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MIGRATING ALONE

UNACCOMPANIED AND SEPARATED
CHILDREN'S MIGRATION TO EUROPE



EDITED BY: JYOTHI KANICS,
DANIEL SENOVILLA HERNÁNDEZ
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Migrating Alone:
Unaccompanied and
Separated Children's Migration to Europe

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Edited by

J. Kanics, D. Senovilla Hernández
and K. Touzenis



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Preface and acknowledgements

On a sunny October day in Poitiers (France) in 2006, William Berthomière, Director of the research centre MIGRINTER (Migrations, Espaces et Sociétés, University of Poitiers–CNRS), suggested that I should coordinate the organization of a seminar on my research topic, children migrating alone. Curiously, we were just about to see Michael Winterbottom's film *In This World*, a very fair and realistic description of the migration journey of two young Afghans trying to reach the United Kingdom, shown at MIGRINTER's annual Diver-Cités film festival.

I scarcely imagined that, only a year later, this proposal would have become an international conference with 43 presentations, more than 200 participants from 25 countries and 3 working languages. MIGRINTER and the International Juvenile Justice Observatory (based in Belgium) shared the conference organization with the support of UNESCO's Social and Human Sciences Sector. The event, held in Poitiers on 10 and 11 October 2007, was entitled 'The Migration of Unaccompanied Minors in Europe: the Contexts of Origin, the Migration Routes and the Reception Systems'.

The present publication is one of the outcomes of the conference. All the authors were also contributors to the conference and the book focuses on two of the three main topics discussed. The first part examines how European states deal with the reception and treatment of children migrating or seeking asylum alone; the second part describes the situation experienced by would-be migrant children in their countries of origin and the factors pushing them to their migration adventure. It provides a first response to these fundamental questions with the aim of generating a constructive debate between practitioners, academics and advocates to promote better protection that respects migrant children's rights.

I am particularly grateful to my co-editors Jyothi Kanics and Kristina Touzenis for their valuable work and support during the whole process. I also express my gratitude to all the authors for their insightful contributions and their response and patience in dealing with tight deadlines.

Thank you to all the MIGRINTER team and to all the people who collaborated in the organization of the Poitiers conference. A very particular mention and all my appreciation go to William Berthomière for his help and advice during my stay at MIGRINTER.

My thanks finally to UNESCO, particularly to Antoine Pécoud, for making this project a reality.

Daniel Senovilla Hernández
February 2009

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Abbreviations and acronyms

BID	best interests determination
BRAC	Bangladesh Rural Advancement Committee
CEAS	Common European Asylum System
CECLR	Centre for Equal Opportunities and Opposition to Racism (Belgium)
CNRS	Centre National de la Recherche Scientifique (National Center for Scientific Research) (France)
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ENOC	European Network of Children's Ombudsmen
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IHF	International Helsinki Federation for Human Rights
ILO	International Labour Organization
INS	Immigration and Naturalization Service (USA)
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour
IRCO	Immigrant Refugee Community Organization (Norway)
IRD	Institut de Recherche pour le Développement (Marseille, France)
ISET	Institute for the Study of European Transformations, London Metropolitan University
MIGRINTER	Migrations, Espaces et Sociétés, University of Poitiers–CNRS (France)
NGO	non-governmental organization
NIDI	Netherlands Interdisciplinary Demographic Institute
OSCE	Organization for Security and Co-operation in Europe
SCEP	Separated Children in Europe Programme
SIJS	Special Immigrant Juvenile Status (USA)
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USA	United States of America
VAWA	Violence against Women's Act (USA)

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Thomas Hammarberg was elected Commissioner for Human Rights on 5 October 2005 by the Council of Europe's Parliamentary Assembly. Prior to his appointment, he spent several decades working on the advancement of human rights in Europe and worldwide. He has held the key posts of Secretary General of the Stockholm-based Olof Palme International Center (2002–05), Ambassador of the Swedish Government on Humanitarian Affairs (1994–2002), Secretary General of Save the Children Sweden (1986–92) and Secretary General of the London-based Amnesty International (1980–86). Over the past twenty-five years, Hammarberg has published widely on various human rights issues, particularly children's rights, refugee policy, minority issues, xenophobia and Roma rights, as well as international affairs and security. He is also well known for his presentations and lectures on human rights at various government and academic institutions.

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Daniel Senovilla Hernández holds a Master's degree and a D.E.A. in migration studies from the Instituto Universitario de Migraciones–Universidad de Comillas de Madrid (Spain). He will read his Ph.D. at the same institution in 2010. Since 2004, he has been an invited researcher at MIGRINTER, University of Poitiers–CNRS (France). He was coordinator of the Scientific and Organization committees of the Poitiers international conference in 2007, which resulted in the present publication.

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Introduction

Daniel Senovilla Hernández and Kristina Touzenis

The independent migration of children, while having several characteristics and many links in common with that of adults, has emerged as a specific phenomenon all over the world. The planned, forced or spontaneous decision to abandon the household and country of origin takes on a new dimension when the people involved in a long and often dangerous migration adventure are sometimes just in their early teens. Since the early 1990s, most European countries have been destination or transit points (sometimes both) for these young migrants.

When confronted with the migration of unaccompanied and separated children, European national legal frameworks and government policies are known to be in continual conflict between the more or less repressive enforcement of their asylum and/or immigration rules and an ambiguous (but timid) interpretation of the international and national legal instruments created for the care of children ‘in need’, regardless of their origin or nationality. There is often a marked discrepancy between, on the one hand, the rights to which migrants in general, and child migrants in particular, are entitled according to international legal standards and, on the other, the effective protection they receive and the difficulties they experience in the countries where they live and work and through which they travel. This disparity between the principles agreed to by governments and the reality of individual lives underscores the vulnerability of migrants in terms of dignity and human rights. A major problem for children is that they are considered as migrants before they are considered as children – this automatically lowers their legal protection, as international standards regarding children are much more elaborated and more widely ratified than those regarding migrants.

Migrants have rights under two sets of international instruments: first, the core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the provisions of which apply universally and thus protect migrants; and second, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the International Labour Organization (ILO) Conventions that apply specifically to migrants, and to migrant workers in particular. Furthermore, children have rights under the United Nations Convention on the Rights of the Child (CRC). But, as with migrants generally, there is no international or regional legislative framework dealing directly with child migrants. Nonetheless, in addition to the ICCPR and ICESCR, norms regarding children’s welfare in general and the protection of children from economic exploitation and harmful work are directly or indirectly relevant to children, accompanied or unaccompanied, who are in

a process of forced or voluntary movement. Similarly, the protective measures within the CRC, the ILO Conventions on child labour,¹ the UN Protocols on trafficking, and regional instruments are also relevant.

Within the European Union (EU) legal framework, the protection of child migrants is very limited and no regional legal framework that adequately addresses this issue is in place.

Generally, the ability to migrate or travel legally without an adult is quite limited for children, especially internationally. This means that children migrating alone are more likely to do so irregularly, thus increasing the risk of exploitation or abuse. Research into independent child migration suggests that it is usually older children who are involved in this phenomenon; that child migration is usually highest in regions where adult migration is also high; that independent child migration can be, and often is, a positive decision taken by the child with the aim of improving life opportunities; and that child migrants, like adults, rely on their social and financial resource networks when migrating.

The current dominant debate in most European countries is still restricted to the national level and sometimes even to national/regional or local levels. The double or even triple level of competences in most of the national territories implies a significant spread of diverging national practices that shape the treatment of migrant children. The competences regarding immigration and asylum issues (access to the territory, identification, asylum process, immigration status) are generally assumed at national level. However, aspects relating to the care of children (evaluation of the individual situation, reception and care, guardianship or fostering) are often within the competence of regional or local authorities and practices therefore vary widely. This dispersion and confusion, combined with a lack of adequate responses to the main objectives of migrant children, mean that a significant number remain outside the control of the relevant authorities and care institutions. As a result, these unprotected migrant children live in situations of increasing vulnerability and instability as victims of trafficking and exploitation networks or simply surviving on their own, sometimes by committing illicit or unlawful activities. Despite the completion of various research studies on this issue, this reality remains broadly unidentified.

The central issues of understanding how this migration is constructed in the contexts of origin, and the different factors playing a role in the migration of these children, require a more extensive examination. To date, hardly any research has been carried out on the children's main countries and regions of origin, which might indicate the main 'push factors' and the motivation behind the increasing number of departures. The main migrant children's profiles, the social and economic situation of their families and the role played by the household and the communities in the migration decision, the choice of the migration route and the function of those encountered during the journey are all key points that

1. C138 Minimum Age Convention, 1973; C182 Worst Forms of Child Labour Convention, 1999; R190 Worst Forms of Child Labour Recommendation, 1999.

remain largely unknown. A better knowledge of these factors will allow not only an understanding of the migration fluxes and phenomena on a more abstract or academic level, but will prove essential if effective protection and respect for these children are to be secured.

The desire to find answers to all these questions and uncertainties lay behind the organization of an international conference, 'The Migration of Unaccompanied Minors in Europe: the Contexts of Origin, the Migration Routes and the Reception Systems'. This conference, organized by the research centre MIGRINTER, University of Poitiers–CNRS and the International Juvenile Justice Observatory (based in Belgium) with the support of UNESCO's Social and Human Sciences Sector, was held in Poitiers (France) in October 2007 with the aim of creating a forum for discussion between researchers and practitioners in this field. Experts from over twenty countries participated and exchanged information on three main issues:

- a comparative approach to the different legislative frameworks, policies and practices in various European countries and an overview and analysis of the protection offered at European level on the basis of international obligations;
- an overview of the situation of children who lack protection in the destination countries; and
- an analysis of the situation and definition of childhood and the different profiles of migrant and potential migrant children in the main countries of origin.

The present publication brings together the main conclusions of the Poitiers conference. From a selection of the most relevant contributions, it seeks to provide an extensive overview of the main questions and issues outlined above. The contributors come from a wide variety of disciplines, combining mainly legal, sociological and anthropological backgrounds. They generally provide an analytical approach to the different issues from both a descriptive and a critical perspective. The three original parts of the conference have been condensed into two main parts in the book: the first five chapters describe the situation and treatment of unaccompanied and separated migrant and asylum-seeking children in the destination societies; and the following chapters analyse the main contexts of origin of migrant children and the different factors playing a role in migration choices.

Most research focuses on either the receiving or the sending end of migration, whereas the present book examines issues that are relevant to child migration both in the countries of origin and in those of destination (there is, in fact, not much published research on countries of origin, another gap that is at least addressed here). Regarding destination countries, even though there are many non-governmental organization (NGO) and institutional reports or studies, as well as a large number of relevant articles published in specialized reviews, there is a dearth of works on the issue of children's independent migration.

The comprehensive, multidisciplinary approach proposed here complements the existing literature in that it brings together precise contributions from some of the foremost European experts in this field. Some chapters (1, 3 and 4) propose European comparative approaches while others propose mono-disciplinary specific investigations (Ch. 2: legal analysis; Ch. 6: anthropological; Ch. 7: results from a quantitative survey; and Ch. 9: relevant theoretical and policy issues). Chapter 5 gives examples of the situation of migrant children outside the European borders and Chapter 8 proposes a contrasting North/South analysis of the same reality. A concluding chapter sums up the legal perspectives and policy challenges.

As Part 1 is devoted to European reception systems, Chapter 1 provides a comparative analysis of the differing legal and policy approaches of selected European countries on data collection, reception and the determination of a durable solution for unaccompanied and separated children. The authors (Kanics and Senovilla Hernández) provide examples of good and bad practice in Europe.

In Chapter 2, Farrugia and Touzenis give a background analysis of the international provisions protecting children in migration movements, including the framework established by the CRC while also considering its implementation, the European Convention on Human Rights and current EU legislation, thus offering a comprehensive critical legal analysis of existing international and regional legislation concerning unaccompanied children in migration movements.

In Chapter 3, Bruun and Kanics stress that the timely appointment of an independent, professional guardian is in the best interest of the separated migrant child. Their contribution therefore examines different guardianship models in Europe and draws conclusions regarding which measures constitute good practice in this important field.

Chapter 4 is one of the rare contributions focusing on the reality and motivations of unprotected migrant children in Europe. Mai analyses the complexity of the needs and aspirations motivating young male migrants from Albania, Morocco and Romania to migrate and their life trajectories of inclusion/exclusion in different EU settings (Italy, France and Spain).

Chapter 5 provides a global approach to the legal framework in international child migration. Bhabha undertakes a comprehensive analysis of the various international legislative instruments and gives examples of the situation in the United States of America and Australia of unaccompanied child migrants applying for asylum or other forms of protection who encounter a significant number of obstacles in the destination states.

Part 2 studies the context of origin of migrant children. In Chapter 6, based on field research in Morocco, Vacchiano presents the true stories of young migrants, their feelings and the experiences of their migration journey: the tiredness, suffering, enthusiasm and contradictions relating to 'growing up in exile'.

Chapter 7 reports findings from a quantitative survey conducted between February and April 2006 in four border districts of Albania with 805 rural children from 6 to 18 years old. Orgocka's descriptive analysis provides valuable information on issues such as the extent of the phenomenon of child migration

in this country, the children's own attempts to migrate, their intention to leave Albania and the modalities of this decision.

In contrast, Chapter 8 seeks to analyse from a dual South/North perspective the increasing migration of children via the Senegalese maritime route to the Canary Islands. Robin and Senovilla Hernández focus on the real scope of this mobility, the profile and origin of these children, the existing links with the migration of adults from this African region and the coherence of responses to this phenomenon, in both countries of origin and countries of destination.

In spite of the fact that social and economic contexts across North and South are very different, Chapter 9 underlines the striking similarity of issues emerging in independent child migration – hence protection against children's vulnerability must be linked across North and South. Yaqub develops some of the issues linking children's rights across regions, and outlines the legal basis for these rights being considered borderless.

In Chapter 10, Hammarberg sums up the legal perspectives and policy challenges that have been raised and reaffirms that children should be treated first and foremost as children. While noting the complexity of their situation and the gaps in protection, he also outlines important state obligations and safeguards, which, if implemented, could lead to significant improvements. He emphasizes the importance of securing long-term stability and opportunities for youth through the development and realization of 'life projects'. Such measures require not only resources and coordination among relevant stakeholders, but also policy reform and a change in attitudes.

The present book is the first collective work to give a global analysis of independent children's migration to Europe. No other volume has so far attempted to address the knowledge gaps described above relating to child migration from so many complementary angles, through its combination of theoretical and practical experiences and cases and its focus not only on host countries but also on countries of origin. The aim is to promote a better understanding of the phenomenon and thus ensure greater respect and protection for child migrants.

Part I

European Reception
Systems:
Between Care and
Migration Control

1

Protected or merely tolerated? Models of reception and regularization of unaccompanied and separated children in Europe¹

Jyothi Kanics and Daniel Senovilla Hernández

This chapter provides a comparative analysis of the differing legal and policy approaches of selected European countries to the reception and regularization of unaccompanied and separated children. While some governments prioritize child protection by recognizing and treating such children first and foremost as children, others deny migrant children even basic rights. Arguably, unaccompanied and separated children deserve a timely decision regarding their immigration status, to ensure their future stability, safety and development in line with their best interests. Models of good practice for the reception and care of unaccompanied and separated children, as well as to determine their best interests and secure their future welfare by means of a ‘durable solution’, are examined.

INTRODUCTION: A BRIEF OVERVIEW

The independent migration of unaccompanied and separated children to most European Union (EU) Member States began during the 1990s, except for Germany, which has been receiving young asylum seekers since the late 1970s. Although arrivals to Germany peaked in the 1980s, in the other countries arrivals of asylum-

-
1. In this chapter we refer to the definitions of the Committee on the Rights of the Child to distinguish between unaccompanied and separated children. See General Comment No. 6 (CRC/GC/2005/6, 1 September 2005) on the treatment of unaccompanied and separated children outside their country of origin. Para. 7: ‘Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, 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.’ Para. 8: ‘Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.’

seeking and migrant children continued to increase significantly towards the end of the twentieth century and during the first years of the present decade (Table 1.1).

Table 1.1: Migration of unaccompanied and separated children to the EU

	Before the 1990s	During the 1990s	During the 2000s
First cases of children migrating alone	Germany (since late 1970s); UK and France (special reception programmes)	France, Italy, Belgium, UK (first half of 1990s); Spain (second half of 1990s)	Most new Member States after EU enlargements in 2004 and 2007
Increase in number of arrivals	Germany (second half of 1980s, early 1990s)	Italy, UK, Netherlands	Belgium, France, Spain, Ireland

Source: Personal compilation based on authors' research results.

