follows: under-age persons from third countries who are alone in Europe without legal representatives or guardians and who are under 18 years of age.

#### Unaccompanied immigrant minors have variable profiles:

- the proportion of asylum-seekers among such minors is minimal because many of them know nothing about asylum-seeker status, and also because asylum application procedures are very slow;
- exploited minors who have been the victims of child trafficking and have since become involved in prostitution or illegal labour networks (domestic work in the case of girls);
- children who have run away from home;
- rootless minors wandering from town to town and from country to country;
- minors joining a relative or acquaintance who has migrated to Europe, thus perpetuating a family or regional migration tradition;
- minors emigrating, either spontaneously or as mandated by their families, in order to seek work and obtain official papers with a view to implementing a project for the whole family: this is the largest category.

The minors in question are mainly boys (Spain, France and Morocco), are aged from 14 to 16 and have a low standard of education, although most of them have extensive experience in the informal labour field (crafts, mechanics, manual work, agriculture, etc).

These unaccompanied immigrant minors come from families in difficulty. Their difficulties can be economic (poverty, unemployment or job insecurity) or relational (divorce, domestic violence, reconstituted families, single-parent families, etc). In such families the children represent a source of income, which makes them responsible for their families at a very early age.

There would appear to be fewer unaccompanied female minors, probably because they have a lower profile, leaving their countries of origin via highly organised trafficking networks (domestic work, prostitution). Female minors only come to light when the networks are dismantled, when the occasional girl manages to escape or when the traffickers are reported to the police, as has happened in Switzerland and Spain.

While North Africa, Sub-Saharan Africa, Romania and other east European countries have until recently supplied the majority of unaccompanied migrant minors, particularly those bound for Spain and France, increasing numbers of such minors are now arriving in Europe from other areas such as West Africa, Latin America and China.

It is difficult to put a figure on these young migrants (insufficient, piecemeal data, and the high degree of mobility of such minors). However, while the extent of the phenomenon still varies from one country to another and from one nationality to another, it is undeniably expanding.

A distinction must be drawn between two types of underlying factors in migration by minors:

- **“pressure factors”**: the minors leave their countries because of ethnic or religious conflicts or socio-economic crises (poverty, mass exodus, etc). Very many under-age migrants point to the lack of future prospects in their countries of origin, not forgetting the large numbers of minors who are responsible for implementing a project for their whole family;
- **“attraction factors”**: Europe has an “El Dorado” mythical status which is maintained by the seasonal returns of legal migrants bearing all the outward signs of wealth (a car, nice clothes, gifts, money, etc). Furthermore, certain countries on the northern and southern shores of the Mediterranean share some of their history because of colonisation and traditional migration trends. The diversity and cost of the various means of transport are making it easier to travel. Unaccompanied immigrant minors choose countries of destination in which a relative or acquaintance is living.

The decision to emigrate is obviously also influenced by the specific procedures for entering specific countries. The rules governing admission to and departure from a territory constitute a mechanism that helps regulate migration flows:

- the increasingly strict and restrictive European visa policy is a further factor promoting unlawful migration;
- the fact that minors cannot be expelled from the territory in which they are present plays a significant role in their migration.

Finally, unlawful migration has become a highly lucrative market for people-smugglers on both sides of the Mediterranean. Young people and their families are contacted by people-smuggling networks holding out the prospect of fulfilling their migration plans for a price. The channels used by people-smugglers and traffickers are

increasingly well organised, and have developed marketing strategies worthy of major international corporations.

Unaccompanied minors use a variety of means of reaching Europe. They use many different land, air and sea routes, depending on which borders they have to cross:

- pateras (small fishing boats) are the most popular mode of transport, setting out from points all along the northern coast of Morocco, from Al Hoceima to Kenitra, as well as the Saharan coast opposite the Canary Islands, from Tarfaya to Dakhla (€ 500 to € 1000);
- boats from the major cargo ports;
- freight lorries setting out for Europe from Moroccan exporting towns and cities (€ 1000 to € 1500);
- private cars;
- aeroplanes (less usual);
- land borders between northern Morocco and Ceuta and Melilla, the two Spanish enclaves in Morocco, which are becoming increasingly difficult to access (with triple barbed-wire fences, thermal cameras and watchtowers).
- less commonly, boats setting out from the 1300-km-long Tunisian coastline for Italy, costing € 700 to € 1200 per person.

A variety of modi operandi are used

Some networks only provide for the crossing, so that once the minors arrive in Europe they are left to their own devices. Others organise the whole itinerary from the place of departure to the final destination; they install a veritable relay system, providing all the transport and transit accommodation. Others canvass parents and/or their children, offering a complete migration package:

- assisted family reunion, whereby the minor is declared as being related to a named migrant residing legally in European territory;
- forged employment contracts (€ 500 to € 1000);
- forged documents for obtaining tourist visas;
- forged residence permits (€ 500).

Carrying Moroccan minors across the Straits of Gibraltar is now one of the most profitable market niches for people-smugglers, fetching some € 800 per child (Amnesty International, 2005).

Many attempts at unlawful emigration end in death because of the unseaworthy vessels used. Migrants drown in the Mediterranean and their bodies are later recovered by Spanish police. Many of those who are reported missing have probably drowned or been thrown overboard. No data is unavailable on the precise number of minors who have died or gone missing.

The host country may not necessarily be the country of destination: to unaccompanied immigrant minors the host country is simply a gateway to Europe, a place of transit prior to reaching the final goal.

## **2. Analysis of the legal framework**

All the countries covered by the study have ratified the International Convention on the Rights of the Child (CRC) and therefore recognise the basic principles laid down in this instrument, including the best interests of the child, the right to life, survival and development, non-discrimination and respect for the child's opinions.

They have also ratified ILO Conventions 138 and 182, as well as both optional protocols to the CRC (the involvement of children in armed conflict, and the sale of children, child prostitution and child pornography).

These countries are likewise parties to the following treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Convention against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention relating to the Status of Refugees and its optional protocol.

However, not all the said countries have transposed these conventions effectively into legislation. For instance, some countries allow the detention of minors from the age of 15 onwards (Switzerland), while others turn back unaccompanied immigrant minors at the border from the age of 12 onwards (Greece).

The procedures and techniques for bone mass measurements vary from one country to the next, and some States have a whole battery of sophisticated scientific facilities. However, whatever the method or technique used, unaccompanied immigrant minors are rarely given the benefit of the doubt.

Many countries fail to provide legal representation for unaccompanied minors, who are held in administrative detention in special waiting areas. Little or no account is taken of the interests of unaccompanied minors in repatriation or expulsion procedures.

The fact that such minors are not entitled to residence permits when they come of age (at the age of 18) forces them underground. Asylum application procedures are slow and hardly ever explained to unaccompanied minors. Nor is there any question of the young people having recourse to appeal procedures in the event of the rejection of an asylum application.

## **3. Analysis of procedures for taking in and providing for unaccompanied migrant minors**

The arrangements vary from country to country, with a wide range of practices from one city to another, from one region to another and from one country to another, which largely explains the high degree of mobility of unaccompanied minors within Europe.

In many countries the waiting or transit areas which are designed to serve only temporarily are being turned into actual medium- to long-term detention centres, because of the mass influx of illegal migrants from various countries, cumbersome administrative procedures, understaffing and inappropriate infrastructures.

Some countries have developed alternative methods based on protecting and safeguarding the interests of the child. In Italy, for example, illegal immigrant minors who are identified as being "unaccompanied" are placed in the care of the local social services until a decision can be reached on whether they can stay in Italy or must be sent back to their country of origin.



The courts place unaccompanied immigrant minors in fostering structures which are run by NGOs with State subsidies or by State social services responsible for child welfare.

Minors may be placed in emergency reception centres, depending on the kind of protection procedures implemented in the host country. Such emergency reception centres are often overcrowded, and educational support is often inadequate. Young people can only stay in the centres for a fixed period.

Once this period has elapsed, the minor is transferred to a different centre. This is the beginning of a process of pushing the young person from one centre to another, without any proper co-ordination, any clear plan or any coherent support.

The services offered by these centres vary greatly and depend primarily on the quality and multidisciplinary of the support team. Not all centres can provide these services, which are often either piecemeal or kept to the bare minimum.

The type of centre used also varies from country to country: they can be day centres, night shelters or secure centres. The type of accommodation varies as well: reception structures, apartments rented by NGOs or hotel rooms. In some countries unaccompanied minors are taken in by foster families or are sponsored by families, which are often from the same country as the minor in question.

The support provided varies in quality and quantity from one structure to the next.

Follow-up work on unaccompanied immigrant minors is non-existent because there are no mechanisms for monitoring the progress of such minors or facilities for gauging the impact of the programmes implemented. What becomes of such young people? Where are they now? How many life plans have been completed for these minors? What happens to them after the age of 18?

Forced repatriation is the fate of many of these unaccompanied minors, even before the age of 18! There are precious few instances of assisted repatriation prepared, agreed to by the child and backed up by a suitable life plan.

On their arrival in Morocco they are apprehended by the Moroccan police. They are then either simply released if they look as if they can cope on their own, or else they are brought before a judge, who orders their placement in one of the State centres run by the State Secretary responsible for Youth until they can be reunited with their families.

But the fact is that the police and judicial services have no social remit for assisting repatriated children, helping them find their families or taking them back home. Moreover, the educational services provided by such centres are unsuited to unaccompanied minors.

They stay with their families for a while, but then try to emigrate again at the earliest possible opportunity. Some minors try as many as six times, swelling the ranks of the children living in Moroccan ports, who are left to their own devices pending the next chance to leave.

A number of good practices are worth mentioning:

- some structures use a life plan to support the young person until (s)he comes of age: the plan comprises residence permits, integration/employment and access to higher education. However, such cases are still uncommon and unresearched;

- some countries are attempting to standardise their procedures;
- decentralised partnerships and NGO-public authority partnerships have been formed on both sides of the Mediterranean;
- residence permits have been issued to young people who have come of age and entered training.

However, there are still many disparities from one country to the next and from one region to another within the same country. This discrepancy between a type of legislation which, in most cases, strives to “protect” and a policy based on an excessive “law-and-order mentality” is the underlying cause of many violations of the Rights of the Child. The extent of these violations is difficult to gauge in the absence of accurate data and of mechanisms to monitor the future fate of unaccompanied immigrant minors.

#### **4. Proposals**

The phenomenon of migration by unaccompanied minors has become a pan-European problem experienced by virtually all Council of Europe member States. People-smuggling networks have become highly active in exploiting this profitable niche, with the result that many children are subjected to ill-treatment and serious abuse.

Unaccompanied immigrant minors are children in danger, who need all the help and protection they can get from the authorities in the host countries.

The best interests of such minors should form the cornerstone of the relevant national policies.

We must create a migration policy covering the two continents of Africa and Europe, with countries on the southern shore of the Mediterranean, primarily Morocco, acting as transit countries between the two.

Such a socio-economic policy taking account of the best interests of the child would include:

- upstream (in Africa), tackling the underlying causes of migration by unaccompanied minors. This means developing national policies to bolster up families, but also and above all introducing sustainable joint development programmes;
- downstream (European Union), reassessing European migration policies to take account of the best interests and protection of the child, and formulating and implementing life plans for the unaccompanied minor.

The following changes are needed to achieve this:

- improved knowledge of the migration routes: information on the extent of the phenomenon, *modi operandi*, causes and networks;
- implementation of programmes to provide a range of attractive “life plans” for unaccompanied immigrant minors, in tandem with joint development schemes: “life plans” should be designed from a comprehensive angle incorporating all the issues involved in co-operation among the countries of origin, transit and destination. If these plans are to be successfully implemented, European countries must accept that not all the migrant children will return to their countries of origin.

## **SESSION 2 - RECEPTION OF UNACCOMPANIED MIGRANT MINORS – EXPERIENCES OF SOME COUNTRIES**

Reception unaccompanied migrant minors in Belgium : general trends and socio-economic profiles, with particular reference to minors from the Democratic Republic of the Congo

Ching Lin Pang<sup>1</sup>

### **Introduction**

This paper provides a general overview of the reception policy and structure of unaccompanied minors, hereafter indicated as UAM in Belgium and a small-scale case study on UAMs from the Democratic Republic of Congo. The case study is based on interviews with a limited group of minors and key figures, responsible for their reception. The latter is by no means representative but it elucidates the issue by introducing the voices and experiences of the minors themselves. Their perspectives have been except for a handful sources (UNICEF 2004) generally overlooked and silenced in most other publications and sources.

### **I. Structural framework**

#### **A. Definition**

The legal definition of an UAM is based on art. 5 of the Programme law 5(I) December 24 2002, title XIII, chapter VI concerning the guardianship of UAM and refers to any person, which has become operational since 1 May 2004:

- Younger than the age of 18
- unaccompanied by a person, who exercises the parental authority or the guardianship according to the national law of a minor
- citizen of a country, which is not a member of the European Economic Area
- and who finds him or herself in one of the following situations:
  - either requested the recognition of the refugee status
  - Either does not meet the conditions concerning access to the territory, the abode, the settlement and the removal of foreigners.

Before 2002 the only available definition of an UAM was to be found in an internal note by the Aliens Office (Hongenaert and Coillie 2000).

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## **B. Subcategories**

Depending on their legal status, the UAMs are divided in three subcategories:

- UAM asylum seekers
- UAM non asylum seekers
- UAM victims of human trafficking

UAM asylum seekers are minors, who have introduced an asylum file, which is still pending. UAM asylum seekers follow the same structural trajectory as adult asylum seekers. First, it is examined whether Belgium is responsible for the asylum request. If so it enters the receivability phase, an investigation carried out by the Aliens Office. The Aliens Office looks at a series of formal grounds and examines whether there is evidence of personal persecution on the grounds of Article 1A of the Geneva Convention on the Refugee Status (1951). In case the request is turned down, the (UAM) asylum seeker has the possibility to introduce an appeal to the Commissariat General for Refugees and Stateless Persons. If the request is accepted by the Aliens Office, the Commissariat General investigates the request content-wise or in depth in order to determine whether or not to grant the refugee status. In case of a negative outcome, the (UAM) asylum seeker has the right to appeal to the Permanent Refugee Appeals Commission. In addition the (UAM) asylum seeker has the right to enter appeal at the State Council against any enforceable decision concerning his/her asylum procedure.

UAM non asylum seekers refer to minors, who have never requested asylum or whose asylum request has been irrevocably turned down and who consequently reside in the country without legal status. When intercepted, the minor receives a declaration of arrival for a period of three months, which can be renewed different times. After 6 months if no durable solution is found and if the minor co-operates with the administration, a proof of inscription in the registry of foreigners, valid for a period of 6 months to 1 year, is issued. After 3 years when no solution has been found and in case the minor continues to co-operate, a proof of inscription in the registry of foreigners valid for an unlimited period of time can be issued on the basis of the following criteria: integration, knowledge of one of the national languages, work (or internship), school results, social behaviour and respect for the public order.

UAM victims of human trafficking are minors, who are victims of sexual or economic exploitation. Minors are subject to the same legal requirements as adults, which are stipulated in the circular concerning the delivery of residence and labour permits to foreigners, who are victims of human trafficking. UAMs who have left the setting of exploitation are received in a specialised and recognised centre. During this period the victim can introduce a complaint or issue a statement at the appropriate services. When s/he effectively does so, s/he will receive a temporary residence permit valid for three months. This permit can be extended following the complaint or the statement that a judicial procedure has been introduced. The 3-month renewal is implemented during the entire period of the judicial procedure.

## **C. Scope**

There is no central instance, which registers UAMs. In order to assess the scope of UAM one needs to look at the data of the Aliens Office, the police and the service Guardianship.

## Statistics of the Aliens Office

**Table 1:** Number of unaccompanied minors in Belgium, registered by Aliens Office (2000-2004)

	UAM asylum seekers	UAM illegals	UAM THB victims	TOTAL
<b>2000</b>	<b>848</b>	<b>852</b>	<b>12</b>	<b>1712</b>
2001	747	473	11	<b>1231</b>
2002	913 (603 after bone-age determination of the wrist)	1135	15	<b>2063</b>
2003	792 (589 after bone-age determination of the wrist)	955	31	<b>1778</b>
2004	679 (599 after bone-age determination of the wrist)	1993	22	<b>2694</b>

**Source:** Fedasil and Child Focus 2005 p. 16

The emergence of unaccompanied minors and separated children in industrialised took off since the 1990s (UNHCR 2004). This trend is well sustained in this decade. The declaration of the minor age is provided by the minors themselves at the border, at the asylum instances or during interception by the Police. Since 2002 the Aliens Office also includes the 'real' number of UAMs, namely those who are identified minor after bone-age determination.

### Statistics of the Police

The border police of the Airport Brussels International intercepted 59 UAMs in 2002 as well as in 2003. In the subsequent year some 60 UAMs were detected.

The maritime police in Zeebruges found 261 UAMs in 2001, 342 in 2002, 306 in 2003 and 178 in 2004.

### Statistics of the Service 'Guardianship'

Between May 1 2004 and 2005 2770 UAMs contacted the Service Guardianship. Of this total some 615 UAM disappeared, while 624 persons do not fall under the category of UAMs or impossible to identify.

## D. Policies towards UAM

### Reception

The reception of UAMs falls under the competence of the Federal Government and the Communities. The Minister of Social Integration is competent for the reception of UAM asylum seekers through the Agency Fedasil. The latter co-ordinates a network of different open reception structures for UAM asylum seekers, scattered throughout the territory. UAM asylum seekers are placed in 8 federal reception centres, where they stay in one premise, separated from adult asylum seekers, living in other buildings within the domain of the reception centre. Or they are referred to one of the four reception centres,

managed by the Red Cross. Finally there are 4 collective local reception initiatives (LOIs) managed by the services of the local communes (CPAS/OCMW). The latter can receive 10 to 60 minors in their buildings. The four collective local reception initiatives have a total capacity of 421 beds.

In a second phase a 'transition reception' is organised in LOIs (local reception initiatives) for youngsters, who have stayed during an extensive period in a reception centre. In June 2005 there were 82 beds in this reception mode.

When UAM asylum seekers are no longer in the asylum procedure, the responsibility of receiving UAMs is transmitted to the Communities. The Communities are responsible for any minor in a problematic educational situation. The Communities run specialised centres for UAM asylum seekers and services for accompanied independent living.

It also happens that UAMs are placed in a closed youth centre by the juvenile court. Other UAMs are denied entry to the territory and are transferred to a closed centre at the border.

The full capacity of the reception of UAMs in open centres amounts to 593 beds in 2005.

#### **The Federal Council of Ministers of March 21 2004**

During the Council of the Minister of March 21 2004 a note of the Minister of Social Integration concerning a co-operation agreement in the reception of UAMs was approved. This note recommends a dual reception model.

The model consists of two phases: the first phase of observation and orientation and the second phase of a reception structure, tailored to the individual situation and the specific needs of the minors.

In the first phase UAMs, whatever their administrative status-asylum seeker, illegal or victim THB-are always entitled to reception in a safe place with access to psychological, social, administrative and judicial assistance. The first phase is organised by the Federal Agency Fedasil in co-financing with the Communities.

In a second phase the minor is transferred after a maximum duration of 14 days to a reception structure, which is more adapted to the specific situation and needs of the minor.

As of now since there is not yet an agreement with both Communities Fedasil organises the first phase reception in two newly established reception centres, notably Neder-over-Heembeek en Steenokkerzeel (50 beds each).

#### **Guardianship**

Since 1 May 2004 the law of the Guardianship has become operational (Van Keirsbilck 2000; Annual Report CEOOR 2004; Fedasil and Child Focus 2005). The competences of the service Guardianship are:

- 1) identifying the UAM
- 2) appointing the guardian and co-ordinating the tasks of the guardian
- 3) maintaining contacts with governments responsible for asylum, residence, reception and housing

- 4) finding durable solution for UAM, taking into account his/her interests and personal aspirations

The service of the Guardianship identifies the UAM. In order to determine the minor age the Service has the right to of its own accord or at the demand of the Aliens Office to request an age assessment. This age assessment encompasses different medical examination (notably of the teeth, bone assessment of the wrist or the clavicle). In a following step the Service appoints a guardian as the legal representative of the UAM. The Service is also in charge with the selection, the recognition and the supervision on the material organisation of the tasks of the guardians. Finally the Service co-ordinates and supervises the contacts with the authorities in charge of asylum, residence, reception and housing and ensures to seek a durable solution for the UAM, taking into account his/her interests and personal life project.

The core task of the Guardian is to look after the interests of the minor and offer him/her protection. S/he is responsible for the legal follow-up and accompanies the minor in each phase of the procedure, assisted by a lawyer. The guardian ensures that the minor has access to education, and if necessary adequate psychological and medical aid in conjunction with appropriate housing facilities and respect for his/her political, philosophical and religious beliefs. Finally the guardian is also responsible to take measures to retrace the family of the minor.

#### **E. Critical Assessment**

Although the introduction of a legal definition of a UAM is a great step forwards and should be applauded, it should be noted, however, that after May 1 2004 the new definition does no longer include UAMs originating from the 10 new accession countries. In 2003 32 UAMs were registered coming from these countries. Within this group, there were 13 UAM asylum seekers, 17 UAM non asylum seekers and 2 UAM victims of THB.

In the area of data it should be underlined that there exists no uniform registration system for all UAMs. Although looking at different sets of data, collected by different instances might give us an indication of the scope but it does not contribute to an accurate rendition of the social reality. First, especially in regard to the second category of unregistered UAMs the data represent the intercepted UAMs and consequently those who are not arrested are not reflected in the figure, which after 2003 it has become the largest among the 3 subcategories. On the other hand there is the issue of double counting by the different instances. For instance an UAM after being intercepted by the police, might apply for asylum. S/he will appear twice, in the statistics of the police and in that of the asylum institution (Fedasil-Commissariat-General for Refugees and Stateless Persons). Thirdly, the statistics include only the UAMs who declared themselves to be minor. There is thus a probability that in this figure there are adults. Conversely it is equally probable that in the statistics of adult asylum seekers and illegals there are UAMs.

Concerning policies one can question the detention of UAMs in closed centres, all the more since they have no access to schooling and do not receive a treatment, which is adapted to their specific condition as a minor, not accompanied by an adult.

Although the introduction of the guardianship is generally applauded, it should be noted that at present there is a shortage of guardians. According to the Service of Guardianship there are sufficient guardians for UAMs, registered after May 1 2004. A priority is given to those, who entered at the border, then to those, who have introduced

an asylum file and finally those, who are illegal or whose asylum request has been turned down. The shortage of guardians applies specifically to youngsters, who are registered before May 2004.

Moreover the installation of this service has led to some unexpected perverse effects. The Aliens Office used to be relatively lenient in issuing residence documents given the total absence of an instance, which is in charge of UAMs. These days the Aliens Office has become much more demanding in the issuance of residence documents.

## II. Small scale case study: DRC UAM asylum seekers

### General

The phenomenon of UAMs has received -quite deservedly - a wide range of attention, ranging from policymakers; social assistants, NGOs, the media and the academic world. The relative wealth of information and analysis notwithstanding, very few instances or studies made an effort to include the voice of the minor. In the small-scale case study undertaken by an intern under the guidance of a staff member of the Centre for Equal Opportunities and Opposition to Racism during a six-months period, the main focus was directed towards the migration trajectory and the way the UAMs experience their journey, the reception and their adaptation in Belgium. In total 14 interviews of Congolese UAMs were conducted, besides interviews with social assistants, other staff members of three open reception centre, a teacher and a pedagogical responsible of a school, hosting a large group of UAM asylum seekers.

#### Research findings:

#### *Figures of Congolese UAMs*

UAMs originating from DRC Congo constitute one of the largest if not the largest group of UAM asylum seekers. From 2002-2004 the Congolese UAM asylum seekers figured as the largest group. In 2002 one out of five UAM asylum seekers originates from DR Congo. This high share continued in the following year. In 2004 the difference with other countries has diminished but they still form the largest group. Important to note is the significant increase of minors from Guinea. Moreover, UAM and adult asylum seekers from DR Congo are well represented in the total number of asylees.

2002	# UAM asylum requests	share	# asylum requests	share
DR Congo	123	20.4%	1789	9.5%
Rwanda	52	8.6%	487	2.6%
Albania	52	8.6%	539	2.9%
Angola	50	8.3%	406	2.2%
Kosovo	27	4.5%	917	4.9%

2003	# UAM asylum requests	share	# asylum requests	share
DR Congo	105	17.8%	1778	10.5%
Guinea	49	8.3%	354	2.1%
Angola	42	7.1%	355	2.1%
Rwanda	29	4.9%	450	2.7%
Afghanistan	28	4.8%	329	1.9%



2004	# UAM asylum requests	share	# asylum requests	share
DR Congo	86	14.4%	1102	10%
Guinea	80	13.4%	400	3.6%
Afghanistan	44	7.3%	201	1.8%
Rwanda	41	6.8%	297	2.7%
Russia	26	4.3%	989	8.9%

### *Life before departure*

The age at departure varies from 11 to 17. Twelve youngsters arrived directly from Congo and consequently have vivid memories of Congo and its capital Kinshasa. Except for one boy and a girl, all lived in the capital prior to departure. It is striking that only 4 children claim that both parents were still alive. Four others stated explicitly that one parent has passed away. Three others mentioned that both parents have passed away and one was not certain about the existence of the parents. Six of them lived with their family before they left, while six stayed with siblings or relatives. One minor said he received housing from his employer. Eleven youngsters have siblings. Three minors were single children. Many boys were also the oldest child of the family.

In terms of schooling all interviewees have attended school. Eight of them were still going to school before the move to Belgium. Two others did not attend school, while one of them was working. In general the Belgian teacher of UAM asylum seekers witnessed a great willingness for learning, which might indicate that this group of Congolese UAM asylum seekers have had schooling in the country of origin.

In the interviews very few references were made in the area of money and finances. In case the father was mentioned, this figure and his activities are situated in the military sphere. They valued the free education system in Belgium. It differs significantly with the situation in Congo where one needs to pay for school. They spend their leisure time in similar ways as their Belgian/European counterparts: going to the movies, play station, to go out with friends, etc.

It becomes clear that these youngsters originate from prosperous middle class families.

### **Migration motives**

The first migration motive is the unstable political situation.

It is not easy living in Congo. There are no human rights. One can be killed, when one doesn't know anyone. This is part of Africa, human life is not precious. It is like a sheet of (old) paper. (Boy. Age: 17)

I don't feel at ease in Congo. The political situation is not good at all. I don't feel safe and sometimes life is really hell. The political situation in Belgium and Europe is much better. There are many advantages here. Here I get proper care. Here you cannot be killed (for no reason). In Congo children are treated in the same way as adults. (Boy. Age: 13)

A related motive is the political activities of family members, which prompted the departure. These activities are mostly undertaken in times of power shift, first between Mobutu and Kabila and second between father and son Kabila.

My uncle is a businessman and politically active. He does not agree with the way how Congo is run. The political system doesn't work and the people ruling the country are not even Congolese. One cannot but suffer in Congo. There is nothing, not even

food. That is why he is active in a political party run by real Congolese, who want to make life better. Of course this party is not loved by everyone. One day I had to hand out documents to promote the party. I was arrested by soldiers and put in jail for 4 days. (Boy. Age: 17)

My father was officer during the regime of Mobutu. Then life was good. When the regime was dismantled it was difficult to integrate the soldiers in the army of Kabila. The officers, like my father, did not agree and have co-operated with the rebels to conquer Kinshasa. My father had to flee for the military. They came to our house, threatened us and accused of collaboration with the rebels. After these threats we moved but the problems did not go away. As the military discovered that my mother still had contact with my father, she was put in prison for 2 months. In that period father Kabila was killed and his son came to power.

The situation has become more calm. My father has then returned to Kinshasa. Later on he is arrested and transferred to prison. There he was shot dead. (Boy. Age: 17).

Another reason for leaving was economic, besides personal or family problems.

Since I am a boy, I need to make money. (Boy. Age: 17)

In December I was involved in a car accident, with a few wounded and one dead. It was my fault because I was drunk like the others in the car. I was arrested together with my friends and imprisoned. There I was beaten and I stayed for one week in prison. Then it was decided that we were sent to the army. When we were transferred to the army barrack and when the military were taking a break, the father of my friends helped us escape. Later I fled to Congo-Brazzaville, where we stayed for some time. (Boy. Age: 16).

The reason why I left Congo was because I had problems with my father. The only solution for my problems was to come to Europe, where I get the necessary protection...It was the church, which helped to organise my departure. (Girl. Age: 17)

I had a regular life but nobody took care of me. My aunt and her husband have never taken care of me. It feels like I had no youth. My life was in fact very sad. If I had the chance to leave the country earlier, I would have done it. Unfortunately I didn't know anyone, who could helped me then. (Girl. Age: 16)

I wanted to go to Paris to join my family. My cousins are all in Paris staying with my aunt. I want to join them there. (Boy. Age: 11)

### **Decision to leave**

Most youngsters were not involved in making the decision to leave the country. They were given notice shortly before the departure.

An acquaintance of my aunt did a proposition. One person could travel with him. Because my aunt was mother of two young children, she decided that I should go. She didn't ask for my opinion. I preferred to have stayed in Congo. (Girl. Age: 15)

I didn't know that I was going to Belgium or Europe. It was not my decision to come to Belgium. My parents took that decision. I had no chance to refuse it. But it was a chance, it is something fortunate. On the other hand I also regret leaving the country. (Boy. Age: 17)

In most cases it is the parents or other relatives, who made the decision for them, without taking into account the consent of the minors. Only two youngsters indicated

that they themselves decided to leave as they want to escape danger and the bad living circumstances.

Boys consider the departure as an opportunity and experience it as a veritable blessing, whereas this feeling is absent among girls. Even when the decision is made by their parents or other adults, boys seem to give much more thought to the departure than girls.

If my father had asked me (to leave), I would not have refused it. It is like receiving money. One never turns down money. The possibility to go to Europe is a unique chance, which I would not refuse. (Boy. Age: 13)

Nonetheless there is a certain ambiguity among most youngsters. Evidently they embrace wholeheartedly the opportunity to go to Europe but on the other hand they feel sadness since they have leave behind their family, friends, and their familiar surroundings.

### **Pre-departure expectation**

Most youngsters do not know the destination country. Two boys were informed in the air plane where they were heading to. Therefore they don't have the possibility to have given much thought to the destination. Moreover, when they are told which country they will go through, given their tender age, they don't have any idea what to expect. In general everyone shares the common image of Europe as a prosperous continent. This image is largely shaped by the media, and television in particular.