Since the EU enlargements in 2004 and 2007, leading to the inclusion of twelve new Member States which are at the same time countries of origin, transit and destination for this migration (SRC Koper, 2007), the phenomenon appears to have stabilized and the number of new arrivals has even dropped slightly.

Despite the increasing social repercussions of this migration in most of the countries, EU regulations on the status of 'unaccompanied minors' are inadequate and do not deal sufficiently with the necessary protection measures. As is well known, there is only one specific legal instrument dedicated to this subject: the Council Resolution of 1997.² The measures in the Resolution do not go far enough in guaranteeing protection of unaccompanied minors' rights and furthermore the Resolution is a non-binding instrument.³

The other EU legal instruments that refer to unaccompanied minors are comprised of those texts that regulate the status of individuals seeking asylum on EU territory and are limited to the regulation of specific aspects concerning children during the asylum procedure, such as the appointment of a guardian, legal assistance and family tracing.⁴

An examination of the national legislation of Member States concerning unaccompanied children reveals that most countries usually apply a combined approach of immigration/aliens and asylum law, which tries to limit the number of arrivals, with an ambiguous recognition of the vulnerable situation of these children.

2. Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03).

3. The Resolution authorizes Member States to refuse admission to their territory to unaccompanied minors and to return them to their country of origin if adequate reception and care are available. When regarding the guarantees that should be given to all unaccompanied minors or the recognition of their rights, the text avoids the use of imperative forms and gives priority to the conditional and to such hypothetical formulas as: 'Every unaccompanied minor should have the right to apply for asylum ...'

4. See Council Directives of 27 January 2003 (2003/9/EC), 29 April 2004 (2004/83/EC) and 1 December 2005 (2005/85/CE).

This leads to the implementation of general child welfare or child protection laws to protect children in situations of risk or abandonment (Italy), defencelessness (Spain), danger (France and Germany) or need (United Kingdom).⁵

While the treatment of unaccompanied and separated children within the framework of legislation on aliens often seeks to prevent their entry into the EU in the first place, general child protection legislation and related practices have been primarily created for national children who are in a vulnerable situation. The reasons why children may be placed in care are often substantially different for national children in need than for migrant children, who also have different expectations. The 'dreams' and objectives of migrant children are different depending on their profile and the factors playing a role in their migration decision. For example, in some cases, the pressure of siblings left behind means that children need outcomes to justify their migration adventure almost immediately. In addition, they are conscious that any protection provided usually ends abruptly when they turn 18 and that they will then be condemned to a clandestine situation.⁶

The main consequence of this situation is that in many EU countries a high number of unaccompanied and separated children either do not enter the care systems or leave them of their own free will. Other contributors to this publication shed some light on the reality that these unprotected migrant children experience in their everyday lives as well as the reasons compelling them to live outside the care system. Thus, our aim in this chapter is to identify best and worst practices regarding the treatment of unaccompanied children in the different European territories.⁷ As the range of legal provisions and policies affecting migrant children is extremely wide, the focus here is on three key aspects: first, the compilation of data and production of statistics; second, models of reception, focusing particularly on housing and education and the debate regarding the integration of migrant children in mainstream centres versus their placement in specialized facilities; and, third, the different routes by which children can be granted immigrant status in Europe and, more specifically, an assessment of their situation and the implementation of a durable solution that respects the principle of the best interests of the child.

-
5. There are some exceptions to this binary implementation of immigration/asylum law and general child protection law. Countries such as Portugal and most of those that entered the EU in 2004 consider an unaccompanied child as an asylum seeker and only implement asylum law provisions. This is also the case in Germany concerning children older than 16. Finally, within the EU, only Belgium appears to have created a specific, specialized regulation for unaccompanied children and, therefore, does not apply the general child protection laws.
 6. The United Kingdom, with its 'leaving care services' system that provides assistance and care to former unaccompanied asylum-seeking children who were in state care, is an exception to this rule. To a lesser extent, unaccompanied children in France can benefit from some care provisions in the framework of a so-called *contrat jeune-majeur* once they become of age and until they are 21.
 7. We also note, where appropriate, that there are often regional differences within EU Member States – not only among them – when it comes to the treatment of separated and unaccompanied children.

DATA COLLECTION

The compilation and presentation by the relevant authorities of data on unaccompanied and separated children migrating or seeking asylum in Europe constitute one of the areas in which the diversity of national practices and traditions is particularly noticeable. Researchers, practitioners and advocates in this field face difficulties in accessing up-to-date and accurate statistics that reflect the true scope of this phenomenon. Several gaps and problems in the way these statistics are collected and presented can be highlighted.

- *Lack of homogeneity.* Every country uses different methods of compilation and as a consequence various national statistics reflect different realities. Many countries simply count the number of asylum applications made by unaccompanied asylum-seeking children during a certain period (usually every year). However, countries such as Germany register in this category only applications from children under 16 years old. While other countries count the number of children admitted into care services during a certain period (Spain), others note the total number of children inside the care system on a certain date (Italy). Finally, the authorities of certain countries (France) do not compile or provide comprehensive statistics on unaccompanied or separated children present on their territory.
- *Lack of accuracy.* In most cases, it is well known that official statistics do not represent the full extent of the presence of separated and unaccompanied children in each country. Countries that only compile asylum applications ignore the fact that a number of children do not fall under that profile or fulfil the requirements needed to seek asylum. In these territories, the children who are not asylum seekers are simply ignored and become invisible. In other cases, certain authorities (Spain) have been accused of inflating the number of arrivals to stir up public alarm and thus to justify the implementation of harsh policies against these children, although such measures would normally be unpopular. In contrast, other countries (Italy) have set up long, complex procedures for the registration of unaccompanied migrant children. As a result, a significant number of children who go missing or abandon the care facilities after a short stay are never registered in the official statistics.
- *Lack of regularity.* With the exception of certain countries that produce and publicize statistics at regular intervals (mainly those issuing only asylum-related statistics), most have important gaps in the compilation of statistics relating to the number of children migrating alone across their borders. In France, the latest available data are from 2005 and there are no figures between 2002 and 2003. Italy, which has created a specific body for the census of unaccompanied children, does provide data, but always at different periods of the year. Finally, Belgium (following the Italian example) created a specialized body in 2004 to compile data on unaccompanied children (whether seeking asylum or not). In 2006 Belgium published a first report, providing extensive information on the

number and demographic characteristics of unaccompanied children in the country for the period between May 2004 to the end of 2005. However, this experience has not yet been repeated and currently information for the following years has to be compiled from different sources.

(i) An example of good practice: the Belgian Service des Tutelles executive report (2004–2005)

Until December 2002, there was an important legal gap in the regulation of the status and treatment of unaccompanied migrant and asylum-seeking children in Belgium. General regulations on immigration and asylum were applied without distinction to adults and children, involving long periods of retention in detention centres, refusals of entry and forced returns of unaccompanied and separated children. In 2002 the Belgian authorities sent a 5-year-old girl named Tabitha back to Kinshasa after detaining her for sixty days, rather than facilitating reunification with her mother in Canada. As a consequence of this affair, which ended with a European Court of Human Rights judgment ruling against the Belgian State in October 2006,⁸ the Belgian authorities urgently approved a series of legal provisions regulating the reception and protection of unaccompanied migrant children. These regulations, which did not come into force until May 2004, included the creation of a specialized body, the Service des Tutelles (Guardianship Service) within the Federal Ministry of Justice (Service des Tutelles, 2005). This service is in charge of identifying the child, verifying his/her age and condition as 'being unaccompanied', finding adequate accommodation and keeping a record of every unaccompanied child, including those who are not seeking asylum.

In 2006 this service issued an activity report providing exhaustive statistics on the number of unaccompanied children and their demographic characteristics (Service des Tutelles, 2005). The report included information on:

- total number of identified unaccompanied children;
- distribution by the service or authority that identified the child and gave notification of the child's presence;
- distribution by age range;
- distribution by continent;
- distribution by country of nationality;
- number and analysis of the situation of all received children (number of children in the identification and first reception phase; number of children received in an accommodation facility; number of children represented by a guardian); and

8. See *Affaire Mubilanzila Mayeka et Kanini Mitunga c. Belgique*, Cour Européenne des Droits de l'Homme/European Court of Human Rights, 2006. For a descriptive analysis of this judgment, see Senovilla Hernández (2006, pp. 187–99).

- number and analysis of the situation of all missing children (number of children who went missing during the first reception phase; number of children who went missing after being received in an accommodation facility; number of children who went missing after a guardian was appointed).

A holistic compilation of data gives practitioners and researchers a better understanding of the real scope of the phenomenon and makes it easier to identify the potential gaps and problems in the institutional response to this migration. A very positive and innovative aspect of this data-collection system is the record of the number and situation of children who went missing from or abandoned the care system. The extent of this phenomenon, which is a common pattern in most European territories and often goes under-reported, remains unknown in most of the host countries.

(ii) An example of bad practice: the absence of comprehensive, centralized data and the disparities between different competent bodies in Spain

Spain has a conglomerate of authorities at the national and regional levels with different competencies at the various stages through which an identified unaccompanied or separated child has to pass. Basically, at the national level two ministries (the Ministry of Interior and the Ministry of Labour and Immigration) deal with the identification process and decision-making regarding repatriation or residence in Spain. These ministries are also competent to issue a residence permit whenever repatriation is not possible. At regional level, the social services or child protection services of each autonomous community are competent to provide care to unaccompanied migrant children who are considered to be in a situation of 'defencelessness.' Furthermore, each regional child protection institution assumes public guardianship of these children.

To date, the Secretary of State for Emigration and Immigration has produced a comprehensive annual report including all the relevant statistics on foreign individuals. These are substantial documents: the 2005 report, for example, is a 933-page PDF document of over 12 MB, including 299 tables representing different data variables plus an annex with 9 maps and 6 graphs (Observatorio Permanente de la Inmigración, 2005). Surprisingly, and despite the fact that the migration of children on their own mainly from North and West Africa is a contentious issue in Spain, this lengthy and detailed report does not provide any information on unaccompanied migrant children.

However, a photocopied hard copy – 'Statistics on unaccompanied foreign minors (extract from the Statistical Report of the General Directorate of Immigration)' – has circulated since 2006 among certain key practitioners and advocates. The data reflect the number of children admitted into care in the different regional services during the year 2004 and the first semester of 2005 and

constitute the most up-to-date and comprehensive compilation so far available at the Spanish national level (Dirección General de Inmigración, 2006).⁹

Otherwise, the only way to access up-to-date data involves a long and meticulous search through back issues of the parliament's *Official Gazette* [*Boletín Oficial de las Cortes Generales*]. Members of parliament ask the Spanish Government to provide information on all manner of topics. Occasionally, these questions concern the statistics and data on unaccompanied children. In such cases, government replies are likely to provide up-to-date information that is not available in the official published statistics. The main problem is that the replies are usually very concise and the government only provides the exact information requested.¹⁰

Apart from the lack of data and the difficulty of accessing it, a further problem concerns the accuracy of existing statistics. According to the General Directorate of Immigration (Ministry of Labour), 9,117 unaccompanied minors were admitted into care between 1 January and 31 December 2004, mainly from Morocco (49 per cent) and to a lesser extent from Romania (10 per cent). Interestingly, the same source states that only 2,004 children remained in the different regional care facilities by 31 December of the same year (22 per cent of the total number admitted into care). Considering that during 2004 there were more than 9,000 new admissions and an unknown number of children already in state care by the end of 2003, it is difficult to believe that over 7,000 children abandoned the care system – whether voluntarily or forcibly – in the space of only one year.

Moreover, a Spanish Ombudsman report published in 2005 gives a very different number of admissions for the year 2004. Quoting data from the Central Immigration Authorities (Ministry of Interior), this independent public institution provides a figure of 1,873 admissions during that year (Defensor del Pueblo Español, 2005, pp. 460–84), almost five times lower than the figures cited above from the General Directorate of Immigration. Furthermore, these significant variations are not only found at the national level. It would be an extremely time-consuming exercise to compile all the contradictory information from the different regional data sources.

There are two probable reasons for this lack of precise data on unaccompanied migrant children in Spain:

- First, there is no central specialized institution to keep the records. Due to their high mobility, unaccompanied children move between different regional care services and are probably registered two or three times using the same identity or another fictitious one.
- Second, advocacy associations allege that the central and the most affected regional authorities exaggerate the actual presence of migrant children

9. Rosa María Bravo, a delegate from the Directorate, confirmed most of the data compiled in the above-mentioned document during her presentation at an international conference organized by the Council of Europe in October 2005 (see Bravo, 2005).

10. Figure 8.1 in Chapter 8 provides updated data from the *Official Gazette* regarding the number of unaccompanied and separated children admitted into care services for the period 2001–2008.

in Spain. According to these advocates, the inflation of the number of unaccompanied children in state care is part of a strategy to create a fake impression among the Spanish public of an ‘invasion’, and thus to justify the implementation of various policies aimed at excluding migrant children from the care provisions to which they are entitled.¹¹

Finally, it should be noted that section 111 of the Aliens Act Decree set up a National Register of Unaccompanied Foreign Minors to be handled by the Central Immigration Authorities.¹² Over three years after this provision came into force, there is still no information on the activities or even the creation of this public service.

RECEPTION

This section analyses the types of measure that each country has adopted for the reception – particularly the accommodation – of unaccompanied and separated children. Since no particular attention is paid to the first phase of identification, subjects such as detention at points of entry, age assessment and access to care are not dealt with. Instead, the focus is on what kind of care provisions unaccompanied and separated children receive once they have been placed in state care. Whether the existing centres have been specifically created for this target group or are, instead, mainstream children protection facilities is also examined. To a lesser extent, the different phases that the children go through from their initial reception until they leave care are discussed.

When examining the different European models, policies and practices covering the reception of unaccompanied and separated children, there is no common or predominant response regarding measures and facilities. Some countries, such as France, Germany and Italy, give priority to the integration of migrant children in general mainstream facilities for children in need. Others, such as Spain or the UK, combine reception in specialized or general facilities depending on the reception phase or the profile of the child. Finally, a few countries have created an exclusive network of specialized facilities for the reception of unaccompanied children. Currently, Belgium is the main example of this approach.

However, there has been very little debate about the adequacy, strengths and shortcomings of each model. In general terms, the strength of mainstream models is their aim of integrating migrant children in the host society. The main shortcoming is that these models are poorly adapted to the characteristics and specific needs of migrant children. On the other hand, specialized models can

11. See section 2 of *Comunicado de la Red de Entidades de Solidaridad con los Menores no Acompañados*, signed in Al Hoceima, 11 June 2006.

12. See section 111 of *Real Decreto 2393/2004 de 30 de diciembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000 de 11 de enero, de derechos y libertades de los extranjeros y su integración social*.

provide a targeted facility, adapting the measures and provisions of care to children's specific needs. The main defect of this model is often the de facto segregation of the migrant children. Finally, mixed models with mainstream and specialized facilities may adapt to the requirements of every child. In some cases, however, the criteria by which children are placed in a particular facility do not seem to take into consideration an individual assessment of every child's specific needs.

A Save the Children England Programme report in 2005 gathered the different opinions of practitioners working with separated children regarding the positive and negative points of each approach (Free, 2005, pp. 29–30). The researchers consulted mainly with team leaders and some senior social workers working in eighteen different local authorities in England. Table 1.2 summarizes the main results.

Table 1.2: Mainstream versus specialized facilities: opinions of practitioners working with local authorities in England

	Advantages	Disadvantages
Mainstream facilities	<p>Provision of a similar standard of care to that of British-born children.</p> <p>More focus on the fact that children are children first and foremost (they are supported by staff qualified in dealing with children's issues).</p> <p>Better possibilities of raising children's issues in consultations and planning of children's general care.</p>	<p>Lack of experience of staff in asylum issues.</p> <p>Possible negative staff attitudes towards asylum seekers.</p> <p>'Bottlenecks' over integrating asylum-seeking children in these services because of insufficient resources.</p>
Specialized facilities for unaccompanied asylum-seeking children	<p>Ability to provide specific expertise on asylum issues.</p> <p>Children may have more influence: they can make their opinions heard about the services provided.</p>	<p>Team feeling of being 'sidelined'. Tendency to consider these services as temporary.</p> <p>Perception of unaccompanied children as 'different'. Risk of receiving a lower standard of care than other children.</p> <p>Staff unqualified in child care and child protection.</p>

Source: Based on Free (2005), section 4.4.1.