When I heard that I could go to Europe, I was very happy...Europe is for me paradise. I could hardly believe that I was the chosen one to go to Europe. Very few have this opportunity. In Congo many people dream of going to Europe but only few actually go there. (Boy. Age: 16)

A few know Belgium through courses they had in school. One boy has heard about Belgium but he did not know that a large segment of the Belgian population speaks Dutch.

In addition, quite a few were taken by surprise about their status of asylum seeker and that they were placed in open asylum centres.

I was not aware of the existence of an asylum centre. I was astounded. I see the chances to succeed in life diminished. But I don't want to return to Congo. I rather die than to return. (Boy: Age: 17)

Most youngsters had not given much thought to the journey abroad and therefore did not have specific expectations. One boy indicated that he expects to have the opportunity to attend school.

### **Trajectory to Belgium**

All interviewees travelled to Europe by plane and arrived at the National Airport. Ten youngsters departed from Kinshasa, two from Brazzaville and one from Angola. Two youngsters mentioned that their destination is Denmark rather than Belgium. Another indicated that his end destination was Turkey.

During the flight they were accompanied by a person, in most cases a man, who they have never met before. Although most were slightly worried, they generally felt at ease with this person. The youngsters consider the journey as a service rendered by a friend or acquaintance. No one is aware of the travel and other costs.

The person, who accompanied me was a man. He was kind. In case of trouble he told me to say that he was my father. During the flight I was scared. (Girl. Age: 16)

Once arrived in Belgium seven youngsters were placed with a person, where they stayed for a short time, before they were taken to the Aliens Office or to the Red Cross.

I stayed for three days with a woman. She was very nice and took very good care of me. On the third day she told me that she could no longer look after me. They took me to the Aliens Office and there I got all kinds of instructions. Ever since I lost touch with this woman. (Girl. Age: 15)

Three boys were taken to the closed detention centre 127 after their arrival when they were left behind by the person, who accompanied them during the journey. Another youngster was arrested together with the adult, who was with him, when the immigration service discovered they were using false documents. He, too was taken to the detention centre 127. Another boy was left behind by the person, who accompanied, after they have successfully passed the immigration service. He then went to Aliens Office on his own initiative.

### **Future Perspectives**

The majority of youngsters is aware about their uncertain future. Most of them hope to obtain legal documents so that they can stay in the territory on a legal basis.

For the future I hope I can stay in Belgium, which I am not too sure about. Living as an illegal is tough. Generally I am happy to be here but sometimes I am restless because I don't have legal documents. Girl Age: 16)

Conversely there are others, who are confident that they will obtain legal status.

I want to stay in Belgium. I think I can get the right documents so that I can stay in Belgium. I am very keen to go to school and to study Dutch. I realise that it is important to be able to speak Dutch in order to find a job. I want to become soccer player. I know this is very ambitious. I also want to become painter. When I have work later, I will not return to Congo. I want to save enough money to let my brothers and sisters come over. (Boy. Age: 13)

Concerning return there is a high divergence among the youngsters. Six youngsters consider return, in case the political situation improves in Congo.

Once I grow up, I want to return for sure to Congo. I want to prove that I can live independently and take care of myself. (Girl. Age: 16)

Four other youngsters firmly insist that they do not want to return under any circumstance. There is a general consensus on the importance of education, which they consider as the indispensable avenue to employment and a meaningful life.

### **III. Concluding thoughts: how to best improve the reception of UAM**

#### **Putting findings in perspective**

These findings, gathered from the interviews with a limited group of Congolese youngsters, are corroborated with the results of large-scale profile and trajectory monitoring dossier, undertaken by Child Focus. This study concludes that the profile of the UAM, who has not disappeared is male and African. His mother tongue is Lingala, having an elementary notion of Dutch, French, German or English when filing for asylum application. He is not subject to an age assessment and was 17 years old when

introducing the asylum request. He is unmarried and no guardian was assigned to him. The UAM travelled directly from his country of origin to Belgium. He is not the victim of human smugglers and could count on the financial support of family or friends. He travels by air plane and is accompanied by an adult. He does not use false documents. Within one week after arrival in the territory, he claims for asylum and hands his residence and identity documents over to the official instances. He is then referred to an open reception centre. In general the UAM feels quite comfortable in the new circumstances. Most of the UAM want to continue schooling in Belgium.

However, when looking at the group of disappeared UAMs most of them originate from African countries, although the most common nationality is Afghan. The share of disappeared UAMs within the total population is 25%. The mother tongue is not known. When applying for asylum he does not have any notion of French, English, German or Dutch. At the time of disappearance they have the age of 17. Of the total disappearances 40% are alarming following the ministerial guideline concerning the investigation of missing persons.

Our small sample did not include disappeared Congolese UAMs.

### **Some recommendations**

- Particular attention to traumatised UAM
- Limiting makeshift, emergency reception
- Putting young UAM in foster home
- If placed in an open reception centre:
  - resolutely choosing for open reception centres
  - personalising the reception
  - professional in-take interview
  - safeguarding privacy
  - translation by professional interpreter
  - guaranteeing right to attend schooling
  - streamlining the first and second phase of reception.

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# Reception of unaccompanied migrant minors in Hungary

Renata Rakaczki<sup>1</sup>

## 1. Introduction

In a situation, where people have to leave the country or the territory where they live owing to fear from persecution, it happens quite often that children get separated from their parents or other people having obligation to care about them, and arrive to the country of asylum alone. These children are in a special situation compared to the adult asylum seekers, and as such, they need special treatment and help.

Hungary uses the widely accepted notion for unaccompanied minors – that is also used by EU directives – saying that UAMs are third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States. The Hungarian Asylum Act gives an exception from the above definition by taking out the people who gained adult status before their 18<sup>th</sup> birthday according to the Hungarian law (people over the age of 16 having married).

### 1. Statistics

The fact that the problem of unaccompanied minors has to be a key question in the area of asylum is founded by the statistics on the number of this type of asylum seekers

According to the statistics, the average proportion of the UAMs among the total number of asylum seekers in 21 European countries was 4 % in 2000, around 5 % in 2001 and 2002, and 4 % in 2003. In Hungary, this number was highly above the average in 2003: this rate was 7,9 %. After 2003, an important decline followed, the total number of applicants in Hungary fell to 1600 persons, 2,6 % of which were UAMs. In the first half of 2005, the rate was 3,7 %.

As the unaccompanied minors – owing to their young age – need very special treatment, well-preparedness, adequate formation from the part of the people directly working with these children, and a special system of care and maintenance, financial and social services is needed as well.

### 2. Legal Basis and Specialties of Asylum Procedure of UAMs

#### • History and present situation

The Hungarian asylum law has a relatively young history. Hungary signed the Geneva Convention in 1989 with geographic restriction, which was ceased in 1998. The first law on asylum was born in 1997 and entered into force in 1998, before that, lower level legal rules contained dispositions in this domain.

As far as the UAMs are concerned, the Asylum Act of 1997 didn't contain any dispositions on them, only the Government Decree no. 24/1998 contained rules on UAMs. It declared that if the applicant hasn't reached the age of 18 and does not have

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legal representative, the Office has to nominate a guardian right after the lodging of the application.

The substantial change was brought by the 2001 modification of the Asylum Act. This modification incorporated the notion of unaccompanied minor in the Asylum Act. For the protection of the interests of UAMs guardian must be nominated, and the procedure must be finished out of turn. During the procedure of an UAM, psychologist expert can be involved who takes part in the hearing of the UAM. In case of doubt on the age of the minor, medical examination can be ordered with the agreement of the concerned in order to gain information on the age of the applicant. If the applicant does not give his agreement to this examination, this sole fact cannot be reason for refusal of his/her claim.

Government Decree no. 172/2001 also contains dispositions on UAMs. Concerning the participation of the guardian in the procedure, the regulation says that the guardian must sign the record of the hearing of the UAM.

There are rules for the accommodation of UAMs, too. The place designated for separated children as a place of accommodation shall be a children's institution or a reception center for unaccompanied minors, or a commercial or private accommodation maintained under contract. UAMs may be placed at relatives other than immediate family members, if the relative undertakes a commitment to provide room and board and support for the minor, and if it is evident that such placement is the minor's best interest by virtue of the relationship between the minor and the said relative.

- **Family Reunification**

The most important aim of the asylum authority must be to reunify the unaccompanied child to his/her family, if it is possible. It is many times the Dublin Regulations that need to be used; this is an evident way of family reunification. In many cases, the UNHCR gives adequate help in facilitating such reunion.

The asylum seekers whose application is rejected have to leave the territory of Hungary, but only under certain conditions of the Aliens Act in the protection of the children's interests. According to article 39(2) the unaccompanied minor who does not meet the conditions of legal stay may be expelled only when the unification of his/her family or appropriate state or other institutional care is guaranteed for him/her in the state of origin or another admitting state. In practice we never expel any separated child, thus their stay until the age of 18 is ensured.

The Hungarian Asylum Act contains a many dispositions protecting the UAMs' interests during the asylum procedure. A special question of the asylum procedure is the reception of the applicant, which is a specially sensitive question in case of UAMs.

### **3. Reception of UAMs**

Minors – just like women – are a special group who need special treatment. This special treatment can only be assured in special institutions, where the children can live separately from the adult applicants, and where experts can deal with them.

#### **a) History**

The first special institution specialized for the reception of the UAMs was founded in 2003 in Békéscsaba (Oltalom Charitable Association Home for Children). The creation of this youth center was financed by the OIN and the Hungarian Embassy of the United States. Before that, the UAMs were accommodated in the facilities of the Hungarian child protection system. The need for a separate institution arose after a



higher influx of UAMs to Hungary in 2002, when difficulties to take care of them arose. The normal foster children homes had no specialized experts on this field and no language knowledge.

Short after the opening of the Békéscsaba UAM Hostel, it began to receive Hungarian children, too, as it needed more financing than the sum that our Office could pay. From that time on, they worked in the frames of the Hungarian guardian system. With Békéscsaba UAM Hostel having lost its specialisation, we had to open a new center in Nagykanizsa.

**b) Youth hostels in Hungary**

• *Functioning of Youth Hostels*

The youth hostels for UAMs are not the part of the organisational system of the OIN, the one in Békéscsaba is functioned by a charitable organisation, the other one, in Nagykanizsa, is maintained by the Hungarian Red Cross. Accordingly, the people working in these institutions are the employees of the functioning organization, and are payed by them.

As already mentioned, the Békéscsaba Home for Children is at the same time registered as a child protection institution which deals not only with the care and maintenance of foreign children, but also with Hungarian ones.

The Directorate of Refugee Affairs nowadays sends all the UAM applicants to the other youth hostel in Nagykanizsa. This institution is partly financed from European Refugee Fund sources, and partly from OIN money. This organ only deals with the care and maintenance of foreign separated children who are under asylum procedure.

• *Role of Social Workers and Training of Staff*

The Youth Hostels are not only special in their legal status and financing, but also because of the people working there. As already mentioned the workers of these facilities are not the employees of the OIN.

Theoretically youth hostels are reception centers and community shelters in the same time, but as they are only for minors, the workers are not the same as in the Reception Centers for adults. Most of the employees are social workers who have special formation; they have pedagogic, nursery pedagogic, sociologist, psychologist, and etc. skills. These people all have qualification and experience that specifically fit the needs of the applicant children. The children are under 24 hour care and surveillance in the youth hostels.

The staff of the reception centers for minors have to participate in special trainings. The trainings focus on country of origin information, psychological care, etc.

The OIN has organized a conference on domestic violence with the financial contribution of the UNHCR. There are also trainings on selected country of origin information, and rotary meetings for social workers at least once in two months. The Cordelia Foundation also organizes meeting, recreational weekends with UNHCR financial aid. These meetings contain actual practical exercises.

#### **4. Care and Maintenance**

##### **a) Special needs**

Government Regulation no. 25/1998. contains the rules for the care and maintenance of the foreigners falling under the Asylum Act. According to this rule, there are two main types of care and maintenance: personal care and pecuniary benefits. These are for example health care, tuition, education for minors, free language tuition, regular subsistence contribution, enefit received upon definitive departure from the country.

For UAMs, psychologist care is provided in Nagykanizsa, and psychiatric care in Békéscsaba. The UAMs are entitled to a full range of health care, and not only for emergency care taking. There is special focus on sports training (eg. soccer) and skilled training (pottery, painting) as the average age of these young people fall between 15 and 18.

The UAMs can also profit from these services, naturally except for those ones that are given under the condition of being adult (eg. home creation benefit). A special form of care and maintenance for UAMs is the following.

##### **b) Tuition, Education and Placement in Institutions of Education and Institutions for Children**

The OIN shall refund the costs related to the pre-school education and the primary school education of temporarily protected persons and UAM claimants, provided that they fulfil their obligation of compulsory school attendance in the basic educational institute nearest to their accommodation. The OIN shall, furthermore, refund the cost of meals provided in educational and child protection institutions, as well as the cost of travel (travel card). From among the costs of school equipment, the OIN shall refund the costs of textbooks and notebooks (exercise books of the various subjects) verified by the educational institution.

##### **c) Practice and Statistics**

The children automatically get accommodation and alimentation. As soon as they are mentally prepared for it, they receive free language education in the youth hostels, and if they are well prepared or mature enough, they should [?] attend primary school for free. Primary education is compulsory in Hungary, for applicants, this rule stands from the age of 6, and after one year spent in the country as applicant, or earlier if the parents desire so. As the Council Directive 2003/9/EC laying down the minimum standards for the reception of asylum seekers prescribes that access to the education system of the receiving country shall not be postponed for more than three months from the date the application for asylum was lodged. Hungary hasn't yet integrated this rule in the national law, but the asylum authority tries to follow these dispositions in the practice, and our Ministry lobbied for the change of the Act on Public Education in this respect.

#### **5. Latest statistics figures**

According to the statistics, the number of UAM asylum seekers is decreasing – this tendency can be seen for all the asylum seekers. There is a change in the structure of the nationality of UAM applicants, too. Out of the 190 children in 2003, 53 % were Afghans, 11,5 % Somali, 4-4 % Iraqi, Vietnamese and Bangladeshi. In 2004, out of the 59 UAM applicants, 17 % were Moldavians, 8,5-8,5 % Turkish and Georgian, 6,7-6,7 % Afghan and Vietnamese. In the first half of 2005 24 UAMs applied for refugee status

in Hungary, 37 % of them were Nigerians, 20 % Moldavians, 12,5 % Vietnamese, 8,3-8,3 % Serbian and Georgian.

Currently, the number of Nigerian separated children has risen. According to our information, these kids – all boys – were travelling to Hungary under an official invitation to a sports event. After the event, only 30 % left officially Hungary and the rest of the team disappeared. Two months after the tour, UAMs started to arrive, very tired, thirsty, in a severe health condition to one of our Reception Centers. We transferred them to Nagykanizsa, and since then, a whole Nigerian youth football team is placed in our Hostel.

In 2003, only two UAMs were recognized as refugee. In 2004 four children were recognized as refugee. There has been no recognition in 2005 yet. It has to be mentioned that in 2003, 60 %, in 2004, 54 % and in the first half of 2005, 37 % of the cases were ceased, in most of the cases because of the applicant's disappearance. The high disappearance rate gives reason for the assumption that the UAMs – just as the adult claimers in Hungary – are not considering Hungary as a target country, and wish to move further to the west.

## **6. Conclusion**

The question of unaccompanied minors always has to be an important concern for the asylum authorities, as children are the most vulnerable group of asylum seekers. The tendency of arrival is unpredictable, thus the asylum authorities must always be prepared, with adequate facilities and qualified, professional staff.



# Reception of unaccompanied migrant minors in Italy

Roberta Medda-Windischer<sup>1</sup>

## Importance and Limits of Definitions

According to the Italian legislation a ‘non-accompanied foreign minor’ is “a minor who does not possess the Italian citizenship or that of another EU Member State, he/she has not applied for asylum,<sup>2</sup> he/she is present on any grounds, on the Italian territory without the assistance and the legal representation of his/her parents or other legally responsible adults in accordance with the Italian law”<sup>3</sup>

One of the main characteristics of the legislation concerning non-accompanied foreign minors is that they cannot be expelled, except in the interests of public safety and national security and for the protection of public order - in these cases the Juvenile Court is competent for adopting the expulsion order - or if he/she wishes to follow his/her parent or guardian, who has to be expelled.<sup>4</sup> Moreover, non-accompanied foreign minors, who have not applied for asylum, can only be repatriated through a special form of ‘assisted repatriation’ (see below).

With regard to the definition, two remarks have to be made. Firstly, the expression “without the assistance and the legal representation of his/her parents” does not mean that a non-accompanied foreign minor is an abandoned child: a minor not accompanied by his/her parents is not abandoned if, for instance, is assisted by relatives within the fourth degree of kinship, who are morally and materially able to take care for him/her, even if they do not have the legal custody of him/her. Likewise, a minor, who lives with his/her parents, can be in a state of abandonment in case of neglect or abuse on the part of his/her parents.

Secondly, according to the above definition, in addition to minors who are completely alone, minors who also who live with adults others than their parents, but who are not their legal guardians or do not have the custody of him/her on a legal basis, should be regarded as non-accompanied minors.

However, in this case there is a problem of interpretation concerning the status of minors, who live with relatives within the fourth degree of kinship (brothers, uncles, cousins, etc), who do not have the legal custody or are not their legal guardians (*de facto* custody).

In particular, some argue that minors living with relatives within the fourth degree of kinship without a formal decree of guardianship, should not be considered as

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<sup>2</sup> It has been noted with concern that very few foreign minors apply for asylum mainly for lack of adequate information by the competent authorities and lack of a comprehensive legislation on asylum. See, Working Group on the Convention of the Rights of the Child, First Report on the Convention of the Rights of the Child in Italy, 2004-2005, note 8.

<sup>3</sup> Art.1 (2) Rules of the Committee for Foreign Minors, Decree of the President of the Council of Ministers (DPCM) No. 535/99.

<sup>4</sup> In case of expulsion, the minor cannot be detained in Temporary Detention Centres (*Centri di permanenza temporanea*), unless this is required to guarantee the unity of the family.

‘non-accompanied minors’ because they have been implicitly and legitimately placed by their parents under the custody of other members of their families. This interpretation is based on the assumption that under the Italian law the custody of a minor by consent<sup>5</sup> does not require the formal consent by the minors’ parents if the consent can be inferred otherwise.<sup>6</sup>

In the legal practice, there have been cases supporting both interpretations: cases in which some Juvenile Courts have formally assigned the legal custody to a relative within the fourth degree of kinship by arguing that without the formal consent of the parents there is no custody by consent; and there are cases, in which, on the contrary, some Juvenile Courts have declared their inability to decide because it has been recognised that the custody based on the parents’ consent - even if not formally expressed – is valid.<sup>7</sup>

According to the Committee for Foreign Minors (hereinafter “the Committee”), the main public body in charge of the overall status and treatment of non-accompanied foreign minors, ‘accompanied minors’ should be considered as under the custody of a relative within the third degree of kinship but *on the basis of a formal decision* by the competent authorities, while the others should be considered as ‘non-accompanied minors’.<sup>8</sup>

Therefore, if a minor lives with his/her brother or an uncle but this person does not have the legal custody of him/her because the minor’s parents had not expressed a formal consent to the custody, then he/she should be considered a ‘non-accompanied minor’.

The Police authorities (*Questura*) have always supported this broad definition and have thus always reported to the Committee for Foreign Minors the presence of a minor in the event of a lack of formal custody. The Committee has not declared its incompetence in these cases, and has extended the scope of application of the legislation concerning non-accompanied foreign minors to these cases as well.

### **The Problem of Statistical Data**

The quality of available data has greatly improved since 2000 when the task to collect data on non-accompanied foreign minors was given to the Committee for Foreign Minors. According to the law, all foreign non-accompanied minors must be reported to this central administrative body, which collects and analyses the data at the national level.

Obviously, this does not mean that the data collected by the Committee corresponds to all non-accompanied minors effectively present in Italy. Many minors

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<sup>5</sup> Art.4, Law No. 184/83 on the Right of a Child to a Family.

<sup>6</sup> Art.9(4) of the Law No. 184/83 determines an obligation to communicate to the authorities the custody solely in case of a custody of a minor to relatives other than those within the fourth degree of kinship. It has to be noted that the custody by consent arranged by the local social services, in case of lack of formal consent by the parents, can be obtained in the practice in various forms : 1) the tutelary judge nominates a guardian (art. 343 ss Civil code), who then gives the consent to the custody; 2) the consent for the custody can be expressed by the institute of public assistance or, more often, by the local administration as the legal minor’s guardian (art. 402 civil code).

<sup>7</sup> Elena Rozzi (ed.) „*I minori stranieri non accompagnati – Schede sugli aspetti giuridici*”, September 2002, p.13.

<sup>8</sup> Guidelines of the Committee for Foreign Minors, 2003.

are not known to the authorities because they are in an irregular situation: either they have entered Italy illegally or they have fled from the communities or institutes where they were accommodated.

Moreover, many minors live with relatives, who for various reasons do not report them to the authorities, or, sometimes, the competent authorities have knowledge of them but they do not reported them to the Committee for Foreign Minors because of the problems of interpretation of the definition of non-accompanied minors, as dicussed above.

As of September 2004, 7.440 minors have been reported to the Committee, of whom 1.557 had a regular residence permit and 5.833 did not have a valid residence permit.<sup>9</sup>

The most frequent countries of origin are: Albania (almost 30%), Morocco (approx. 20%) and Rumania (almost 20%).

With regard to the age, most foreign minors reported are teenagers, between the age of 14 and 17.

**Table 1 – Country of origin**

Country	Tot. Reported Minors as of September 2004	
	No.	%
Albania	2.122	28,5
Morocco	1.602	21,5
Rumania	1.462	19,6
Rumania	2.254	30,2
Others*	7.44	100

Source :  
Committee for Foreign Minors

\* Among the others, Former Yugoslavia, Bangladesh, Turkey, Algeria, Iraq, Moldova, China.

**Table 2 - Age**

Age of Minors as of September 2004	%
14-17	84,6
5-16	13,8
0-4	1,6

Source :  
Committee for Foreign Minors

<sup>9</sup> Caritas, *Dossier Statistico Immigrazione*, XIV Report, 2004.

Among the reported foreign minors, a great majority are male:

**Table 3 - Gender**

Gender	%
Male	83.1
Female	16,9

Source :  
Committee for Foreign Minors

Also the above data are not reliable because the number of female minors is probably further underestimated: for instance, minors rescued from prostitution rackets can obtain a special residence permit for social protection (*permesso di soggiorno per protezione sociale*) and they do not fall under the jurisdiction of the Committee for Foreign Minors.<sup>10</sup>

Most minors are reported from Northern Italy (Lombardia-20,9%, Piemonte-11%), but also from the Centre (Lazio-13 %) and Southern Italy (Apulien-11%). Many minors reported from regions of south of Italy are often reported upon their arrival by boat but then they move to wealthier regions of Northern Italy.

**Table 4 - Actual situation**

Actual situation	%
Under custody of private persons	51,7
Placed in public or private structures	39,8
Untraceable*	8,5

Source :  
Committee for Foreign Minors

\* With regard to the untraceable minors, one can formulate different hypotheses: from the most optimistic – a voluntary return to their country of origin – to the less optimistic – irregular residence, involvement in sexual exploitation or trade with human beings.

### **Profile of Minors and their Families**

For a minor the difficult socio-economic conditions existing in the countries of origin, the scarcity of services, infrastructures, education and vocational training, job opportunities and, in general, and a lack of promising future prospects, are among the main motivations that lead him/her to leave the country of origin. Social unrest and endemic conflicts in the country of origin, in particular for those coming from Albania, but also from Kosovo and Maghreb countries, are other noteworthy grounds for migration.

<sup>10</sup> Art. 18 of the Law No. 286/98 Consolidate Act on Migration.



Likewise, the fascination for the European way of life and its wealth - as witnessed by many migrants of the same country or presented, though often distorted, by the media - influence the minor's decision to migrate.

The typical case of a non-accompanied foreign minor present in Italy is that of an Albanian boy between 16-18 years of age, stemming from a poor family, usually from the countryside or that has recently moved to a town. He has fulfilled compulsory education, but he does not want to continue with his studies. His parents agree that higher education is not worthwhile and supported his wish to find a better life in Italy. He is acquainted with many other Albanians, who went to Italy and returned wealthy or send money to their families that ensured them a comfortable life. Often, the entire family has accepted the idea of incurring debt or to sell their cattle to pay for the travel cost for him. Usually, the travel is by boat, arranged by criminal organisations. Sometimes, the arrival in Italy is fortuitous: many minors would have preferred to move to Germany or the United Kingdom, where integration policies are thought to be more generous.<sup>11</sup>

According to recent data, most minors today as compared to the past, are generally more motivated to get involved in integration projects, they possess higher levels of education, display greater interest in vocational training, and have more information on job opportunities.<sup>12</sup>

### **Main Legal Sources**

The legal framework pertaining to the status and protection of non-accompanied foreign minors is composed by legal norms on minors (such as, the UN Convention on the Rights of the Child, the Italian Civil Code, the Law No. 184/83 on guardianship and adoption), by provisions on migration (such as the Consolidate Act No. 286/98, its subsequent amendments and implementing regulation No. 394/99), and by specific regulations on non-accompanied foreign minors (such as the Rule of the Committee of Ministers No. 535/99).

Below is reported a brief overview of these international and domestic provisions:

#### International Treaties ratified by Italy

1) The UN Convention on the Rights of the Child (1989) (hereinafter "the UN Convention") was ratified by Italy with the Law No. 176/91. The Convention establishes main principles that member states must introduce into their domestic legal systems and that must guide the adoption of every judicial and administrative measure concerning minors;

2) The Luxembourg Convention (1980) and the Hague Convention (1980), on legal custody and repatriation measures, were ratified by Italy with Law No. 64/94. In particular, the Law provides that "the decisions concerning the repatriation requests by foreign authorities must be taken by the Juvenile Court where the minor resides";

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<sup>11</sup> International Social Service, *Report on the Programme undertaken by the International Social Service in Italy and Albania - 1998-1999*, Roma, January 2000, p. 36.

<sup>12</sup> Province of Bolzano/Bozen, Social Service Department, *Non-accompanied Foreign Minors*, Workshop of 23 April 2004.

3) The European Convention on the Children's Rights (1996) was ratified by Italy by Law No.77/03. This CoE Convention aims at strengthening the protection and respect of the rights of the child;

4) EU Directive 2003/9/CE (2003) on the minimum rules related to asylum seekers. This directive provides, *inter alia*, that member states must adopt, as soon as possible, measures aimed at arranging the legal representation of non-accompanied foreign minors.

#### Domestic legislation and regulations

1) Italian Constitution: a special concern for minors is reflected in various provisions: art. 2 – on general human rights, art.3 - non-discrimination clause , art.29 – family rights, art.30 – parental responsibilities, art.31- support to the family, art. 37 - minor's labour);

2) Consolidated Act on Migration and Asylum (Law No. 286/98): this law expressly prohibits the expulsion of a minor; it has created a special residence permit for minors; it has established the Committee for Foreign Minors with an exclusive competence on decisions concerning repatriation or integration of non-accompanied foreign minors. This law was subsequently amended by the so-called Bossi-Fini law (Law No. 189/02) that includes provisions on the treatment of minors under custody once they come of age;

3) Law No. 184/83 on the Right of the Minor to a Family, as amended by Law No. 476/98, includes provisions on adoption and foster placement;

4) Law No. 119/93 on the change of personal data for those cooperating with the authorities (judiciary and police);

5) Civil Code (art. 343 and ss and art. 403) on the custody and urgent measures for the protection of minors;

6) Decree of the President of the Council of Ministers (DPCM) No. 535/99 on the definition of non-accompanied foreign minors, repatriation measures and tasks of the Committee for Foreign Minors.

7) Memorandum of 31 November 2000 by the Home Office on the special residence permit for minors and on the types of activities that the holders are entitled to perform;

8) Guidelines of the Committee for Foreign Minors of 11 January 2001 that define the criteria for evaluating the best interest of a minor in case of repatriation;

9) Guidelines of the Committee for Foreign Minors, 2003, on the identification of non-accompanied foreign minors and on the family inquiries in the country of origin.

#### **Principles and Structures**

With the entry into force of the UN Convention on the Rights of the Child by Law No. 176/91, all provisions of this international treaty became part of the Italian legal system, including the main guiding principle in this field, namely the best interest of the child.<sup>13</sup> This principle is particularly relevant when there is a gap in the legislation or a problem of interpretation.

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<sup>13</sup> Art.3 of the UN Convention on the Rights of the Child.

An important corollary of this principle is that the ties of the child with his/her natural family must be always protected and strengthened. The natural family is in fact the main setting in which a child should grow up and develop his/her potentialities.<sup>14</sup> The state thus has the obligation to intervene with appropriate measures when the natural family has not, for instance, sufficient means to take care for the child.

With regard to non-accompanied foreign minor, the legislation foresees a special mechanism of protection that differentiates non-accompanied minors from other illegal foreigners present on Italian territory. The main features of this legislation are a special mechanism of repatriation (*rimpatrio assistito*),<sup>15</sup> and the creation of an *ad hoc* body, the Committee for Foreign Minors, an administrative body established within the Department for Social Affairs at the Presidency of the Council of Ministers (*Presidenza del consiglio dei ministri*).<sup>16</sup>

The main task of the Committee is to monitor the status and condition of non-accompanied foreign minors present on Italian territory and to coordinate the activities of all actors involved (public bodies, private organisations, and so on). Moreover, the Committee is responsible for collecting the data on foreign non-accompanied minors, verifying their status, initiating inquiries into the minors' family members, ordering the repatriation of the minor when the conditions are in place, arranging agreements and programmes with other public bodies and NGOs aiming at the repatriation and/or integration of non-accompanied foreign minors.

The Committee comprised of representatives from the Ministry of Foreign Affairs, Justice, Home Office, Department for Social Affairs at the Presidency of the Council of Ministers (*Presidenza del consiglio dei ministri*), two representatives from the National Association of Italian Municipalities (ANCI), one representative from the Union of the Italian Provinces (UPI), a UNHCR representative, and two representatives from the most relevant organisations active in this field.

### **Mechanism of Protection**

Although in principle the mechanism of protection established by law might seem rather simple and clear, in reality, its implementation raises many uncertainties about the interpretation of relevant laws and regulations.

The mechanism of protection begins when a minor is found by the police or when he/she spontaneously approaches a public office that then has the duty to report him/her to the local police headquarters (*Questura*).<sup>17</sup> Here, the identity of the minor concerned, his/her age, the presence of any family members in Italy, grounds for entry on the Italian territory, and any other useful information to delineate his/her overall situation is verified.

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<sup>14</sup> See also, Art. 147 Civil Code; Art. 30 Italian Constitution; Art. 1 Law No. 184/83.

<sup>15</sup> Art. 33 (bis) Consolidate Act No. 286/98.

<sup>16</sup> See, Law No. 40/1998; Art.33(1) Consolidate Act No. 286/1998; Decree of the President of the Council of Ministers (DPCM) No. 535/99.

<sup>17</sup> Note that the possibility to refuse a minor at the border or immediately after his entry is not expressly excluded by law, even in case he/she has been temporarily admitted on the Italian territory for an emergency situation. However, when a foreign minor, who is not accompanied by his/her parents or a relative within the fourth degree of kinship, is found on the Italian territory (because he/she has been admitted or detained temporarily), the Italian state is under the responsibility to guarantee an adequate protection in accordance to the minor's best interest rule.

The identification of the minor is carried out by the police with the assistance of the Embassies or Consulates of the (most probable) country of origin. Foreign minors often have documents, for instance a passport, where only the year of birth is reported. In this case, the authorities usually indicate as date of birth the fictitious date of 31 December of the year indicated on the document. In case of doubts about the minor's identity, nationality or age, the Police, while respecting the dignity of the minor, can take identification photos and fingerprint. However, when the nationality or age of the minor are still in doubt, especially in the case of minors who are almost of age, the authorities must apply the benefit of the doubt in accordance with the best interest rule.<sup>18</sup>

Subsequently, various public bodies are informed: the Committee for Foreign Minors, the Juvenile Court and the tutelary judge, who will appoint a legal guardian, and, if the child is below 14 years of age, the Commission for international adoptions. As seen, the Committee for Foreign Affairs has established a data bank where personal data, nationality, physical condition, means of subsistence, educational/professional qualifications, temporary address and plans for the future of all reported foreign non-accompanied minors are collected.<sup>19</sup>

After having informed all competent bodies about the presence of a foreign non-accompanied minor, the local Police headquarters issue a special residence permit for minors (*permesso di soggiorno per minore età*) that allows the holder access to various services (health, school, training, and so on) (see below).<sup>20</sup>

After this initial phase, the minor is placed in a community of first reception (*comunità di prima accoglienza*), where he/she will remain, in principle, for a maximum period of 3 months. During this period he/she is put under 'observation': his/her overall situation is analysed, an educational/professional project is formulated together with him/her, he/she begins to familiarise with the Italian school system and Italian language.

The Committee meanwhile assesses whether the conditions for a sustainable assisted repatriation or for a foster placement exist. According to the Italian law, the guardianship (*affidamento*) due to a *temporary* difficulty of the minor's family, falls under the competence of the social services in case of consent by parents or guardian (*affidamento consensuale*), in the case of non-consent it falls, instead, under the competence of the Juvenile Court (*affidamento giudiziale*).<sup>21</sup> This type of guardianship (*affidamento*) can be arranged by another family, preferably where other minors live, or by a single person, or alternatively in a family-like community or finally by a public or private institution.<sup>22</sup>

The Police issue in this case a residence permit on custody grounds that allows the minor to study, do training and, when legally possible, to work. The advantage of this permit in comparison to the permit for minors is that once the minor has come of

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<sup>18</sup> Art.6 Law No. 286/98 and Guidelines of the Committee for Foreign Minors, 2003.

<sup>19</sup> Although foreign minors temporarily present in Italy through special programmes of solidarity (such as those launched after the Chernobyl disaster) are not included under the definition of non-accompanied minors, the Committee keeps a record on them.

<sup>20</sup> Art. 28 Law No. 349/99, Art. 25 Law No. 189/02.

<sup>21</sup> Art.4 (2) of the Law No. 184/83 and art.20 (1) (3) and ss of the Civil Code.

<sup>22</sup> Art.2(1)(2) of the Law No. 184/83 on the Right of the Minor to a Family.

age, he/she can convert this permit into a new residence permit on study or employment, while the permit for minors is not convertible (see below).

In case of *permanent* difficulty or impediment by the minor's family or in the case of the lack of a natural family, for instance, the death of family members, the guardianship (*tutela*) falls under the competence of the tutelary judge within the ordinary tribunal (*giudice tutelare presso il tribunale ordinario*). In this case the minor is under the legal guardianship of the tutelary judge, who places the minor under the care of the local social services by issuing a decree of guardianship (*decreto di tutela*).

As in many instances related to the legislation on non-accompanied minors, in this context as well there are controversies and contradictory interpretations on whether the *stable distance* from the natural family, as in the case of non-accompanied foreign minors, falls under the former (*affidamento*) or the latter (*tutela*) type of guardianship. As a consequence of this lack of clarity in the legislation, the Police often issue a simple resident permit for minors instead of a residence permit on family or custody grounds that allows the holder to work and convert it). Unfortunately, the only feasible solution is to lodge a complaint before the judiciary while waiting for a law that will clarify this issue.

As discussed earlier, a non-accompanied foreign minor is not necessarily an abandoned child. Only in case of child abandonment, namely in the case of lack of assistance of a permanent character not due to *force majeure*, the Juvenile Court declares a minor available for adoption (*stato di adottabilità*).

In the practice, however, it happens very often that a foreign non-accompanied minor is treated as an abandoned child. The main difference, as seen earlier, is that in the latter case the competence no longer falls under the Committee for Foreign Minors but under the Juvenile Court that applies a different legislation.<sup>23</sup> The overlapping competence between these two bodies represents one of the most troubling and uncertain aspects related to the treatment and protection of non-accompanied foreign minors.

### **Repatriation Procedure**

The family reunion in the country of origin through the repatriation procedure (*rimpatrio assistito*) is a priority for the authorities when the natural family is willing and able to assume responsibility once again of the minor. A sustainable repatriation is a repatriation based on the results of a special inquiry conducted in the country of origin followed by an evaluation of the circumstances of each individual case. In the case of repatriation assistance is provided until the family is reunited or placement under the custody of the authorities of the country of origin is completed and an educational/professional project is proposed to the minor concerned.

The guiding principle in deciding whether to repatriate a foreign minor is always the best interest of the minor concerned and the need to guarantee the unity of the natural family. As seen, the repatriation of a foreign non-accompanied minor can only be decided once the Committee has concluded an inquiry on the minor's family in the country of origin and on the situation of the country of origin itself. The Committee initiates the inquiry within 60 days from the date in which the minor has been reported; in carrying out the inquiry in the country of origin the Committee is assisted by the International Social Services (Albania, Morocco, Moldavia and Rumania), and a

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<sup>23</sup> Law No. 184/83 on the Right of the Minor to a Family.

number of NGOs, such as the Italian Consortium of Solidarity (ICS) (Albania, Rumania, Moldova, Macedonia, Bosnia, Serbia and Kosovo), the International Voluntary Service for Development (VIS), the Association of Children' Friends (AIBI).

If a minor is apparently abandoned the inquiry should continue for at least two years; the minor can then be declared as abandoned and can be adopted.

In comparison with an ordinary expulsion order, in addition to the inquiry of the Committee and the need to guarantee the best interest of the child, a sustainable repatriation does not lead to a prohibition of re-entry in Italy.

During the inquiry, the competent social workers collect the minor's views about the possibility to be repatriated: the minor's opinion is not, however, binding (see below).

Once the inquiry is concluded, the Committee decides whether it is in the best interest of the minor to be repatriated or to remain in Italy. In the former case, the Committee informs the Juvenile Court that issues a sort of 'clearance' (*nullaosta*) to the repatriation procedure, except in case of criminal pending suits. Afterwards, the Committee orders the competent 'public administration' to carry out the repatriation: no further details are provided.<sup>24</sup> In the practice the repatriation is carried out by the Police (in case of forced repatriation), the social services and/or the NGO, which has conducted the inquiry in the country of origin.

It is relevant to note that there have been recent cases of repatriation conducted forcibly by the police forces against the will of the minor. These cases appeared to be *de facto* deprivation of the minor's liberty that, according to the Italian Constitution, should be under the exclusive jurisdiction of the judiciary.<sup>25</sup> However, the legislation on non-accompanied foreign minors assigns the competence over the repatriation order to the Committee, thus an administrative body, and limits the jurisdiction of the judiciary to a 'clearance' to the repatriation procedure for lack of criminal pending suits.<sup>26</sup> In this regard, it has been argued<sup>27</sup> that the fact that the Committee is the only body responsible for assessing the best interest of the child raises some constitutional problems: firstly, as an administrative body, the Committee is also guided by the principle of good administration that leads it to take into account the interest of the Public Administration, the relations with other states and the budget of the local authorities in charge of the minor. Secondly, the Constitutional Court has always recognised the jurisdiction of the Juvenile Courts over one of the basic constitutional principles, namely the 'protection of children and youth'.<sup>28</sup> The competence of the Committee should thus be limited to the mere enforcement of decision adopted by the Juvenile Courts. Therefore, many argue

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<sup>24</sup> Rules of the Committee for Foreign Minors, Decree of the President of the Council of Ministers (DPCM) No. 535/99.

<sup>25</sup> Art. 13 Italian Constitution.

<sup>26</sup> Artt. 32 and 33 Consolidate Act No. 286/98 and Decree of the President of the Council of Ministers (DPCM) No. 535/99.

<sup>27</sup> Joseph Moyersoer "L'evoluzione della normativa sui minori stranieri non accompagnati", in Cittadini in crescita, 2002, p.16-17; Elena Rozzi, „I minori stranieri non accompagnati e irregolari, tra accoglienza e rimpatrio. Aspetti giuridici”, IRES, April 2001; Walter Citti, "I minori stranieri non accompagnati tra tutela in Italia e rimpatrio", Giuffrè, 2000.

<sup>28</sup> Art. 31 Italian Constitution. See among the others, Constitutional Court, Judgment No. 78, 22 February 1989.

that the exclusive competence of the Committee over the assessment of the best interest of the minor in the case of repatriation is not fully in line with the Italian Constitution.<sup>29</sup>

The criteria followed by the Committee in deciding whether to repatriate a minor or not are not clearly established by law and by the Committee itself. Obviously, the Committee must order the repatriation of the minor if this is specifically requested by his/her parents or his/her legal guardian, or when there is evidence that his/her parents have disagreed with his/her idea to migrate (flight from home, etc.).

According to the current practice of the Committee, a minor cannot be repatriated if the repatriation represents a serious risk for the minor: for instance, if it is not possible to identify in the country of origin either family members or authorities willing or able to take the minor in charge, or if the parents have committed serious acts of neglect or abuse against the minor, or if the minor's country of origin is in a state of war, he/she can be persecuted, or, for instance, in the case of the Albanian minors, if he/she risks becoming a victim of a traditional form of revenge.

In order to fully respect the UN Convention on the Rights of the Child other factors should be taken into account, for instance the minor's opinion – the minor concerned has indeed the right to express his/her views and these views must be taken into consideration, depending on his/her age and his/her maturity, the willingness of his/her family to take him/her in charge, the opportunities (educational, training, assistance, etc) existing in the country of origin and in Italy. According to the Committee, the poor economic conditions of the family and the country of origin should not be taken into account, except in extremely severe cases.

The factors mentioned above should not be taken into consideration in a rigid manner, but should guide the Committee on a case by case basis in order to find a solution that better guarantees the best interest of the minor concerned. It is thus essential that the Committee receives from competent bodies all relevant information pertaining to the minor through in-depth and up-to-date reports. In the practice, however, due to a lack of clear and specific criteria to assess the best interest of the minor, most repatriation orders are justified referring simply to the primary interest of the family unity.

In case the Committee decides that it is not in the interest of the minor to be repatriated, it issues a non-repatriation decree (*non luogo a provvedere al rimpatrio*), informs the Juvenile Court and the Social Services for the guardianship, and requests the competent public and private bodies<sup>30</sup> to formulate an integration project of a least two years.<sup>31</sup> The Police (*Questura*) issue a residence permit on custody grounds (*permesso di soggiorno per affidamento*).

The repatriation order can be appealed before the Regional Administrative Court (TAR)<sup>32</sup> : in this context as well, the jurisdiction is no longer of the Juvenile Courts, but of an administrative judicial body. This provision is currently under litigation before the Constitutional Court for the alleged breach of the principle of equality between foreign

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<sup>29</sup> Joseph Moyersoen , *supra* note 26.

<sup>30</sup> Private bodies must be active at the national level in the social integration of foreigners and listed in a register established in the office of the Presidency of the Council of Ministers.

<sup>31</sup> Art. 25 Law No. 189/2002.

<sup>32</sup> Art. 33 (2 bis) Consolidate Act No. 286/98.

minors: those, who have received a repatriation order, and those, who have been authorised to stay in Italy or have received an expulsion order.<sup>33</sup>

During the appeal procedure, the minor can intervene through his/her legal guardian or, alternatively, his/her parents, who must forward the power of attorney to the minor's lawyer. In the case of a minor without a legal guardian, the Committee "in case of necessity" can inform the tutelary judge, who will then appoint a provisional legal guardian.<sup>34</sup>

### **Typology of Residence Permits and Legal Status of Foreign Minors**

The legislation pertaining to the residence permit, which has important repercussions on the minor's status and his/her rights and, in particular, on the possibility to remain in Italy once he/she has come of age, is extremely incoherent and confused.

As seen earlier, all foreign non-accompanied minors have the right to obtain a special residence permit for minors (*permesso di soggiorno per minore età*). This type of permit is a residual solution in cases where it is not possible to issue another kind of permit (on custody, family, study grounds, etc.). The Committee for Foreign Minors has clarified that this is a provisional permit, which is issued while the authorities carry out the inquiry on the minor's family and decide on his/her repatriation.<sup>35</sup>

A Memorandum of the Home Office (2000) has stated that, in general, the permit for minors does not allow the holder to work and cannot be converted into a permit on study or work grounds once the holder comes of age. The permit for minors expires when the minor comes of age.<sup>36</sup>

It is clear that if a minor is unable to obtain a residence permit once he/she comes of age, even if he/she has been involved in serious integration projects, there is the actual risk that he/she will remain in Italy in an irregular situation.

In this regard, many argue that the prohibition to work for the holders of a residence permit for minors is not in accordance with the law.<sup>37</sup> In fact, the main legislation in this context does not specify which types of activities the holder of a residence permit for minors is allowed to perform.<sup>38</sup> Moreover, according to the Italian Constitution, the legal status of a foreigner is regulated by law according to international norms and treaties. As a consequence, the interpretation of relevant domestic legislation cannot be based on simple memorandums of the Home Office, but should be based on main international norms, in particular the minor's best interest rule enshrined in the UN Convention of the Rights of the Child, ratified by Italy by Law No. 176/91.

Many argue that the UN Convention is not relevant in this context because it contains provisions pertaining to the rights of persons under age, while the problem of the conversion of a residence permit refers to persons of age. However, the possibility

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<sup>33</sup> See, Decree by the Tribunal of Vercelli, 7 June 2002.

<sup>34</sup> Art. 3(6) of the Regulation included in the DPCM No. 535/99.

<sup>35</sup> Memorandum of 14 October 2002 by the Committee for Foreign Minors.

<sup>36</sup> Memorandum of 31 November 2000 by the Home Office.

<sup>37</sup> Elena Rozzi, *supra* note 6, p. 24.

<sup>38</sup> Law No. 349/99 and Law No. 189/02.



to plan for the future is extremely important for minors: even if the conversion of a residence permit will take place once the minor comes of age, it is evident that this has enormous relevance while he/she is under age. Indeed, if a minor is not sure whether his/her residence permit will be renewed once he/she comes of age, any integration projects will be worthless. And in fact, as a result of this uncertainty many minors prefer becoming illegal aliens (*clandestini*), with the risk of exploitation and/or involvement in criminal activities, although they were involved in serious educational and professional projects.

It is evident that the prohibition to convert a residence permit for minors is not inspired by the minor's best interest rule, but rather by a strict and repressive policy of migration control.

It is interesting to note that, in contrast to the 2000 Memorandum of the Home Office, some Provincial Councils, such as Turin and Bolzano/Bozen, have allowed holders of residence permits for minors to perform work activities in the framework of apprenticeships.<sup>39</sup>

In order to find a remedy to the difficult situations created by the prohibition to convert a residence permit for minors, some exceptions have been introduced in recent laws and regulations.<sup>40</sup>

Firstly, the recent law amending the legislation on migration foresees that a minor can obtain a residence permit on study or employment grounds, once he/she comes of age, if the following conditions are fulfilled:<sup>41</sup>

- the Committee has not issued a non-repatriation decree (*non luogo a provvedere al rimpatrio*);
- the minor has been living in Italy for at least 3 years, thus before the age of 15 years;
- the minor has followed, for at least 2 years, an integration project carried out by a public or private body active at national level and registered at the Office of the Presidency of the Council of Ministers - the Committee should assess the quality of these 'integration projects', but so far it has not yet adopted specific guidelines in this regard; eventually, the Police authorities, in charge of issuing the residence permits in these cases, will simply verify whether the minor has attended school or a vocational training course, or has worked under a work-training contract (*contratto di formazione-lavoro*);
- the minor has attended school or is enrolled at university or is employed in accordance with the law, or has signed a work contract;
- the minor has an accommodation.

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<sup>39</sup> Autonomous Province of Bolzano/Bozen, Provincial Council, Order of 17 September 2003.

<sup>40</sup> Obviously, those holding a residence permit for minors can also decide to return to the country of origin and re-enter in Italy by submitting a visa request on work or study grounds. It is essential, however, to verify that, if the minor had entered Italy illegally, is not inserted into one of the lists established under the Schengen Agreements because this would prevent any possibility to re-enter legally in Italy.

<sup>41</sup> Art.25 Law No. 189/02 amending the Consolidate Act No. 286/98 and the Decree of the President of the Council of Ministers (DPCM) No. 535/99.

Evidence of these requirements must be provided by appropriate documentation by the organisation in charge of the integration project.

This mechanism of conversion is probably the most interesting novelty introduced lately by law in this field.

Secondly, a 2001 Memorandum of the Home Office<sup>42</sup> states that even before the minor comes of age, he/she can convert a residence permit for minors into a residence permit on custody grounds if:

- he/she receives a decree of non repatriation (*non luogo a provvedere al rimpatrio*) by the Committee for Foreign Minors on the basis of the results of the inquiry conducted in the country of origin;
- he/she was placed under guardianship in another family, in a family-like community or in a public or private institution by the Juvenile Court or by the local Social Services and authorised by the Tutelary Judge.<sup>43</sup>

This type of residence permit allows the holder to work and can be converted into a residence permit on study, work or health grounds once the minor comes of age. In the practice, as the non-repatriation decree (*non luogo a provvedere al rimpatrio*) by the Committee is often issued few days before the minor reaches the age of 18, many local Police headquarters automatically issue a residence permit on custody grounds in these cases.

The Committee for Foreign Minors has welcomed this opportunity because it has admitted that the first mechanism of conversion - introduced by Law No. 189/02 - is rather limited in its scope of application: many minors, who cannot be repatriated, arrive in Italy when they are already between 17 and 18 years of age. As a result, the Committee can neither authorise a two-year integration project nor, for obvious reasons, requires evidence that they have been staying in Italy for at least 3 years.<sup>44</sup>

With regard to the second mechanism of conversion - introduced by the 2001 Home Office Memorandum – it has been argued that the requirement to obtain the approval by the Committee through the non-repatriation decree is devoid of legal basis.<sup>45</sup> In this respect, some Regional Administrative Courts have declared that the Police authorities have the exclusive competence for deciding on a case by case basis whether to issue a residence permit on study or employment grounds.<sup>46</sup> More clearly, the Tribunal of Turin has stated that a minor *has the* right to perform a working activity without the need to obtain an authorisation based on a discretionary evaluation of an administrative body, such as the Committee for Foreign Minors; the residence permits for minors that do not allow the holder to work were thus declared null and void.<sup>47</sup>

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<sup>42</sup> Memorandum of 9 April 2001 by the Home Office.

<sup>43</sup> Law No. 184/93 on the Right of the Minor to a Family.

<sup>44</sup> Memorandum of 14 October 2002 by the Committee for Foreign Minors.

<sup>45</sup> Joseph Moyersoen, *supra* note 26, p.22.

<sup>46</sup> TAR Emilia-Romagna, Section I, decree no.50, 23 May 2002; TAR Piemonte, Section II, judgment no. 952, 14 November 2001, TAR Toscana, Section I, judgment no. 880, 2002.

<sup>47</sup> Tribunal of Turin, Section VII, decree of 21 November 2001.

Minors placed - by the Juvenile Court or by the local Social Services and authorised by the Tutelary Judge<sup>48</sup> - under the guardianship of a foreigner legally resident in Italy, who lives together with the minor, are registered on the residence permit of this person until the age of 14; they, then, obtain a residence permit on family grounds.<sup>49</sup>

Many argue that the minors, who arrived in Italy when they were older than 14 years of age and thus they cannot be registered on the residence permit of their legal guardian, should obtain a residence permit on family grounds.<sup>50</sup> In these cases, however, the Police authorities often issue a residence permit for minors and not on family grounds, and thus, the only possibility to obtain a residence permit on family grounds is to lodge a complaint before the judiciary.

Finally, with regard to the minors under *de facto* – because there is no formal decree of guardianship - custody by a legally resident relative within the fourth degree of kinship, the law does not explicitly state that they can obtain a residence permit on study or work grounds once they come of age, unless they fulfil the requirements introduced by the recent amendments of the law on migration (3 years of staying in Italy, 2-year project, etc).

Many argue that the provisions pertaining to the registration of minors on the residence permit of their legal guardians and the issuing of a residence permit of family grounds after the age of 14, should apply to them by analogy.<sup>51</sup> However, also in these cases the Police authorities often do not issue a residence permit on study or work grounds once these minors are of age, and hence the only feasible solution for them is to lodge a legal complaint before the Regional Administrative Court (TAR).

Another type of residence permit is a permit for social protection (*permesso di soggiorno per protezione sociale*): this can be issued in the following cases:

- to those who have served a sentence for a crime committed while they were underage and have participated in a social integration programme;<sup>52</sup>
- to those who have been subject to severe forms of abuse or violence (prostitution, severe forms of labour exploitation, etc) and whose lives are in danger due to their attempts to escape from criminal organisations or due to the statements given during a trial.

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<sup>48</sup> The Constitutional Court, Judgment No. 198 of 5 June 2003, has stated that, contrary to the approach taken by many local Police headquarters, the situations of minors placed under guardianship by the Juvenile Court or by the local Social Services and authorised by the Tutelary Judge are equivalent with regard to the possibility to obtain a residence permit on family grounds.

<sup>49</sup> Art. 31 Law No. 286/98. The residence permit on custody and family grounds is inspired by the same logic: a residence permit on custody grounds is a specific type of residence permit on family grounds; as a result, the regulations pertaining to residence permit on family grounds – duration, possibility to convert it, rights connected – apply also to the residence permits on custody grounds. These permits allow the holder to work and to convert it into a residence permit on study or labour grounds once the holder comes of age.

<sup>50</sup> Elena Rozzi “*I diritti dei minori stranieri non accompagnati*”, Save the Children – Italia, January 2004, p.6.

<sup>51</sup> *Ibidem*.

<sup>52</sup> In some municipalities, this type of residence permit is issued also to those who have served their sentence through measures other than detention.

The residence permit for social protection allows the holder to work and can be renewed once the minor comes of age.

Finally, foreign non-accompanied minors who apply for asylum receive a residence permit on asylum-seeking grounds; a special Commission for the recognition of refugee status will analyse his/her asylum request and will hear the minor and his/her legal guardian; afterwards, if the minor is granted refugee status, he/she will obtain a residence permit for asylum, otherwise the Commission can ask the Police to issue a residence permit on humanitarian grounds.

The residence permit on asylum-seeking grounds does not allow the holder to work, while the residence permit for asylum and the permit on humanitarian grounds do allow the holder to work; all types of permits can be renewed once the holder has come of age.

### **Rights of non-accompanied foreign minors**

Foreign minors holding any type of residence permit (for minors, on custody, family or health grounds, for social protection, for asylum seeking or for asylum) are automatically registered in the National Health Service and have access to all available services.

Foreign minors with no residence permits cannot be registered with the National Health Service, but nevertheless have access to all urgent or essential treatment, even those of a continuous nature, in case of sickness or accidents, and to the programmes of preventive treatments (vaccinations, etc).

The differential treatment between documented and undocumented minors is considered by many to be in contrast with the UN Convention on the Rights of the Child, which states that all minors, with no distinction, must have access to health services.<sup>53</sup>

All foreign minors, documented and undocumented, are under the obligation to attend school and thus have the right to be enrolled in school. This right refers to all types of schools and it is not limited to compulsory education. The registration procedure is the same as for Italian minors, and can be requested at any time during the school year. Foreign minors with no valid personal documents or undocumented are enrolled under condition, but they can attend any type of school and obtain valid final qualifications.

It is not clear whether foreign minors holding a residence permit for minors have the right to attend vocational training. The UN Convention on the Right of the Child, however, clearly states that vocational training must be accessible to all minors; therefore, provisions limiting access to vocational training to a given category of minors would be in breach of international norms.

As seen earlier, the right to work for those holding a residence permit for minors is neither clearly recognised nor excluded by law. Only a Home Office Memorandum (2000) has stated that a residence permit for minors does not allow the holder to work: as a consequence this type of permit is often issued by the Police with the stamp “not valid for working purposes” and many public employment agencies not only do not offer to the holders work contracts but also work-training contracts (*contratto di formazione-lavoro*).

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<sup>53</sup> Art. 24 of the UN Convention of the Rights of the Child.

With regard to the minors having a residence permit on custody, family, social protection, or asylum grounds, they can work under the same conditions as the Italian minors: minors can start working once they are 15 years of age and have concluded compulsory education.<sup>54</sup> Minors are required to fulfil their compulsory education until they come of age : this educational obligation can be fulfilled either at school, or through vocational training or apprenticeships. A minor can sign a work contract other than a contract of apprenticeship only if this does not prevent him/her from concluding his/her compulsory educational or vocational training.

### **Conclusions and Recommendations**

It is evident from the foregoing that the Italian legislation on the status and protection of non-accompanied foreign minors is rather unclear and incoherent. As a consequence, the judicial and administrative practice is extremely inconsistent and varies from a region to region or even from one town to another.

One of the main problems underlined in this present report is the regulation concerning the type of permit to be issued to a non-accompanied foreign minor. In particular, the residence permit for minors and the problems of interpretation concerning the possibility for the holder to work and to convert it into another type or permit once the holder has come of age, are among the thorniest issues in this regard.

The administrative practice in this context is absolutely confused and diversified: for instance, when confronted with the same situation, many local Police headquarters issue directly a residence permit on custody grounds; some require the decree on custody by the Juvenile Court before issuing a residence permit on custody grounds; and finally, some others, even if the Juvenile Court has formally placed the minor under custody, issue a simple residence permit for minors awaiting the results of the family inquiry in the country of origin by the Committee.

Another set of problems are linked with the procedures regarding the choice between the minor's repatriation and his/her integration in Italy.

Firstly, a problem is given by the time-limit by which a decision between repatriation and integration must be taken. Until now, the inquiries on the minor's family in the country of origin and the decision on his/her possible repatriation have required excessively long periods of time – usually from 6 up to 12 months. As said earlier, on the basis of current legislation the inquiries must be initiated by the Committee within 60 days from the date in which the minor has been reported to the Committee and not immediately after it. Moreover, the law has not established a deadline for the procedure. However, it is extremely relevant that the decision on whether a minor is allowed to stay in Italy or has to be repatriated is taken rapidly. The identity and character of a minor is obviously more fragile than that of an adult, thus even a delay of a couple of months might create profound anguish and uncertainty on the minor, provoking serious psychological damage, and even inducing him/her to abandon ongoing integration projects and adopt deviant behaviour.

Moreover, while the competent authorities carry out the inquiry, the minor is accommodated in a community of first reception (*comunità di prima accoglienza*), where he/she remains eventually much longer than 3 months as established by law. The

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<sup>54</sup> Evidence that compulsory education has been concluded is that the minor has successfully finished his/her first year of high school or that the minor is 15 years of age and has attended 9 years of school education in the country of origin.

local authorities in charge of these structures are obviously concerned about the fate of these minors; however, on the one hand, they must wait for the decision of the Committee on repatriation or integration, on the other hand, the Committee must wait for the result of the family inquiry.<sup>55</sup>

In the practice, it happens that many minors come of age while no decision on their status has yet been taken by the Committee. According to the law, they should leave the country and return to their country of origin. However, this hypothesis is highly problematic, as it is improbable that these minors, now of age, accept peacefully to repatriate.<sup>56</sup> This aspect raises the problem of compulsory forms of repatriation. In addition, it is not clear which organs are responsible for carrying out the repatriation due to a gap in the legislation. These cases are decided on a discretionary basis by the local authorities and the result is an absolute incoherent and confusing policy in this context.

Secondly, the relevance of the minor's views towards the decision to repatriate or to integrate is another problematic aspect of the discipline on non-accompanied foreign minors. Indeed, the right to participate in the decision-making process leading to the repatriation or integration is among the main principles enshrined in the UN Convention on the Rights of the Child.<sup>57</sup> According to the Italian legislation, the local social services are responsible for collecting the minor's opinion on his/her possible repatriation and not the Juvenile Court or the Committee. The risk behind this procedure is that the local social services, always overburdened by financial problems, will tend to reduce the number of non-accompanied foreign minors to be integrated in their territory, and as a consequence, they will be more inclined to interpret the opinion of the minor as favouring his/her repatriation. A possible solution would be to ensure that the minor is heard by the Juvenile Court.

Finally, with regard to the possibility of lodging a compliant against the decision of the Committee, the following aspects can be raised: firstly, in order for the minor to be represented during the appeal procedure, it is always necessary that a legal guardian is appointed – however, as seen earlier, in case of *de facto* custody a legal guardian is not formally designated; secondly, the appeal should be decided speedily and not leave the minor in anguish about his/her future. The Committee's decision is, however, an administrative act and thus the appeal must be lodged before the Regional Administrative Court, whose rulings are usually not rapidly adopted; thirdly, as the repatriation can have important consequences on the minor's life, the repatriation procedure should be 'frozen' and postponed until the final ruling is adopted.