When considering both the best interests of the migrant children concerned and the financial cost of the care provisions provided for them, the debate on the most appropriate reception model for unaccompanied and separated children becomes urgent. A coherent solution would seem to be a flexible mixed model foreseeing different possible solutions and adapted responses after carrying out a

fully individualized assessment of the specific needs of every child. But again, it is not clear that the relevant European authorities at national, regional and local levels will have the will to assume this task.

(i) A good example of a mixed reception model but only for unaccompanied asylum-seeking children: the United Kingdom

In spite of the UK's reservation to the Convention on the Rights of the Child (CRC) excluding the application of this international legal instrument to alien children,¹³ its national legislation grants a high degree of protection to all unaccompanied children seeking asylum. Once the asylum application has been registered, a child should immediately be referred to the social services of the corresponding municipality, where a global assessment of his or her needs should be carried out. As a result, a personalized care plan should be drawn up. The UK regulations establish two different levels of protection: the first consists of simple assistance and the second provides more holistic protection.¹⁴ Based on an important court decision in 2003,¹⁵ it is considered that when children have no parent or guardian, they should be placed in state care, unless a needs assessment suggests that another response would be more appropriate.¹⁶ In such cases, taking into account the views of the child concerned, the local authority might decide that the child is able to look after him/herself and, therefore, decide simply to support or help with accommodation, education, and so on.¹⁷

There are three kinds of residential facilities in the UK: residential centres (either general or specializing in the reception of unaccompanied asylum seekers); semi-independent resources (guest houses or shared flats); and, finally, foster care. Although the local social services try to give priority to foster-care placements, families are not always available and willing to receive unaccompanied asylum-seeking children. Children are often placed in a reception centre, which could be either mainstream or specialized. In some cases, local social services delegate responsibility for the reception to a private agency, which usually accommodates the children in a 'bed and breakfast' or a shared flat. In recent years, some local authorities have placed unaccompanied children in private accommodation in

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13. United Kingdom of Great Britain and Northern Ireland reservation upon ratification of the Convention on the Rights of the Child: 'The United Kingdom reserves the right to apply such legislation, in so far as 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 to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.' (http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm)
 14. These two standards of protection are defined in sections 17 and 20 of the United Kingdom Children's Act of 1989.
 15. We refer to the so-called Hillingdon Judgment: *EWHC 2075 (admin) in the High Court of Justice, Queen's Bench Division, the Administrative Court: The Queen on the application of Helen Berhe, Yorsmame Kidane, Wahdat Munir, Albertina Ncube vs The London Borough of Hillingdon*, September 29th 2003.
 16. Local Authority Circular LAC (2003) 13.
 17. Local Authority Circular LAC (2003) 13.

municipalities far from their area. When a child living in this situation had a problem, the designated social worker was hundreds of kilometres away (Stanley, 2001, pp. 51–52). Fortunately, this bad practice now seems to be disappearing (ADSS, 2005).

(ii) An example of bad practice in the specialized reception of migrant children: Catalonia (Spain)

In Spain, the autonomous communities (former regions) are allowed to run their social services as well as child protection services. Most Spanish autonomous communities have created a combination of specialist and mainstream facilities either for the first reception phase or for longer periods. This is the case in Andalusia, where separated and unaccompanied children are normally first placed in a facility dedicated to migrant children and then integrated into a mainstream facility a few months later. In the Madrid region, the system works the other way round: the children are first placed in a clearing facility for all children in need and then progressively accommodated in specialized residential centres.

Catalonia, on the other hand, has created a parallel network of reception facilities for the exclusive accommodation of unaccompanied migrant children, excluding most of them from mainstream facilities. The regional Ombudsman points out that the Catalan system was created some years ago as a response to the immediate reception of a growing number of unaccompanied children (mostly from Morocco). According to the same source, however, the system was designed to solve an emergency situation but has now evolved into some complex and negative practices that are not suitable for the situation of migrant children (see Síndic de Greuges de Catalunya, 2006, p. 28). Only a small number of unaccompanied children have access to ‘ordinary’ reception centres for all children in need and most of them spend their nights in accommodation hostels (*centros de noche*) and move to other facilities during the day. As these facilities are overloaded, many children end up in the street or move to another region (pp. 24–25).

Unlike the Belgian example, where the creation of a specific system aims to provide a better and more tailored response to the patterns and characteristics of child migrants,¹⁸ the ‘parallel’ Catalan system seeks to segregate migrant children¹⁹ and to put pressure on them to abandon the reception facilities. Some authors have criticized the Catalan protection authorities (Dirección General de Atención a la Infancia y a la Adolescencia) for applying continuous pressure on migrant children: the threat of forced return, isolation from urban centres and no educational or training plans are common occurrences in Catalonia.²⁰

18. See Van Zeebroeck (2007) for an extensive description and analysis.

19. *Comunicado sobre los centros discriminados para menores no acompañados en Cataluña*, press release from Colectiu DRARI pels Drets de l’Infant, 29 September 2008.

20. There is an extensive analysis of the Catalan specific protection system for unaccompanied children in Empez and Galea (2007).

A good example of this policy of institutional pressure on unaccompanied children is a recent leaflet addressed to Moroccans and informing them of the conditions of the Catalonia-Maghreb Programme aimed at the return of migrant children to a new reception centre in the Tangier region. A paragraph in the leaflet reads:

During the time you are spending here [in Catalonia], without a clear future, without residence documents, without a job, your partners are working every day in Morocco to make it a better country ... Now you realize that Europe is not the paradise everybody had described and you had dreamed of; as you now know what happens on the other side of Gibraltar, and you don't like it, you should not be ashamed of returning ... Because of all this, because of your loneliness, and all the moments you are missing with your people, out of respect for your dream of a better life for you and your family, we have created the Catalonia-Maghreb Programme.²¹

While voluntary return might be a best-interest, durable solution in certain individual cases, the gaps and shortcomings in the Catalan reception system for migrant children – combined with this aggressive, marketing-style awareness that promises a better life once the child is back in Morocco – could be interpreted more as a political subterfuge to reduce the flow of migrant children (as most of the susceptible Spanish regions are trying to do in different ways) than a real policy to promote respect for these children's interests.

IDENTIFYING AND SECURING A DURABLE SOLUTION

The United Nations Committee on the Rights of the Child stresses that:

the ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.²²

Such efforts should be initiated and implemented in a timely manner without delay. The United Nations High Commissioner for Refugees (UNHCR) (2008) proposes that a durable solution should be identified for a separated child within two years.

Unfortunately, in most European countries separated children are denied a timely resolution to their irregular circumstances and there is no formal determination of their best interests, except in some cases through the asylum process. Not all separated children will meet the strict criteria to qualify for

21. See the leaflet *Explicació del Programa Catalunya Magrib i el seu context als joves marroquins*, Generalitat de Catalunya, Departament d'Acció Social i Ciutadania. Translation by present authors (<http://www.catalunyamagrib.cat/contingut.html>).

22. See CRC General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6, 1 September 2005), para. 79.

refugee status and many are not even considered for that process. In reality, many separated children are merely tolerated until they turn 18, at which time they are threatened with deportation or forced to lead an irregular existence.

In order to prevent such negative outcomes, it must be recognized that every separated child has the right to a timely decision in line with their best interests, which will secure their long-term stability, safety and welfare. As children temporarily or permanently deprived of their family environment, separated children are entitled to special protection and assistance provided by the state (CRC, article 20). Such protection and assistance should include equitable treatment and care as well as an independent, professional guardian who should ensure that the child's best interests are a primary consideration in identifying a durable solution.

Durable solutions may include family reunification in the host country or abroad, voluntary assisted repatriation to the country of origin, the granting of long-term residency in the host country or resettlement to a third country. The process of identifying a durable solution usually starts with family tracing and a comprehensive assessment that will form the basis of a formal best interests determination (BID). This is an essential step in identifying and securing a durable solution for a separated child. UNHCR (2006) defines a BID as:

a formal process with specific procedural safeguards and documentation requirements that is conducted for a separated child whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the Convention on the Rights of the Child and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of the child.

A durable solution should secure the long-term safety and welfare of the child concerned. Good practice models suggest that a BID panel should be set up, including appropriate expertise such as the child's guardian, legal representative, child welfare officer or social worker and psychologist. UNHCR (2007) proposes that a report and assessment should be carried out by a specialist in child protection, community services or child welfare and presented to this multidisciplinary panel, which should consider each child on a case-by-case basis and determine his or her best interests.

The Committee on the Rights of the Child also provides authoritative guidance on this point:

At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial

assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age- and gender-sensitive interviewing techniques.²³

Although the Committee on the Rights of the Child and UNHCR provide some guidance on how a formal BID should be carried out and which factors should be taken into consideration, it is also recognized that decision-makers need to balance the competing rights of the child in such circumstances. In practice, however, this does not seem to be the case across Europe.

(i) The lack of examples of good practice in Europe

As noted above, in most European countries there is no formal BID in place which prioritizes the child's welfare and also seeks to resolve other issues that affect his or her long-term safety, stability and development – such as immigration status.

Although some models of regularization do exist in countries such as Italy and Spain, these measures are rarely implemented in practice. In Italy, for example, regulations provide that all unaccompanied migrant children under the care of the protection services are entitled to a residence permit (*permesso di soggiorno per minore età*). Even though this documentation should be granted automatically once a child has been located and integrated in the care system, very few children actually receive the permit and become documented.²⁴ In Spain, the Aliens Act considers as legal the residence of foreign children under the protection of a regional public institution and decrees a delay of nine months to document the child with a residence permit. In practice, however, the formalities involved in applying for this document rarely start before the term of nine months (in some cases, even later or never), causing considerable delays in obtaining the documentation.²⁵ Moreover, a residence permit is not granted until it has been proven that it is impossible to return a child to the country of origin. In most other European countries, regularization depends exclusively on the resolution of the asylum application of the child concerned.

Another particular concern is that states create forced return policies regarding unaccompanied and separated children that tend to undermine other protection measures. This is the case in Belgium, in Italy and again in Spain, where the government has recently signed bilateral agreements with Morocco, Romania

23. See CRC General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6, 1 September 2005), paras 19–20.

24. According to statistics of 15 April 2005 provided by the Comitato Minori Stranieri (the public body that censuses unaccompanied and separated children in Italy), only 20 per cent of the children under the care of the Italian social services were documented with a residence permit at that date.

25. Delays lasting up to 20–25 months have been denounced. See para. 58, *Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in conformity with resolution 2003/46 of the Commission on Human Rights: Addendum. Visit to Spain*, United Nations Commission on Human Rights, 60th session (E/CN.4/2004/76/Add.2, 14 January 2004).

and Senegal and reportedly may decide to return children to specialized centres in Morocco whether or not their families have been traced.²⁶

(ii) A good example of BID outside Europe: Special Juvenile Immigrant Status in the United States of America²⁷

As there are few examples in Europe, it is interesting to note the model from the USA, which could be considered and adapted by European countries. With the Immigration Act of 1990, the US Congress created the Special Immigrant Juvenile Status (SIJS). Since then, it has been possible for some separated children and youths to apply for SIJS and subsequently to become legal permanent residents and even US citizens.

The child, a caseworker or an attorney can complete the application for SIJS, which should be submitted to the Immigration and Naturalization Service (INS). The child must complete INS forms, undergo a special medical examination and provide fingerprints, a photograph and proof of age. Individuals who apply for SIJS must be under 21 years of age, unmarried and under the jurisdiction of a juvenile court. This means that the child is either in dependency (foster care), delinquency (probation), probate or another state juvenile court.

The INS regulation on SIJS defines 'deemed eligible for long-term foster care' to mean that the court has found that family reunification is not a viable option and, usually, the child will go on to foster care, adoption or guardianship. Additionally, there must be a determination reached through administrative or judicial proceedings that it would not be in the child's best interests to be returned to their home country. There is a fee for the application process, but a fee waiver is possible.

If an individual applies for this status and is successful, they may remain in the USA, work legally, qualify for in-state tuition at college, and in five years apply for US citizenship. If the application is denied, however, the child may eventually be deported.

CONCLUSION

When we examine the diverse range of responses to the needs of separated and unaccompanied children across Europe, it is clear that the situation is continually

26. *Migration News Sheet*, May 2008. For further details on the Spanish policy of forced returns, see Chapter 8 of the present volume.

27. As defined in the legislation: 'An immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.' A serious negative aspect of this status is that if the family is subsequently traced, they are barred from joining a child who has been granted SIJS in the USA.

evolving and that a better response is required. Trends, legislation, policies and practices continue to change across the continent, yet it is difficult to collect even the most basic data and attempts to harmonize the different protection systems do not seem to be making much progress. The guidance from the Committee on the Rights of the Child is valuable and outlines important safeguards and standards that should be implemented in order to realize the rights of all separated and unaccompanied children. While some progress has been made at national level based on that guidance, it may be time for the EU to consider strengthening its legal framework to clarify minimum standards in this field for the reception and care of separated and unaccompanied migrant children (Save the Children, 2007).

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The international protection of unaccompanied and separated migrant and asylum-seeking children in Europe

Ruth Farrugia and Kristina Touzenis

Human rights protection for migrants remains much less developed than the international refugee protection system and no international institution yet has a protection mandate comparable to that of the United Nations High Commissioner for Refugees (UNHCR). Migrants nonetheless have rights under two sets of international instruments: first, the core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the provisions of which apply universally and thus protect migrants; and second, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the International Labour Organization (ILO) Conventions that apply specifically to migrants, and to migrant workers in particular. Migrant children are therefore able, in the international legal framework, to avail themselves only of the protection of the Convention on the Rights of the Child (CRC) and, in limited cases, of the ICRMW. In Europe, children may also avail themselves of the protection of the European Convention on Human Rights.

This chapter offers a comprehensive critical examination of existing international and regional legislation concerning unaccompanied children in migration movements, analysing – from a child-focused point of view – to what extent, if at all, the protection offered is adequate, as follows:

- the background to the international provisions protecting children in migration movements;
- the framework provided by the CRC and its implementation;
- a focus on both child migrants and child refugees;
- the international rules regarding asylum for unaccompanied children;
- the rules in regional instruments;

- a special focus on the European Convention on Human Rights and case law from the European Court of Human Rights;
- treatment of the problem of unaccompanied minors in current European Union (EU) legislation; and
- an evaluation of the protection offered.

DEFINITION

In general terms, all immigration and asylum-related EU legal instruments affirm that Member States 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. ‘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 Member States 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.

The definition includes minors who are left unaccompanied after they have entered the territory of the Member State.

The terms ‘immigrant’, ‘refugee’ and ‘migrant’ give rise to conceptions of ‘others’ as fundamentally different, and serve the interests designed to promote and protect the interests and privilege of ‘not other’. This is clear from the extensive literature on the subject (Goulbourne, 1991; Nairn, 1997). While official policy may declare, for example, that ‘the child is a child first and an asylum seeker second’, the notion of ‘child’ is mediated through the notion of ‘alien’ and this may have a bearing on the treatment the child receives. In this way, the child who is defined as an alien is not quite a child, so that notions of innocence and vulnerability attributed to children generally do not apply. Similarly, this child would not be entitled to the same considerations of care and protection – and may be subject to the same hardships and procedural requirements imposed by immigration controls – as those experienced by adults (Jones, 2001).

INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS

(i) The Convention on the Rights of the Child (CRC)

All Member States of the EU are parties to the 1989 CRC and are bound by the following articles:

Article 2.1. 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.

Article 2.2. 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.

Article 2 of the CRC thus emphasizes that all the rights in the Convention must apply to all children in the state, including visitors, refugees, children of migrant workers and those in the state irregularly. The Committee on the Rights of the Child has on several occasions raised the issue of 'alien' children and pointed out that the Convention accords them equal rights:

The Committee notes that all children who have had their asylum requests rejected but remain in the country have had their rights to health care and education provided de facto but not de jure. It is the view of the Committee that such services should be provided as a matter of principle according to the letter and spirit of articles 2 and 3 of the Convention (Norway Immigrant Refugee Community Organization [IRCO], Add. 23, para. 12).

The enjoyment of the rights stipulated in the CRC is therefore not limited to children who are citizens of a State Party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.¹

Article 3.1. 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 principle of the child's best interests, derived from article 3 of the CRC, is the second core principle applicable in all policies, also those concerning non-national children. This principle, also combined with article 12 (below), clearly recognizes that the child is an agent and has rights. The Committee on the Rights of the Child has highlighted article 3.1 and stresses that the best interests of the child shall be a primary consideration in all actions concerning children, as one of the general principles of the CRC, alongside articles 2, 6 (life and development) and 12 (participation). Interpretations of the best interests of children cannot trump or override any of the other rights guaranteed by other articles in the Convention. For example, it cannot be interpreted as being in the best interests of the child not to receive adequate health care – in other words, the best interests principle should not go against the rights guaranteed by the Convention.