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<sup>55</sup> The local authorities also complain about the financial burdens due to the accommodation and integration of an increasing number of foreign minors placed under their responsibility.

<sup>56</sup> A survey conducted by the International Social Service (Italy) showed that out of 256 Albanian minors surveyed, who have been repatriated between 1998 and 2000, as of 2001 only 98 were still in Albania and only 6 (2%) had found a job. The relevant data is that 155 minors (60%) had migrated again, mostly to Italy. Some of them had been already repatriated two or three times.

<sup>57</sup> See art. 12 of the UN Convention on the Rights of the Child: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (1) "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law"(2).

According to some scholars,<sup>58</sup> the procedure that would better guarantee the ‘best interest of the child’ is a procedure whereby the decisions on the custody and on his/her repatriation/integration are separated and independent from each other. Current legislation provides instead that the custody of a non-accompanied foreign minor can be determined only after the Committee’s decision.<sup>59</sup> Moreover, once the minor is placed under custody, a thorough evaluation on the possibility to repatriate the minor is no longer foreseen. Given that the decision between repatriation and integration is taken in order to guarantee the best interest of the child, it is not clear why a minor already placed under custody is disenfranchised of this opportunity.

In order to improve the mechanism of protection the Juvenile Court or the local social service should decide rapidly on the custody of the minor even before the final result of the Committee’s inquiry: if, in light of the inquiry’s results, the Committee decides that the minor should not be repatriated, then the custody can continue. If, on the contrary, the Committee decides that the minor should be repatriated because this is in his/her best interest, then the minor will be repatriated. In case the Committee decides for the repatriation although the family in the country of origin is not suitable, then the Juvenile Court and the social services should be still responsible for assessing whether the custody should continue or not. In this case, there might be potential conflict between the decisions taken by the Committee and the Juvenile Court: priority should be given, however, to the judicial authority.

This potential conflict is linked to a more general problem of coordination among the competent bodies due to the lack of clarity and coherence in the legislation. For instance, with regard to the duty to report the minor to the relevant bodies, a Memorandum of 14 April 2000 by the Home Office had established that the local Office of the Government (*Prefettura*) should collect with appropriate forms the data of all minors present on the territory. However, so far, the coordination does not seem to function properly, and thus the Committee continues to receive inconsistent data from a variety of public and private bodies.

Finally, with regard to the integration of foreign minors, there is a general scarcity of appropriate structures. The progressive increase in the number of foreign minors reported to the Committee has not been followed by an equivalent increase in the number of appropriate temporary and long-term communities for non-accompanied foreign minors. More funding should be thus allocated either at the regional level in Italy and in the countries of origin in order to tackle the roots of the phenomenon and enhance the integration policies in Italy and in the countries of origin in case of repatriation.

It is clear that the work of the social workers is particularly arduous: they have to solve the potential conflict between, on the one hand, the pressure that a minor has from his/her family, which expects him/her to become immediately independent and support it financially, and, on the other hand, the attempt to convince the minor to accept an integration plan that includes studying or training and that is projected into the future, not in the immediate present. This difficult balancing task, coupled with the uncertainties, gaps and limitations existing in the legislation, hinders enormously the chances of developing veritable long-term integration plans for non-accompanied foreign minors.

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<sup>58</sup> Elena Rozzi, *supra* note 6, p. 11.

<sup>59</sup> Law No. 184/83.

In conclusion, Italian policy-making as well as public opinion must realise that migration is a stable and durable phenomenon in Italy as well as in the rest of Europe, and that the adoption of a comprehensive legislation on the status and treatment of non-accompanied foreign minors cannot be postponed any longer: a new law in this field should consolidate scattered norms, clarify uncertainties and doubts, and fill in the existing gaps in the current legislation, concurring in this way to reduce the local variations existing in the practice.



# Unaccompanied migrants children : what they think

## Interviews of children in France, Spain, Britain and Morocco

Imogen Lamb<sup>1</sup>

### **Background**

The Unaccompanied Migrant Children interviewed for this report come from various regions of the world and very different backgrounds. They moved to Europe for a variety of reasons. They each have their own personal story to tell and their own specific needs. Yet these young people have much in common: they all bear scars from past traumas, they share similar fears for the future, and they are bound by a common goal.

They come from China, Sri Lanka, Kosovo, Romania, Turkey, Angola, Democratic Republic of Congo, Sierra Leone, Côte d'Ivoire, Ethiopia, Somalia, Algeria, Morocco.... They have been sent to Europe by parents to get a better education, or to be safe. They are brought in by people-smugglers to be used as sex slaves, or domestic servants, or drug dealers. They have fled a life of poverty, deprivation or abuse, and have come on their own, or with friends their age. Some have been encouraged to come by family or friends at home or in Europe. Others have emigrated against their parents' wishes, or without their knowledge. They have come on foot, by lorry, boat or plane, either hidden or in possession of false ID.

On arrival their fate is rarely in their hands: they may be expelled or detained, they may get help from local authorities or become street-children, or they can fall prey to the drug and human trafficking underworld. Many do not speak the language, and some do not know which country they are in. A significant number of Unaccompanied Migrant Children do not know their rights, and do not know where to go for help. Most are disorientated on arrival, and baffled by what they discover. Some are scared of going to the police for help: they fear arrest, brutality and expulsion. Many of those who ask for asylum or a resident's permit find the process traumatic and incomprehensible.

The Unaccompanied Migrant Children who are put into care experience very different scenarios, depending on which local authority or association is looking after them and which country they are in. They can either be sent to a foster-family, a hotel, a home for abused and difficult children, a centre for UMC, or be offered shared accommodation. They can be sent to school, or be given vocational training, or just language lessons. They may be locked in a centre with very little to do, while others are offered a whole range of activities. Some are given a maintenance grant, others have almost no money.

### **Methodology**

Sixty Unaccompanied Migrant Children, aged 12 to 20, were interviewed in France, Spain and Britain for the purpose of this report. Thirty minors and young adults were also interviewed in Morocco: they have either been deported from Europe or are trying to emigrate there. Specialised NGOs and local authorities helped establish the initial contacts. None of the interviews were carried out in the presence of authorities:

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<sup>1</sup> Journalist, Radio France Internationale. Interviews carried out from July to September 2005.

most of the interviewees were alone, or accompanied by an interpreter. All were promised anonymity. Most accepted to be recorded. Nonetheless several, victims of child traffickers, refused. Although now in care, they remain fearful that the smugglers they escaped from may find them one day.

The purpose of this report was to present what Unaccompanied Migrant Children had to say.

## **1. What they want**

### To be treated fairly, with respect and understanding

Ugandan girl in Britain: *When I went to the home office they asked me so many questions that weren't related to my problem, for example: what did I have to eat on the plane? what was the colour of the air hostess's uniform? what did the plane look like? I'd like them to ask me why I came here. I was always telling the truth but in court they asked the same questions but in a different way, they were treating me like I was lying.*

Moroccan boy in Spain: *The workers at the hostel don't reassure us, they don't try to understand our problems, they just don't want to know. We get no affection.*

Moroccan boy in Spain: *At the hostel we're only allowed out once a week. If we do something wrong we're locked up in a room in the basement for 24 hours, and the men who work there are often violent. We're only given 3 euros a week so some of us steal, others run away.*

### To go to school, get vocational training, earn a living

Ugandan girl in Britain: *I would prefer to work than to be on benefit, but when our permit expires the employer can't give us work anymore. We don't want to be on benefit and take money, and have people say asylum seekers just take money. We want to work and support ourselves and study.*

### All the interviewees expressed the wish to lead active lives

Congolese boy in France: *I wasn't sent to school for 5 months. I forgot many things. I should have at least been able to have French and maths lessons.*

Moroccan boy in Spain: *I wanted to go to school, but I was put in a centre for 6 months, then another one, and was given a few Spanish lessons, that's all.*

Ugandan boy in Britain: *Being busy helped me so much. I've got some psychological torture in me, being busy helps me think about the future, not the past.*

### Most want to be able to talk to someone about the past, present and future

Moroccan boy in Spain: *I need to talk to people because there are lots of things inside me that I haven't said, but no-one wants to listen.*

### They all want to be allowed to stay permanently, and say they'll remain in Europe whether they are given permission to stay or not

Moroccan boy in Spain: *If I'm not given residency status I'll go to another country in Europe, and if I have to I'll steal or sell drugs. But I'd prefer to stay here and work.*

Nearly all of them miss their families, and want to go home to visit them

Moroccan boy in Spain: *I haven't seen my mother and my brothers and sisters for 4 years. As soon as I get my residency permit I will go and see them.*

**2. What they say about their status**

Boy from Kosovo in Britain: *I'm always branded as a refugee if I say where I'm from, so when people ask me now, I say I'm from Sweden.*

Ugandan girl in Britain: *One day I heard someone say "fuck asylum-seekers" so now I don't say who I am anymore. You're looked at differently if you're a refugee. Being a refugee is the lowest class.*

Ugandan girl in Britain: *I don't tell anyone I'm an asylum-seeker because I would be isolated. If I say I'm British they'll like me more. If they think I'm an asylum-seeker they'll think I'm poor, dirty, that I've come here to eat benefit, that I'm useless in society.*

Moroccan boy in Spain: *Were not treated like other people. We Moroccans are all put in a centre together and we don't even get to meet Spanish people our age.*

**3. What they fear**

Being deported

Ugandan girl in Britain: *I'm scared that if I'm sent back to my country then the old man who I was forced to marry and who beat me will find me.*

Sierra Leonean boy in France: *I know where the man who killed my father lives. If I'm sent back to my country will I have to kill him?.*

Ivorian boy in Britain: *I lost my life two years ago when I had to flee the violence at home. When I came here I got it back. I don't want to loose it again.*

Guinean boy in Britain: *Deporting us is like killing us indirectly, it's like giving us a slow poison.*

Ivorian boy in Britain: *Sending me back would be like dumping me in the fire.*

Not being able to finish their course of study before expulsion

Ivorian boy in Britain: *A friend of mine was detained just before he was due to take his school exams, so he couldn't take them. I'm afraid this could happen to me.*

Congolese boy in France: *I'm scared of what will happen to me when I'm 18, because I started a two-year vocational training programme aged 17, and I don't know if I'll be allowed to finish it.*

Feeling alienated in their home country if they are deported

Ivorian boy in Britain: *We've got used to the culture here, back home we've no family, no friends.*

Being forced into crime or prostitution in case they have to go underground

Algerian boy in France: *I don't want to steal, but what choice do I have?*

Moroccan boy in France: *If I'm not allowed to work here I'll go to Italy where I know someone but I'm worried that I'll have to deal in drugs there and I don't want to.*

Algerian boy in France: *I don't want to live on the streets.*

#### 4. Their traumas

Congolese boy in France: *I've seen war like you see it in films.*

Chinese boy in France: *I'm scared that the man who locked me in his flat will find me one day.*

Somali girl in Britain: *When I arrived I was very scared, I couldn't speak English, I had no-one to talk to. I couldn't eat, I couldn't sleep, I didn't dare go out. I was ashamed of my clothes, I felt people were looking at me. I was scared of getting arrested, scared of having nightmares about being attacked.*

Liberian boy in Britain: *My parents were killed in fighting in our village. When I came here I had no idea what would happen to me, and I was forced to trust people I didn't know.*

Ugandan boy in Britain: *I thought I was going to be put in prison here because back home I was captured by rebels and forced to kill people.*

Congolese boy in France: *My father is a political prisoner, I don't know what's happened to him. My mother sent me here to be safe and I don't know where she is now.*

Kurdish boy in France: *I'm embarrassed because of my level at school, so I don't want other kids to see me do my homework.*

#### 5. Pressure from parents

Chinese boy in France: *My father sent me here to find work and send money home to the family. I daren't tell him that I've had an accident and am severely handicapped.*

Moroccan boy in Spain: *Every time I call my parents they ask me: Are you working? Why aren't you sending us money?*

Moroccan boy in Spain: *My parents tell me that I mustn't forget my younger brothers and sisters because they need my help.*

Moroccan boy in France: *I want to help my parents build a house and I want them to be able to eat properly, I don't think about me but about them.*

Algerian boy in France: *I must earn some money so that I can go home and take presents to my parents.*

Boy in Morocco: *When I was 15 my mother suggested I go to Spain, she said look at our neighbours who've left, they've got nice things. She said if I am still here when they return for the holidays they'll make fun of me.*

#### 6. What they say about their home country

Algerian boy in France: *Here, if you go to school and work well you'll be alright but in Algeria it's not possible to have a future.*

Boy in Morocco: *Even if I went to school all my life here I still wouldn't find a job.*

Chinese boy in France: *Maybe I'd like to return to China when I've finished my studies but I don't know where my parents are.*

Ivorian boy in Britain: *A country can be in peace but not for a particular individual.*

Ugandan girl in Britain:*In my country I would never have had the operation I've had here and I'd never have got better.*

Ugandan girl in Britain:*Back home you never go to the police for help, but to the church.*

Boy in Morocco:*When the police catch you trying to leave for Europe they hit you with handcuffs, a stick and with shoes, they put you in a cell for the night then they let you go.*

Kurdish boy in France:*Where I come from, there's no future. The kids are psychopaths. They don't want to work, they become criminals.*

Boy in Morocco:*I will always be exploited back home, I'll never have a chance to set up my own business, or to have a house or a family.*

Moroccan boy in France:*Back home you're discriminated against and you're exploited.*

Boy in Morocco: *At school there's only one topic of conversation: emigrating to Europe. After the summer holidays there are always a few kids missing: they're the ones who've gone to Europe.*

## **7. What they say about their host country**

Ivorian boy in Britain: *Here you have rights. Back home it's the people who carry weapons who have rights, that's how it is in Africa. If we had rights in Africa then maybe I wouldn't be here.*

Guinean boy in France:*People of very different ethnic origins live in France, I like that.*

Ivorian boy in France:*What you see about France on television is not the truth.*

Guinean boy in Britain:*Here children can talk about everything with their parents, and parents can admit to being wrong. But children also shout at their parents, and that's not right.*

Somali girl in France:*I used to wear a veil, but here it's not allowed in school.*

Somali girl in France:*People here kiss in the streets, and I'm also shocked by the way women dress.*

Moroccan boy in Spain:*I thought I'd have a great life here, but I was wrong.*

Sierra Leonean boy in Britain:*I was given money to go and buy food, but I'd never seen a shop before. In my country you buy food in the streets.*

Ethiopian girl in Britain:*Back home there are over 100 children in each classroom, and if you talked in class, the teacher hit you. Here you're encouraged to participate, to speak.*

Ivorian boy in Britain:*In my country the classroom was so quiet it was like a crematorium.*

Ugandan boy in Britain:*Children have too much power here, they shouldn't be allowed to behave like they do. They don't respect teachers, and teachers don't seem able to cope.*

Ivorian boy in Britain:*Children here are rude, they don't show adults any respect. In Africa you can't call an adult by their first name or say "you" to them, you have to say aunt, sister, sir...*

Ivorian boy in Britain:*I offered to help an old man carry his bags but he thought I wanted to steal them.*

Algerian boy in France:*A man can get a woman pregnant then leave her.*

Algerian boy in France:*People shouldn't sleep on the streets here.*

## **8. What they are happy about**

Ivorian boy in Britain:*Since I've known I can stay and continue my studies I'm more motivated.*

Moroccan boy in Spain:*After my mother died my father remarried, and my step-mother treated me like a slave, so I run away. I went home to see them last year and my step-mother treated me very well because I now live in a rich country and am earning money.*

Guinean boy in Britain:*The police are sociable, they listen to you.*

Ugandan boy in Britain:*When police came to arrest me here I was so scared, I thought they'd be like they are in my country, but in fact they were very nice, they called a solicitor, they gave me my belongings back. Where I'm from the police would have stolen everything.*

Liberian boy in Britain:*I asked a policewoman my way, and she took me to the place I was looking for, I was so surprised, so since then I often ask the police something, it's like a game to help me improve my English.*

Boy from Kosovo in Britain:*Only 4 days after arriving I started an intensive course in English*

Ethiopian girl in Britain:*It was very helpful to have a "mentor" (volunteer) to help me get accustomed to life here.*

Boy from Kosovo in Britain:*I've thrown out my dictionary.*

Guinean boy in Britain:*I was given a fridge.*

Moroccan boy in Spain:*In Morocco I was earning 30 euros a week, here I'm earning 30 euros a day.*

Ugandan boy in Britain:*Here I have doctors and psychiatrists.*

Moroccan boy in France:*There are lots of people from all over Africa who live here.*

Algerian boy in France:*Here I've a chance to make a career in the music business. Back home I had no chance at all, my parents wouldn't let me.*

Algerian boy in France:*There are associations here that help us – I didn't know about them until I arrived.*

## **9. Their suggestions**

Ivorian boy in Britain:*Once we come to this country they should tell us how many years we can spend here and then we can finish university, by then we'll be helpful for other people. They could then send us to Africa to help there, because we'll be qualified, but we'll also be safe by then. And then we'll be able to pay back the*

*money they spent on us. Also, once we finish our studies, the authorities can decide if we'll be helpful, if we can stay or if we'll not be good for the country.*

*Ugandan girl in Britain: They say you should be deported, but we should be given a chance to recover from what has happened to us first, we're still feeling unsafe, we're psychologically unhealed. At least if we're given a few years so that we can heal psychologically, and study, and work, then when we're sent back to our country we can look for a job, we can do something because we'll have saved some money. We don't intend to stay in our host country permanently unless we are needed here. Some of us come here because our parents have been killed or are dead, but as soon as we turn 18 we're sent back, but turning 18 doesn't change anything, we don't have anything, we're still orphans, we're still uneducated and we're still people who are psychologically unhealed, so if we are given a chance to improve ourselves it would be better.*

*Ugandan girl in Britain: The G8 summit has just met and they were talking about helping Africa, their point was they can't help Africa because of the corrupt leaders, the people won't get the money, so why can't they help the Africans who are here, because if they help us to study and work and get money then they can be sure that we're really getting the help, and if they educate us now we're the people who'll go back to Africa and help the people or we'll save money here and help Africa, because we have the hearts to cry for Africa. If they help us then we can help Africa directly, but to send people back to poverty who are crying here, how can that help Africa?*

*Ugandan boy in Britain: Once they've started encouraging people to be in society then they should continue, because I've started adapting, I've made friends, I'm getting on well at college, I've had good doctors and counsellors, so if they send me back now it'll be a further disaster.*

*Ugandan girl in Britain: When we ask for asylum the room where we go is not private, the person who is interviewing you and the interpreter sit at the other side of the glass, and you sit the other side in a hall, everyone is there, and you're expected to say everything about you, but how can you say things that have happened to you, that are shameful, that really traumatised you, when people are listening. In the end you leave the important information behind because you don't feel comfortable, but everything you say at that point is used to judge you for your asylum request. If you were given a private room where you can explain to someone and they listen properly, it would be better instead of judging you from just a few things you've said.*

*Moroccan boy in Spain: If Spain says it's a country that respects children's rights then it should help until the last minute, meaning until we get work and find accommodation.*

*Ethiopian girl in Britain: We should see a lawyer more often, so that we can understand what happens in court. For me it's the first time in my life that I'll be going to court, and I don't know what it's like.*

*Moroccan boy in Spain: If the authorities don't help those who arrive, then they'll become criminals.*





# SESSION 3 - MANAGING MIGRATION OF UNACCOMPANIED MINORS IN THE BEST INTERESTS OF THE CHILD

## Migrations of unaccompanied minors and comprehensive approach based on the rights of the child

Hatem Kotrane<sup>1</sup>

### Introduction

1. Compliance with human rights starts with the way a society – a country – treats children: all children! While it is true that the legal commitments entered into by the States Parties to the United Nations Convention on the Rights of the Child (hereafter referred to as "the Convention"), adopted by the United Nations General Assembly at its 44th session on 20 November 1989, mainly apply to those children who are directly within their jurisdiction, no children must be left by the wayside or categorised in such a way that they are left in legal limbo.
2. The issue of separated minors outside their country of origin –which is an issue of prime concern for the Committee on the Rights of the Child (and one to which it has drawn attention during its consideration of periodic reports submitted by States Parties to the Convention) and for many other relevant international institutions and non-governmental organisations (NGOs) – must be considered within the framework of these values.
3. The ratification of the Convention by 192 – almost all – UN member states can be considered as the starting point of a systematic process designed to give new impetus to the range of measures and programmes for children that have been implemented to date, with the aim of aligning national legislation and policy more closely with the rules and principles set forth in the Convention and other related international instruments, including the Convention's two optional protocols: the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict.
4. However, while it is true that children have never had as many rights, or enjoyed as much care and special attention, as now, neither have they at any time been exposed to as many risks, or called upon to adapt to such an extent, as in the case of abandoned children or those involved in other difficult situations: poverty; disabilities; lack of school; deviant behaviour, economic exploitation; sale of children; child prostitution; child pornography; involvement of children in armed conflict; trafficking and illegal movement of children; and separated children or children seeking asylum. Children in these situations continue to be an issue of prime concern for the international community, and call for fruitful debate about universal values: not only about the responsibility of each state and its obligations towards its own nationals, but also about the support and resources each state is willing to make available, including in the

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<sup>1</sup> Member of the UN Committee on the Rights of the Child.

framework of international co-operation and solidarity, to ensure that childhood is the time when children – all children – learn to trust in humanity.

5. The issue of separated minors raises a number of questions and challenges. Each state, under international public law, naturally has exclusive competence to establish laws governing the conditions relating to the entry and residence of foreign nationals on its soil. However, at the same time, states have also acceded to many international instruments, including the Convention, Article 10 of which, in particular, calls for applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification to be dealt with "*in a positive, humane and expeditious manner*". Article 22 of the Convention similarly provides that: "*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 ...*".

6. Consequently, the international institutions and bodies responsible for co-ordinating and monitoring states' policies in this area are trying to ensure greater realisation of the rights enshrined in the Convention, by encouraging states – particularly the European states primarily concerned by the increasing flow of children seeking asylum or applying for family reunification – to adopt a series of measures and programmes incorporating the principles and guarantees enshrined in the CRC and other related instruments of protection. In 1994 the Office of the United Nations High Commissioner for Refugees (UNHCR) drew up the UNHCR Guidelines on the Protection and Care of Refugee Children (UNHCR, 1994), which acknowledge the key importance of the Convention as the reference framework for all action in this field. In 1997 the UNHCR went on to publish Guidelines on Unaccompanied Children (UNHCR, 1997), which were systematically based on the general principle of the "best interests of the child" as enshrined in Article 3 of the Convention, with the aim of providing systematic, comprehensive and integrated protection and assistance for those children.

7. More recently, UNHCR and some members of the International Save the Children Alliance set up a joint initiative: the Separated Children in Europe Programme (SCEP). The Programme partnership is based on the complementary mandates and areas of expertise of the two organisations: UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum; the International Save the Children Alliance strives to ensure full compliance with the rights of all children. Extending the original partnership, the Programme has set up a network of non-governmental organisations (NGOs) working with children, asylum seekers and refugees in 17 Western European countries (the Member States of the European Union (EU), and Norway and Switzerland). In 2000, the Programme was extended to include a further eight countries in Central Europe and the three Baltic States.

8. The Committee on the Rights of the Child, as the official treaty body responsible for monitoring application of the CRC, also has an important role to play, in particular when it considers the periodic reports submitted by the States Parties under Article 44 of the CRC. For example, at its 36th session, when considering the second periodic report submitted by France (CRC/C/15/Add.240, 30 June 2004), the Committee

"note[d] the efforts of the State party to address the situation of unaccompanied minors by providing them assistance during their time in the holding area by an "ad hoc administrator" who replaces a legal representative." However, the Committee also noted that "the number of minors in such situations has been steadily increasing, and that the implementation of the new legislation remains a challenge. Foreign unaccompanied minors continue to be deprived of their liberty and placed in detention with adults." The Committee was also "concerned that unaccompanied children arriving at the airport may be returned to the country of origin without judicial intervention and without an evaluation of their family situation. It [was] further concerned at the absence of clear instructions to coordinate and facilitate access to basic services by these children for the protection of their rights. In addition to this, the age determination process allows for errors which may lead to minors not being accorded protection they are entitled to."

9. The Committee therefore recommended that the State Party pursue its efforts in this area and, in particular, that it: "a) ensure a coordinated approach to the collection of information and statistics, allowing a response commensurate to the needs; b) establish norms that orient and coordinate actions aimed at guaranteeing access to basic services, in particular education, health and legal assistance; and c) consider introducing recent methods of age determination which have proven more accurate than the method in use." Similar observations were made, albeit to varying degrees, during the consideration of the periodic reports submitted in recent years by many other European countries. One of the key conclusions to emerge is the Committee's desire, in the light of the relevant observations made by UNHCR and its SCEP partners, to encourage those states concerned by separated minors arriving at their borders, in order to apply for family reunification or seek asylum, to adopt a holistic approach based on the rights of the child (I). Such an approach, as pointed out by the Committee in its General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children, will enable European states to negotiate an agreement on areas of concern that sometimes necessarily differ, by establishing good practices (II) that enable the specific needs and rights of separated children, as guaranteed by the Convention, to be addressed more satisfactorily.

This paper has therefore been divided into the following two parts:

- I. The Convention and separated children: a holistic approach based on the rights of the child
- II. Good practices in the treatment of separated children.

## **I. The Convention and separated children: a holistic approach based on the rights of the child**

10. A holistic approach to the question of separated children reflects progress made in the implementation of a strategy for promoting and disseminating the rights of the child, systematically using international human rights standards as a reference framework. The aim is not to describe in detail a model system for dealing with separated children, to be applied in all circumstances and at all times, given the wide variety of issues raised and situations covered. The aim of the approach is, rather, to encourage constant efforts on the part of States Parties to the Convention on the Rights of the Child to apply, and comply with, the minimum rules and principles, as defined by the relevant provisions of the Convention – in particular Articles 9, 10 and 32 – and other United Nations rules in this area, such as the UNHCR Guidelines on the Protection and Care of Refugee Children (UNHCR, 1994), the Guidelines on Unaccompanied Children (UNHCR, 1997), and the Separated Children in Europe Programme (SCEP).

Moreover, the minimum rules applying to separated children concern areas in which thinking is constantly changing. This paper will attempt – as far as possible – to report on the position of the Committee on the Rights of the Child and on the role played by the relevant international organisations, in particular UNHCR and its SCEP partners, with the aim of increasing the focus on – and understanding of – the rights of separated children; recording existing measures and good practices in this area; and helping to draw up legislation and promote action plans, strategies, policies and programmes that are based on the needs of separated children and designed to bring national legislation and policy into line with the provisions of the Convention and other United Nations rules and directives in this area.

11. Although examples of good practice exist at national and local levels, the issue of separated children continues to be, in many countries, mainly seen in terms of the regulations defining the conditions of entry and residence for foreigners, focusing on administrative and police action rather than on social and humanitarian action. The particular needs and rights of separated children in the area of asylum policy are generally little understood or acknowledged. At EU level, this lack of attention reflects the fact that issues affecting children remain relatively invisible in terms of law and policy; and it was only in 1999 that the European Commission announced that it was intending to produce a first “Communication” (i.e. statement of policy) in relation to children (Ruxton, S., *A Children’s Policy for 21st Century Europe’s First Steps*, 1999).

12. This lack of attention is potentially very damaging for separated children, who constitute a highly vulnerable group of children. It is therefore essential that political will be mobilised in order to take action to assist them, duly taking into account the general principles of the Convention: the right to non-discrimination (Article 2); children's right to have their best interests considered a primary consideration (Article 3); the right to life, survival and development (Article 6); and children's right to have their views given due weight (Article 12). All these guidelines should be carefully taken into account at the different stages of the system for dealing with the different groups of children concerned.

13. Because of the interdependence and indivisibility of the rights of the child, effective measures meeting the requirements of the Convention and other United Nations rules and directives in this field can only be adopted if the rights of children and teenagers are fully respected. As stated in the SCEP, the most important rights in this

connection – besides those arising from the provisions of the CRC on family reunification (Article 10) and on protection and assistance to be given to children who are refugees or those seeking asylum (Article 22), and those enshrined in the general principles of the Convention listed in paragraph 12 above – are as follows: children's right not to be separated from their parents (Article 9); the right to be protected from violence (Article 19); the right to health (Article 24); the right to education and leisure (Articles 28 and 31); and the right to be protected from economic exploitation and from sexual exploitation and violence (Articles 32, 34 and 36). The Convention, particularly its four general principles, which advocate a global approach, provides a solid framework on which states can back their efforts to bring their national legislation and policy into line with the provisions of the Convention and other United Nations rules and directives in this area. The holistic approach, which is based on the rights realised through the application of the Convention, is the best way to deal with the wide range of issues raised by the system for dealing with separated children.

14. In short, a holistic approach to dealing with separated children entails the adoption of the following rules and guidelines:

**a) The definition of a "separated child"**

15. Separated children are children under 18 years of age outside their country of origin and without parents or guardians to care for and protect them, according to the SCEP definition. They suffer socially and psychologically from this separation. Although some appear to be "accompanied" on arrival in Europe, the adults with them are not necessarily able or suitable to assume responsibility for them.

16. There are variations in how states define a "separated child" (or the more commonly used "unaccompanied child" or "unaccompanied minor". Some use a relatively broad definition (eg Norway), largely in line with the approach adopted in the SCEP Statement of Good Practice. Others apply a similar definition in practice, although it is not set out in asylum or child law (eg Finland, Ireland).

But there are other countries where a more restrictive definition is used. For example, in Belgium, the Netherlands and Portugal a "separated child" is not regarded as including a child who travels with a relative. And in Greece, definitions vary between agencies, with potentially damaging consequences for children.

In order to ensure that the needs and rights of separated children are fully recognised, it is essential that states should develop a common definition. The term "separated child" should also be defined in the EU Directive on Asylum Procedures and all other relevant EU instruments, in line with the SCEP Statement of Good Practice.

**b) The right to non-discrimination (Article 2)**

17. Discrimination increases the vulnerability of separated children and has serious repercussions on the life of these children and their ability to lead a normal social life. All discriminatory practices against them constitute violations of the rights of the child set out in the Convention. Article 2 of the Convention obliges States Parties to respect and ensure the rights set forth in the Convention, without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". In the Committee's opinion the expression "or other status" applies inter alia to the situation of separated children. Laws, policies, strategies

and practices must aim to eliminate all forms of discrimination, which hinder the realisation of the rights of this group of children.