1. CRC General Comment No. 6 (CRC/GC/2005/6, 1 September 2005), para. 12.

The concept acquires particular significance in situations where other, more specific, provisions of the Convention do not apply. Article 3.1 emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies (UNICEF, 2002, p. 39). The second and third paragraphs of article 3 are also of great significance: article 3.2² outlines an active overall obligation of states, ensuring the necessary protection and care for the child's well-being in all circumstances, while respecting the rights and duties of parents; article 3.3³ is concerned with standards of competence in the services responsible for the care or protection of children.

The Committee on the Rights of the Child has not as yet attempted to propose criteria in a specific General Comment by which the best interests of the child should be judged in general or in relation to particular circumstances, apart from emphasizing that the general values and principles of the Convention should be applied to the context in question. But the Committee has mentioned the best interests principle in the context of migration in its General Comment No. 6 on unaccompanied children.⁴ The Committee has repeatedly stressed that the Convention should be considered as a whole and has emphasized its interrelationships, in particular between those articles it has elevated to the status of general principles (articles 2, 3, 6 and 12) (UNICEF, 2002, p. 42). Thus, the principles of non-discrimination, maximum survival and development, together with respect for the views of the child, must all be relevant when determining what are the child's best interests in a particular situation, as well as when determining the best interests of children as a group. The consideration of best interests must embrace both short- and long-term considerations for the child. Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings

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2. 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.'
 3. 'States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'
 4. Para. 20: 'Determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques.'

Para. 83: 'Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best interests-based balancing test has decided against return, the obligations under article 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein.'

of his or her own and the child as the subject of civil and political rights as well as special protections (p. 42).

Where the phrase 'best interests' is used elsewhere in the Convention, the focus is on deciding appropriate action for individual children in particular circumstances and requires determination of the best interests of individual children. In such situations, the child's interests are the paramount consideration, for example as stated explicitly in relation to adoption in article 21 (UNICEF, 2002, p. 39). It is especially important to keep in mind that return and family reunification or placement in an institution without access to work will not always be in the best interests of the child, even if traditional perceptions of what is 'good' and 'bad' for children may lead to this belief. In this context, the guarantee of respect for another right – the right to participation – is clearly important. It is vital to listen to the migrant child in order to respect the best interests principle.

Article 9.1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10.1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Every child has the right to be cared for by her or his parents (article 7). According to article 10, 'applications made by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner'.⁵ In reality, family reunification is not easy and unaccompanied minors are left exposed to the uncertainties and danger of abuse created by their particular situation. When reunification is impossible or pending, and alternative care solutions for an unaccompanied minor are required, 'due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background', in accordance with article 20.3.⁶

It is important that children experience a continuity, that their development is not interrupted or obstructed and that even while decisions regarding status are pending, they are not left in limbo where their rights are not respected. Naturally, for unaccompanied children without care, placement with a family within the child's own community is preferable and care arrangements must leave open the possibility of family reunion. In the case of refugee children, efforts should be made to place the child with a relative or a family from the refugee community before an adoption by a non-relative or a non-refugee family is considered.⁷ Obviously, a case-by-case assessment is necessary. This consideration is also valid for migrant children when repatriation is not an option (which it will not be if it is not in the best interests of the child).

Article 10 of the CRC is concerned with rights to family reunification of children who are, or whose parents are, involved in entering or leaving a country, and with tracing of family members and the right to remain in contact with family. The families primarily affected by article 10 are so-called 'economic migrants' and refugees, although it should be noted that the children of refugee parents, or the parents of child refugees, may seek entry for the purposes of family reunification rather than asylum. While family unity is a fundamental principle of the Convention, the wording of article 10 is notably weaker than that of article 9⁸ in

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5. Article 10 states that State Parties shall respect the right of the child and her or his parents to leave any country, including their own, and to enter their own country. Thus there is no right to *enter any country other than one's own*. *The CRC does not attempt to extend the right to family reunification to a right to enter for family members, which remains at the discretion of each state.*
 6. 'A child temporarily or permanently deprived of her or his family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.'
 7. UNHCR (1999), Guideline 6, detention of persons under 18 years of age.
 8. '1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the

so far as the right to family reunification is not expressly guaranteed (even though article 10 makes an express reference to article 9.1). This is a good example of a case where the child's best interests would clearly be the primary consideration in determining what should happen to the child. The article does not directly address the right of children or their parents to 'remain' for the purposes of family reunification, taking into consideration the whole question of the deportation of parents. By implication, however, as a deported parent would immediately be in a position to wish to re-enter the country, these cases can be assumed to be covered by this article as well as by article 9 (p. 146), although in such cases, regional and country-specific rules would probably be brought into play.

Article 12.1. 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.

The theme of 'participation' runs throughout the CRC. In one way or another, nearly every article concerns some aspect of children's participation in society. Participation may take many forms, such as social participation in family life (articles 9 and 10) and community life (articles 15 and 17) and the participation of those with special needs, such as disabled children (article 23) (UNHCR, 1999, Ch. 2). As the Convention is read as a whole, and articles 3 and 12 are considered together, it is clear that what is in the child's best interests also depends on the child's opinion, although the two may not always coincide. In the Convention, the child is given a much greater role in deciding his or her fate when compared with a more traditional approach (Van Bueren, 1995, p. 47).

Children have opinions and are able to discuss them with adults. When adults give children's opinions due weight, according to the child's age and maturity, then, according to the CRC, the children are participating in the decision-making process. Children evolve and – depending on their maturity and understanding – young people are able to make some of their own decisions. Even though these choices are usually subject to the approval of parents, the right of adolescents to decide what is in their own best interests shows that participation is a continuum: with an increase in age and maturity comes an increase in control over one's life (UNHCR, 1999, Ch. 2).

This is recognized in CRC article 5, which incorporates respect for the child's evolving capacities, which should be respected and taken into consideration in actions concerning the child. Article 12.1 requires states to ensure that any child capable of forming a view has the right to express it freely in all relevant

detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the state) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

matters and that the child's views are given due weight in accordance with age and maturity; while article 12.2 specifically provides the child with the opportunity to be heard in any judicial and administrative proceedings that affect the child. This covers a very wide range of court hearings and also formal decision-making that affects the child in, for example, education, health, planning, the environment and so on (UNICEF, 2002, p. 159). The child must be regarded as an active subject of rights and a key purpose of the Convention is to emphasize that human rights extend to children.

Despite the widespread acknowledgement of the child's right to participate and the recognition that this participation is a key pillar in the maintenance of children's rights, there appears to be a lack of willingness to place the child's right to participate at the heart of policy development. It is likely that, by involving children in the development of services, the results will be more relevant and workable than if their views were excluded.

Article 22.1. 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 in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

The basic needs and rights of young refugees are no different from those of young people living within their own countries and communities. The CRC applies to refugee children and children seeking asylum. The circumstances in which young refugees find themselves are particularly hazardous (Crisp, 1996, p. 3). It is therefore necessary to consider these children's particular needs, as is done in article 22. When the underlying principle of the Convention that 'child refugees are children first and refugees second' (Nykanen, 2001, p. 319) is truly respected, the CRC offers good protection for the child refugee. Moreover, article 22's second paragraph ensures that unaccompanied minors are entitled to special protection and assistance provided by the state – or rather, they are entitled to the same protection as other children entitled to this assistance.

Article 22 must be read in conjunction with article 9 (separation from parents only when necessary in the best interests of the child), article 10 (rights to family reunification, to be dealt with in a positive, humane and expeditious manner), article 20 (protection of children without families), article 37 (prohibition of torture and ill-treatment; deprivation of liberty a measure of last resort) and article 39 (recovery and reintegration after experience of armed conflict, torture and other forms of abuse). It should also relate to the *UNHCR Guidelines*, notably the 1994 *Refugee Children: Guidelines on Protection and Care*, and take into consideration the *Inter-agency Guiding Principles on Unaccompanied and Separated Children*

from 2004⁹ and the Separated Children in Europe Programme's Statement of Good Practice (UNICEF, 2002, p. 306).

Article 37. States Parties shall ensure that: ... (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; ...

Children in detention suffer violations of their basic rights. The conditions under which they live are frequently deplorable and inhumane, including a lack of basic medical care, while physical abuse is common and may include sexual abuse (UNICEF, 2004). Much of the research findings from detention centres has focused on the fact that these centres are usually poorly equipped to house children. There have been reports of suicides, violence, a lack of schooling and time outside of the centre, and overcrowding. Other problems for children in detention are the lack of information given to them about their cases, the long period they can be kept in detention, the lack of access to immigration centres for outreach groups or service-providers, separation from family members and a lack of training and understanding of children's needs on the part of the centres' staff (Farrow, 2007, pp. 6–8).

It must be remembered that the core principles of the child's best interests, participation and non-discrimination, evolving capacities and right to development also apply to migrant children. Here only the most relevant provisions for migrant children have been examined, including the core principles of the CRC. It is, however, important to stress that migrant children's protection under the CRC would equal any protection under the CRC and thus provisions not mentioned below also apply to migrant children. Rights such as the right to freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, privacy, and access to information are all extremely important, even if not treated in detail here. Freedom of association is often overlooked and denied to children who work. Even if associating may often help to prevent abuse in such situations, it has not been deemed 'appropriate' that children form unions. The right to freedom of religion (also in the field of education) is clearly important for child migrants who find themselves in a country with different beliefs.

9. ICRC, UNHCR, UNICEF, World Vision International, Save the Children UK and International Rescue Committee.

(ii) Migrant children and work

Statistics on irregular migration are few and unreliable in view of the clandestine nature of migration channels, but major flows invariably include children, including some who become unaccompanied or separated from close family during the migratory process. In Spain, almost 1,400 unaccompanied and separated migrant children were taken in by the Andalusia Administration in southern Spain between January and October 2005. In Mexico, over 4,000 unaccompanied children were returned to their countries of origin in 2005 alone, most of them to Guatemala. The return procedures do not include the necessary safeguards to guarantee the security and well-being of these children (UN, 2007, p. 202).

The fact that children do migrate as workers should be accorded recognition within the framework of article 32 of the CRC, in conformity with article 10 of the ICESCR, which states that children and young persons should be protected from economic and social exploitation. CRC article 32 establishes that:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Thus article 32 recognizes that work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, should be prevented. This is a holistic approach that acknowledges that the exploitation of children interferes with all aspects of their development. The fact that States Parties are required to take legislative, administrative, social and educational measures to ensure the implementation of the article is a continuation of this broad approach, which recognizes that legislative measures alone are not enough, as in many situations child exploitation is the result of a lack of education and lack of opportunities. A specific requirement that States Parties combat the economic and social causes of exploitation would have been welcome. Article 32 regards it as a right for children to be protected against economic exploitation, while the following articles, somewhat inconsistently, place the duty on the state to protect the child against any exploitation without incorporating the terminology of rights (Van Bueren, 1995, p. 262).

Paragraph 1 of article 32 stipulates that the child must be protected from performing any work that is likely to 'interfere with the child's education'. In its

2003 recommendations on economic exploitation,¹⁰ the Committee on the Rights of the Child highlighted the interconnection between the right to education, guaranteed by CRC article 28, and exploitation in child labour. In addition, article 28 requires states to: 'Take measures to encourage regular attendance at schools and the reduction of drop-out rates' – for example, by introducing more relevant curricula or providing grants to poor families. The Worst Forms of Child Labour Convention, 1999 (No. 182) notes the importance of free basic education in its Preamble and requires ratifying states to ensure access to free basic education for all children, removed from the worst forms of child labour (UNICEF, 2002, p. 489).

A minimum age and the regulation of hours and conditions of employment are especially crucial. The fact that article 32 does not provide details of the content of these regulations is a weakness.¹¹ Such detailed regulations should be enacted and enforced for all minors who find themselves on the labour market – in this context, it should be borne in mind that young people in Europe also work before they turn 18, which is acceptable as long as the conditions are duly regulated.

ILO Convention 138 establishes that states should set a minimum age for employment or work that should be no lower than the age of compulsory schooling and in any case not lower than 15 years.¹² Further, the Convention protects children from any type of employment or work which by its nature, or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons until they are 18 years old (ILO Convention 138, article 3). This is subject to the qualification that the competent authority may, after consultation with the organizations of employers and workers concerned (where they exist), authorize employment or work as from 16 years of age on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant activity. These provisions are extremely important for migrant children, who in many cases have a specific economic project. Being allowed to work – and not just being seen as dependent children – is of the utmost importance for many of them, and for their protection.

Further, article 7 of ILO Convention 138 determines that national laws or regulations may permit the employment or work of persons 13 to 15 years of age

10. <http://www.unhchr.ch/html/menu2/6/crc/doc/days/exploit.pdf>

11. The details are to be found in ILO Recommendation No. 146, para. 12, which recommends that the conditions under which those under the age of 18 are employed should be maintained at a satisfactory standard and supervised closely. However, the Recommendation does not specify the exact number of hours permissible. It does recommend that the hours be strictly limited both on a daily and a weekly basis. Such limitations are obviously valid for all children. But the provisions still leave much too broad a margin of appreciation.

12. Article 2.4 allows for an initial minimum age of 14 for states with an insufficiently developed economy. And see article 2.5: 'Each member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the constitution of the International Labour Organization a statement: (a) That its reason for doing so subsists; or (b) That it renounces its right to avail itself of the provisions in question as from a stated date.'

on light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work that meets these requirements.¹³

The exclusions of protection for States Parties with a weak economy – which can exclude the application of the Convention to entire branches of activity – leave a worrying discretion to the state (article 5). This means that the exclusions must be read in connection with the protection of the CRC in order to have a beneficial effect. Thus the fact needs to be addressed that children tend to be concentrated in the lowest-status and worst-paid employment and are often injured in workplace accidents (Van Bueren, 1995, p. 269). Such work is quite clearly not in the child's best interests even if the child has a desire to work. Work needs to be controlled and secure and to leave space and time for education and play. Stricter and more precise rules are essential if child workers are to benefit from the protection that is their right.

If child migrants work in the same controlled conditions as nationals, when the latter have strictly controlled hours and conditions and a minimum age for admission, article 32 is respected. Rigorous controls are clearly needed and it is especially important that the principle of non-discrimination is applied. It is, however, equally clear that children's right to be children should be promoted, including the possibility of growing up with their families without needing to go abroad to 'seek their fortune' and thus running the risk of ending up in exploitation and misery. It should also be emphasized that children's right to work should not take priority over other rights, and that national children's rights must be protected in this regard. Work must never turn into exploitation and the level of what would constitute exploitation of a child is clearly lower than what would constitute exploitation of an adult. Many types of work would be acceptable for an adult but not for a child, such as work in factories among heavy machinery. It should finally be emphasized that the right to work, and the respect for the wish for economic gain that lies behind a migration project, will be conditional upon the child's age. It must be quite clear that a minor of 16 can work in controlled circumstances, with limited hours, whereas a child of 12 or 14 would be in a different situation altogether. Here again, the underlying principles of articles 3 and 6 come into play.

Article 32, perhaps more than other articles in the CRC, should be read in conjunction with article 31 on the right to leisure, play and culture. Children's right to play is sometimes referred to as the 'forgotten right', perhaps because adults tend to see it as a luxury rather than a necessity of life, and because children

13. In these cases, a member which has availed itself of the provisions of paragraph 4 of article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this article (article 7.4).

always find ways and means of playing, even in the worst circumstances. But play is also an essential part of development and children who are unable to play, for whatever reason, may lack important social and personal skills (UNICEF, 2002, p. 465).

The right to rest and leisure encompasses more than simply having enough time to sleep at night. Articles 29 and 32 need to be balanced so that children who need/want to work can do so but still receive an education. Article 31 is necessary as a reminder that, in addition, children need some space for themselves between work and education (article 16, the right to privacy, also addresses this need). Article 31 is especially, but by no means exclusively, relevant to children who fall outside the protection of the ILO Conventions on Child Labour. For example, children in domestic service or working in non-hazardous occupations with their families may be exempted, yet millions of children across the world work long hours in conditions of near slavery as domestic workers, and many more are forced by their family circumstances to work in family enterprises without adequate rest or education throughout most of their childhood (UNICEF, 2002, p. 467). Such less-visible work can be more hazardous to children as its invisible nature makes it easier for abuse to go unchecked, and more difficult for the state machinery such as police or labour inspectors to gain access to private premises (NGO Group, 2002).

It should not be forgotten either that children have the right to free association. This means the right to form unions. Such a right faces many challenges in being recognized and conciliated with the view, in many destination countries, that childhood should be strictly separated from a work environment. This is not the reality, however (not even in the case of national children), and furthermore the right to free association is not restricted to the work context but may be extended to organizations such as guiding or scouting.

As shown above, work in protected and controlled circumstances may be better for the child than a misunderstood overprotection. However, children who have tried to obtain influence not just as children but as working children, and who obtain the right to work in dignity, have met with resistance. It should be recognized that these children see work as an important part of participation in society and that they claim a right as active social subjects (Liebel, 2004, p. 29). Once again, it should be stressed that an acceptance of children working should be for their benefit and not lead to the condoning of abuse and exploitation. The fact that many migrant children work at the expense of school attendance (p. 116) is, for example, completely unacceptable.

(iii) Implementation of the CRC in relation to migrant children

In theory the entire CRC (as well as many provisions in the ICCPR and ICESCR) is valid for migrant children regardless of their legal status. In practice the situation is different and discrimination, both *de facto* and *de jure*, prevents children from enjoying their most basic rights. The fact that the CRC is always valid for children

is not enough to satisfy the specific needs of migrant children. It would have been preferable if a specific article had addressed this group of children, obviously underlining the need to apply the entire Convention to migrant children, as an especially vulnerable group. The fact that special protection is required is emphasized by the fact that even if the ICCPR and most of the ICESCR apply to all, specific instruments regarding migrants have been created, demonstrating the need for special attention and protection of this group. Particular attention to migrant children within the CRC would therefore have been preferable.

The CRC is extremely important for migrant children: both its underlying fundamental principles and its specific articles grant them fairly comprehensive protection. Of equal importance are the ILO Conventions and the ICRMW. But the ICCPR, ICESCR and the other core conventions of human rights also cover child migrants. It is crucial to take into consideration the fact that children continue their growth and development both during the process of determination of their legal status and during the period that they reside in the country of destination.

Legal obligations under the CRC are both negative and positive in nature, requiring states not only to refrain from measures infringing children's rights but also to take measures to ensure the enjoyment of these rights without discrimination. This implies that states should take active measures in the protection of all children. It is important that children's special needs are respected at all times. It is equally important that children are treated with respect and dignity because their character is formed during this period when they are particularly vulnerable. It is also crucial that child migration projects and goals are respected – and that it is not denied that children may benefit from working in a safe environment with respect to their rights. It is, lastly, of the utmost importance that both these children's vulnerability and their independence and resourcefulness are taken into consideration when protection is planned. It is not easy to ensure adequate protection, which requires a careful balance of these considerations. Child migrants are children first and migrants second.

The discussion must never move from exclusive 'protection' to exclusive 'resourcefulness'. It should never be forgotten that many migrant children face severe exploitation and abuse at the hands of foster families, employers and criminals, both during their journey and upon arrival. It should also be remembered that even if children have a migration project and leave on their own as independent migrants, separation from their families puts them at added risk and may in itself cause severe traumas. All too often, migrant children end up in the worst forms of child labour or in exploitative situations. An example comes from part of a story told in *Voices of Child Migrants* (Migration DRC, 2005):

I migrated to the city with a relative. It was a sudden decision, taken on a whim. I was tired of rural life which was tedious and joyless. When I reached Dhaka I was afraid. I regretted leaving home. I began to cry and wished to go back. My relative explained that it was not possible for her to take me back right away or even in the immediate future. She had a job and she could not leave at will. I was stuck. At the beginning I stayed with my relative.

Subsequently, I started to roam the streets. I soon got involved with bad activities. I once wandered into an unknown area in Dhaka where I came across a few child sex workers. I joined the group and engaged in sex work. I also carried drugs like heroin. Initially, I did not get any work. I used to steal. I have given up stealing now. I lead a risky life. There is no way I can now return to my parents. So I have decided to stay on.

This is doubtless why in most cases children choose to remain with their families when their economic situation allows it.

It is a grave mistake to talk in terms only of 'strong and resourceful migrant children' or of 'vulnerable migrant children'. It must be acknowledged that these children are both. Children's rights need to be safeguarded; this means that children must be kept safe from harm, such as violence, abuse or injury and lack of health protection. This is basic and essential protection, though the context may vary according to the child's age, wishes and development.

It should also be stressed that protecting child migrants requires an all-encompassing protection and respect for children in general. This means adequate laws regarding the labour market, education, health, social security, birth registration, discrimination, and so on, as well as adequate laws and implementation in the countries of origin, transit and destination alike.

However, the enforceability of the CRC remains limited, mainly because of the lack of enforcement at the international level and, frequently, at the domestic level because of the reservations entered by a number of states on its ratification. The focus of international agreements in respect of children has been to attempt to introduce a 'global language' on children's rights and to provide an opportunity for countries to develop a commitment to these rights beyond national interests and cultural boundaries (Kent, 1995). In spite of its limitations, however, the language of children's rights has produced important international agreements which provide a framework for domestic policy and legislation and serve as a basis for litigation in the European Court of Human Rights (Jones, 2001).

(iv) The European Convention on Human Rights

The European Convention on Human Rights (ECHR) is the major binding human rights instrument valid in the EU (and beyond – the ECHR is valid for the Council of Europe states). This grants some protection to child migrants, although it has been argued that nowhere is protection as weak as in the area of immigration law relating to children and family life (Van Bueren, 2007, p. 123; Mole, 2007). Article 8¹⁴ on family life may be especially relevant in cases when an unaccom-

14. '1. Everyone has the right to respect for his private life and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the public health or morals, or for the protection of the rights and freedoms of others.'

panied child (refugee or migrant) can be reunited with family members within the EU.

This is, however, obstructed by the very narrow definition of family in the EU Directive on Family Reunification, as examined in the following section.¹⁵ In cases concerning relations between children and their parents under article 8¹⁶ of the ECHR, the European Court of Human Rights leaves a rather wide margin of appreciation to states, reflecting differences in the views regarding the proper position of children within the family in Europe (Nykanen, 2001, p. 325). The European Court has appeared to develop what has been termed a 'restrictive' approach in its determination of respect for family life within the context of developing family life and immigration (Lambert, 1999, p. 427). While *Keegan vs Ireland* recognized a family relationship between a father and child after one meeting,¹⁷ in *Gul vs Switzerland* a similar relationship was not accorded similar recognition.¹⁸ Whether such genuine ties exist is determined, *inter alia*, by the nature of the family relationship invoked by the applicant; for married couples and children born from that marriage, and for other close family relationships, they are assumed unless their absence is evident or proven (Van Dijk and Van Hoof, 1998, pp. 506–07). It appears that persons with Geneva Convention refugee status or a humanitarian residence permit stand a better chance of winning their article 8 case than other immigrants (Van Steijn and Ferschtman, 2001).

In *Nsona vs the Netherlands*,¹⁹ another such case from 1996, the Court made no reference to the best interests of the child, even if the return from a Member State to the country of origin could be criticized (Nykanen, 2001, p. 327). This is most unfortunate as it leads to the conclusion that the Court does not take into particular consideration the child's best interest in refugee/immigration cases and leaves Member States with an extreme margin of appreciation. However in other cases, such as *Abdulaziz, Cabales and Balkandali vs the United Kingdom*, the Court stated that 'the exclusion of a person from a state where members of his family were living might raise issues under article 8'.²⁰ Such an approach may be attributable to the Court's statement that a balance had to be struck between the interests of the individual and those of the community as a whole.²¹ It would obviously be welcome if the Court took a consistent approach to the issue – preferably one that

15. To date there have been no cases before the European Court of Human Rights regarding the narrow definition in the Directive.

16. *Al-Nashif vs Bulgaria* 50963/99, 20 June 2002, confirmed the right to family reunion for a resident even when under accusation of terrorist activity – this may lead to the hope that article 8 will be interpreted in favour of refugee children even when the family tie is not that of a nuclear family. However, the two situations are obviously quite different and the hope remains linked only to the interpretation of a wide protection of this right. This hope is not consistently sustained by case law such as the *Nsona* case (note 19) – contrary to *Cabales and Balkandali* (note 20).

17. *Keegan vs Ireland*, Judgment of the European Court of Human Rights, 26 May 1994.

18. *Gul vs Switzerland*, Judgment of the European Court of Human Rights, 19 February 1996.

19. Application No. 23366/94 *Francine Nsona and Bata Nsona vs the Netherlands*.

20. *Abdulaziz, Cabales and Balkandali vs the United Kingdom*, Judgment of 28 May 1985, Appl. No. 9214/80; 9473/81; 9474/81.

21. *Ahmut vs the Netherlands*, Judgment of 28 November 1996.

focuses on the best interest of the child and includes the child's participation and evolving capacities.

Probably the most important protection within the ECHR is under article 3,²² which first of all protects children from ill-treatment in the Member States – that is upon arrival, pending decisions on their admission or return, and once admitted into a state. Further, article 3 may protect children from return in cases where doubt exists that return is safe.²³ The protection in article 3 may be broader than that in article 33²⁴ of the Refugee Convention as article 3 protection is not conditional upon the person's behaviour and the eventual ill-treatment is not dependent upon the person's civil or political status – in other words, the conditions in the Refugee Convention do not apply. Thus article 3 may grant protection to children who have particular difficulty in establishing that eventual ill-treatment is conditional upon their status, as discussed above.

For a child to be protected by article 3, the ill-treatment must attain a minimum level of severity. This threshold is thus higher than the protection granted by article 33 of the Refugee Convention, which applies when the person may be

22. 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

23. In the *Soering* case (*Soering vs the United Kingdom 1989*), for example, where the Court declared: 'The decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that state under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.'

And in *Chahal vs the United Kingdom 1996*, where the Court pronounced: 'Article 3 enshrines one of the most fundamental values of democratic society. The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the State. The prohibition provided by Article 3 against ill-treatment is equally absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another state, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion. In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration. The protection afforded by Article 3 is thus wider than that provided by Articles 32 and 33 of the United Nations 1951 Convention on the Status of Refugees.'

These principles have also been affirmed several times in *Cruz Varas vs Sweden 1991*, when the Court extended the principles to cases of expulsion and not only extradition (paras 69–70); and in the case *Viljarajah and others vs the United Kingdom 1991*, likewise regarding expulsion.

24. On non-*refoulement*: a person cannot be sent back to a place where they are in danger of persecution in accordance with the definition in the Refugee Convention, article 1.

in ‘danger’ in the context of the definition of persecution in article 1A, whereas article 3 of the ECHR applies to ill-treatment, torture and the death penalty.

The assessment of the level of severity is relative, however, and depends on all the circumstances of the case such as the duration, the effects of the treatment and the gender, age and state of health of the victim.²⁵ The assessment is objective and does not include the subjective element of ‘fear of persecution’, which is problematic for children in the Refugee Convention. The protection will depend on how the circumstances are evaluated and how high a threshold is set for ill-treatment. If the level of proof is high, it may be difficult for children to meet these requirements, especially if the risk of ill-treatment is required to be individual (Nykanen, 2001, p. 341). The final protection of child refugees under article 3 of the ECHR thus depends on how strictly the provision is interpreted. Previous decisions (*supra*) indicate that there is room for taking account of the special situation of the child. Personal characteristics such as age of the victim may, according to the Court itself, be taken into account. If the principle established in *Ireland vs the United Kingdom*²⁶ is followed, it seems obvious that the age of the child will be a determining factor, thus lowering the threshold considerably.

In the Chalal case (see note 23 above), the general human rights situation in the country of origin was accorded significant weight;²⁷ this also leads to the conclusion that the application of article 3 to child asylum seekers can be more effective than the Refugee Convention, thus solving the problem of the subjective element of fear. However, even if the Court shows itself willing to use this potential safety net to fill the protection gap that the Refugee Convention leaves open when it comes to children, it cannot grant asylum and will leave children in a legal limbo (Nykanen, 2001, p. 345). In that case, it is crucial that some form of subsidiary protection, which allows a long-term settlement – and even more importantly, constant protection of the child’s rights – is put in place (see also the Tabitha case mentioned in detail below).

The cases considered here mainly concern the return of refugee children, but article 3 will obviously also apply to cases where there is a risk of violation of the said article upon the return of migrant children – this is one reason why article 3 protection is so strong (see note 23 above on the Soering case, for example, which does not concern a refugee but established the principle of non-return in cases of risk of violation in general).

Furthermore, article 14 of the ECHR may be of relevance.²⁸ This article is not to be considered alone – it is always considered in conjunction with one of the rights in the Convention, according to its wording. Thus there can never be a violation of article 14 considered in isolation but there may be a violation of

25. *Ireland vs the United Kingdom* 1978, Series A, No. 25 2 EHRR 25, para. 162.

26. *Ireland vs the United Kingdom* 1978, Series A, No. 25 2 EHRR 25, para. 162.

27. *Chalal vs the United Kingdom*, paras 98–107.

28. ‘The enjoyment of the rights set forth in this Convention shall be secured without discrimination on any ground such as race, sex, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’

article 14 considered together with another article of the Convention in cases where there would not be a violation of this latter taken alone (Ovey and White, 2002, p. 349). This means that there may be a violation of article 14 in cases where there has been discrimination in trial, even where article 6 alone is not violated. This is important when cases are decided or appealed. There may also be a violation of article 14 taken together with article 8 even when article 8 alone is not violated. This is likewise important for refugee and immigrant children.

THE MAIN EU DIRECTIVES ON ASYLUM AND THEIR IMPACT ON UNACCOMPANIED MINORS

Current EU legislation focuses less on prevention and exploitation and more on security and prevention of irregular migration. The EU's approach is based on the 1997 Council Resolution on Unaccompanied Minors and, in principle, on the non-binding EU Charter of Fundamental Rights. Furthermore, the ECHR is obviously a binding instrument as under article 6, paragraph 2, of the Treaty on the European Union, the EU must respect fundamental rights in whatever action it takes in accordance with its competencies (Douglas-Scott, 2004, p. 37). In this way, the Charter of Fundamental Rights may be deemed to express fundamental rights guaranteed by general principles of law including one specific, although unfortunately not justiciable (i.e. capable of being decided by a court), article directed at the rights of the child.²⁹

Although these instruments provide some protection, they are an inadequate reflection of the principles of the CRC. Developing EU legislation does not sufficiently incorporate the principle of the 'best interests' of the child throughout all texts. References to other core articles 2 and 12 within the ECHR are likewise missing. Whenever there is a reference to the principle of the child's best interest, it often stands alone with no guidelines on how to implement it; it is too vague and left to the Member States' discretion as to how to apply it; and it frequently seems difficult to reconcile the principle with the general rules.

29. Article 24 of the Charter of Fundamental Rights of the European Union, 2000: '1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.'

(i) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (the Reception Directive)³⁰

In 2003 the European Commission introduced a Directive laying down the minimum standards for the reception of asylum seekers in the EU. According to article 2(h):

'unaccompanied minors' shall mean persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the territory of Member States.

The Directive includes provisions on children and unaccompanied minors where the best interests of the child are upheld and may be particularly relevant for young unaccompanied minor asylum seekers who have not had a decision while they are under 18. The Directive also sets out the specific measures necessary for housing, family tracing and representation of unaccompanied minors.

Article 10 sets out obligations for the schooling and education of minors so that Member States shall grant to minor children of asylum seekers, and to asylum seekers who are minors, access to the education system under similar conditions as nationals of the host Member State. Furthermore, access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents, although this period may be extended to one year where specific education is provided in order to facilitate access to the education system.

Minors are specifically dealt with under article 18.1, which states that the best interests of the child 'shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.' Article 19.1 requires Member States 'as soon as possible [to] take measures 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 ...'

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers although, 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 are expected to be kept to a minimum. Member States, protecting the unaccompanied minor's best interests, shall

30. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *Official Journal of the European Union*, 6.2.2003, L 31/18 (http://ec.europa.eu/commission_barroso/frattini/archive/DIR_2003_9_EC.pdf).

endeavour to trace the members of his or her family as soon as possible (articles 14.3 and 19).

Those working with unaccompanied minors are expected to have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work (article 19.4).