**c) The best interests of the child (Article 3)**

18. By the terms of Article 3(1) of the Convention: "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". The obligations arising from this right are essential for guiding states' actions in drawing up, and constantly updating, asylum policy. The principle requires that the impact on children of the development, administration and resourcing of government policy must be assessed and the interests of children must be "a primary consideration".

19. It also applies to decisions about the cases of individual children. Although it can prove very difficult, determining "best interests" must be central to establishing appropriate action for resolving the situation for any separated child. This may mean balancing potentially conflicting rights. For example, seeking to realise the right to family reunification (CRC, Article 10) can give rise to conflicts with the child's own expressed wishes (CRC, Article 12). The same can be true when considering the question of whether or not a child should return to his or her country of origin. Children's opinions will be strongly affected by the conditions and expectations that surrounded their departure; the expectation of their family and the home community, and the quality of information available to them.

"A child may be an orphan living in a refugee camp, with grandparents in the country of origin, an uncle in a second country of asylum, and with an unrelated family in another country that would like to adopt the child. In deciding what is best for the child many factors would have to be considered, including 'the desirability of continuity' of culture and language (Article 20), the preservation of family and nationality (Article 8), and the child's own desires, which must be considered according to the child's age and maturity (Article 12)." (UNHCR, 1994.)

Both the Finnish Aliens Act of 1999 and the Swedish Aliens Act of 1997 specifically state that particular attention should be paid to the "best interests" principle. Attempts to ensure consistent decision-making on the basis of Article 3 of the CRC are, however, relatively few and in practice, it appears that separated children's best interests are not duly taken into account. For example: guardians or advisers are not regularly appointed to support them; legal representation may be non-existent; lack of any form of legal status often means that children live in uncertainty for considerable periods of time; in many cases children are routinely detained, sometimes in penal conditions and/or with adults.

Alongside the principle of the child's "best interests", increasing attention has focused in recent years on the principle of the child's right to participate in decisions affecting him or her (CRC, Article 12). Indeed, it has been suggested that the "best interests" principle should be properly understood to provide an opportunity for the child to determine what those best interests are – on the condition that it is compatible with the law and interests of others and that it is not contrary to his or her self-interest in terms of physical or mental wellbeing and integrity (Eekelaar, J., 1994).

Against this background, it is essential that a comprehensive assessment of the child's "best interests" should be included in the EU Directive on Asylum Procedures and other relevant EU instruments.

Governments should also explain how the principle has been respected when decisions have been taken, either in relation to broad aspects of policy or in individual cases.

Appropriate mechanisms should be developed to monitor and evaluate implementation.

**d) The right to life, survival and development (Article 6)**

20. The obligation on states to ensure children's right to life, survival and development highlights *inter alia* the need to pay special attention to how being involved in criminal activities adversely affects the lives of separated children and their right to survival and to harmonious development, especially if these criminal activities are the work of organised criminal groups.

The trafficking of separated children into Europe is a serious problem, and research reveals disturbing examples from several states.

In Greece and Italy, Albanian children in particular are sometimes brought into the country illegally to be economically or sexually exploited.

In France, there are cases involving children from China being forced to work in sweatshops, and children from Sierra Leone being forced into sex work.

In Spain, Roma children from Portugal, Romania and other Eastern European countries are exploited as beggars in the streets. Trafficking routes to the Netherlands appear particularly well established with children being brought from Eastern Europe, China and Nigeria by organised gangs to work in the sex trade. A particularly worrying aspect of the Dutch experience is the number of children who disappear from reception centres; many do so in order to work as sex workers.

Although it appears not to happen to the same extent elsewhere, there is an urgent need for further research to establish the true scale of the problem and to promote the development of effective responses.

Although issues relating to trafficking are broader than the focus of this paper, there are links between trafficking and the use of asylum. Children seeking asylum sometimes come into the EU via trafficking routes. It appears also that the more states introduce restrictive control measures to make it more difficult to reach EU territory, the more the incentives for child trafficking grow.

It is suggested that, building on measures set out in the EU Council of Ministers' Joint Action to Combat Trafficking in Human Beings and the Sexual Exploitation of Children of 24 February 1997, practical initiatives should be developed at all levels in response. These could include priority procedures for children who have been trafficked; swifter appointment of guardians; better information to children on the risks; increased monitoring of children "at risk"; and training courses for relevant staff. The effectiveness of measures taken under the Joint Action also needs to be properly evaluated.

**e) Children's right to express their views and to have these views taken into account (Article 12)**

21. Separated children have specific rights, in particular the right to participate, according to their level of development, in decisions relating to an application for family reunification or for asylum, and the right to "to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a

representative or an appropriate body, in a manner consistent with the procedural rules of national law" (Article 12(2)).

22. In practice, attempts are made to incorporate the principle of the right to participate into the refugee or asylum determination process. Children normally do have the right to have their views represented during interviews, and most states have an age limit above which the child either should be or must be consulted (usually 12). Nevertheless, the child's rights in this area are marginalised in some countries. Beyond the determination procedure, it appears that children are able to participate to a greater extent in decisions in relation to care planning.

23. Although the right to participation is lacking in the EU Resolution on Unaccompanied Minors, any national and EU level legislation on asylum procedures should include the principle of consulting children and taking their views into account whenever decisions affecting them are being made. Additional factors which facilitate child participation, which should also be addressed in any instrument, are:

- the early appointment of guardians and legal representatives;
- the availability of skilled interpreters;
- access to education, and
- child-friendly environments

## **II. Good practice in the treatment of separated children**

24. The following paragraphs essentially reiterate the recommendations contained in the Statement of Good Practice of the Separated Children in Europe Programme (SCEP), as set out in the study by Sandy Ruxton entitled *Separated Children Seeking Asylum in Europe: a Programme for Action* (Stockholm, 2000). The author compiled this study on the basis of the conclusions of national assessments carried out for the purposes of the study. The same author had already published a study entitled: "A Children's Policy for 21st Century Europe: first steps" (Euronet, Brussels, 1999).

### **a) Access to territory and to asylum procedures**

25. The 1997 EU Resolution on Unaccompanied Minors sets out that member states should prevent the "illegal" entry and residence of separated children, and allows member states to refuse admission at the frontier to separated children and to keep them at the border until a decision has been taken on their admission.

In his study, Sandy Ruxton writes:

*"Within Europe, although refusals are rare or unknown in some countries (eg in Scandinavia), denial of access of separated children to the territory of a country in which asylum is sought appears to be relatively common in others. Although safeguards exist in some countries, access to normal determination procedures are also obstructed in many states by 'accelerated' and 'admissibility' procedures. For instance, 'safe third country' policies are commonly applied (eg in Austria, Denmark, Finland, Germany, Portugal, UK)".*

Similarly, applications are often regarded as 'manifestly unfounded' (eg Austria, Denmark, France, Portugal, Sweden). However, some countries rarely use this concept for children (eg Finland, Ireland).



Building on the conclusions of the Tampere European Council, the principle must be established that separated children seeking protection should never be refused entry or returned at the point of entry, and that when such children seek asylum, they must have access to the normal refugee status determination procedure; they should gain access immediately and not have to wait until they are 18".

**b) Guardianship and legal representation**

26. According to Sandy Ruxton's study, in relation to guardianship, "policy and practice across Europe is diverse. In several states (eg Austria, Denmark, France, Ireland, Italy, Portugal, UK), guardians or advisers are not appointed systematically to advise and protect separated children; in others they are (eg Luxembourg, The Netherlands, Norway, Spain, Sweden).

A number of additional problems arise with guardianship systems. For instance, the role of guardians may be short-term only and it may take a long time for them to be appointed; they may lack specific guidance, expertise or awareness of refugee issues; training may be limited; they may have a purely administrative relationship with the child; and resources are often lacking to provide a sufficient number of guardians. Despite these difficulties, there are some examples of positive practice. In The Netherlands, for instance, appointing a guardian takes around four weeks, their role is wide-ranging and long-term, and continuous training is available for them.

In most states, some form of legal representation exists to assist separated children in making an asylum claim; however this is not necessarily available at all stages of the asylum process (eg Belgium, Denmark, France, Italy).

In some countries advances in legal representation have occurred recently; in Finland and Ireland, for instance, representation is now provided throughout the process. But significant weaknesses remain in legal representation in many states. The quality of legal representation may be poor; there may be no prior consultation with the child before an interview; lawyers may lack knowledge of countries of origin or experience of representing children; there may be constraints on access to free legal aid.

27. In order that the 'best interests' of a separated child are met, it is essential that he or she should be assisted by a guardian or adviser during the whole asylum process, in line with the UNHCR Guidelines and the CRC. In particular, guardians should be appointed as soon as possible (and certainly within a month of the child arriving in the country); co-ordination between guardians and staff in other relevant agencies should be improved; training and guidance materials should be developed; and accessible information about the guardianship system should be available to the child on arrival.

Similarly, the provision of appropriate legal representation is essential if a separated child is to receive a fair hearing. Representation by specialist lawyers should be available to every child throughout the determination procedure; lawyers should be present at asylum interviews, and they should be skilled in supporting children; regular and open contact should be established between the lawyer and the child; free legal aid should be provided; and training should be available to legal representatives. These recommendations should be integral to the EU Directive on Asylum Procedures and any other relevant instrument at national and EU level" (Ruxton, S., 2000.

**c) Age assessment**

Sandy Ruxton's study shows that "separated children frequently arrive in Europe with false documents or no documents at all. In many cases this is their only means of

escape from danger, as is recognised by Article 31 of the 1951 Refugee Convention. As a result it can prove difficult to ascertain their age, and if they are incorrectly identified as adults, they will not be entitled to the full protection of international law.

Although several states (eg Denmark) appear to apply the principle of the 'benefit of the doubt', in line with the UNHCR Guidelines, others (eg Austria, France, Portugal) do not. In most states, some form of medical assessment is undertaken to attempt to determine the age of the child, in breach of the UNHCR Guidelines, which state that methods 'must be safe and respect human dignity'. Hence the concerns expressed by the Committee on the Rights of the Child that unnecessary X-rays are being carried out (commonly of the wrist and hand, but also in Italy of the head) and that intrusive and sometimes frightening bodily examinations are also conducted. Neither of these methods appears to provide conclusive evidence of age, and the margin of error can be wide.

28. Minimum guarantees should therefore be included in any legislation affecting age determination. For example, the principle of the 'benefit of the doubt' should be respected (with 20-24 months' leeway as a suggested guideline); age assessment should not be based solely on appearance without taking into consideration ethnic/cultural background, but should also take psychological maturity into account; experts should be involved for a second opinion prior to detailed medical assessment; existing bone directories are dated and incomplete and should not be used for age assessment; if medical examination is necessary, it should be carried out by a physician with appropriate expertise and familiarity with the child's background; and medical examinations should never violate the physical integrity of the child". (Ruxton, S., 2000).

#### **d) The use of detention**

Ruxton says: "within Europe there are several countries where separated children are not detained (or only extremely rarely detained) for reasons associated with their asylum application (eg Denmark, Finland, Ireland, Italy, Norway, Spain). But there are others where detention is more common (eg Austria, Belgium, France, Portugal, UK), either in so called 'waiting zones' at airports, or in detention centres, police cells, or prisons. The age of children who can be detained varies, and there are cases of children as young as 13 or 14 being detained in the UK.

29. Detaining children is a highly damaging practice which can be traumatic for those involved – especially within the context of the situations from which they have fled. Detention may represent a contradiction to the 1997 UNHCR Guidelines and the 'best interests' principle of the CRC. Instead, children should be accommodated in appropriate residential child care facilities or other settings (eg foster placements, group homes, independent living) where support is available from specially trained staff with experience of working with separated children. These recommendations should be included in EU and national legislation" (Ruxton, S., 2000).

#### **e) Criteria for making a decision on a child's application**

According to Ruxton: "although the EU Resolution on Unaccompanied Minors sets out some of the criteria relevant to a decision on a child's application (eg age, maturity and mental development), UNHCR's 1997 Guidelines and the SCEP Statement of Good Practice go further. In particular they raise (among other issues) the significance of child-specific forms of human rights violations which, depending on the circumstances, may justify recognition of refugee status or the granting of a

humanitarian status. Also underscored in these documents is the need for a liberal application of the 'benefit of the doubt'.

30. The information available from the Country Assessments indicates that, on the one hand, there is a lower refugee status recognition rate among separated children than the general asylum-seeker population; and that, on the other hand, there is a much higher recognition of humanitarian status.

In general the issue of child-specific forms of human rights violations is not emphasised in EU states, even though there is considerable evidence of children being recruited into armed forces from as young as ten years, of girls experiencing female genital mutilation, and of children being forced into prostitution or child labour. This study provided some further examples, especially in relation to children being trafficked for the purpose of economic and sexual exploitation.

31. Neglect of these issues in the decision-making process reflects the overall lack of focus on the needs and rights of separated children in immigration and asylum policy. Greater efforts must be made by NGOs and UNHCR to ensure that European governments and the EU recognise the importance of child-specific forms of human rights violations and "liberal application of the benefit of the doubt". These principles should also be specifically referred to within the EU Directive on Asylum Procedures. Further research should be undertaken to monitor and explore current practice in more detail, with the aim of informing the development of appropriate policy and practice" (Ruxton, S., 2000).

#### **f) Training for those working with separated children**

The importance of training for officials dealing with separated children and their cases at all stages should be highlighted in relevant EU and national instruments, as in the EU Resolution of Unaccompanied Minors (Article 4(5)). Appropriate training is also essential for legal representatives, guardians/advisers, interpreters, and other care staff working with separated children.

Sandy Ruxton states: "the extent to which this happens in practice varies between states. For example, in some countries (eg Austria, France, Italy, Portugal, Spain) there is no training for officials in interviewing children, in others (eg Germany, Ireland, The Netherlands, Sweden, UK) there is some, even though it is often not sufficiently widespread.

32. As the roles of officials, representatives, guardians, interpreters and other care staff often differ, training programmes should be tailored to the specific needs of the groups involved. It is also suggested that the training programmes should include the following topics as core elements:

- the principles and standards of the CRC and other key instruments and guidelines;
- knowledge of countries of origin;
- appropriate interviewing;
- child development and psychology;
- cultural issues;
- use of language, and
- creating child-friendly environments.

Initial training should be backed by the setting up of networks and continuing education programmes "(Ruxton, S., 2000).

**g) The return of a separated child**

As the study by Sandy Ruxton shows: "in most European countries it appears that some or all of the special conditions set out in the SCEP Statement of Good Practice (eg family assessment, preparation for immediate and long-term care in the country of origin, analysis of conditions in the country of origin) are not fulfilled prior to the return of a separated child.

Although some countries have established systems or programmes of return for separated children, most have not. A number of countries also practice expulsion and return of separated children without taking necessary safeguards. In Austria, Belgium, France, Germany, Greece, Italy and the UK expulsions or returns without sufficient preparation are known to happen. However, it is difficult to get statistics and general information on the return of separated children, and consequently there is a great need to increase knowledge and awareness of this aspect".

33. The study draws attention to the "need for formal schemes for return to be developed in European states, however it is essential that appropriate safeguards are respected. For instance:

- guidelines and procedures should be in place in order to assess the best interest of the child in the context of return measures;
- standard criteria should be set out for determining whether care in the country of origin is in line with the CRC;
- assistance should be provided to separated children prior to, during and after the return to country of origin;
- attempts to locate a separated child's parents in order to assess whether the child should be returned should be standard procedure;
- the child should be fully informed at all stages regarding progress in relation to return, and should be involved in any decisions regarding his or her future, and
- returns should always be carried out in a child-appropriate manner. If return is not possible without endangering the child's wellbeing, a solution in the host country should be found".

**h) Data and research on separated children**

According to Ruxton: "the available statistics on separated children in the European states covered by this study are patchy, both in scope and quality. This mirrors the fact that general statistics about children in the EU are limited both between and within states (Ruxton, S., 1999). It appears that most countries – but not all – collect basic data about the number of arrivals and/or applications by separated children; however beyond this, detailed breakdowns are more difficult to find.

Nevertheless, there is evidence from some countries that the majority of separated children are boys (mainly aged between 16 and 18 years) and that the main source countries are Afghanistan, China, Iraq, Morocco, Sierra Leone, Somalia, Sri Lanka and Republics of the former Yugoslavia (though the distribution varies between countries). Where statistics on status determination are kept, refugee recognition rates

appear to be generally very low (around 1 to 2 per cent) – lower in many cases than those for adults".

34. Ruxton goes on to say that "overall, this study highlights significant gaps in the data at all levels. There are several main reasons for this:

- data are frequently not recorded according to the same categories and formats, both between and within countries. There may be no centralised data bank and information may be held by different institutions. Some concerns surround confidentiality and access to personal information.
- resources for data collection may be scarce. State authorities may have little or no desire or capacity to collect comprehensive information and statistics.

35. Despite these obstacles, there is a strong argument that the development of well-founded information systems and continuous monitoring in relation to separated children is vital, both at local, national and European levels. The availability of such information is an important precondition for developing and implementing positive policies towards separated children.

Given the different systems which currently exist for information collection in different states, it is impossible to be prescriptive as to which institutions should have primary responsibility in each country (although at EU level, Eurostat should be approached).

However, it is more feasible to attempt to specify the kind of data which should be collected. At a minimum, this should include basic biographical data (eg age, sex, nationality, ethnic group); total number of arrivals; total number of refusals of entry to the territory; numbers of asylum applications made; guardians and legal representatives appointed; type of accommodation (eg detention, reception centres, group homes, independent living); participation in education and training; information on status determination (eg refugee status, humanitarian status, temporary protection, other forms); statistics on returns and family reunification.

In addition to setting up systems for collecting statistics and ongoing monitoring, additional in-depth research should seek to analyse the qualitative experiences of separated children – especially in relation to areas which are as yet insufficiently explored (eg the impact of trafficking, disappearance of children)" (Ruxton, S., 2000).

### **List of recommendations**

(contained in the SCEP Statement of Good Practice, as presented in the study by Sandy Ruxton entitled *Separated children seeking asylum in Europe: a programme for action*.)

#### **The definition of a “separated child”**

**Recommendation 1:** When developing legislation and administrative regulations, the EU and European states must recognise the needs and protect the rights of all separated children. The inclusive definition of ‘separated children’ as defined by SCEP should therefore be central to legislation dealing with asylum-seekers and refugees, and should also be acknowledged within child law.

#### **Access to the territory**

**Recommendation 2:** In order to ensure effective protection for separated children seeking asylum, greater political will should be focused on meeting the standards set out in international law and guidance (especially the 1951 Refugee Convention, the CRC, and the UNHCR Guidelines), and endorsed in the SCEP Statement of Good Practice. Any subsequent EU and national level legislation in relation to access to the territory should reflect these instruments and the European Council conclusions from the Tampere summit.

#### **Identification**

**Recommendation 3:** In order to ensure that children are given appropriate protection, the EU and European states should build on the EU 1997 Resolution on Unaccompanied Minors based on paragraphs 5.1 – 5.3 of the UNHCR Guidelines regarding identification.

#### **The appointment of a guardian or adviser**

**Recommendation 4:** For children’s “best interests” to be adequately protected, there is a clear need for all children under 18 years old to be assisted by a guardian or adviser at all stages of the asylum process and in relation to durable solutions. Such assistance should be in line with the provisions set out in international law and guidance (principally the CRC and the UNHCR Guidelines) and the SCEP Statement of Good Practice. In developing common standards on asylum procedures, the EU should ensure that the safeguards identified in the EU 1997 Resolution on Unaccompanied Minors are strengthened and incorporated in subsequent EU legislation.

#### **Registration and documentation**

**Recommendation 5:** To protect the interests of separated children, such children should be registered and documented as soon as possible following entry to the territory. Article 3.1 of the EU 1997 Resolution on Unaccompanied Minors should be elaborated upon and strengthened, in line with the SCEP Statement of Good Practice and the UNHCR Guidelines.

#### **Age assessment**

**Recommendation 6:** In any legislation developed by the EU and European states, minimum guarantees in relation to the age assessment of separated children should be integral, based on paragraphs 5.11 of the UNHCR Guidelines and the SCEP Statement of Good Practice.

## **Detention**

**Recommendation 7:** SCEP believes that the detention of separated children for reasons relating to their immigration status violates the CRC and also contravenes the UNHCR Guidelines. In any legislation which is subsequently developed at European and national level, a clear statement preventing the use of detention for all separated children should be included.

### **The right to participate**

**Recommendation 8:** In order to meet the standards set out in Article 12 of the CRC, states should ensure that separated children are provided with appropriate opportunities to be heard at all stages of the asylum process. It is also essential that states should fulfil their positive duty to assist children to express their views. The EU and European states should integrate the standards set out in the CRC and the UNHCR Guidelines into any relevant asylum legislation.

### **Family tracing and contact**

**Recommendation 9:** Despite the real obstacles which exist, the emotional and psychological importance to the child of maintaining and developing contact with family and relatives, and of preserving cultural links with the country of origin, is undeniable. It is therefore vital that the EU should develop legislation which upholds the key principles established in the CRC, and reinforced in the ECHR, the EU 1997 Resolution on Unaccompanied Minors, and the UNHCR Guidelines.

### **Family reunification in a European country**

**Recommendation 10:** In order that the “best interests” of the child are met, states should ensure that separated children seeking asylum within one EU country who have family relatives in another EU country should receive appropriate assistance so that family reunification can take place as soon as possible. Separated children’s access to reunification procedures should be premised upon the fact that they are children rather than upon their status in the asylum procedure. The existing Dublin Convention provisions fail to meet the needs of separated children and their families adequately. Future EU legislation (eg Directives on Temporary Protection and Asylum Procedure) should provide for the right of separated children to be reunited with their families.

### **The asylum or refugee determination process**

#### *Access to normal procedures*

**Recommendation 11:** Separated children are to have access to normal asylum procedures containing appropriate provisions and safeguards, in line with the UNHCR Guidelines, ECRE’s Position on Refugee Children, and the SCEP Statement of Good Practice.

#### *Legal representation*

**Recommendation 12:** The provision of appropriate legal representation is essential if separated children are to receive a fair hearing in asylum procedures. This principle is reiterated in the UNHCR Guidelines and expanded upon in the SCEP Statement of Good Practice, and should be integral to any EU and national legislation on asylum procedure which is developed.

*Minimum procedural guarantees*

**Recommendation 13:** The evidence suggests that there are minimum guarantees for separated children in European states. There is, however, considerable variation in practice, both between and within countries – even in those where official policy exists. If asylum claims by separated children are to be processed efficiently and fairly, it is essential that any legislation on asylum procedures should ensure that the minimum guarantees within it are sufficiently rigorous and that they are met in practice, in line with the UNHCR Guidelines.

*Independent assessment*

**Recommendation 14:** In any legislation on asylum procedures which is developed by the EU or European states, reference should be made to the possibility of undertaking expert assessments on the child's ability to articulate fear of persecution.

*Interviews*

**Recommendation 15:** The evidence suggests that in many states conformity with the principles set out in the UNHCR Guidelines (and the SCEP Statement of Good Practice) is not ensured. Official guidance is generally lacking, and many children can be subject to hostile questioning in an alien environment. Several governments admit that currently the training for those interviewing children is either not available or not extensive enough. And it is also relatively common for a child to attend an interview alone, without adult support. Measures should be taken by governments to ensure that officials who interview separated children are adequately trained; and that interviews are undertaken in a child-friendly manner.

*Criteria for making a decision on a child's asylum application*

**Recommendation 16:** The evidence suggests that, in general, there is a lack of clear policies on the factors which should be taken into account in determining separated children's cases – despite the existence of developed UNHCR Guidelines. In practice, this gap means that officials may make decisions in a policy vacuum, leading to wide variations in treatment based on criteria which can be subjective and unfair. When determining refugee status, governments should make sure that child-specific forms of human rights violations are taken into consideration as well as the fact that children might have different ways of communicating fear of persecution and different knowledge regarding their claims than adults.

*Young people who become adults during the asylum process*

**Recommendation 17:** There is wide variation in approaches between states to separated children who become adults during the asylum process. Significant unfairness can result, especially when “ageing out” occurs as a result of delays which have not been caused by the children themselves. In this context, it is important that the EU and European states should seek to establish fair procedures in this regard.



## **Durable or long-term solutions**

### *Grounds for a child remaining in a host country*

**Recommendation 18:** Generally speaking, European states do allow separated children to remain in the “host country” in line with the criteria set out in the SCEP Statement of Good Practice. However, to meet fully the needs and rights of separated children, key safeguards such as providing a status which gives them access to assistance and family reunification, must be implemented in all states, in line with the CRC principle of the “best interests of the child” and the UNHCR Guidelines.

### *Family reunification*

**Recommendation 19:** The evidence presented by the assessments indicates that practice is far from meeting the standards set out in the CRC in relation to family reunification in the “host country”. Efforts should be made to change policy and practice to allow for family reunification in the “host country” for all categories of separated children.

### *Integration*

**Recommendation 20:** Although a number of good practices are in place, existing evidence suggests that significant improvements are required if the standards of the CRC, the EU 1997 Resolution on Unaccompanied Minors, and other relevant international instruments, are to be met. All separated children should gain access to appropriate services on a non-discriminatory basis and facilities and programmes should be designed to meet their special needs.

### *Adoption*

**Recommendation 21:** Adoption is rarely a suitable option for a separated child. It is essential that prior to adoption being considered as a viable option for a separated child, there is a rigorous assessment of the family circumstances in the country of origin. The separated child’s parents often still live in the country of origin, or sometimes they are missing but not officially reported dead.

## **Family reunification and return to the country of origin**

### *Return*

**Recommendation 22:** There is a need for formal schemes or programmes of return to be developed in European states. Guidelines and procedures should be in place in order to assess if return would be in the best interest of the child. Such guidelines and procedures should be drawn up in collaboration with agencies with specific child and country knowledge, and according to the UNHCR Guidelines.

### *Conditions that must be fulfilled prior to return*

**Recommendation 23:** Experience in European states suggests that greater attention and effort must be devoted to ensuring that the conditions and safeguards set out in the UNHCR Guidelines and the SCEP Statement of Good Practice are implemented. Guidelines should be developed at national level specifying which steps to be taken before a separated child is returned including verification that care will be provided for and basic needs will be met.

### *Programmes and aid to facilitate return*

**Recommendation 24:** Programmes to assist the reintegration of returned children should be initiated and supported.

*Settlement in a third country*

**Recommendation 25:** In general it appears that guidelines and procedures are not in place in European states to assess if settlement in a third country would be in the best interest of the child and to ensure that the decision is reached in accordance with appropriate safeguards. Procedures should be put in place in all European states in order to allow for the transfer of a separated child to a third country if the child has a family member in that country who is willing and able to care for him or her.

# Sharing responsibility – boosting co-operation between countries of destination and origin at all levels

Michel Villan<sup>1</sup>

*Ladies and gentlemen,*

Migration has increasingly become even more of a key political issue than they used to be, not only in Europe but throughout the world.

Over the last two decades, despite the consistently high levels of unemployment occurring in European societies, there has been a huge expansion of the informal economy owing to the decline of traditional industrial sectors, developments related to technological progress, increased competition and the globalisation of trade. This has increased the demand for migrant workers who are unorganised, tractable and undemanding when it comes to salaries and working conditions. At the same time, in countries of origin, the prospects for economic development have dwindled, also as a result of this increased competition of products on international markets.

Observance of human rights – including the right to a better future – is the central theme of our presentation, and must be the cornerstone of any initiative, whether it is of an economic or social nature.

Compliance with the rules laid down by a democratic society is, naturally, a vital prerequisite for maintaining social cohesion and promoting social development. However, the problems that arise on a daily basis must always be dealt with in this spirit of upholding human rights, but also in an effort to build the necessary solidarity to ensure that there is less injustice and poverty in the world.

All human beings, all over the world, have the right to a better future for themselves, their children and their children's children, particularly when they have experienced poverty, exclusion or lack of respect.

In September 2005, participants in the first Euro-Asian Parliamentary Forum on Migration, held in Almaty, Kazakhstan, called for all nations to make greater efforts to achieve fairer sustainable economic development, in order to reduce the gap between developed and developing countries and regions – one of the main reasons why individuals or groups of individuals abandon their birthplaces.

The philosophy behind the CDMG's work is based on: fleshing out debate, drawing up proposals or recommendations to encourage member states to develop appropriate policies to achieve more justice, equal opportunities and solidarity, while promoting diversity as an asset, higher levels of participation and the greater well-being of all people.

Analysis, proposals relating to integration, and migration flow management must be set against this background.

Co-operation and partnerships between host countries, countries of origin and countries of transit are essential factors of success in achieving better integration of

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<sup>1</sup> Chair of the European Committee on Migration (CDMG), Council of Europe.

migrants in host societies, and in more balanced management of migration and its economic and social effects.

For the Council of Europe,

"Social cohesion comprises all the elements and processes that help to strengthen society's ability to secure the long-term well-being of all its members, including equitable access to available resources, respect for human dignity and diversity, personal and collective autonomy and responsible participation".

The "integration of immigrants and minorities" must be understood within the meaning of this definition of social cohesion. There can be no successful integration without social cohesion and there can be no successful social cohesion without proper integration of immigrants and minorities.

### **Some of the CDMG's recent major activities**

In addition to the series of recommendations drawn up by the CDMG since its creation in 1979, I would like to highlight two of its particularly important initiatives in recent years:

- improved knowledge, improved monitoring and assessment of policies implemented;
- establishment of dialogue between countries of emigration, countries of transit and countries of immigration.

#### *List of integration indicators*

In 2003, the CDMG drew up a list of integration indicators, both quantitative and qualitative, to be recorded for each country, with the aim of improving the monitoring and assessment of policies implemented in this area.

This tool concerns eight important spheres of life: employment, housing, health, nutrition, education, information and culture, and analyses the basics of the relevant public functions, viz. the founding, remedial and enabling functions.

This tool is intended as a guide, or benchmark, to be used by anyone wishing to develop an integration policy for migrants in one of the sectors analysed. It enables short, medium and long-term objectives to be set.

It can be broken down according to specific population groups such as unaccompanied minors outside their country of origin.

#### *Political Platform of the Council of Europe on Migration*

At the end of 2003, the CDMG set up the first Political Platform of the Council of Europe on Migration, concerned with North-South and East-West dialogue, and has continued to hold these half-yearly meetings since then.