(ii) The establishment of which country is responsible for examining an asylum claim (Dublin II Regulation 343/2003)

Despite EU efforts to harmonize asylum systems across Europe, there is still a great disparity among the procedures, protections and resources available in different EU Member States, which has impacted on the implementation of the Dublin II Regulation. For example, there are cases documented where several EU Member States and Norway have refused to return children to Greece because of concerns regarding the returned applicants' access to a fair asylum procedure as well as the inadequate care provisions for unaccompanied minors.³¹

Article 12 of the Dublin Regulation specifies that where the decision to entrust the care of an unaccompanied minor to a relative other than the mother, father or legal guardian is likely to cause particular difficulties, particularly where the adult concerned resides outside the jurisdiction of the Member State in which the minor has applied for asylum, cooperation between the competent authorities, in particular the authorities or courts responsible for the protection of minors, shall be facilitated and necessary steps taken to ensure that those authorities can decide, with full knowledge of the facts, on the ability of the adult(s) concerned to take charge of the minor in a way which serves his or her best interests.

(iii) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Qualification Directive)³²

Under article 2, 'Unaccompanied minors' means third country nationals or stateless persons below the age of 18 who arrive on the territory of the EU Member States unaccompanied by an adult responsible for them whether by law or custom,

31. All cases cited in this section are courtesy of Save the Children, Separated Children in Europe Programme (2006).

32. Council Directive 2004/83/EC of 29 April 2004. Interinstitutional File: 2001/0270 (CNS). Importantly, Member States are encouraged to maintain better or more favourable conditions. However, in EU law a so-called 'non-regression' clause is traditionally included in Directives. This means that if a country's existing system provides more or a higher level of protection/service than the common EU standards, that country is prohibited from reducing its national standards to the EU base line. This clause is missing from all the EU asylum harmonization legislation.

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. According to article 20.5 of the Directive, ‘The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.’

In terms of education, article 27.1 of the Directive ensures that Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals. This is obviously positive for refugee and protected children who have their status determined, but *all* such minors ought to be given access to at least compulsory education in accordance with international obligations under the CRC.

Article 30 imposes a duty to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organization responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order. It also requires that the Member State protects and acts in the best interests of the child, as far as possible keeping siblings together and tracing close relatives of a child as soon as possible. States are bound to ensure that the minor’s needs are duly met in the implementation of the Directive by the appointed guardian or representative, with the appropriate authorities required to make regular assessments.

Under the same article 30, there is also a positive duty of Member States to ensure that unaccompanied minors are placed either with adult relatives; or with a foster family; or in centres specialized in accommodation for minors; or 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.

(iv) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the Procedures Directive)³³

According to the Directive, Member States are expected to ‘lay down’ specific procedural guarantees for unaccompanied minors on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.

Article 15 provides guarantees for unaccompanied minors, declaring that with respect to all procedures, Member States shall as soon as possible take measures to ensure that a representative is appointed to represent and/or assist the unaccompanied minor with respect to the examination of the application. The state is also expected to ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare for it. The

33. On minimum standards on procedures in Member States for granting and withdrawing refugee status, see: Council of The European Union Brussels, 9 November 2004. Interinstitutional File: 2000/0238 (CNS) 14203/04.

representative shall be allowed to be present at that interview and to ask questions or make comments (article 17.1(a) and (b)).

The Directive applies for specific rules relating to instances where an asylum application is made by an unaccompanied minor, with article 17.6 providing that the best interests of the child shall be a primary consideration for Member States implementing this article.

EU POLICY ON UNACCOMPANIED MINORS

(i) Council Resolution 97/C 221/03 on Unaccompanied Minors who are Nationals of Third Countries

Although some EU action has been taken in specific policy areas, such as child sexual exploitation, this is undermined by the fact that the legal bases in the EU treaties for action in relation to children are relatively limited. A specific reference is provided at present by article 29 of the 1997 Amsterdam Treaty, but this only covers offences against children.³⁴

Recent years have seen growing interest in the development of a clear legal basis for children's rights within the EU Treaties. While article 24 of the EU Charter of Fundamental Rights represents a considerable step forward, it is weaker in several respects than the text of the CRC. Although the Charter is not legally binding, the European Commission has clarified that it intends to consider it in respect to its own actions. The fact that the 'best interests' principle, based on article 3 of the CRC, is referred to in places in the texts of all EU legislation on asylum perhaps reflects this commitment.³⁵

In relation to unaccompanied children in particular, there has only been one EU text that has wholly concentrated on issues concerning them – the EU Council Resolution 97/C 221/03 of 26 June 1997 on Unaccompanied Minors who are Nationals of Third Countries.³⁶ Although it has no binding force, the Resolution is seen as an influential reference point for the development of subsequent EU legislation as part of the Common European Asylum System (CEAS).

Council Resolution 97/C 221/03 establishes that Member States may, in accordance with their national legislation and practice, refuse admission at the frontier to unaccompanied minors, in particular if they are without the required documentation and authorizations (article 2.1). In this connection, Member States should take appropriate measures, in accordance with their national legislation, to prevent the unauthorized entry of unaccompanied minors and should cooperate to prevent illegal entry and illegal residence of unaccompanied minors on their territory (article 2.2). This demonstrates fairly clearly the focus of European

34. Article 29 sets out that an area of freedom, security and justice is to be created by 'preventing and combating crime, organised or otherwise, in particular ... trafficking in persons and offences against children'.

35. Antonio Vitorino, Commissioner for Justice and Home Affairs, speech at a seminar on 'Children Affected by Armed Conflict and Forced Displacement', Norrköping, Sweden, 2 March 2001.

36. *Official Journal C* 221, 19/07/97.

migration legislation: illegal entrance and illegal residence. It is in conformity with the principle, already emphasized, that states have a right to determine who they want on their territory and who they do not want. This is also reflected in the ICRMW,³⁷ which, while being the main instrument protecting migrants, does not include a right to enter any territory other than the one where the person is a national. Nonetheless, it is contrary to the principles of the *UNHCR Guidelines on Unaccompanied Children* (UNHCR, 1997), and the spirit of protection granted to all children in the CRC, as these would require unaccompanied minors to be allowed into the territory and granted at least temporary protection until a permanent solution (which may include return) can be found.

Importantly, Resolution 97/C 221/03 establishes that children are entitled to the necessary protection and basic care, irrespective of their irregular or regular status (article 3.2). Minimum guarantees are established for all unaccompanied minors (article 3) and Member States should provide as soon as possible for the necessary representation of the minor by legal guardianship or representation by a (national) organization which is responsible for the care and well-being of the minor, or other appropriate representation (article 3.4). This should be read as opening up for non-governmental representatives, which can be an external guarantee that minors' rights are effectively protected in the period pending a decision and that the child's best interests are at all times taken into consideration. 'Other appropriate representation' is an unfortunate phrase, however, as only a legal guardian – or at least a legal adviser – can properly represent a minor. Where a guardian is appointed for an unaccompanied minor, the guardian should ensure, in accordance with national law, that the minor's needs are duly met (article 3.5).³⁸ Furthermore, unaccompanied minors should receive appropriate medical treatment to meet their immediate needs.

As with other EU instruments concerning children, the standards set out in the Resolution, although they have some positive aspects, are relatively weak overall. While the Resolution represents an important political commitment by Member States to recognizing the rights of unaccompanied minors, it has also to some extent undermined the practical implementation of high-quality standards. For instance, it indicates that states may refuse unaccompanied minors (also referred to as separated children) leave to enter EU territory without authorized documentation, whereas the 1997 *UNHCR Guidelines* argue the reverse, recognizing that identity papers may have been lost, forged or destroyed – or may never have existed in the first place.

Similarly, the *Guidelines* state that it is particularly important that children seeking asylum (and especially separated children) are not kept in detention (para. 7.6), in accordance with both CRC article 37 and CRC General Comment No. 6 (paras 61–63), but the Resolution makes no such commitment. And whereas

37. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm).

38. Article 3.5 lists legal, social, medical or psychological needs which should be interpreted broadly.

the Resolution correctly identifies the need for unaccompanied minors to be represented as soon as possible after arrival, the method and specific responsibilities (scope of work) is left to individual Member States (Ruxton, 2003).

(ii) Children strategy

The EU's obligation to respect fundamental rights, including children's rights, implies a general duty not only to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the treaties through mainstreaming.³⁹ The latest proposal is to develop a coherent EU policy on the protection of the rights of the child.⁴⁰ This strategy started with the issuance of a Communication to the Council and the European Parliament on the protection of the rights of the child in 2006.

The strategy touched upon a number of areas, including asylum and immigration. The Commission declared its intention to undertake a number of initiatives, including the evaluation of the implementation of instruments of the CEAS, with particular attention given to the situation of minors and unaccompanied minors, with a view to ensuring full protection of their interests and, if necessary, preparing proposals for amending the existing legislation.

(iii) The Return Directive

In June 2008 the Directive on the Return of Illegal Immigrants was approved at first reading by the European Parliament. Purporting to be a step towards a European immigration policy, it was aimed mainly at encouraging the voluntary return of illegal immigrants but it also laid down minimum standards for their treatment.

Under the text as finally adopted, where a decision is taken to deport an individual, a two-step approach must be followed: the deportation decision is immediately followed by a voluntary departure period, limited to between seven and thirty days. Then, if the deportee does not leave, a removal order will be issued. If the removal order is issued by a judicial authority which believes the individual in question might abscond, the person can be placed in custody. At present, detainees can be held indefinitely in some Member States but the Directive lays down a maximum period of custody of six months, which can be extended by a further twelve months in certain cases.

A re-entry ban for a maximum of five years will apply where the person is deported after the voluntary return period has expired, or longer if the individual

39. Communication from the European Commission, COM(2006) 367 final.

40. Vice-President Frattini has initiated a Children Strategy on the basis of a comprehensive overview of the Commission's actions on the protection of children. The finance programmes ERF, INT and ARGO could also emphasize the protection of minors in their respective work programmes.

represents a serious threat to public safety. However, Member States retain the right to waive, cancel or suspend such bans.⁴¹

The Directive also states that children and families must not be subject to coercive measures and can only be held in custody as a last resort. Unaccompanied minors may only be deported if they can be returned to their family or to ‘adequate reception facilities’ in the state to which they are sent.

According to article 5, when implementing this Directive, Member States shall take due account of: (a) the best interest of the child; (b) family life; (c) the state of health of the third country national concerned; and shall also respect the principle of *non-refoulement*. Formerly the article also stated: ‘They shall also take account of the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child.’

Article 10 prohibits the removal of an unaccompanied minor as long as there is no assurance that he or 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:

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration given to the best interest of the child;
2. Before removing an unaccompanied minor from its territory, the authorities of the Member State shall be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

This may impact negatively on children returned to third countries (not necessarily their country of origin), even where they have no parent or guardian there, as long as there are ‘adequate reception facilities’ as the Directive provides no further definition of this term.

Originally, article 8 [postponement] had specified:

Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the specific circumstances of the individual case and Member States shall postpone the execution of a removal order in the following circumstances, for as long as those circumstances prevail.⁴²

Finally, article 17 confirms that children are to be allocated suitable residential facilities and shall only be detained ‘as a measure of last resort and for the shortest appropriate period of time’. A number of non-governmental organizations

41. The UK and Ireland are not affected by the Directive because they have opted out of it.

42. Could this be in reaction to the Tabitha judgment?

(NGOs)⁴³ have severely criticized this inclusion as it is felt that families with children and unaccompanied children may be detained as a measure of last resort even if for the shortest possible period. Save the Children, for example, emphasizes that, as a general rule, children should not be held in detention for administrative reasons.⁴⁴ Moreover, the Directive fails to ensure that such families – or even unaccompanied children – have access to legal assistance for any review of their detention order. In exceptional circumstances, the Directive allows for a detention period of up to eighteen months, which could be considered excessive and disproportionate.

Perhaps the greatest concern is that the Directive permits Member States to deny all these safeguards, *inter alia*, to:

third country nationals who have been apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.

Unaccompanied children frequently arrive in the EU via irregular routes and indeed have sometimes been trafficked into the EU without regular documents.

(iv) The Family Reunification Directive

The Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification states that, in accordance with the CRC, unaccompanied children should be provided with all the social services and legal protections available to children in the host country who are not in the care of their parents (CRC, article 22.2). Every effort must be made to place children in foster families or groups of similar ethnic, cultural, linguistic, and religious background (article 20.3).

Once children have been separated from their families, in whatever way, they will sooner or later need to be – as far as possible, and as long as it is in their best interest – reunited with their families. In the European context, this means considering that separated children seeking asylum or otherwise present in a European country sometimes have family member(s) in other European Member States (SCEP, 2004) who can take care of them. Reunification is by no means a simple task, especially as one fundamental right – the right to a name and registration at birth (CRC, article 7) – is often neglected, making identification and thus reunification extremely difficult. This shows yet again the necessity of a holistic, all-inclusive approach to the protection of children if any effective respect for their rights is to be realized.

43. Headed by the European Network of Children's Ombudsmen (ENOC) (<http://www.ombudsnet.org>).

44. Europe – Criticism of Proposed Directive, 22 July 2008 (<http://www.ombudsnet.org/resources/infoDetail.asp?ID=17721&flag=news>).

The Family Reunification Directive establishes in article 10.3 that if the refugee is an unaccompanied minor, the Member States:

- (a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line ...;
- (b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

The Directive thus continues the narrow definition of the family unit found in the Dublin II Regulation, restricting it to parents and siblings. This fails to appreciate the cultural importance of the extended family within some communities and the harsh realities of life for many unaccompanied children, some of whose parents may be dead, missing or imprisoned. It also leaves issues relating to unmarried partners and their children, and of ascending relatives and adult children, to the discretion of Member States. The formulation in article 10.3(b), in particular the phrase ‘may authorise’, leaves a wide and unfortunate degree of discretion to Member States.

It is important to note that the notion of extended family is much more common outside Europe, and that in many countries, as a result of factors such as conflict and AIDS, children are often brought up by families who are not their own (Ruxton, 2003, p. 58).

Article 3.1 states that the Directive applies to a third country national who resides lawfully in a Member State, holding a residence permit issued by that Member State for a period of validity of one year or more and ‘who has reasonable prospects of obtaining the right of permanent residence’. This additional condition again allows for considerable discretion by individual Member States regarding the interpretation of what constitutes ‘reasonable prospects’ and risks undermining the purpose of the Directive as a whole. As confirmed in the Preamble, family reunification creates stability for refugees and allows them to better integrate into the economic and social life of their new societies, a fundamental objective of the Community. The provision is very restrictive. Moreover, emphasizing the importance of a one-year permit undermines the principle in article 3.3 of the 1997 Resolution on Unaccompanied Minors and paragraphs 5.17⁴⁵ and 10.5⁴⁶ of

45. Tracing 5.17: ‘Tracing for parents or families is essential and should begin as soon as possible. To that end, the services of the national Red Cross or Red Crescent Societies and the International Committee of the Red Cross (ICRC) should be requested where necessary. In cases where there may be a threat to the life or integrity of a child or its close relatives, particularly if they have remained in their 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, so as to avoid jeopardising their safety.’

46. Family Tracing/Reunion 10.5: ‘Family reunion is the first priority and it is essential that unaccompanied children are assisted in locating and communicating with their family members. Advice may be sought from the ICRC Central Tracing Agency or, if need be, from the tracing services of other international institutions. Assistance from the national Red Cross and Red Crescent Societies may be required to restore such links. All attempts should be made

the 1997 *UNHCR Guidelines* that family tracing should begin as soon as possible (Ruxton, 2003, p. 58).

Member States may confine the application of Chapter V (on family reunification and refugees) to refugees whose family relationships predate their entry (Directive 2003/86/EC, article 9.2). This provision differs from the second amended Commission proposal, according to which Member States may confine the application of this chapter to refugees whose family relationships predate their refugee status. The new formulation gives Member States the possibility of excluding refugees whose family relationships were established *after* their entry from the right to family reunification.⁴⁷ The European Commission should also consider that for the purpose of the Dublin II Regulation the definition of 'family member' should be broadened to include extended family members and any other significant adult who has cared for the child (Farrugia, 2007).

In the Family Reunification Directive there are restricted rights for children aged over 15 who may have to demonstrate that they are dependent on their parents and unable to live alone or support themselves (article 4.6).⁴⁸ Further, it is disturbing that the Directive states:

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive (article 4.1).

The first problem is that this allows Member States to derogate from the principle that 'child' should be defined as up to the age of 18 years. Here there is a real danger of breaching international law. Second, subjecting children, in addition, to a vague 'integration test' that they may fear or not comprehend is not likely to represent a 'humane' approach (Ruxton, 2003, p. 58). The European Parliament challenged this Directive at the European Court of Justice, which, however, did not find that there were reasons to consider the Directive contrary to international obligations.⁴⁹

This is incompatible with the provisions of the ECHR article 8 on the right to family life and the CRC article 1 on the age of majority. Article 9 of the CRC enshrines the child's right to live with their parents unless incompatible with

to reunite the child with his/her family or other person to whom the child is close, when the best interests of the child would be met by such a reunion. When family reunion takes place the family may have been separated for a long period of time. They must therefore be given time and support to re-establish family relationships.'

47. European Council on Refugees and Exiles (ECRE) information note

(<http://www.ombudnet.org/resources/infoDetail.asp?ID=17721&flag=news>).

48. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorize the entry and residence of such children on grounds other than family reunification.

49. Judgment of the Court of Justice in Case C-540/03.

their best interests and the child's right to maintain contact with both parents if separated from them. As seen above, article 10 goes on to establish the right to family reunification, and stresses that applications must be dealt with in a 'positive, humane, and expeditious manner'. The Directive clearly has serious problems in living up to these standards. The *UNHCR Guidelines* similarly emphasize that every effort should be made to reunite a child with their parents in another asylum country at an early stage and before status determination takes place – something that the Directive does not try to guarantee. It would clearly have been preferable if the best interest of the child and child participation had been given a more prominent place within these rules. Although the principle is mentioned in article 5.5 of the Directive, it is not a current theme and the rules do not seem to be guided by this principle.

(v) The EU Charter of Fundamental Rights

The inclusion of children's rights in the Charter of Fundamental Rights agreed upon at the Nice Summit in 2000 may indicate that the EU is now more focused on children's rights. Article 24 on the rights of the child (Chapter III: Equality) reads:

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.⁵⁰

While the Charter is not binding, it may be seen as a hope for a more child-focused policy.

A further problem in the EU is that immigration has often been linked with crime by various governments and/or politicians. The automatic assumption that a migrant is a criminal has done nothing to improve migrants' human rights. This image is reinforced by the fact that clandestine migration is very pronounced in the Mediterranean area.⁵¹ There seems to be no political will to open up the possibilities of regular migration – on the contrary, the 'illegal' discourse is preferred, probably for various reasons: irregular workers are cheaper and the use of terms such as 'managing migration' or 'dealing with the migration problem' send a political signal that politicians are 'handling' the situation.⁵² However,

50. *Official Journal of the European Communities*, 18.12.2000, C 364/1.

51. Recommendation 1449 (2000) – Clandestine migration from the south of the Mediterranean into Europe.

52. Reasons that have been mentioned in a study of the lack of ratification of the UN Migrant Workers Convention (de Guchteneire et al., 2010).

clandestine immigrants, of whom an increasing number are women and children, live in extremely dangerous and inhumane conditions and are deprived of their fundamental social rights and human dignity.⁵³ When the EU restricts lawful migration, the measures affect those most in need of protection who are in search of practical solutions to the destitution and inequalities in their home countries.

CONCLUSION: POLICY SHORTCOMINGS

The international protection of unaccompanied and separated migrant and asylum-seeking children in Europe comes up for close scrutiny in the issue of detention, where the contradictions between immigration and children's legislation are perhaps most visible. The state has a final responsibility for the care and welfare of young unaccompanied child asylum seekers, but the problem arises when immigration officials at ports of entry believe that a young person is lying about their age. In these cases, the young person may be classed as an adult and specific procedures for children would then be considered inappropriate (Jones, 2001).

The detention of children and young people is usually carried out within a framework whose key elements are law, regulation and review. These elements are underpinned by ideas of social justice and children's rights, although they are also riddled with ideological and moral confusion and contradictions about punishment vis-à-vis welfare. The detention of children is also addressed in the CRC, article 37.

In spite of the legal reservations, children and young people who are subject to immigration controls are often denied access to some of the rights listed in these legislative and policy frameworks. This may occur principally because there is a failure to distinguish between adult and child needs within the immigration context and insufficient facilities are provided in response to the needs of child migrants. The aspiration of human rights lawyers and those concerned with child welfare is to protect and promote the rights of each individual child. For an inclusive approach to children's rights in which the rights of children and young people affected by immigration controls are safeguarded, it may, ironically, be necessary to place children's rights within a completely separate and distinct asylum system.

In the aftermath of the *Tabitha* case,⁵⁴ for example, Belgium introduced legislation to provide for the appointment of a guardian and for the minor to be taken into care. In addition, on 19 May 2006, the Cabinet approved in principle a measure intended to prohibit the detention in a closed centre of unaccompanied foreign minors arrested at the border. However, a recent publication by the

53. As recognized in article 3 of Recommendation 1449.

54. *Mubulanzila Mayeka and Kaniki Mitunga vs Belgium* (Application No. 13178/03) 12.10.2006.

International Helsinki Federation for Human Rights (IHF, 2007)⁵⁵ reported Belgian activities relating to unaccompanied minors:

The detention of accompanied and unaccompanied minors remained a pressing human rights problem. According to the statistics published by the Aliens' Office, 258 unaccompanied minors asked for asylum in the first seven months of the year.⁵⁶

The Belgian Centre for Equal Opportunities and Opposition to Racism (CECLR) has issued several statements calling on the Belgian authorities to revise the system of holding children in closed centres.⁵⁷ The situation in Belgium has changed, however, since May 2006. The entry into force of a new law has relaxed the entry conditions for unaccompanied migrant children, whether asylum seekers or not: detention has been replaced by custody in specific facilities called 'Orientation and Observation Centres'. Nevertheless, the presence in these centres is still considered as extraterritorial: if, within a maximum period of fifteen days from admission (which can be extended exceptionally for five extra days), the authorities have not proceeded to a return, the unaccompanied child must be authorized to enter Belgium.⁵⁸

While Tabitha's case was being dealt with in Strasbourg, the practice in the United Kingdom (UK), for example, was clearly heading in the opposite direction. In *Rudi vs Secretary of State for the Home Department*, the respondent stated in court:

1. Families are especially difficult to remove because different family members may make last minute claims and it is expensive and undesirable to detain families; 2. If the family is granted leave, then the parents can work to support the children whereas unaccompanied children will have to be supported by the state in any event; 3. Special policies exist for unaccompanied minors including the grant of leave until the minor's 18th birthday, and it is then easier to remove young adults than families.⁵⁹

Meanwhile, a consultation document, *Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children*, was published on 1 March 2007.⁶⁰

55. See the section on Belgium (http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=7394).

56. Office des Étrangers, statistics (www.dofi.fgov.be/fr/1024/frame.htm).

57. CECLR, 'Détention des familles en centres fermés: de l'exception à la règle?', 27 January 2006, and 'Mineurs et centres fermés: des adaptations c'est bien, des alternatives c'est mieux', 7 April 2006 (www.diversite.be). Act of 20 January 2003 reinforcing the legislation against racism published in *Moniteur belge*.

58. Articles 40 and 41 of the Law of 12 January 2007 *sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers*. Published in *Moniteur belge*, 7 May 2007.

59. Case No. CO/352/05 and CO/355/05 Neutral Citation Number: [2005] EWHC 1025 (Admin) Exclusion of unaccompanied minors from the 'family amnesty' – information note – *R (Rudi) v Secretary of State for the Home Department* (CO/2900/2005).

60. <http://ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/consultationdocument.pdf?view=Binary>

However, this disregarded any possibility of children being placed in detention, although it did detail a child's journey through the asylum system, including the possibility of return. The most recent UK policy paper, *Better Outcomes: The Way Forward. Improving the Care of Unaccompanied Asylum Seeking Children*, published in January 2008, seems to focus largely on the provision of specialist care.⁶¹

ECHR judgments set an admirable precedent for states to follow as basic minimum practice and bode well for the future, provided the interpretation is not as restrictive as has been the practice to date. The adoption of minimum standards needs to be viewed more as an opportunity to address wide anomalies in the practice of Member States with regard to unaccompanied minors (as documented in Ruxton, 2000). There should be clear national policies in relation to the factors that need to be taken into account when determining the cases of unaccompanied minors.⁶²

Problems in contemporary EU policy seem to reflect the issue of political will rather than anything else. The legislative framework is, for the greater part, in place and is strongly reinforced by judicial sanction. Reluctance on the part of Member States to put policy into practice seems to stem from a variety of factors. Popular reaction to the debate may influence the political approach. Administrative and financial setbacks are frequently cited as the reason for shortcomings. It is to be hoped that strategies for children under the auspices of the EU and the Council of Europe augur well for the future.

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61. Both documents available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closed_consultations/uasc/
62. A 1997 report by the Secretariat of Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia highlighted 'difficulties assessing the credibility of the minors' statements in the light of the minors' age and ability to express themselves ... [and] the lack of information on the plight of minors in countries of origin' (quoted in Ayotte, 2000).

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Ensuring that every separated child
is heard and protected:
the role of an independent,
professional guardian

Lise Bruun and Jyothi Kanics

This chapter outlines the need for every separated child to be appointed an independent, professional guardian as well as to be covered by the relevant international obligations, which require states to respect children's rights and provide special protection to separated children. The timely appointment of an independent, professional guardian for each separated child is an effective measure to ensure that the child's voice is heard and that all decisions ensure the child's best interests. Although various treaties and policy documents emphasize the importance of providing an independent, professional guardian for every separated child, this is a relatively new area of practice in many countries and good practice standards are currently being developed and debated. This chapter examines different guardianship models in Europe and draws conclusions as to which measures constitute good practice in this important field.

**THE NEED FOR AN INDEPENDENT, PROFESSIONAL
GUARDIAN FOR EVERY SEPARATED CHILD**

Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other forms of exploitation, or they may have travelled to Europe to escape conditions of serious deprivation (SCEP, 2004, p. 2).

Due to their particularly vulnerable situation, separated children are exposed to risks such as sexual exploitation, abuse and child labour. Other concerns that have been identified by separated children themselves include the use of detention,

discrimination, long delays over decision-making and disregard for their own best interests.

For example, when making a decision regarding a separated child, such as whether or not the child should be returned to the country of origin, it is crucial that a variety of factors are taken into consideration in order to determine which decision is really in the individual child's best interests. Such factors include the views of the child and their family, the level of integration in the host country, the availability of care arrangements for the child upon return as well as the general level of safety and security in the country of origin. In most cases, such decisions do not review and balance the necessary factors, but simply fall to one decision-maker, who is often untrained in child welfare matters and who may have different priorities altogether.

For obvious reasons, therefore, every separated child is in need of an independent, professional guardian. In order to ensure protection and guidance for separated children, not to mention acting in the best interests of the child in all matters, there is an urgent need for a guardianship system built on clear standards across Europe.

In its campaigning, Save the Children UK¹ has stressed the need for a guardian to assist separated children in order to address the following concerns:

- lack of legal responsibility;
- difficulty in accessing basic services;
- adult-orientated immigration procedures; and
- vulnerable children going missing from care.

It has been reported (*The Guardian*, 2008) that separated children in care in the Netherlands are a third less likely to go missing than their counterparts in the United Kingdom (UK) because the Dutch Government funds a private foundation, Nidos,² to provide a system of guardians and safe houses. Many of the children in the Netherlands are placed with foster parents or in monitored, semi-independent blocks. The most vulnerable children are placed in safe houses with 24-hour care. Each child is allotted a guardian, who focuses on their welfare and security.

The need for a guardian to be appointed for every separated child has also been noted by the Committee on the Rights of the Child in its Concluding Observations to European governments.³ In 2006, for example, the Committee recommended that the Irish State ensure that children:

be provided with the opportunity to be heard in any judicial and administrative proceedings affecting them, and that due weight be given to those views in accordance with the age and maturity of the child, including the use of independent representations (*guardian ad litem*) provided for

1. Presentation made in Cork (Ireland), November 2007.

2. See www.nidos.nl

3. Norway 2007: CRC/C/OPAC/NOR/CO/1; Sweden 2005: C/C/15/Add.248.

under the Child Care Act of 1991, in particular cases where children are separated from their parents.

Furthermore, the Committee on the Rights of the Child advised the Swedish Government to consider appointing a temporary guardian for each unaccompanied child within 24 hours of arrival.⁴ The timely appointment of a professional independent guardian would ideally not only ensure that the child's voice is heard in all matters affecting the child, but would also lead to a more child-friendly and accountable system in line with international obligations.

THE LEGAL AND POLICY FRAMEWORK FOR THE GUARDIANSHIP OF SEPARATED CHILDREN

An important starting point in advocating guardianship for separated children is the strong basis in international and European law, which requires states to respect children's rights and to provide special protection to separated children. According to the Convention on the Rights of the Child (CRC), separated children are entitled to special protection and assistance provided by the state as they are temporarily or permanently deprived of their family environment (article 20). Furthermore, states should respect the principle of non-discrimination, respect the views of children in accordance with their age and maturity, and ensure that their best interests are a primary consideration in all decisions that affect them.

In order for children to participate in such matters, states should provide them with relevant information and support. This is recognized in the European Convention on the Exercise of Children's Rights (Council of Europe, 1996), for example. In addition to providing free legal aid when necessary, states are urged to appoint a guardian or special representative to support a separated child and to ensure that their best interests are met.

The state's responsibility to appoint a guardian to each separated child is also provided for in other legal instruments such as the Hague Convention of 1996⁵ (article 3), the European Union (EU) Reception Directive⁶ (article 19.1), the EU Procedures Directive⁷ (article 17(a)) and the Council Resolution on Unaccompanied Minors.⁸ It is furthermore emphasized in a range of recommendations and guidelines issued by such bodies as the United Nations High Commissioner for Refugees (UNHCR), the Parliamentary Assembly

4. CRC/C/15/Add.248.

5. The Hague Convention on jurisdiction, applicable law, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, 1996.

6. Council of the European Union Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

7. Council of the European Union Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

8. Council of the European Union Resolution 97/C 221/03 on unaccompanied minors who are nationals of third countries.

of the Council of Europe⁹ and the European Network of Ombudspersons for Children.¹⁰

Thus, there is no question about states' obligations and responsibilities with regard to the appointment of a guardian in order to ensure the protection and care of separated children. Nevertheless, while a variety of legal and policy documents stress the importance of providing a guardian for every separated child, this is a relatively new area of practice and good practice standards are still being developed and debated.

UNHCR/SCEP MAPPING OF THE IMPLEMENTATION OF STANDARDS AND OBLIGATIONS

As in other fields, it is one thing to have the legal and policy framework in place and quite another to realize those commitments. All too often, recommended standards and tailored training for professionals are sorely lacking. Unfortunately, the legal provisions with respect to guardianship for separated children have not always been successfully transposed to the national level throughout Europe and in many cases remain simply words on paper.

UNHCR, in cooperation with the Separated Children in Europe Programme (SCEP), recently undertook mapping of the guardianship systems for separated children in forty-two countries across Europe. This section outlines some of the preliminary findings (Alikhan and Floor, 2007). The mapping shows that in half of the countries, guardianship systems are described as operating with professional guardians, whereas in the other half the systems operate with volunteers. Despite the fact that most countries have at least some relevant national legislation, guardians are not always appointed to all separated children, and in a number of countries separated children disappear before a guardian is appointed.

There also seems to be a profound confusion with regard to the concept of a guardian. In over half of the countries, the system is not operating with guardians but simply with legal representatives. This is in contrast to the guidance provided in the Committee on the Rights of the Child's General Comment No. 6, which clearly specifies that the provision of legal representation is additional to the appointment of a guardian. Legal representation may be necessary, particularly when the child is involved in the asylum procedure or judicial proceedings. In the countries that operate only with legal representatives, their role is usually merely to advise and represent the child in the asylum procedure and their function is generally limited to the duration of the procedure. In a few cases, these legal representatives have other additional duties and are also expected to arrange for the child's accommodation, health care and education.

9. See PACE Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum (<https://wcd.coe.int/ViewDoc.jsp?id=926477&BackColorInternet=DBDC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864>).

10. <http://www.ombudnet.org/enoc/>

In less than half of the countries, the guardian is primarily expected to ensure the child's physical and psychological well-being along with care arrangements, accommodation, health and education. In only about half of the countries, the guardians are involved in the determination of best interests. In even fewer countries do the guardians' duties include the identification of a durable solution for the child. Most alarming is the fact that only a few countries define the specific duties of guardians. Furthermore, in some countries the approach to guardianship is unclear as it is not specified whether the asylum-seeking separated children should be treated as children or simply as asylum seekers with limited rights, disregarding the non-discrimination principle of the CRC.

Concerning the required competencies of the guardians, the educational requirements are well defined for the professionals, mainly in the field of social work or law. By contrast, requirements in the voluntary systems are linked to personal attributes or character and are usually negatively defined by the criteria of what disqualifies someone from acting as a guardian. Only five countries specifically refer to the relationship between the child and the guardian.