The aim of the political platform is *to promote North-South and East-West dialogue and co-operation in the area of migration between countries of origin, transit and destination.*

1. Two themes were chosen for the *first meeting of the political platform*, held in Amsterdam in December 2003: - the first was the role of information.

- how to ensure dissemination in countries of transit and countries of origin of accurate information on migration conditions in Europe (channels of legal migration, family reunification, recognition of qualifications, visa systems, fairness of selection processes);
- how to disseminate intelligently, in host societies, information about countries of origin, and in particular about the migration pressures resulting from the level of development in these countries;
- how to increase knowledge and understanding of migrants' cultures in host societies.
- the second theme was: integration as a factor for development

the question discussed was: how to ensure that the process of integration in host societies is of equal benefit to countries of origin and countries of destination in economic, social, cultural and educational terms.

2. The *second meeting of the political platform*, which was held in Strasbourg, in May 2004, was on the theme of student mobility.

The European Committee on Migration decided to examine the situation of migrant students in EU member states, with the aim of promoting student mobility and the transfer of qualifications and know-how between countries of destination and origin.

The problems raised by student mobility are bound up with the specific nature of this mobility. In this connection, the issue of return to the country of origin is of particular importance.

Discussion centred on three areas in which problems arise at the different stages of study of overseas students:

- Departure (how to frame consistent and transparent visa policies, how to provide students with reliable information, etc.).
- Study period (how to ensure that students make the most of their studies; how to ensure that foreign students are not unfairly treated or exploited);
- Return (how to deal with "brain-drain" problems; how to ensure that students return once they have completed their studies).

3. The *third meeting of the political platform*, held in November 2004 in Strasbourg, addressed the issue of unaccompanied minors outside their country of origin.

The questions providing the backdrop to the meeting were:

- How to ensure that these minors are not traumatised for life;
- How to ensure that they do not fall prey to human trafficking networks;
- How to prevent them or their families, at the outset, from being lured into this type of migration;
- What training, education, monitoring, supervision and life plan should be arranged for, and with, these young people.

During the discussions, participants stressed the need for co-operation between the countries of origin, transit and destination in order to deal effectively with the complex problems of unaccompanied minors, highlighting the following key points:

- There is a clear need to adopt a global, balanced approach that is sufficiently flexible to cater for the requirements of each individual without forfeiting the integrity of national immigration control systems;
- The root causes of migration of unaccompanied minors need to be addressed. This means, in particular, developing national policies aimed at strengthening families and educating parents, but above all setting up sustainable co-development programmes. European migration policies must also be reassessed;
- It seems clear that different countries, including states that are not members of the Council of Europe, implement specific measures aimed at migrants who are unaccompanied minors (for example reception centres). Unfortunately, exchange of national experiences at international level is rare. It would be useful to have a framework allowing the regular exchange of useful information and good (or bad) practices;
- The reintegration of children returning to their societies of origin is an important factor that could potentially reduce the number of unaccompanied minors arriving in Europe. If such reintegration were successful, children returning to their countries would be able to provide their peers with accurate and reliable information on what to expect from illegal migration. National experiences of reintegration should be exchanged and new projects launched with the help of European countries.

Various "life plans" devised for children should be put in place so that they can build their life in the host country or rejoin society in their country of origin. Such plans should be designed as part of an overall approach incorporating the different aspects of co-operation between the countries of origin, transit and destination; the education of parents and children; the participation of international agencies such as the Red Cross, etc. To ensure successful implementation of these projects, European countries must accept that not all migrant children will return to their country of origin.

4. The fourth meeting of the political platform on migration addressed the theme of co-development between North and South and the way in which countries of origin maintain links with nationals who have migrated

Three workshops were held prior to the meeting, in April 2004, December 2004 and March 2005 by the CDMG in conjunction with the North-South Centre of the Council of Europe based in Lisbon.

The aim of these workshops was to further North-South dialogues by providing an opportunity to address issues of practical co-operation; exchange examples of good practice, particularly in the area of micro-projects; come up with project proposals and, if possible, facilitate the necessary fund-raising.

The following recommendations were made during these workshops:

- implement a policy of co-operation that is consistent with migration policy;
- promote an environment that is favourable to co-development initiatives, and place migrants at the centre of these initiatives;
- encourage inter-regional dialogue;

- facilitate access by migrants to credit;
- recognise individuals and associations as co-partners in development and assist in placing migrant associations on a professional footing;
- promote and support the contribution of highly qualified migrants in countries of destination and origin, and their development-related initiatives.

Migrants are not a burden, but an important asset which should serve to bring countries of origin and destination closer together.

These discussions are being continued by a CDMG committee of experts and by meetings held in conjunction with the North-South Centre.

5. The *fifth meeting of the political platform*, held on 21 October 2005 in Athens, dealt with the image of migration in the media, the representation of immigrants in the media and the information which should be available in countries of departure, so that migrants are not completely uninformed on arrival and, in countries of destination, to improve their reception.

The following issues were also addressed: the role of governments, migrants' associations and NGOs in promoting an appropriate image of migrants in the host society and the society of countries of transit.

The CDMG also agreed that it should provide national and local authorities with more legal, political and practical guidelines for implementing policies on integration and inter-community relations. This work should feature greater dialogue with the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe and NGOs.

Here I have run through the main areas of work, ideas and proposals of the European Committee on Migration of the Council of Europe aimed at promoting migration management more in keeping with migrants' the aspirations for a better future.





# Effective respect of the fundamental rights of unaccompanied migrant minors – the findings of the Commissioner for Human rights

Manuel Lezertua<sup>1</sup>

## Introduction

It is a great pleasure for me to contribute to this conference on unaccompanied migrant minors on behalf of the Council of Europe Commissioner for Human Rights.

I would like to begin by thanking the Spanish Ministry of Labour and Social Affairs and our colleagues from the Social Cohesion Directorate of the Council of Europe for providing this opportunity to express the views of the Commissioner for Human Rights and contribute to your discussion on the highly topical subject of protecting unaccompanied migrant minors.

The Commissioner's work varies, touching on all the human rights enshrined in the Council of Europe's conventions and taking diverse forms. His main task is to visit Council of Europe member states and identify shortcomings in law and practice. On his visits, he conducts detailed investigations in institutions and other places where people are particularly vulnerable to breaches of their fundamental rights, such as prisons, detention centres, holding centres, centres for young offenders, children's care institutions and hospitals. He meets the people held or accommodated in these places, and the staff and the management. He also meets the highest national authorities and representatives of civil society and human rights bodies. As well as highlighting problems and shortcomings, he tries to establish constructive dialogue with the relevant national authorities and contribute to a quest for solutions through opinions and recommendations. Lastly, he works to raise awareness of human rights through seminars and promotes the establishment and development of human rights bodies.

Throughout his term in office and particularly during his visits, the Commissioner, Mr Alvaro Gil-Robles, has set much store by the protection of children, taking the view that their situation is still a major problem in the 21<sup>st</sup> century. Too many children are confronted with poverty and destitution, are deprived of basic health care or become the victims of armed conflicts, slavery or sexual exploitation.

The aim of this presentation, therefore, is to put forward a number of ideas based on the outcome of the Commissioner's findings over the last six years. Since the late 1990s, the number of minors arriving in European countries without parents or legal guardians – “separated children” – has been steadily increasing. There is clearly a problem, but there is no commonly accepted definition of such children at European level. It is important therefore for us to endorse the definition arrived at by the joint UNHCR/Save the Children programme “Separated children in Europe”, which defines them as children under the age of 18, outside their country of origin, separated from their parents or their previous legal/customary primary caregiver.

The question is complex because these children have various intersecting legal statuses, which are difficult to reconcile. From a legal viewpoint, they are minors,

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<sup>1</sup> Director, Office of the Commissioner for Human Rights.

aliens, persons without legal representation and sometimes even asylum-seekers. Legislation in some countries takes account of only one of these aspects, making the situation even more difficult for the children. Their origins, their past and their motives and goals are all different, but what they have in common is that they are all uprooted and in need of protection. Very often the authorities are unconcerned about their vulnerability or fail to take a consistent approach to them within one and the same territory. Irrespective of how they are defined, they are all likely to end up roaming the streets or falling victim to crime rings or violence before they are identified by an association, social services or the police. The fact is that these children are victims of the clash between countries' ever tighter immigration policies and the principles of child protection.

### **The child's best interests and immigration policies**

Whereas all the Council of Europe member states have ratified the United Nations International Convention on the Rights of the Child, the Commissioner has noticed that the child's best interests are not always taken into account in policies for the reception and protection of immigrants.

During his visits, particularly his more recent ones to southern Europe, the Commissioner has noted a, to say the least, worrying change in the migration process. Governments are reporting that, as a result of restrictive admission policies and the fact that adult immigrants without official papers are automatically turned back, more and more children are arriving at their borders, particularly in boats from North Africa. The organisers are totally unscrupulous human traffickers, who now "recruit" ever younger children in remote, poverty-stricken villages, enticing them with the hope of a better life for themselves and a guaranteed income for their parents.

### **Reception of minors**

The Commissioner's view is that repatriation should not be an unconditional goal and that other factors, such as the child's life and physical and mental well-being, should be taken into account.

Yet, while the reception and care system may well be able to deal efficiently with immigrant children who arrive with their parents, there are still enormous difficulties when it comes to the social and cultural integration and personal development of unaccompanied minors.

Some problems derive from a lack of co-ordination and/or co-operation between local and regional authorities, which are responsible for protecting minors, and central government, which is responsible for repatriation and minors' papers. Authorities at different levels sometimes pursue separate or even conflicting policies.

Another problem is that of actually identifying minors, that is to say determining the immigrant's age. Often age is determined using what are commonly known as bone examinations, but there are problems with the reliability of these tests, which have been highlighted both by NGOs and by the UNHCR. They have been criticised because of their inaccuracy, the scarcity of professionals with proper training to carry them out and the lack of proper supervision throughout the process.

One of the greatest difficulties with the identification of real minors is the frequent lack of co-operation by the consular authorities of the immigrant's country of origin. This makes it more difficult to protect minors and increases the risk that they will become victims of human trafficking rings.

In response to policies aimed at excluding unaccompanied minors over 16 who arrive in European countries from child protection systems, the Commissioner would draw attention to the international rules on the subject (the Convention on the Rights of the Child and the European Charter on the Rights of the Child), which place the child's best interests above any other legitimate interest. Any foreigner without papers who is under 18 – or about whose age there is any doubt – must be considered a minor and must be placed at the disposal of the services for the protection of minors.

### **Waiting zones**

During his visits, the Commissioner has often encountered both accompanied and unaccompanied minors who are held with adults. To justify this, the authorities say that they lack reception facilities or that they have to keep certain minors under strict police supervision. It is clear, however, that the situation is changing in a growing number of states and fewer children are being detained. The Commissioner was still concerned, however, about the number and the length of child detentions in the United Kingdom. In most cases children are held with their parents, but special provision is made for separated children, who can be detained overnight pending transfer to a suitable institution.

In France, children under thirteen are separated from adults and held in hotels near the airport, but older children are held in the same place as other foreigners and no special arrangements are made for them.

States should offer special protection to children deprived of the support of their families and provide them with a substitute family or place them in a specialised institution. As the Commissioner says, *“Member States should avoid holding unaccompanied minors, pregnant women, mothers with young children, the elderly, and people with disabilities in waiting areas. Where appropriate, unaccompanied minors must be placed in specialised centres, and the courts immediately informed of their situation. Members of the same family should not be separated.”*

Under the guidelines on forced return, adopted by the Committee of Ministers on 4 May 2005, unaccompanied minors who have to be detained may only be placed in centres with staff and facilities suited to persons of their age (Guideline 11, § 4)

The Commissioner is in favour of the idea of building reception centres, with the co-operation of the host countries, in the countries from which most unaccompanied foreign minors come. This would reduce the influx of unaccompanied minors and prevent overcrowding in centres. The Moroccan government's recent decision to build reception centres in Morocco, with Spanish assistance, for Moroccan minors repatriated by the Spanish authorities is a step in the right direction.

### **Applications for asylum**

In April 2005 the Parliamentary Assembly of the Council of Europe adopted a recommendation on protection and assistance for separated children seeking asylum. The recommendation highlights the fact that asylum procedures often fail to meet the specific needs of separated children as a result of factors such as a lack of specific training, preconceptions about the truth of events recounted by children, excessive delays and the absence of legal representatives.

Because of restrictive immigration measures, the need for migration sometimes finds expression through the prism of asylum. In other words, the only way for some

immigrants to gain protection is to apply for asylum. Unfortunately this also applies to many unaccompanied immigrant children.

As there is no specific legal status of separated child, both children and social services are in the habit, in some countries at least, of making an application for asylum simply in order to gain time, put a situation in order or ensure that a child can go to school, find a home or be given medical treatment. Yet the asylum procedure should not be used for such purposes, especially in view of the fact that, according to the UNHCR, only a small proportion of children are granted refugee status.

### **Family reunion**

Like Article 10 of the Convention on the Rights of the Child, Article 8 of the European Convention on Human Rights and the case law of the European Court recognise the right to respect for children's families. In its decision in *Sen v. the Netherlands*, the Court confirmed that children have the right to live with their parents and their families.

Against the current background of restrictions on immigration, family reunion is becoming increasingly difficult. The official procedure for family reunion is often so long and arduous that parents sometimes decide to have their children join them unofficially in the hope that they will be able to put their situation in order afterwards. On his visits, the Commissioner met many unaccompanied minors whose goal was to join a parent or relative in another country.

During his visit to Denmark, the Commissioner noted that stricter requirements for family reunion had been introduced in 2004: the age limit for reuniting children with their families had been reduced from 18 to 15. Only under exceptional circumstances may children over the age of 14 be granted a residence permit so that they can be reunited with their family if it is in their best interests, as defined in the Convention on the Rights of the Child. Yet, as the Commissioner points out, *"family reunion will in fact be in the best interest of the child in the great majority of cases. It is rather incongruous therefore ... to establish a general rule presuming the contrary"*.

### **Integration in the host country: education and training**

Separated children should be entitled to the same level of assistance and protection as children with the nationality of the host country, in accordance with the principle of non-discrimination. Irrespective of their legal status, young immigrants should have access to compulsory schooling catering for their specific situation and needs (language support, assistance from psychologists, social workers, etc.).

Accordingly, it is essential to provide access to existing integration schemes or, when setting such schemes up, ensure that they are geared to young immigrants. The schemes should include language courses and vocational guidance and/or training.

Enforcing such rights is often a difficult task. Teachers are faced with problems of communication, integration and cultural background and these difficulties are compounded by the fact that, generally speaking, the resources placed at their disposal are inadequate. Lastly, for older children who have come to find work, school is often of little benefit.

The other question that needs to be addressed is what to do with these children once they have become adults. Even if children have been able to go to school and successfully integrate into the host country, there is practically no legal provision for what will happen to them when they become adults. This can lead to totally absurd

situations in which children reaching adulthood lose their education and health rights overnight.

During his recent visit to Italy, the Commissioner took note of the system whereby these children are issued a residence permit if they have been resident in Italy for three years and taking part in an integration scheme for at least two. However, from discussions with Italian social workers, it became clear that the measure actually applied to very few children because it was rare for children to arrive and be legally registered in the country before the age of fifteen.

### **Preparation for return**

In many cases, repatriation to the country of origin – and the family reunion that this entails – is actually the step that is in the best interests of children who are sent away by families driven desperate by poverty, in search of any type of income or relatives who have already emigrated, and then take up begging on behalf of third parties who exploit them, or enter the labour market too early, leaving themselves prone to exploitation and financial insecurity. The Commissioner believes that, in such cases, it is the host country's duty to take all the appropriate measures to help the child return to the country of origin in decent conditions. He was very encouraged by the measures taken in Andalusia in co-ordination with the relevant Moroccan authorities to provide immigrant minors with training intended to help them to return to their country of origin and find jobs on the labour market there.

### **Human trafficking**

In January 2004, the Commissioner's concern about the growth in human trafficking, particularly trafficking in very young people, prompted him to hold a seminar in Albania on measures to combat trafficking in children in Europe. The conclusions of this seminar highlighted the overriding need to protect the best interests of the children who are the victims of trafficking. Owing to a lack of resources, facilities or suitable programmes, they are treated as ordinary illegal immigrants once they have been arrested. The priority should probably be to set up special centres providing medical and psychological assistance for children who have had a traumatic experience of this kind.

Trafficking can only be successfully prevented through better education and awareness-raising campaigns in countries of origin, transit countries and countries of destination, so the Commissioner was glad to note that governments are putting more and more resources into prevention and education. Romania, for example, has set up programmes to facilitate access to employment for potential victims in certain regions.

Even where there are proper reception facilities and children are able to live in almost normal conditions, dangers persist. During one of his visits, the Commissioner learnt that a large number of separated children disappeared from the centres in which they had been placed. Some were in fact falling into the clutches of procurers who operated in the vicinity of the centres, as children were free to come and go as they pleased, regardless of their age. While these child victims need to be given as normal a life as possible, it is also the state's duty to act *in loco parentis* and protect the children from such dangers.

Trafficking in children is a global scourge and, to combat it, international, national and local co-operation will have to be improved. Agreements should not be restricted to the re-admission of separated children to their country of origin but cover

every aspect of the problem, including the pooling of information, the funding of projects and co-operation between institutions.

As far as conventions are concerned, a mention should be made of the optional protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography. In May 2005, the Council of Europe also adopted a legal instrument on the subject in the form of the Convention on Action against Trafficking in Human Beings, which places much emphasis on children and highlights both their need for protection and their vulnerability.

Under Article 10 of the Council of Europe convention, when unaccompanied children are identified as victims of trafficking, steps must be taken to ensure that they are provided with legal representation and that their identity is established and, where it is in their best interests, to locate their families. Children's best interests must also be considered when deciding whether to issue them with a residence permit or whether to send them back to their country of origin.

In view of these provisions, which do at least protect unaccompanied children, it can only be hoped that the convention will come into force as soon as possible.

## **Conclusions**

These findings reflect only a tiny part of the complex circumstances in which unaccompanied minors find themselves. What we have to bear in mind at all times is that, whatever these children's origins, status or goals, they are, first and foremost, vulnerable children, whom we have a duty to protect. Our future depends on the means that we give them to develop their personalities, flourish and build the Europe of the future. Some progress has been made, but there is still an enormous amount of work to do and this will require a huge effort from everyone involved, including national parliaments, international organisations and field workers.

Thank you.

# European Union policy towards unaccompanied migrant minors

Annick Goeminne<sup>1</sup>

## I. Children's current rights in EU Asylum and Migration policy

In general terms, all immigration- and asylum related EU legal instruments state that MS shall have due regard to the best interest of the child.

Immigration and asylum instruments have specific provisions addressing the situation of minors and, in particular, unaccompanied minors.

“Minors” are generally referred to as persons “below the age of majority set by the law of the MS concerned and not married”

“*Unaccompanied minors*” are in all instruments defined as “third country nationals or stateless persons below the age of 18, who arrive on the territory of the MS unaccompanied by an adult responsible by law or by custom, and for as long as they are not effectively taken into care of such a person. It includes minors who are left unaccompanied after they entered the territory of the Member States.”

### 1. Council Directive 2003/86/EC of 22.9.2003 on “Family reunification”<sup>2</sup>. (had to be implemented by 3 October 2005)

This directive determines the conditions for exercising the right to family reunification by third-country nationals residing lawfully in the territory of the MS.

This directive – which also applies to refugees – contains specific provisions in case the refugee is an unaccompanied minor: in this case the Member States

- shall authorize the entry and residence of his/her first-degree relatives in the direct ascending line and
- may authorize the entry and residence of his/her legal guardian or any other member of the family, if the refugee has no relatives in the direct ascending line or they cannot be traced.

### 2. Council Directive 2003/109/EC of 25.10.2003 on “Long-term residents”<sup>3</sup>. (to be implemented by 23 January 2006)

This directive determines

- the terms for conferring and withdrawing long-term resident status granted by a MS to third country nationals legally residing on its territory and the rights pertaining thereto; and
- the terms of residence in a MS other than the one which conferred long-term resident status.

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<sup>1</sup> European Commission, DG Justice, Freedom and Security, Immigration and Asylum.

<sup>2</sup> O.J. L 251/12 of 3.10.2003

<sup>3</sup> O.J. L 16/44 of 23.01.2004

This directive does not contain specific provisions for unaccompanied minors and it is unclear whether a minor could be entitled to the long-term resident status (requirement of stable and regular resources). However, some provisions could apply also to minors, such as the right to equal treatment with nationals on a number of rights, in particular as regards education.

**3. Council Directive 2004/81/EC of 29.04.2004: “Victims of trafficking”<sup>4</sup>.** (to be implemented by 6 August 2006)

This directive defines the conditions for granting residence permits of limited duration to third-country nationals who cooperate in the fight against trafficking in human beings or against actions to facilitate illegal immigration

This directive applies to third country nationals having reached the aged of majority. But Member States may decide to apply this directive also to minors who are or have been victims of offences related to the trafficking in human beings or who have been subject of an action to facilitate illegal immigration. In this case, specific provisions apply: Article 10 stresses that the best interests of the child must be taken in due account and that minors must have access to the educational system. In case of *unaccompanied minors*, Member States shall take the necessary steps to establish their identity and nationality, shall ensure legal representation if necessary and shall make every effort to locate their families as quickly as possible.

**4. Proposal for a Directive of the EP and of the Council on “return”**

This directive will set out common standards and procedures to be applied in MS for returning illegally staying third-country nationals.

A provision prohibits MS to remove an *unaccompanied minor* as long as there is no assurance that he / she can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return. It is also proposed that minors shall not be kept in temporary custody in common prison accommodation and that unaccompanied minors shall be separated from adults, unless it is considered in the child’s best interest not to do so.

**5. Council Directive 2001/55/EC of 20 July 2001 on “Temporary Protection”**

This directive establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between MS in receiving and bearing consequences of receiving such persons.

Besides specific provisions relating to minors, such as the access to education and the right to family unity, particular attention is given to *unaccompanied minors*: the directive requests that MS provide for the necessary medical care or other assistance for persons with special needs, such as unaccompanied minors. MS shall also take measures, as soon as possible, to ensure the necessary representation of unaccompanied minors by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. During the period of temporary protection MS shall ensure that unaccompanied minors be placed with adult relatives, a foster-family, in reception centres with special provisions for minors, or with the person who looked after the child

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<sup>4</sup> O.J. L 261/19 of 6.08.2004



when fleeing. This article specifies that the views of the child shall be taken into account in accordance with his / her age and maturity.

**6. Council Directive 2003/9/EC of 27 January 2003 on “Reception conditions”<sup>5</sup> (had to be implemented before 6.2.2005)**

This directive lays down minimum standards for the reception of asylum seekers in Member States.

This directive deals with the right for schooling and education for minors, with the respect of family unity as well as with access to rehabilitation services, included appropriate mental health care, for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts.

As regards unaccompanied minors, the directive has similar provisions as those stated under the directive on “Temporary protection”, notably:

MS shall take measures, as soon as possible, to ensure the necessary representation of unaccompanied minors by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Additionally, regular assessments shall be made by the appropriate authorities. From the moment that an unaccompanied minor who makes an application for asylum is admitted on the territory to the moment he is obliged to leave, the host MS shall ensure the minor is placed with adult relatives, a foster-family or in reception centres with special provisions for minors. MS may, however, place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.

The provision further specifies that as far as possible, siblings shall be kept together, taking into account the best interest of the minor concerned and, in particular, his / her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. The directive further encourages MS to trace the family members as soon as possible with due regard fore his/her safety. Finally, those working with unaccompanied minors shall have had or receive the appropriate training.

**7. Council Regulation 343/2003 of 18 February 2003: “Dublin II”<sup>6</sup>**

This regulation lays down the criteria and mechanisms for determining the MS responsible for examining an application for asylum lodged in one of the MS by a third country national.

Family unity is an essential criterion for determining the MS responsible. But it is even preceded by a criterion related to the situation of an *unaccompanied minor* asylum seeker. In this case, it is the MS where a member of his/her family is legally present which is responsible for examining the application, provided that it is in the best interest of the minor. In the absence of a family member, it is the MS where the minor lodged his/her application which is responsible.

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<sup>5</sup> O.J. L31/10 of 6.2.2003.

<sup>6</sup> O.J. L50/1 of 25.2.2003.

**8. Council Directive 2004/83/EC of 29 April 2004 on “Qualification for refugee”<sup>7</sup> (to be implemented before 10.10.2006)**

This directive lays down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

As far as the content of the protection granted is concerned, this directive also has some provisions addressing the specific situation of minors, such as the right to education and to family unity. It has a specific Article dedicated to the protection granted to *unaccompanied minors*, similar to the protection which he would have when falling under the directive for Temporary Protection:

1. As soon as possible after the granting of refugee or subsidiary protection status Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order.
2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.
3. Member States shall ensure that unaccompanied minors are placed either:
  - (a) with adult relatives; or
  - (b) with a foster family; or
  - (c) in centres specialised in accommodation for minors; or
  - (d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

5. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

6. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs.

**9. Proposal for a Council Directive (not yet adopted) on “Asylum Procedures”**

The purpose of this directive is to establish minimum standards on procedures in MS for granting or withdrawing refugee status.

Besides specific provisions relating to minors, such as on the possibilities for interviewing a minor, this directive also deals with the necessary legal representation of

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<sup>7</sup> O.J. L304/12 of 30.9.2004

the *unaccompanied minor*. However, under this directive, MS may refrain from appointing a representative under certain conditions, f.i. when the minor will in all likelihood reach the age of maturity before a decision at first instance is taken; or where he / she is 16 or older, unless he / she is unable to pursue his / her application without a representative. The draft directive also insists on the appropriate skills for persons dealing with minors; it has a provision on the use of medical examinations to determine the age of an unaccompanied minor.

#### **10. Proposal for a Regulation of the Council and the EP on Community Statistics on Migration and International Protection**

This Regulation will set the obligation for the Member States to transmit annual figures on applicants for international protection who are considered to be unaccompanied minors.

Moreover, for all data categories (migration, illegal immigration, asylum, returns, etc, there is an obligation to give the age of the person concerned.

The application of this Regulation is foreseen for 2007

#### **11. Financial solidarity programmes**

The Commission is managing several financial solidarity programmes in the field of asylum, immigration, visas and borders: the European Refugee Fund, INTI, ARGO, which may include as priority action the protection of children and, in particular, unaccompanied minors.

Background:

- The European Refugee Fund (ERF) co-finances actions in the field of reception conditions of asylum seekers and asylum procedures, integration of refugees and voluntary returns. One of the guiding general principle is that actions take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, etc. The ERF is managed on the one hand via centralized management for co-financing trans-national projects via the so-called Community Actions. In the past, a few projects related to children (either asylum seekers, either refugees) were selected. On the other hand, each Member State beneficiary of the Fund receives a share to be managed on a national basis (shared management). The Commission designs general strategic guidelines within which Member States do their own programming.

The Work Program 2005 for Community Actions is still in preparation internally. One of the priorities could easily be linked to children situation. The strategic guidelines for the national programming includes a guideline relating to children and unaccompanied minors, with a higher (60%) co-financing possibility than the 50% rule.

- INTI (Integration of third-country nationals) is a European Union (EU) funding programme for preparatory actions promoting the integration in the EU member states of people who are not citizens of the EU. Its aim is also to promote dialogue with civil society, develop integration models, seek out and evaluate best practices in the integration field and set up networks at European level. It amounts to € 5.000.000 for the 25 Member States for 2005. In 2003 and 2004, a few projects selected related to children such as a project called "Inside the Outsiders: deviant immigrant

minors and integration strategies in European justice systems” or another one dealing with specific cartoons to be dispatched in schools.

- ARGO (Programme for administrative cooperation in the field of asylum, immigration, visas and borders) supports administrative cooperation between Member States for asylum, external borders, visas and immigration. The programme's objectives are to promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions, to promote the uniform application of Community law, to encourage transparency of actions taken by the national authorities and to improve the overall efficiency of national administrations in their tasks. Activities to be supported are training actions, staff exchanges, actions promoting the computerised handling of files and electronic data exchange, the setting up of common operative centres and of teams composed of staff drawn from two or more Member States, studies, research, conferences and seminars and finally Member States' activities in third countries.

## **12. The Constitutional Treaty**

The Constitutional Treaty sets up as one of the objectives of the European Union the promotion and the protection of the rights of the child.

Firstly the Charter of Fundamental Rights has become an integral part of the Constitutional Treaty, which makes it legally binding. Art. 24 of the Charter includes the principle of “the best interest of the child”; other articles include right to education, on equality and non-discrimination etc.

Furthermore, other parts of the Constitutional Treaty are dedicated to the protection of Children’s rights.

The inclusion of children’s rights in the internal and external objectives of the Union does not create a new competence for children at European level and it does not take away the national competences in the areas of children’s rights. But it ensures that in the areas where the EU is allowed to legislate the rights of the child can be taken into account.

## **13. Communication on fighting trafficking in human beings**

The Commission adopted on 18 October a communication on fighting trafficking in human beings. An important chapter deals with specific groups, especially women and children, as victims or potential victims of trafficking in human beings. The communication stresses that the EU anti trafficking policy should reflect a child rights approach, based on globally recognised principles, in particular the UN Convention on the Rights of the Child; and that particular attention should be paid to *unaccompanied minors* or children travelling without an immediate family member.

## **Follow-up**

Vice-President Frattini has initiated a *Children Strategy*: on the basis of a comprehensive overview of the Commission’s actions on the protection of the children, he proposes developing a coherent EU policy on the protection of the rights of the child.

A first step of this strategy will be the issuance of a Communication to the Council and the European Parliament on the protection of the rights of the child, beginning of 2006.

The Strategy will touch upon a number of areas under DG JLS responsibility. One of them relates to asylum and immigration. Actions which the Commission will take in this area are i.a., the evaluation of the implementation of the first phase instruments of the Common European Asylum System, with a particular attention to the situation of minors, and even more unaccompanied minors, in view of ensuring full protection of their interest and, if necessary, preparing proposals for amending the existing legislation. Also the financing programmes ERF, INT and ARGO could emphasise the protection of minors in their respective work programmes.



# Unaccompanied migrant minors and asylum procedures : prospects for UNHCR

Margarita de la Rasilla<sup>1</sup>

## Introduction

Spanish asylum legislation does not prescribe any specific procedure for dealing with applications from unaccompanied minors, who are therefore normally subject to the same admissibility criteria as adults<sup>2</sup>. Particular importance accordingly attaches here to contributions from international organisations, NGOs and independent experts working in the whole area of minors' rights, whose recommendations are helping establish and consolidate good practices in this field.

As regards unaccompanied minors seeking asylum, it is important to point out that owing to their particular vulnerability they are protected as asylum-seekers not only by the provisions of the Geneva Convention and by all extant human rights conventions but also, and primarily, by all available regional, national and international legislation specifically concerned with protecting children's rights, such as:

- The Declaration on the Rights of the Child, 1959
- The Convention on the Rights of the Child (CRC), 1989
- Optional Protocol 1 to the CRC on the sale of children, child prostitution and child pornography, 2000
- Optional Protocol 2 to the CRC on the involvement of children in armed conflict, 2000
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- UN Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), 1985.

And the list could go on.

States are likewise required to take into account the recommendations and guidelines of international agencies working in this field, eg the UNHCR 1994 Guidelines on protection and care of refugee children, the latest 2004 edition of the Statement of Good Practices UNHCR-Save the Children for unaccompanied children in Europe, and the Council of Europe's recommendations.

## I. Basic Principles

A number of the basic principles underpinning the Statement of Good Practices UNHCR-Save the Children must be taken into account in processing any asylum application lodged by an unaccompanied minor.

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<sup>1</sup> Legal Advisor and focal point on separated minors, UNHCR.

<sup>2</sup> Save the Children, "*Informe sobre la situación de los menores no acompañados en España*" (Report on the situation of unaccompanied minors ["separated children"] in Spain), 2003, p.21.

### 1. Best Interests<sup>3</sup>

*The best interests of children shall be a primary consideration in all actions concerning children<sup>4</sup>.*

The children's best interests must be the main consideration in all actions concerning minors.

The Convention on the Rights of the Child does not spell out the meaning of this broad concept, with the result that some of the decisions taken in accordance with this instrument may be based on inappropriate legal interpretations. With an eye to securing a uniform interpretation, the UNHCR is preparing a document entitled "*UNHCR Guidelines Formal Best Interest Determination*"<sup>5</sup>, which includes a series of guidelines and principles to be followed in determining the minor's best interests.

### 2. Non-discrimination<sup>6</sup>

*Separated children are entitled to the same treatment and rights as national or resident children. They should be treated as children first and foremost. All considerations of their immigration status should be secondary<sup>7</sup>.*

Every child subject to a country's jurisdiction enjoys all the rights guaranteed to it by the Convention on the Rights of the Child regardless of any other consideration<sup>8</sup>.

### 3. Right to participate<sup>9</sup>

The views and wishes of separated children should be sought and taken into account whenever decisions affecting them are being made. Measures should be put in place to facilitate their participation in line with their age and maturity<sup>10</sup>.

### 4. Confidentiality<sup>11</sup>

As we all know, confidentiality is a basic principle in all asylum applications. Its absence may endanger the life of the asylum-seeker or that of his or her family members in the country of origin.

*Care should be taken not to disclose information about a separated child that could endanger the child's family members in her or his home country. The permission of separated children should be sought in an age-appropriate manner before sensitive*

<sup>3</sup> CRC, Article 3 (1): In all actions concerning children... the best interests of children shall be a primary consideration.

<sup>4</sup> Statement of Good Practices UNHCR-Save The Children, Third Edition 2004, p.7.

[http://www.savethechildren.net/separated\\_children/good\\_practice/SGP\\_3ed\\_print.pdf](http://www.savethechildren.net/separated_children/good_practice/SGP_3ed_print.pdf).

<sup>5</sup> Draft, Monday 3 October 2005, "*UNHCR Guidelines Formal Best Interest Determination*".

<sup>6</sup> CRC, Article 2: The rights of the CRC apply to all children without discrimination of any kind and irrespective of their parents or their own race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

<sup>7</sup> Statement of Good Practices, UNHCR-Save the Children, *op.cit.*, pp. 7-8.

<sup>8</sup> Refugee Children: Guidelines on Protection and Care, 1994, p. 23.

<sup>9</sup> CRC, Article 12: The views of children are to be given due weight in relation to their age and maturity and children shall have the opportunity to be heard in all proceedings affecting them.

<sup>10</sup> Statement of Good Practices UNHCR-Save the Children, *op.cit.*, p.10.

<sup>11</sup> CRC, Article 16: Children have the right to protection from arbitrary or unlawful interference with their privacy, family, home and correspondence.



*information is disclosed to other organisations or individuals. Information should not be used for purposes other than for those for which it was given*<sup>12</sup>.

For this reason, the confidentiality principle must be particularly borne in mind in the case of unaccompanied minor asylum-seekers, irrespective of the need to trace their family. In some cases, attempts to trace family members will have to be postponed until a decision has been taken on the minor's asylum application.

Before sensitive information is disclosed to other organisations or persons, the permission of unaccompanied minors must be sought in a manner appropriate to their age. Under no circumstances must contact be made with the country of origin's diplomatic representation while the minor's asylum application is being processed.

## **5. Information**<sup>13</sup>

*Separated children should be provided with accessible information about, for example, their entitlements, services available, the asylum process, family tracing and the situation in their country of origin*<sup>14</sup>.

Lack of information is undoubtedly one of the main reasons for the penury of asylum applications by minors in Spain as compared with the huge numbers of unaccompanied foreign minors dealt with every year. In this connection, an examination of the statistics for unaccompanied minor asylum-seekers is revealing.

It must first be said that our data are incomplete because of shortcomings in the computer software used. In previous years the official studies<sup>15</sup> confined the minors category to persons below the age of 17 (rather than 18). For a minor to be included in the statistics it was also necessary for his or her case to be still pending on 31 December of the year of applying for asylum. Despite all these problems, which we have been trying to resolve for some time, there is a manifest lack of asylum applications by unaccompanied minors. According to available figures, out of the 9 490 unaccompanied minors who arrived in Spain in 2001 only two applied for asylum, with only one asylum application from among the 6 310 who arrived in 2002.

Ignorance of asylum as an institution is the main reason for the lack of information for minors. In the first place, most minors are unaware that they are entitled to apply for asylum, and even when they have some inkling of this right, they fail to understand its implications and the importance that refugee status could have for their lives. In the second place, we have found in various training courses organised by our office that, with the exception of the few centres specialising in minor asylum-seekers, persons in daily contact with the minors, ie those best acquainted with their personal circumstances and needs in terms of protection, frequently do not even know that asylum exists as an institution. Some of them are even convinced that minors are not entitled to asylum, believing that it is an institution intended for adults only.

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<sup>12</sup> Statement of Good Practices UNHCR-Save the Children, *op.cit.*, p.9.

<sup>13</sup> CRC, Article 17: States shall ensure that children have access to information from a diversity of international and national sources. CRC, Article 13.

<sup>14</sup> Statement of Good Practices UNHCR-Save the Children, *op. cit.*, p. 10.

<sup>15</sup> One in 2002 and two in 2001.

## II. Procedural aspects

Where unaccompanied minors are concerned, Spanish asylum procedure involves certain practices that are at variance with the above-mentioned basic principles in that they block access to the refugee protection system provided for under both international and Spanish legislation.

### 1. Age assessment tests

Anyone present in Spanish territory whose under-age status is in doubt must immediately take an age test. The results may restrict access to the legal and welfare protection available to potential minor asylum-seekers in Spain<sup>16</sup>.

This practice raises two fundamental problems:

#### A. Type of test

The UNHCR considers that the age test currently employed in Spain, consisting of a bone-measurement test performed via an x-ray of the left wrist and interpreted according to the Greulich and Pye Atlas, is unsuitable. This method was devised in the 1930s as a means of detecting growth problems in young people of white race. Its results should not therefore be regarded as either appropriate or conclusive<sup>17</sup> when used 70 years later to establish the real age of applicants<sup>18</sup> of any nationality. The UNHCR has made known its attitude to the need for and the unreliability of these tests on numerous occasions<sup>19</sup>. On the basis of the UNHCR's comments, the Basque Institute of Forensic Medicine (Instituto Vasco de Medicina Legal) organised a seminar for forensic scientists from all over Spain in San Sebastián in March 2004<sup>20</sup>.

#### B. Lack of a uniform interpretation

In Spain, powers to protect minors are delegated to the Autonomous Communities. On certain matters, such as how to interpret proofs of age, the criteria employed differ from one Community to another. The UNHCR feels that this type of discrepancy should be abolished and recommends that both the tests and their interpretation be approved at national level.

As age assessment is not an exact science and involves a considerable margin of error, minors must be given the benefit of the doubt. Public Prosecutor's Instruction

<sup>16</sup> Reference was also made to this point by the Special Rapporteur on the human rights of migrants in her 2004 report – see above.

<sup>17</sup> Included in the final comments of 13 October 2004 on the draft Aliens Regulation.

<sup>18</sup> The bone-measurement test compares the average development of the wrist bone of sub-Saharan or North African male and female minors with that of white males (of Caucasian origin) belonging to the US middle class in the 1930s.

<sup>19</sup> In this connection, see paragraph 5.11 of the UNHCR's 1997 Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, section C.8 of the 2004 Statement of Good Practices UNHCR-Save the Children and Article 4.3.b of the Resolution of the Council of the European Union on unaccompanied minors.

<sup>20</sup> Symposium on the forensic assessment of age in undocumented minors, 4 and 5 March 2004. We would direct the reader to the Recommendations on methods of forensic age diagnosis in minors without papers in the legal environment, 5 March 2004. In this connection, see also paragraph 5.11 of the UNHCR's 1997 Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, section C.8 of the 2004 Statement of Good Practices UNHCR-Save the Children and Article 4.3b of the Resolution of the Council of the European Union on unaccompanied minors.

2/2001 corroborates the UNHCR's opinion on this point and orders the results of the age test to be interpreted as follows:

*"As medical tests never indicate an exact age but always fix a fairly broad range between whose extremes the subject's true age may be calculated with a minimal margin of error, in the absence of other data and in order to determine whether the subject is an adult or a minor, it must be presumed that his or her age corresponds to the lower limit of the range."*

Nevertheless, on 29 December 2004 the Madrid Community issued a Circular containing instructions that largely contradict those of the Public Prosecutor's Office<sup>21</sup>. The following quote from the third section may be taken as an example:

*"If the x-ray report refers to chronological age with a 4-year interval, the criterion of average age shall be applied as the STANDARD AGE."*

The criteria for interpreting the above-mentioned instrument, which was in force in the Madrid Community until mid-2005, tended to raise significantly the age of the supposed minor in breach of the principle set out in Implementing Act 1/1996 on the Legal Protection of Minors to the effect that the best interests of the minor must override any other legitimate interest that may be present<sup>22</sup>, and contrary also to the benefit of the doubt applied in any legal matter which, if not properly verified, may have adverse consequences for the person concerned. In this connection, the UNHCR feels it should point out that the regulation of this type of question by the Autonomous Communities causes unaccompanied foreign minors to be treated differently in different Communities, with the result that minors in Autonomous Communities which receive a greater number of unaccompanied minors are generally less well protected.

However, according to our information, this Autonomous Community has started to carry out a series of complementary tests over the past few months involving more thorough examinations than just the wrist x-rays practised until recently, thus ignoring the December 2004 Circular. This Delegation has been unable to assess this practice in view of its very recent adoption.

## **2. Minor asylum-seekers and compatibility with the immigration route**

The chief obstacle for potential minor asylum-seekers when taking a decision to apply for asylum is undoubtedly the incompatibility between asylum and immigration procedures<sup>23</sup>. This incompatibility, which has been repeatedly highlighted and condemned by institutions responsible for the care of minors, is the decisive factor in minors' failure to ask for asylum when approaching the age of majority, and constitutes one of the main reasons for the low rate of applications.

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<sup>21</sup> Instruction 2/2001 of the Public Prosecutor concerning the interpretation of the current Article 35 of Implementing Act (Ley Orgánica) 4/2000 on the rights and freedoms of foreigners in Spain and their social integration.

<sup>22</sup> Article 3 CRC; Article 2 of Implementing Act 1/96 on the Legal Protection of Minors.

<sup>23</sup> In its comments of 13 October 2004 on the draft Aliens Regulation, the UNHCR expressly requested that these procedures should not be regarded as incompatible. The UNHCR holds that the minor's best interests override those of family reunion, and that in any case it is unfair for a minor who has already waited for his/her asylum application to be processed to have to wait a further nine months before a start is made on regularising his or her situation.

According to Spanish aliens legislation<sup>24</sup>, unaccompanied minors in the care of the State for an uninterrupted period of nine months are entitled to a residence permit. The body actually caring for the minor is responsible for obtaining the permit, which should be granted retroactively after the nine-month period has expired.

The lack of specific provisions on minor asylum-seekers makes it necessary to have recourse to Article 92 of the Aliens Regulation, which concerns unaccompanied immigrant minors. An erroneous interpretation of that article leads some of the bodies responsible for obtaining permits to believe that processing of the residence permit nine months after the minor was placed in State care is possible only when the appropriate steps have been taken to trace his or her family. In the case of under-age asylum-seekers, any attempts to obtain information are blocked by the confidentiality principle, which means that calculation of the nine-month period does not start until the asylum application has been rejected.

It should be noted that the fact of a minor holding documents to the effect that (s)he is an asylum-seeker is not the same as having a residence permit. This may have disastrous consequences if the asylum application is ultimately rejected. The following example illustrates the negative effects of an incorrect interpretation of Article 92: *The case concerns a minor, a native of Angola, who arrived in Spain in July 2002 and lodged an application for asylum in December 2002. He was refused refugee status a year later, in January 2004, but by then he had already turned 18. The failure to process his asylum application earlier means that a minor who has spent more than a year and six months in the care of the Spanish authorities will very probably have to leave the country.*

In response to a complaint from this Delegation, the Children's Ombudsman of the Madrid Autonomous Community stated that he shared its concern and had taken action urging *"an end to the inflexibility of the administrative services which, when asylum has been refused, frequently after a year or more, require observance of the nine-month period stipulated in the regulations on aliens before the procedures for obtaining a residence permit can begin"*<sup>25</sup>.

Subsequently, in reply to our request for information on this issue and other aspects relating to asylum and minors, the Children's Ombudsman of Madrid Community asked the authorities concerned for information on their attitude to such matters. We have recently received this information<sup>26</sup>, which shows that our interpretation of the act tallies with that of the chief public bodies involved, for example the Madrid Government Representation<sup>27</sup>, the Madrid Institute for the Minor and the

<sup>24</sup> Article 92, Royal Decree 2393/2004 of 30 December 2004 approving the Regulation applying Implementing Act 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration.

<sup>25</sup> 16 December 2004, File 0974/04, N/Ref GT-MR-0974/04/1s.

<sup>26</sup> 12 July 2005, File 0974/04, GT-MR0974/04/8s.

<sup>27</sup> Madrid Government Representation (Assistant Government Representative), *"A correct interpretation of Article 92.7 of the Regulation applying the Aliens Act would establish that, since it is not possible to attempt repatriation in the case of minor asylum-seekers because of the non-refoulement principle and the condition constituted by the phrase "if this was not possible" in the Article mentioned, the minor must be granted the residence permit referred to in the Aliens Act nine months after he was placed in the care of the appropriate child-protection services regardless of the processing of his asylum application, since if the latter is subsequently granted it will be more favourable for the minor than the said residence permit. On the other hand, if the asylum application is rejected, the interest to be protected, ie the status of minor, will be safeguarded and it will be possible to avoid pernicious effects that might prevent the*

Family<sup>28</sup> and the Directorate General for Internal Policy<sup>29</sup>. From this we may conclude that, although there is general agreement on the theory, malfunctions occur in practice that prevent the attainment of a lawful outcome capable of protecting the rights of under-age asylum-seekers.

### **Final considerations**

Nevertheless, apart from the aforementioned problems on which progress is still needed, we would point to the following improvements over the past few months:

- repeal of Public Prosecutor's Instruction 3/2003, under which any unaccompanied foreign minor aged 16 years or over arriving in Spain was considered as being of full age and had therefore to receive the same treatment as any adult expellable from Spanish territory, in breach of his entitlement under the legal child protection system. This Instruction was revoked by Instruction 6/2004 of November 2004;
- possibility of submitting an official asylum application to the Asylum and Refuge Office, regardless of whether the minor is in the care of the child protection services, in order to avoid unnecessary delays in submission of the application. This guarantees non-refoulement without making this basic and fundamental right of every asylum-seeker dependent on placement in care, a process which can take several months.
- automatic provisional acceptance of asylum applications by minors in the first phase of the border-crossing asylum procedure as soon as the young person in question is proved to be under age. The aim is to ensure that the claims made by the minors can be examined with care and attention and to avoid summary procedures in respect of minors, as recommended by the international organisations and NGOs.
- accelerated examination of minors' applications by the Asylum and Refuge Office in order to reduce the harmful effects of the current incompatibility between aliens' and asylum legislation.
- finally, we wish to record the marked change in the sensitivity shown by some of the main authorities dealing with unaccompanied minors, and

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*minor from regularising his situation if, for example, he has already attained his majority or if less than nine months remains before he will reach it, which would constitute a fresh obstacle to the mandatory criterion for obtaining a Spanish residence permit. The procedure remaining open to him would be to apply for a residence permit on the grounds of exceptional circumstances (Article 92.5) and he would come under Article 40j of the Aliens Act, which excludes the need to take the national employment situation into account in granting a work permit."*

<sup>28</sup> Madrid Institute for the Minor and the Family (Instituto Madrileño del Menor y la Familia). *"If a minor withdraws his asylum application or it is refused, the body in whose care the minor has been placed will submit the minor's documentation for the purpose of the residence permit without starting another period of nine months."*

<sup>29</sup> Directorate General for Internal Policy. *"As regards the situation arising from the application of Article 92.5 of the new Aliens Regulation... this Directorate General sees no objection to the nine-month period in the said Article being calculated at the same time as processing of the asylum application starts since, the minor being an asylum-seeker, the non-refoulement principle applies and his or her repatriation therefore cannot be attempted."*

the great commitment shown by such institutions as the Ombudsman, the Madrid Children's Ombudsman and non-governmental organisations (eg Amnesty International, Spanish Red Cross, CEAR (Spanish Commission for Assistance to Refugees) and Save the Children).

## SESSION 4 - INTEGRATION: MODELS OF INTERVENTION

### “Life plans” for unaccompanied migrant minors and co-operation between countries of origin, transit and destination

Carmen Belinchón Sánchez<sup>1</sup>

#### 1. Present situation

While the number of unaccompanied foreign minors arriving in the Autonomous Community of Andalusia has steadily increased since 1995, since the end of April 2005 there has been a sharp upturn as large numbers have started arriving in flimsy fishing boats called “*pateras*”, mainly at the weekend, peaking at an average of about 70 minors per week in June-July. Until recently the arrival of unaccompanied minors in these boats was unusual. They tended to enter Spain by other means. We are not sure of the reasons for this new development, although it is conceivable that the effectiveness of the *Sistema Integral de Vigilancia del Estrecho* (SIVE – the Strait Watch System), which is capable of detecting virtually every boat that crosses the Strait of Gibraltar, leading to the capture and repatriation of almost all adults who make the crossing, has something to do with it.

In the first nine months of this year (1 January - 30 September 2005) 1,398 unaccompanied foreign minors and presumed minors entered protection centres for minors in the Autonomous Community of Andalusia, compared with 685 over the same period in 2004, an increase of 713 minors, or 104%, and even more than in the whole of 2004 (1,035).

The total number of unaccompanied foreign minors these centres attended to during the same period was 1,884, this figure including the 486 minors who were already in the centres on 1 January 2005, in addition to the 1,398 new arrivals. Over the same period in 2004 they attended to 938 unaccompanied foreign minors (261 plus 685), making an increase of 946, or 100% for the same nine-month period from one year to the next.

In the first four months of the year (January-April) 445 new arrivals were registered (compared with 268 over the same period in 2004), while in the following five months (May-September), when the weather conditions were obviously better, there were more than 953 arrivals, more than double the 417 registered during that period the previous year.

Broken down on a monthly basis, in May 2005 there were 127 new arrivals (59 in May 2004); the number peaked in June, with 299 (63 in June 2004); in July it decreased slightly, to 215 (58 in July 2004) and finally, in August there were only 141, less than half the June figure and not much higher than in August 2004 (137). In September there were 171 new arrivals (100 in September 2004). Thus, in the first two summer months –June/July – there were 514 arrivals, but only 312 (202 fewer) in the following two months of August/September

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The decrease began in mid-June, coinciding with the meeting of the permanent Spanish-Moroccan Working Group on immigration and minors held in Madrid on 18 July, at which our Autonomous Community was represented by the Minister for Equality and Social Welfare. At the meeting it was agreed to step up border controls and joint patrols to prevent people traffickers from treating minors as merchandise, and together to build and run up to four centres for the protection of minors in Morocco, with a formal offer of assistance from the *Junta* of Andalusia in the form of training and human resources.

## 2. Profile of the minors concerned

Here we take a look at the current situation in an attempt to ascertain the magnitude of the problem. Most of the information set out in this section is based on what the minors themselves told the intercultural mediators in the centres.

- First of all, as we have already said, the massive arrival of minors and presumed minors in boats on the Mediterranean coastline of Andalusia really began in late spring 2005, when the weather conditions improved.
- Secondly increasing numbers of these immigrants claim to be minors although they look older. This increases the risk of malfunctions in the centres for the protection of minors, obliging them to cater for adults as well as minors.
- The minors are mainly boys between the ages of 14 and 17, from rural areas of Morocco, with little schooling and no knowledge of Spanish. In many cases their mother tongue is Berber. It is quite common that all the minors who arrive together in a “*patera*” come from the same town or village.
- Recently more girls between the ages of 14 and 17 have been arriving, also from Morocco, which is a new development. Many of them say they have come to study.
- Many of the youngsters say their families encourage them to make the journey, when the adults have already been, or are afraid of being repatriated and losing the cost of the journey.
- Many of them want to stay in the centres and not continue on their migratory journey.
- Interestingly, many of them come equipped with mobile phones and large sums of money – up to 100 euros – and as soon as they arrive at the centre – or even before – their families call the centre to see if they have arrived safe and sound.
- Also, in many cases, family members already established in Spain immediately go to the centre to pick them up, which proves that they knew they were coming.
- *Finally, but perhaps most significantly, with few exceptions, the vast majority of unaccompanied minors now arriving in Andalusia are not children in need of protection under the terms of Section 172 of the Spanish Civil Code. By their own account these children receive adequate affection and material care from their parents and family members, in keeping with the socio-economic conditions in their places*



*of origin. In general they are not children who have been abandoned, ill-treated or neglected. Their families are not well-off and have little hope of their situation improving. So although when they arrive in Spain they are no longer protected by their families, one might say these minors were the victims of "self-inflicted need".*

### **3. Possible reasons behind the current situation**

No scientific research or survey has yet been carried out to determine the exact reasons behind the recent changes in the numbers and profiles of unaccompanied foreign minors arriving in Andalusia. What information we do have, however, based mainly on what the minors themselves tell us, points to the following reasons:

- The increase in number may be the result of three key factors:

1. First, the undeniable fact that emigration to EU member states has become the one hope for many young Africans of improving their socio-economic lot, as they see no hope of ever achieving an acceptable standard of living in their regions of origin.

2. The SIVE surveillance system makes it possible to detect just about every "patera" that reaches our shores. This makes it possible to immediately repatriate the vast majority of the adult immigrants detected. However, the legislation on the protection of minors and the "Aliens Act", rule out the immediate repatriation of minors, so it is hardly surprising that those who engage in the despicable crime of human trafficking should change their "client" profile, possibly because of waning demand from adults.

3. The full protection given to minors under our public system may make emigration seem more appealing to minors and their families. Our protection system understandably makes the same resources, measures and programmes available to unaccompanied foreign minors as to Spanish boys and girls: administrative guardianship, residential centres where they receive full affective and material care and attention, training and socio-occupational integration programmes, programmes and resources – such as flats – to help them learn to fend for themselves.

- This also explains the increasing number of people who claim to be minors when their "pateras" are detected and escorted into port, when they are in fact adults and eligible for immediate repatriation. The "minority" principle, which rules out the conducting of medical examinations to determine age, giving the immigrant the benefit of the doubt, is another factor. Thus, when osteometric tests are not carried out immediately to establish age and the person claims to be a minor, he or she is considered as such and not repatriated but handed over to the services responsible for the protection of minors. Not to mention the inaccuracy of osteometry when used to determine age, which tends to place the subject's age within a four-year range (between 17 and 21, for example), or even less accurately (under 18, for example), so that even if such tests were practised on all those claiming to be minors, some adults would still get through the net.

- The other aspects of their profile – boys and girls from Morocco; from rural areas; not living in economic misery; wanting to stay in the centres; from normal, caring families – clearly confirm the conclusion reached earlier: most of the children are not street urchins, or children ill-treated or neglected by their parents. They are minors whose families encourage them to make the journey – possibly unaware of the real risk this entails – in the hope that they will bring a better life for the whole family. For the sake of comparison, they are like the

children who were sent to Spain's "orphanages" in the 1950s and 60s because their parents did not have the material means to raise them, but not because they were unwanted or neglected or because no-one had their interests and happiness at heart. Under no circumstances should we lump them together with children who are genuinely in need of protection because of parental incapacity, neglect or failure to provide the necessary moral and material support.

**4. Immediate measures taken by the ministry for equality and social welfare of the JUNTA of Andalusia**

To provide immediate care for these minors, the Ministry for Equality and Social Welfare now has a network of 18 centres for the protection of minors in Andalusia, specially equipped to take care of unaccompanied foreign minors; but with only 302 places available in principle, this resource has already reached saturation point. These are not centres reserved exclusively for foreign minors; like other centres they cater for Spanish and foreign minors, but they also have staff (intercultural mediators, cooks, etc.) and technical facilities (special training in work with foreign minors, interculturality, integration, etc.) which add up to a better quality of care for these children.

This lack of capacity has obliged the General Directorate of Children and Families of the Ministry for Equality and Social Welfare to activate the Emergency Plan. The aim is to guarantee the rights of these minors and provide them with care and attention, thereby fulfilling one of the basic principles of the Ministry for Equality and Social Welfare and, by extension, the System for the Protection of Minors, namely that all minors, irrespective of origin or nationality, have the same rights, guarantees and regard. This Plan, activated exceptionally to deal with the massive influx of minors into a province with insufficient residential resources to cater for them all, basically consists, in opening up the system's remaining residential resources, including those for unaccompanied foreign minors in other provinces of Andalusia, and the other public child protection centres, which are not specially equipped to cater for foreign minors, thereby adding another 11 centres (with 238 places) to the 18 more specialised centres, bringing the total to 29 centres and 540 places.

The Emergency Plan has had to be activated five times to date, and has worked well enough to provide proper care and attention rapidly to all the minors concerned.

**5. Measures to be developed to prevent the immigration of unaccompanied foreign minors and to promote their return.**

First of all, it should be remembered that in most cases we are probably not dealing here with children who are neglected, abandoned or ill-treated by their parents. When they reach the shores of Andalusia, they do need protection, but their need is something "brought on and assumed" by the minors themselves and their families, in the hope that they will be taken in and provided for by the child protection system of Andalusia. This is in our opinion a central factor that must be borne in mind when addressing the question of unaccompanied foreign minors in the medium and long term. It may be necessary to change strategy and tend more towards educational and work-oriented approaches rather than assistance.

It must also be remembered that this is not a problem limited solely to Andalusia and Morocco. It is a matter that must of course be addressed jointly by the country of origin of the minors, in this case Morocco, and the other communities affected. But the Spanish Government and, of course, the European Union also have a major role to play.

Having said that, when dealing with any problem of a social nature, the stress must be placed on prevention. In this case prevention means working on the children's social and family environment of origin so that they do not feel obliged to leave their homes and their families in search of a hypothetical brighter future elsewhere. It is generally accepted, and the social sciences all agree on this, that the best conditions for the full and optimum development of children's well-being are found in the family. Accordingly, all child protection systems accept the principle that the protection of children should hinge on preventive measures that make it possible for young boys and girls to grow up and live in their family environment, unless this is against their better interests. This means that co-operation needs to be developed with Morocco to prevent risks in the family and help the families themselves cater for their children's needs. In practical terms, we propose jointly defining and setting in place a map of facilities for the benefit of families in economically depressed parts of Morocco, along the lines of the Family Treatment Facilities in Andalusia, of which there are 111, manned by 375 professionals, in the whole Autonomous Community, which develop technical and economic support measures that deter families from migrating.

However, when the minors are already in Andalusia, under Section 172.5 of the Civil Code every effort must be made to reunite them with their families. In the case of unaccompanied foreign minors, under Section 92.4 of the regulations implementing organic law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, approved by Royal Decree 864/2001, this principle together with the children's best interests hinges on returning them to their country of origin to be reunited with their families, or to be taken into care by the child protection services in the country of origin. We feel it would be useful here for co-operation to focus on opening residential reception centres as part of Morocco's child protection services which, based on criteria embodied in the 20 November 1989 Convention on the Rights of the Child and with economic support but also technical and logistical assistance from the European, Spanish and Andalusian authorities, would take in minors who were repatriated and help to reunite them with their families safely and promptly.

## **6. Measures to be developed for unaccompanied foreign minors in Andalusia**

The figures clearly show that Andalusia's network of residential child protection facilities is insufficient to cope with the large and steadily increasing demand. If minors keep arriving at the same rate as in the last few weeks, the system will almost certainly collapse.

To prevent this, in addition to the Emergency Plan of the Ministry for Equality and Social Welfare of the Junta de Andalucía, the following measures should be taken in the Autonomous Community:

- The Government authorities should open high-capacity reception centres for minors and presumed minors in the areas where most “pateras” arrive – Almería, Motril, Málaga, Algeciras – to take in newly arrived minors for a maximum two-week initial stay. Implementation of this proposal, which has already been discussed by the Autonomous Community Minister and the National Government Delegate in Andalusia, would facilitate the orderly distribution of unaccompanied foreign minors among the various residential centres in Andalusia's child protection system.
- These centres should be equipped with the necessary technical equipment and specialised medical staff to carry out the osteometry tests required to

determine the age of the new arrivals, which would help to keep many of those who claim to be minors but are in fact adults out of the child protection circuit.

- In any event, it should be clearly established that nobody will be allowed into a protection centre for minors without previously undergoing medical tests to prove that they are minors, unless this is obvious BEYOND A SHADOW OF DOUBT from their physical appearance.
- Protocols should also be drawn up for collaboration between the various national law enforcement agencies and the Autonomous Community police in Andalusia for the transfer of minors.
- Finally, means of co-operation must be developed to help reunite these minors with their families, in their own best interests, when there is no evidence that they have been abandoned, neglected or mistreated by their families.

# CLOSING SESSION

## General Rapporteur's Conclusions

Najat M'Jid

*Main characteristics of the migration of unaccompanied migrant minors*  
*Identification of problems relating to the reception and care of unaccompanied migrant minors*  
*Proposed solutions for the integration of unaccompanied migrant minors, taking account of the best interests of the child*

*Ladies and Gentlemen,*

As General Rapporteur, I have the awesome honour of producing summary conclusions in the light of the various speeches and debates at this regional conference, which was organised by the Council of Europe in partnership with the Spanish authorities.

I will do my best to be brief and concise and simply underline a number of points which were common to many of the statements and highlight the salient features of the very diverse situations described in these very interesting contributions and some of the similarities encountered.

In agreement with the Directorate General of Social Cohesion of the Council of Europe and under the aegis of the Migration Department, we decided to bring together representatives of Council of Europe member states, non-member states such as Morocco, Tunisia, Angola and the Republic of Congo, representatives of international institutions and non-governmental organisations, researchers and various observers concerned with the migration of unaccompanied minors, to facilitate discussion of the complex and often ill-defined problem of this type of migration. We also decided to base the discussion on very specific local case studies so that we could describe and assess the phenomenon from various perspectives. For instance, I talked about the situation in Morocco, Ms Rosa Maria Bravo Rodriguez talked about Spain, Ms Elizabeth Johnston about France, Mr Sylvain Vite about Switzerland, Dr Ching Lin Pang about Belgium, Ms Roberta Medda-Windischer about Italy and Ms Renta Rakaczki about Hungary.

These local case studies were backed up by more general contributions concerning an entire country or group of countries. For example, Mr George Moschos, Deputy Ombudsman for Children, described the general situation in Greece.

I believe that we have met the challenge of bringing a wide range of people together to consider case studies from Europe and Africa, and that the debates have been fruitful.

The fact that this regional conference has been held in Malaga, with the help of the authorities of the autonomous region of Andalusia and the Spanish Government, is no coincidence. Spain, and particularly Andalusia, which, owing to its geographical position (it shares borders with other European countries and with Africa), used to be a country of emigration, has gradually become a country of immigration and transit.

**Several points have emerged from the Regional Conference:**

**1. At the very beginning of the Conference,** Ms Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, underlined the importance of upholding and protecting children's rights, which are interdependent, inalienable and indivisible. The best interests of the child must be the cornerstone of all policies for managing the migration of unaccompanied minors, at every stage of the migration process (in the country of origin, the country of transit, the country of destination and on return to the country of origin). European policies must be comprehensive and integrated, and aimed at devising and establishing practices based on the rights of the child, and must be founded on strategies of solidarity and co-operation with the countries of origin.

Ms Boer-Buquicchio pointed out that this is a major challenge. Europe must make its position clear vis-à-vis the ever-increasing number of unaccompanied minors: does it want to be an open and tolerant Europe or a Europe that looks only to its own interests?

The representatives of the Spanish authorities taking part in the opening session - Ms Consuelo Rumí, State Secretary for Immigration and Emigration, Ministry of Labour and Social Affairs, Ms Amparo Marzal Martínez, Director General of Family and Childhood, Ministry of Labour and Social Affairs, and Ms Micaela Navarro Garzón, Adviser on Equality and Social Welfare - also underlined the importance of acting in the best interests of the child.

Mr George Moschos, Deputy Ombudsman for Children (Greece), recalled the principles laid down by the European Network of Ombudsmen for Children (ENOC) with regard to the reception and care of unaccompanied minors: abolition of detention; review of the methods by which migrant children are identified and their exact age determined; minors' right to be informed in their mother tongue about procedures relating to applications for asylum; the right to dignified living conditions; the right to appeal if their applications for asylum are rejected; legal representation ensuring that children's rights are respected pending their properly prepared return to their family or their placement in a suitable accommodation centre; appropriate training for all those concerned; and the children's right to a residence permit once they reach the age of majority in the host country.

**2. The analysis of the main characteristics of the migration of unaccompanied minors, by means of the aforementioned case studies, highlighted the following points:**

The children concerned by these case studies are unaccompanied minors under 18 years of age with no legal representatives or guardians. They come from third countries and usually fall into one or more of the following categories: refugees from countries in armed, ethnic or religious conflict, who have little or no knowledge of asylum procedures; victims of people trafficking (sexual exploitation, illegal labour); runaways or street children; or children who have a relative or know someone in the country of destination. However, the majority have come for financial reasons, often sent by their families. They therefore carry the hopes and ambitions of an entire family, their aim being to find work and obtain papers giving them legal status.

The great majority of these children are boys between 14 and 16 years of age, with little or no school education and only casual work experience. They usually come

from unstable families or families suffering financial hardship, where children are considered the main source of income.

There are some girls but they are less visible because they are quickly caught up in trafficking for the purposes of domestic slavery or prostitution.

These unaccompanied child migrants come from various countries - North and Sub-Saharan Africa but also an eastern European country, Romania, West Africa, Latin America and China - and their numbers vary according to the country.

It is difficult to estimate the number of these children because of their illegal status and their high level of mobility within Europe, and data vary from one country to the next and depending on their nationality. Nevertheless, all of the speakers at this conference agreed that the number of unaccompanied minors migrating to Europe is steadily rising and they are ever younger.

Unaccompanied minors leave their country of origin for the following reasons: armed, ethnic or religious conflict; social and economic crises; the lack of prospects; the difficulty, if not the impossibility, of being allowed into Europe (restrictions on the granting of visas). Sometimes an entire family places its hopes in the unaccompanied minor.

They are attracted to the country of destination by: the myth of a European Eldorado conveyed by the media and the return, in the summer, of friends or relatives who are lawfully resident in Europe and show obvious signs of prosperity; the common historical memory (the social and cultural heritage linked to the existence of protectorates, colonisation and successive waves of migration); the wide range of means of transport, which makes it easier for them to travel; the fact that unaccompanied minors cannot be returned to their country of origin; and the increase in trafficking networks and the fact that they are now better organised.

There are many ways of reaching Europe, by sea, air or land. The cost of getting there depends on the distance, the means of transport and the networks concerned.

### **3. An analysis of the relevant legislation and reception and care arrangements revealed a number of points.**

Although the founding principles of the Convention on the Rights of the Child, including the principle of acting in the best interests of the child, have been incorporated into the legislation of almost all countries, practices still vary from one country to the next, and even from one town or region to the next within the same country.

The rights of unaccompanied minors are not always respected. The following have attracted various degrees of criticism, often within the country concerned: administrative detention; the absence of legal representation; forced and/or unprepared returns; the lack of any possibility of appealing if the application for asylum is rejected; failure to inform minors of their rights and to explain asylum procedures; failure to take account of their views; the uncertainty caused by the lack of clear methods for determining children's age, which in no way helps unaccompanied minors; inequality of access to healthcare, education and training; instances of minors being subjected to violence when arrested by the police; overcrowded accommodation centres with untrained staff; the lack of a system for tracking down minors who run away or disappear; and the permanent risk of their being expelled once they reach the age of majority.

The fact that practices vary widely between towns, regions and countries also explains why unaccompanied minors readily move from one place to the next in search of a situation that meets their expectations better.

With a view to tackling these problems, many countries have introduced and implemented other procedures and/or strategies: review of legislation; harmonisation of procedures; decentralised (ie. local and regional) partnerships, and partnerships between NGOs and public authorities and between host countries and countries of origin; and renewable residence permits for people on training courses.

The speakers and the participants agreed that there is an urgent need for a comprehensive strategy based on international co-operation between Europe and the countries of origin in order to obtain a better understanding of the migration phenomenon (scale, procedures used, causes, networks, etc.), adapt programmes and measures to the profile of unaccompanied minors and ensure the effective involvement of consular departments and legal representatives from the countries of origin, the aim being to help unaccompanied minors to work out their aspirations and plan accordingly. Plans should be drawn up in co-operation with the minors concerned. A good knowledge of their personal experience, family situation and how they got to the country of destination is required. Such plans should give them access to a status which will in turn ensure that they have access to welfare services, education and training. Once the plan has been drawn up and set in motion, it should be followed up in the country of origin. A careful social assessment must first be carried out to ensure that the appropriate conditions exist. If not, the plan should be implemented in the host country.

At the same time, it is necessary to frame a proper policy to prevent the migration of unaccompanied minors, based on a decentralised (local and regional) co-development strategy, information and awareness campaigns in the countries of origin and the host and transit countries and greater efforts to combat trafficking networks.

Finally, the participants stressed the fact that European policies concerning the migration of unaccompanied minors must take account of the North-South and East-West dimensions.

The interviews with young unaccompanied migrants in France, Spain, the United Kingdom and Morocco carried out by Ms Imogen Lamb, a reporter for Radio France Internationale, offered an insight into how these young people viewed their situation. Some said that their first encounters with the authorities had not taken place in appropriate surroundings and that they had not felt at ease or that they could trust the authorities. Others described the accommodation centres as if they were prisons (the centres were overcrowded and they had been locked up and subjected to corporal punishment). They had often not been dealt with by social workers trained to listen to their problems or respect their rights.

Not all minors have access to schools, training and/or employment. Those interviewed said that they had either been misinformed or been given little information about their rights; they had suffered from having to wait for a long time to find out what was going to happen to them and were afraid they would be expelled. Some of them wandered from country to country seeking answers to their problems (a residence permit, schooling, training and sometimes employment).

The fear that dominated the lives of the majority was that they would be expelled as this would mean that they had failed and would lead an insecure, illegal



existence, in which they might be forced to turn to juvenile delinquency or might fall prey to mafia networks.

Families bring great psychological pressure to bear on unaccompanied minors: the children have to reassure their parents and yet never mention their need for affection or their loneliness.

Voluntary repatriation is not one of their immediate objectives: they can return home only if they have been successful (i.e. if they have secured a residence permit, been accepted for training or found employment).

#### **4. On the subject of managing the migration of unaccompanied minors in the best interests of the child**

Mr Hatem Kotrane, member of the UN Committee on the Rights of the Child, said that a holistic approach based on the rights of the child is urgently needed (see General Comment No. 6 (2005) laying down minimum rules governing the reception and care of young unaccompanied migrants). He also referred to the document drawn up in 2004 by Save the Children and UNHCR, entitled “Separated Children in Europe Programme: Statement of Good Practice” .

Mr Michel Villan, Chair of the European Committee on Migration (CDMG), highlighted two initiatives by his committee: the monitoring and assessment of existing policies and the establishment of dialogue between countries of emigration, transit and immigration. He drew attention to the proposals of the Council of Europe Political Platform on Migration (set up by the CDMG) on how to manage the migration of unaccompanied minors while taking account of the best interests of the child: decentralised and consistent co-operation, with the migrants themselves central to initiatives; public information campaigns; setting up a scheme to facilitate the exchange of information and know-how; and preparing and putting into practice suitable plans for the lives of minors in their country of origin or, failing that, in the host country.

He announced that an ad hoc committee (a group of specialists) will be charged with preparing draft recommendations based on the conclusions of the conference.

In his address, Mr Manuel Lezuerta, Director of the Office of the Council of Europe Commissioner for Human Rights, stressed the need to ensure that the fundamental rights of young unaccompanied migrants are respected in practice, as they are first and foremost vulnerable children. He called on all those concerned by this problem in the countries of origin, transit and destination to work together to devise a comprehensive policy for the protection of young unaccompanied migrants.

Ms Annick Goeminne, from the European Commission, drew attention to the binding instruments on asylum for young unaccompanied migrants. The Directive on qualification and status as a refugee (2004/83/EC, April 2004) contains provisions acknowledging unaccompanied minors and lays down specific procedures for young unaccompanied migrants, based on the best interests of the child. Moreover, to make up for the lack of data on the extent of the phenomenon, a procedure has been drawn to encourage member states to provide statistics, by means of specific methods, and will be put into practice in 2007.

Ms Goeminne said that a European fund for refugees has been assigned to train border guards with a view to harmonising practices. A system for assessing existing arrangements has also been established to ensure the protection and safety of young unaccompanied migrants and minors who are victims of trafficking.

Ms Margarita de la Rasilla, legal advisor for unaccompanied minors (UNHCR Spain), said that in Spain young unaccompanied migrants are entitled to seek asylum. They have the right to the same treatment as minors in the host country and must be entitled to seek asylum. However, as young unaccompanied migrants are sometimes given no information or misinformed, there are still very few applications for asylum. She stressed the difficulty of determining whether the migrants are under age, the relatively long time-limits and the risk of expulsion if applications for asylum are rejected. Good practices have been established to overcome these difficulties: children who can prove that they are minors or who have no legal guardian may apply for asylum on arrival at the border, and time-limits for the processing of applications have been shortened.

The representative of Angola, which was invited to the conference as an observer country, said that it is necessary to take a comprehensive approach to the problem of the migration of young unaccompanied migrants, involving the countries of destination, transit and origin. He also stressed the need to clarify the concepts used, to harmonise practices and establish effective co-operation with the countries of origin.

**5. With regard to integration models, Ms Carmen Belinchón Sánchez addressed the issue of plans drawn up for young unaccompanied migrants**

1,884 minors are currently living in residential centres in Andalusia, the aim being to enable them to live their lives, to develop as individuals and undergo training, and to facilitate family reunification if possible or, failing that, to place them in a foster family. Some of them are granted a residence permit when they reach the age of majority, provided they have a proper plan for their lives. The migration of unaccompanied minors is gradually changing in terms of age, background, language spoken, reasons for migrating, procedures used, and so on.

It is necessary to take account of their background, of family problems and of their migratory experience and to offer them a plan for their lives while working with the region or town of origin to ensure genuine, sustainable human development and maintain and strengthen family ties.

Staff must be given proper training so that they are able to respond appropriately to the problems encountered by young unaccompanied migrants.

Ms Belinchón said that family reunification is a serious matter requiring a great deal of work: the family has to be located and identified, assessed and involved in the process. The young migrants have to be assisted with their plans and sometimes the community of origin also requires assistance. She stressed that fact that, in order to eradicate trafficking networks, it is necessary to have a genuine participative policy of co-ordination and co-operation with the countries of origin.

**In conclusion**

The conference has given everyone the opportunity to take a critical look at the management of the migration of unaccompanied minors and to realise that account is not always taken of the best interests of the child: in some cases there is only a very limited and patchy awareness of the scale of the phenomenon; practices vary widely; reception and care facilities are often overcrowded; and expensive security arrangements are overused. There is therefore a need for an integrated and comprehensive strategy involving the countries of destination, transit and origin.

The real question is: do we want to protect and promote the rights of young unaccompanied migrants or do we want to put an end to migration?

The challenge to which we must rise is to act in the best interests of young unaccompanied migrants and at the same time make it unnecessary for them to migrate.



## Closing remarks

Alexander Vladychenko,  
Director General for Social Cohesion (DGIII)  
of the Council of Europe

*Ladies and Gentlemen,*

First of all, I would like to express my gratitude to all of you who have participated in this conference. The fact that so many of you came here, proves the importance of the issue which we have examined over the last two days. Indeed, the situation of unaccompanied migrant minors is difficult. It is not becoming better. Moreover, it has worsened over recent years.

I think that no one can tolerate this fact. Especially, the Council of Europe as an intergovernmental organisation promoting human rights cannot stay silent. There is an urgent need to improve the life of unaccompanied minors, to improve countries' capacity for managing the presence of unaccompanied minors. Co-operation among all the countries involved - origin, transit and destination, is vital.

During the conference, there were a great number of issues that have been discussed. All are very important. But let me recall only major of them:

*We looked at the phenomenon of the migration of unaccompanied minors and tried to understand it better – what did we learn?*

The reasons for migration of unaccompanied migrant minors are often similar to those of adult migrants. However, they also have specificity. Some of them leave simply because they cannot imagine any future for themselves in their home country. because, as we have heard during these two days, there is no future. At least, not right now. For them, migration is mostly irregular with all the risks that this entails including violence from traffickers and smugglers.

*What did we learn about national policies and practice?*

The reports and discussions show that the situation of unaccompanied minors may vary widely on their arrival in the host country. What is common ? Their presence is always a real challenge to the national authorities.

As we have seen the assistance provided to unaccompanied migrant minors can take different forms. I will not enter into details as this question has been largely examined in the conclusions of the General Rapporteur by Mrs M'Jid. Let me only underline that there is an urgent need to harmonise the policies of the Council of Europe member States' regarding the minimum standards treatment of unaccompanied minors and guaranteeing them basic human rights.

*What can be done in the best interests of the child ?*

I think that there is a common opinion among us that all national policies towards the unaccompanied migrant minors should be guided by the best interests of the child.

Our Conference has confirmed that the unique way to determine “the best interest of the child” is to associate the children themselves. The presentation of the

interviews by Mrs Lamb is an excellent example on how they imagine their life. I would like to thank Mrs Lamb for inviting us, the participants, to enter their world. The testimony of your anonymous heroes is significant. We cannot stay indifferent. Our action should include the children's view, their aspirations, expectations, what they think about their future.

Mrs De Boer Buquicchio, the Deputy Secretary General of the Council of Europe, said in her opening speech that "*children are not mini human beings with mini rights*". This observation is very important. Any measure in respect of unaccompanied minors, whatever their status is, must take account of the fact that they are first and foremost children in need of protection. The central point of action in favour of unaccompanied migrant minors is the development of "life projects" for them. These "life projects" have to be conceived together with the children.

*How can we reinforce the international co-operation ?*

National response to the phenomenon of migration of unaccompanied minors vary. However, no country will succeed alone. Dealing with unaccompanied minors needs co-operation of all involved countries and especially hosting and origin countries.

International co-operation between the member and non-member States should be stepped up with the participation of all the possible players, including local and regional authorities. At the same time, the various projects and programmes must be developed in the countries of origin to offer children an attractive alternatives to migration.

As an intergovernmental organisation, the Council of Europe helps its member States to develop co-ordinated, balanced systems for managing their policies in the migration field, drawing on the principles of respect for human rights, and to promote social cohesion, integration and tolerance. By encouraging a coherent, "mainstreamed" approach to integration policies, the Council of Europe places the individual, as a human being, right at the very centre of its activities.

The ultimate objective of the Council of Europe shall be to elaborate a durable solution for each minor.

*Follow-up of the Conference – undertakings of the Council of Europe*

We have just distributed the final communiqué containing the general principles on treatment of unaccompanied minors. The final communiqué formulates a number of recommendations for common action in relation to unaccompanied minors, particularly in relation to the promotion of their life opportunities, ie. "life projects".

But we will not stop at this. The results of the Conference will serve as a guidance for intergovernmental work on the situation of unaccompanied minors. This will allow the European Committee on Migration ( CDMG ) to review policies of the Council of Europe member States in a comprehensive way, including all aspects of their life: legal protection, residence permits, education, health care, integration, but also family reunion and re-integration with communities of their countries of origin. A concrete task of the CDMG now is to draft a recommendation on the unaccompanied minors. Their situation might also be a topic for discussion during the next Ministerial European Conference on Migration to be held in Kyiv in 2007. A further more ambitious goal could be a relevant Council of Europe legal instrument.

Thank you very much.

## CONCLUSIONS OF THE CONFERENCE

The participants gathered together in Malaga thank the Spanish authorities and the Council of Europe for organising this conference on the migration of unaccompanied minors.

They note that a growing number of unaccompanied minors find themselves alone, far from their family environment, separated from their parents or relatives and exposed to many kinds of dangers.

Bearing in mind obligations of states to uphold human rights and human dignity, the participants call on the member states of the Council of Europe, the countries of origin and of transit, intergovernmental organisations, regional and local authorities and civil society to unite all their efforts to seek solutions, with the unaccompanied migrant minors concerned, allowing them to build a better future.

On the basis of the conference proceedings, the participants have reached the following conclusions:

### **General principles**

Children's best interests shall be a primary consideration in all decisions affecting them at all stages in the migration process.

All the measures taken must safeguard the rights and the persons of unaccompanied migrant minors and foster their well-being.

Unaccompanied migrant minors must be guaranteed the right to be treated in an appropriate manner and in particular:

- the right to physical, mental and moral safety
- the right to health
- the right to material support
- the right to information, to confidentiality and to respect for their opinions
- the right to legal protection
- the right to education and training.

The diversity and disparity of unaccompanied migrant minors (ethnic and migratory backgrounds, cultural diversity, etc.) must be taken into consideration on a case by case basis.

Unaccompanied migrant children, including those who arrive unlawfully in a country, must not be incarcerated for having breached administrative law.

Unaccompanied migrant minors must be protected against all forms of trafficking for the purpose of their economic and/or sexual exploitation.

As soon as an unaccompanied migrant minor is taken into care, every effort must be made to trace his or her family and re-establish family ties.

## **Arrival, reception and care of unaccompanied migrant children**

The initial contact with an unaccompanied migrant minor must take place under conditions designed to foster the child's confidence, protect the child and provide him or her with care and/or assistance as necessary.

Gathering basic information on the child's identity should be performed in an appropriate manner, in designated areas suitable for receiving children and by properly trained officials.

A presumption that a migrant is under-age should be applied based on a variety of indicators. This presumption entails acknowledging individuals as minors in cases of doubt. It also means that age claims should not be verified solely using bone mass measurements but that other evidence must be taken into account such as the documents presented and the individual's behaviour, statements and maturity. The child's word should be heard.

Immediately upon arrival unaccompanied migrant minors should be informed, in a language they understand, of their rights under the law of the country of destination, including the right to seek asylum and to benefit from legal aid, as well as the asylum procedure<sup>1</sup>.

It is important that unaccompanied migrant minors should be provided as soon as possible with qualified legal counsel to assist them throughout their stay in the country of destination.

A genuine public policy aimed at developing and implementing a full reception and care programme must encompass:

- measures to identify and inspire confidence in unaccompanied migrant minors ("street work"), a reception procedure, assessment and guidance, arrangement of care and support facilities and monitoring of children's progress in attaining their goals in life, as determined with them;
- co-ordination measures between the different agencies involved;
- assignment of properly qualified staff to these jobs;
- the effective involvement of consular services or, failing that, other official representatives of the country of origin.

## **Seeking sustainable solutions**

### **Prevention**

Prevention must be based on the following key lines of action:

- Development programmes implemented through partnership between states, regions, local authorities and civil society associations;
- Efforts to combat trafficking in human beings and dismantling of networks;
- International co-operation in the exchange of information on how unaccompanied children migrate (taking account of their considerable mobility);

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<sup>1</sup> The last part of this paragraph, i.e. « including the right to seek asylum and to benefit from legal aid, as well as the asylum procedure » was not accepted by the representative of Germany.



- Information and awareness-raising campaigns on the issue and undertaken , in particular, in co-operation with the media in the countries of origin, transit and destination;
- Minors with life goals requiring the acquisition of skills and vocational training unavailable in their countries of origin must be able to access educational facilities in Europe<sup>2</sup>.

### **"Life goals" in the context of return to the country of origin**

Any return of a child migrant must satisfy the following criteria:

- the guarantee of quality care and assistance;
- the support in devising and implementing reintegration plans in the country of origin.

With these aims in mind, co-operation between states, regions, local authorities and civil society associations must be promoted, strengthened and enhanced.

### **"Life goals" in the country of destination**

Working with unaccompanied migrant minors to determine what they want from “life projects” must be based on an individualised, multi-disciplinary and participatory approach aimed at integrating the young person into the host society.

Unaccompanied migrant minors who have committed themselves to achieving certain goals in life (e.g. acquisition of skills or training not available in their home country) in the country of destination and have reached the age of majority should be issued with a residence permit allowing them to reside in that country until they have attained those goals<sup>3</sup>.

### **Recommendations to the Council of Europe and to member states**

The participants recommend that the Council of Europe and/or its members States:

- adopt a global and balanced approach that is sufficiently flexible to take account of the needs of each unaccompanied migrant children;
- harmonise at European level the systems for dealing with unaccompanied migrant children, which should include the processing of asylum applications and all legal guarantees, in particular those relating to the Convention on the Rights of the Child and other international human rights law;
- establish effective co-ordination measures between all the players concerned in the countries of origin, transit and destination;
- set up a network for the regular exchange of information and good practices and the improvement of knowledge on this subject;
- reinforce European co-operation in combating trafficking organisations and networks;
- make the issue of migration by unaccompanied migrant minors a systematic focus of North-South and East-West relations.

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<sup>2</sup> This point was not accepted by the representative of Germany.

<sup>3</sup> This paragraph was not accepted by the representative of Germany.



# PROGRAMME

## **Eve of Day One – 26 October 2005**

Arrival of participants

9.00 pm Welcome drink offered by Ms Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, in Hotel Meliá Costa del Sol, Torremolinos, Malaga.

## **Day One - 27 October 2005**

9.00 – 9.30 am Registration of participants

**9.00 – 11.00 am Opening session**

9.00 – 10.00 am Opening of the Conference by:

**Ms Maud de Boer-Buquicchio**, Deputy Secretary General of the Council of Europe

**Ms Amparo Marzal Martínez, Director General of Family and Childhood**, Ministry of Labour and Social Affairs

**Mr Joaquim Duarte**, Chair of the Committee of Ministers of the Council of Europe

**Mr Ed van Thijn**, Member of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe.

**Ms Micaela Navarro Garzón**, Adviser on Equality and on social well-being from **Autonomous Regional Government** of Andalusia

**Ms Consuelo Rumí**, Secretary of State for Immigration and Emigration, Ministry of Labour and Social Affairs, Spain

**10.00 – 10.45 Keynote speech:**

**Mr George Moschos**, Deputy Children's Ombudsman (Greece)

10.45 – 11.00 am Coffee break

**11.00 – 4.30 pm**     **Session 1: Main characteristics of migration of unaccompanied minors – five case studies**

**Chair: Mrs Marta Rodriguez-Tarduchy**, Director General of Immigration (MTAS)

**11.10 -2.00 pm**     **Case studies**

*Situation of unaccompanied migrant minors in Morocco*, by Ms Najat M'Jid, Chair of the BAYTI Association, Morocco

*Situation of unaccompanied migrant minors in Spain*, by par Mme Rosa María Bravo Rodríguez, Ministry of Labour and Social Affairs, Spain

*Situation of unaccompanied migrant minors in the United Kingdom*, by Dr Eugenia M. Markova, Research Fellow, Sussex Centre for Migration Research of the University of Sussex, United Kingdom

*Situation of isolated migrant minors in France*, by Ms Elizabeth Johnston, Deputy Director, European Forum for Urban Safety, France

*Situation of unaccompanied migrant minors in Switzerland*, by Mr Sylvain Vité, NGO Group for the Convention on the Rights of the Child, Switzerland

2.00 – 3.30 pm     Lunch break

**3.30 – 4.30 pm Debate**

**Introduction to the debate**

*Identification of issues and current and future trends in migration of unaccompanied minors* – Summary report of the 5 case studies, by Ms Najat M'Jid, Morocco, General Rapporteur of the Conference

4.30 – 4.45 pm     Coffee break

**4.45 – 6.30 pm**     **Session 2: Reception of unaccompanied migrant minors – experiences of some countries**

**Chair: Ms Estrella Rodríguez Pardo**, Director General Ministry of Integration of Immigrants (MTAS)

*Reception of unaccompanied migrant minors in Belgium: general trends and socio-economic profiles, with particular reference to minors from the Democratic Republic of the Congo*, by Ms Ching Lin Pang, Deputy Head of the Migration Department, Centre for Equal Opportunities and the fight against Racism, Belgium

*Reception of unaccompanied migrant minors in Hungary*, by Mrs Renáta Rakaczki, Hungary

*Reception of unaccompanied migrant minors in Italy*, by Mrs. Roberta Medda-Windischer, LL.M (Essex), Researcher, Institute for Minority Rights, European Academy Bozen/Bolzano.

5.45 – 6.30 pm Debate

**Day Two – 28 October 2005**

9.15 – 9.45 am **Unaccompanied migrant children : what they think**  
*Interviews with children in France, the United Kingdom, Spain and Morocco*, by Ms Imogen Lamb, reporter, Radio France Internationale, France

9.45 – 10.15 am Debate

10.15 – 10.30 am Coffee break

10.30–12.30pm **Session 3: Managing migration of unaccompanied minors in the best interests of the child**

10.30 – 11.00 am **Keynote speech:**  
Ms Nezha Chekrouni, Minister responsible for Migration, Morocco

11.00 – 11.15 am **Looking for Solutions:**

*Migrations of unaccompanied minors and comprehensive approach based on the rights of the child*, by Mr Hatem Kotrane, Member of the UN Committee on the Rights of the Child

*Sharing responsibility – boosting co-operation between countries of destination and origin at all levels*, by Mr Michel Villan, Chair of the European Committee on Migration (CDMG), Council of Europe

*Effective respect of the fundamental rights of unaccompanied migrant minors - the findings of the Commissioner for Human Rights*, by Mr. Manuel Lezertua, Director, Office of the Commissioner for Human Rights

*European Union policy towards unaccompanied migrant minors*, by Mrs Annick Goeminne, European Commission, DG Justice, Freedom and Security, Immigration and Asylum

*Unaccompanied migrant minors and asylum procedures: prospects for UNHCR* by Mrs Margarita de la Rasilla, Legal Advisor and focal point on separated minors

**Representatives of non-member countries:**

Mr Théophile Mbemba Fundu, Democratic Republic of the Congo  
Mrs Eufrazina Maiato, Angola

12.00 – 12.30 am Debate

**12.30 – 1.15 pm    Sesion 4 – Integration: models of intervention**

**“Life plans” for unaccompanied migrant minors and co-operation between countries of origin, transit and destination**, by Mrs Carmen Belinchón Sánchez, Director General of Childhood and the Family of Autonomous Regional Government of Andalusia.

**1.15 – 2.00 pm    Closing session**

**General Rapporteur's Conclusions** by:  
**Ms Najat M'Jid**, Chair of the BAYTI Association, Morocco

**Closing remarks** by:  
**Mr Alexander Vladychenko**, Director General of Social Cohesion (DGIII), Council of Europe

**Presentation of the Conclusions of the Conference**

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