In all except four countries, the views of the separated children and their relationship with the guardian are not generally taken into account, nor are they given much weight when guardians are appointed. It was reported that none of the countries has any formal mechanism for hearing the child's opinions either on the appointment of a guardian or on the periodic reporting and evaluation of the guardian.

In only six countries is specific training compulsory prior to taking up guardianship, and in only three countries is continued training during the guardianship compulsory. Thirteen countries have no training whatsoever.

Very few countries explicitly include monitoring and supervision in the legislation. The most common method is annual or six-monthly reporting by the guardian – with an emphasis on financial reporting. It seems that nowhere is standardized reporting in place and there is, in general, a lack of independent oversight.

Good systems are in place in a few countries, however, and good practice can be identified in a few isolated instances. But the mapping also demonstrates that the level of implementation and the standards of guardianship systems are poor in most European countries. There are widespread gaps and shortcomings – and several states have no guardian system at all for separated children.

AUTHORITATIVE GUIDANCE AND RECOMMENDATIONS FOR FUTURE PRACTICE

There is a real need for more guidance in order to interpret and fully implement the principles and standards outlined in the CRC. As noted above, the Committee on the Rights of the Child provides authoritative guidance in its General Comment No. 6. This could be taken even further by developing Good Practice Guidelines on Guardianship to ensure the protection of the best interests of all

separated children. Such guidelines must be based on four basic principles of the CRC:

- the best interests of the child as a primary consideration;
- non-discrimination;
- the right of the child to be heard and to express his or her views freely; and
- the right to life, survival and development.

An obvious starting point would be the relevant sections in General Comment No. 6. They would need to be further elaborated into more detailed guidelines and complemented by issues addressed in the SCEP Statement of Good Practice, as outlined below:

- A guardian should be appointed as soon as the separated child is identified.¹¹
- The guardian's overall responsibility should be to ensure the separated child's best interests in all matters.¹²
- Guardianship arrangements should be maintained until the child turns 18 or has permanently left the country.
- The separated child should at all times be informed and heard on arrangements with respect to the guardianship and legal representation and their opinion should be taken into consideration.
- The guardian should be consulted and informed regarding all actions taken in relation to the child and have the authority to represent the child in all planning and decision-making processes.
- The guardian should have the authority to represent the child in all efforts to search for a durable solution.
- The guardian should have the necessary expertise in the field of child care and have an understanding of the special and cultural needs of the separated child.
- The guardian should ensure that the child's legal, social, psychological and material needs are appropriately covered and that the child has appropriate care, accommodation, language support, education and health care provision.

11. In the Netherlands, for example, a guardian is appointed after the first contact has been made, which is often at Schiphol Airport when the child applies for asylum. Nidos has a guardianship team based at the airport so that children can meet with a guardian. Even though it may take weeks for the family court to appoint Nidos as guardian, in practice the relationship between the guardian and the child can begin immediately. This is important in order to identify children who are at risk of trafficking and to support age-disputed individuals. For very vulnerable children, a guardian can be appointed within 24 hours.

12. In Belgium and other countries, the guardian's legal duty is to act in the best interests of the child. UNHCR reports that determining and securing the best interests of the child is a priority for guardians in twenty-four of the countries surveyed.

- The guardian should act as a link between the child and all individuals or agencies and organizations that provide services to the child.¹³
- The guardian should advocate on behalf of the child where necessary.
- The guardian should, with the consent of the child, explore the possibility of family tracing and reunification.
- The guardian should help the child keep in touch with his or her family.
- Additional legal representation should be provided where a separated child is involved in asylum procedures or other administrative or judicial proceedings.
- The guardian should be provided with specialized training tailored to the needs and rights of separated children, and the training should be followed up regularly, including on-the-job learning and professional networks.
- The guardian should receive proper supervision and support.
- Mechanisms should be implemented for the child to express his or her views and to complain.
- Review mechanisms should be implemented to monitor the quality of the exercise of the guardianship, to ensure that the best interest of the child is being represented and also to prevent abuse.
- Non-eligibility criteria should be established for agencies and individuals, both with regard to conflict of interests as well as for child protection reasons.¹⁴

The drafting of guidelines could benefit from drawing upon the already existing systems and the good practice that has been identified. Such guidelines would be a first step, but, most important, would be targeted, follow-up advocacy efforts – not in order to ‘shame and blame’, but to present states with a useful tool and to demonstrate examples of good practice and experience from other countries that could be copied. If the responsible decision-makers and authorities can be brought to fully understand *why* proper guardianship systems should be implemented and *how* this can be done, a crucial right for separated children can be realized.

13. This is clearly the case in Finland, where the guardian links with many agencies from immigration officials and interpreters to social workers, health professionals and legal advisers.

14. UNHCR (Cork, Ireland, November 2007): ‘... guardians should not be involved in taking decisions on the child’s rights and entitlements. Instead, he/she should be able to assist the child in respect to issues of confidentiality and ensure that the best interests of the child is the guiding principle in all decisions related to the provision of the child’s care, protection and recommended solutions.’

UN Committee on the Rights of the Child: selected excerpts from General Comment No. 6

In section IV(c) the appointment of a competent guardian is seen as a key procedural safeguard to ensure the best interests of a separated child; section V(b) specifies the role and requirements of a guardian; and section VIII(a) deals with minimum requirements for training.

V(b) Appointment of a guardian or adviser and legal representative

33. States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role.
34. In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child. In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely. If such a guardian is able and willing to provide day-to-day care, but unable to adequately represent the child's best interests in all spheres and at all levels of the child's life, supplementary measures (such as the appointment of an adviser or legal representative) must be secured.
35. Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being represented throughout the decision-making process and, in particular, to prevent abuse.
36. In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.
37. At all times children should be informed of arrangements with respect to guardianship and legal representation and their opinions should be taken into consideration.

Good practice example — the Belgian model: duties of the guardian

1. To help with the asylum application when appropriate.
2. If the separated child does not apply for asylum, to help him or her to apply for another type of status such as family reunification.
3. To appoint a lawyer. While the lawyer can give specialist advice on which legal route to take, the guardian makes the final decision. The lawyer however acts on behalf of the child, so where there is a disagreement between the child and the guardian, the lawyer would act on the child's behalf.
4. To act as a guardian/legal representative in all proceedings – including to appeal negative decisions.
5. To be physically present at every hearing/interview. There should be no hearings without the guardian. If, during an interview, the authorities discover that the asylum applicant is a separated child, they legally have to stop the interview and ask the Guardianship Services to appoint a guardian, otherwise the interview cannot legally be said to have taken place.
6. To look after the child's social well-being with regard to education, mental and physical health. The guardian's relationship with the child's social worker will depend on the type of accommodation that the child is living in, but generally if the child is in accommodation with a social worker it will be the social worker who provides the day-to-day support such as taking the child to school, while the guardian will take legal decisions. If the child is living alone, the guardian will perform more of the other roles as well.
7. To find accommodation where the child is safe and feels well.
8. To respect the religion, politics and psychology of the child.
9. To assist in family tracing. While this is one of the guardian's tasks, no means is provided to undertake it. Guardians rely on the assistance of non-governmental organizations (NGOs) such as the Red Cross, which provides a tracing and messaging service with the child's consent. If the family is traced, this does not necessarily mean the child has to be returned; the child's wishes must be taken into consideration. It is up to the guardian to reach a decision on whether it is in the child's best interests to make contact with the family in the first place, and the immigration authorities ought to take the guardian's recommendations into consideration (Dermine and Van Zeebroeck, 2007).
10. To seek a durable solution for the child. Guardians make a recommendation about this based on the child's best interests and the immigration authorities take the final decision. If a decision is made to remove a child under 18, the child is informed; however, such a decision is currently not enforced until the child turns 18, at which point they can be forcibly removed.
11. To explain the decisions to the child and ensure that the child fully understands all the processes.
12. To manage the child's finances.
13. To help the child to access social benefits.
14. To provide reports on the child after the first fifteen days and thereafter every six months, which are sent to the Guardianship Services.

Source: Based on a summary prepared by Save the Children UK.

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4

Marginalized young (male) migrants in the European Union: caught between the desire for autonomy and the priorities of social protection

Nicola Mai

This chapter analyses the complexity of the needs and aspirations motivating minors and young people from Albania, Morocco and Romania to migrate and their life trajectories of inclusion/exclusion, with particular reference to their experiences of the ambivalent systems of social protection targeting them in different EU settings (France, Italy and Spain).

INTRODUCTION

This chapter draws on a number of research projects undertaken in the last ten years on specific but interconnected aspects of the independent migration of minors and young people into and within the EU. These stemmed from two main research areas, linked by a common focus on the relationship between psychological and physical mobility. The first refers to the relation between transcultural media consumption and the emergence of social mobility and migration, which was the topic of my doctoral research. I investigated these dynamics by focusing on the role played by the Italian media in the Albanian migration to Italy. The second research area refers to the negotiation of bodies and gendered identities with the survival strategies (sex work, stealing and drug smuggling) of marginal migrant groups and focused on Albanian and Romanian male and female sex workers living in Greece and Italy.¹

Within these wider research areas, I have recently directed two research projects, whose findings are summarized here. The first concerned the migration experiences of young men (including minors) from Eastern Europe (Romania and Albania), North Africa (Algeria, Morocco and Tunisia) and Turkey (South-Eastern

1. For an overview of the main findings of this research, see respectively Mai (2005) and Mai (2004).

regions) to the EU (Belgium, France, Germany, Italy, the Netherlands and Spain), with a specific focus on their survival strategies (sex work in particular) and on the risk behaviours that are consistent with these. The research lasted twenty months, from spring 2004 to the end of 2005, and was undertaken in eighteen cities, across eleven countries. The research findings are based on the analysis of ethnographic observations and of the eighty-two interviews (fifty with minors/young people, thirty-two with key informants) undertaken in the context of the research. The majority of interviewees were over 18 (18–25), but many (approximately 30 per cent) were minors.

The second research project was on the relationship between Romanian migrant children's (male and female) experiences of migration in Italy (Rome), their involvement in illegal activities and local initiatives of social intervention. The research was commissioned by Save the Children Italy, lasted ten months (from September 2005 to the end of July 2006) and was undertaken both in Rome and in Bucharest and Craiova (Romania). The findings are based on the analysis of ethnographic observations and of the 100 interviews (60 with minors/young people, 40 with key informants) that were undertaken in the context of the research.

The two main methodological tools were the ethnographic observation of the survival strategies and risk behaviours of young migrants, and the semi-structured interviews both of young migrants and of people working for the social intervention projects targeting them. The most important aspect of this methodological approach is the comparison between the way young people verbalized their life trajectories in the biographical interviews and the way these 'moralized' narratives were embodied in everyday life. The main research questions shaping both studies and therefore this chapter are the following:

- Are migrant minors and young people particularly vulnerable, with particular reference to 'trafficking' and 'criminal behaviour'?
- Are they particularly resilient 'social innovators' (Lăzăroiu and Alexandru, 2003)?
- What are the most culturally/socially/economically sustainable forms of social intervention?

I aim to answer these questions drawing on the material and experience gathered in the range of research outlined above. In order to do so, it is very important to deconstruct hegemonic victimizing paradigms and to acknowledge the existence of varying degrees of agency in young people's migratory journeys. Both studies started from the deconstruction of the victimizing paradigms that shape current research and the initiatives of social intervention targeting young migrants. In particular, the 'trafficking paradigm' – currently the prevalent way in which the mobility of migrant minors (both young men and women) is explained and addressed by EU policy – will be challenged by acknowledging the agency of the subjects involved, whenever present, and by focusing on the complexity of their needs and priorities. This is very important in the identification of socially and culturally sustainable models of social intervention. The use of the term

‘marginalized’ in the title of this chapter and throughout the text aims to underline the causal relationship between marginalization and vulnerability, whether this happens at home and/or during the migration process.

THE CONUNDRUM OF AGENCY AND VULNERABILITY IN YOUNG PEOPLE’S MIGRATION

In the last twenty years, the world’s societies have been characterized by an increasing polarization between rich and poor and by dramatic outbursts of social antagonism, conflict and war within and between nations. This has coincided with an increase in the number of minors and young people among the world’s poor and a transformation in the magnitude and quality of migratory flows, which have been characterized by a very high level of mobilization of young people, adolescents and minors, alongside women, in the imagination, enactment and management of migration and survival.

The social changes brought about by globalization and its hierarchical reordering of local regimes of subsistence, collective and social imaginaries and models of personhood have coincided with what Mercedes Jiménez Álvarez (2004) calls the ‘minorization of poverty’, meaning that ‘poverty (in the form of social exclusion, marginalization and inequality in accessing fundamental resources) is increasingly conditioned by age.’ The minorization of poverty does not only refer to the increase in the number of young people in conditions of poverty, but to the way an increasing number of young people are becoming poor because they are young, because the social roles, identities and inequalities associated with age produce a differential experience of poverty and of survival.

The minorization of poverty coincides with the minorization of survival, as more and more minors and young people have become responsible for the economic viability of the household and are subject to a process of early ‘adultization’ and ‘responsibilization’ to face the socio-economic changes shaping the environments they inhabit. Although these processes take specific forms in different countries, Jiménez Álvarez’s analysis of the Moroccan situation can be extended to Albania, Romania and other key sending contexts. These are usually marked by new forms of social exclusion characterized by:

- the devaluation of local industrial and agricultural production in the context of globalization and the process of European integration and the rise in unemployment this produces;
- the reception of the delocalization of production from European countries;
- the devaluation of the local labour force and the precarization of working conditions for adult men, which is consistent with a loss of status and authority with reference to their socio-cultural role as economic provider for the family;
- the feminization of survival (Sassen, 2002), referring to women’s increasing responsibility for securing the survival of their households in

contemporary post-industrial and globalized societies. This means that children are more likely to be left without the care of an adult, as men are often unavailable to assume that role;

- the advent of forms of exploitation of minors' labour;
- the deterioration of the education system or its inability to reach socially or geographically peripheral strata of the population;
- a legal framework that fails to protect minors; and
- the absence of an organic social policy that encourages the comprehensive protection of minors.

At the same time, the global circulation of visual and narrative accounts of individualized and successful trajectories of social inclusion in the West, through the media and returning migrants, has provided young people with new imagined migratory identities, usually in contrast with the models of youth and adulthood established in their own countries. Through the consumption of European television, Europe is associated with a utopian understanding of the West in terms of a universe of freedom and easy-to-attain material plenty. The role of the media must be read against the crisis of established figures of authority and the models of personhood they represent, coinciding with the social transformations enforcing the minorization of poverty and survival. The clash between this adolescent utopian fantasy and the dynamics of social exclusion faced at home and after arrival in Europe is a key aspect of young migrants' cultural and social vulnerability. As a result, in many of the world's 'sending societies' (in migration terms), there has been a proliferation of minors and young people in a situation of potential socio-cultural vulnerability, expelled by these socio-economic conditions into an unknown world of utopian self-realization, entitlement and pleasure.

Due to the nationality- and age-related restrictions on their access to international migration and the labour market, independent minors and young migrants can be marginalized into a potentially vulnerable social group in two main respects:

- As they sometimes (when they are undocumented) have to smuggle themselves into the countries of destination, they can contract debts with the individuals or networks providing illegal transportation services, which may employ them in exploitative activities.
- As their migration- or/and age-related (as minors) legal status often prevents them from accessing 'regular' sources of income, independent minors and young migrants can experience very powerful dynamics of social exclusion and sometimes have to rely on drug smuggling, theft and sex work to survive economically.

To these two policy-related aspects of marginalization we should add an 'endogenous' factor of vulnerability. The lack of the cultural capital and life experiences necessary to understand the complex contradictions of Western capitalist societies can produce a very utopian migratory project, often based

on an idealization of the West as a place where 'everything is possible'.² Once confronted with the reality, some minor and young migrants experience strong feelings of disappointment and turn to sex work, theft or drug smuggling as the only viable ways of sustaining their utopian life trajectories. Finally, the role of specific people, peers in particular, and livelihood possibilities encountered during the migratory journey and on arrival at the destination is also a key factor in the direction towards which minors and young people's life trajectories unfold.

However, analyses of child and youth migration that address the phenomenon only in terms of vulnerability and protection fail to understand and acknowledge the complexity of the migratory project of young people and how it is an integral part of the development of their self-identities. This is when the concept of 'liminality' becomes useful. In the research studies on which this chapter is based, the migration of minors and young people is addressed as a potentially liminal practice through which the passage to adulthood is negotiated socially. The term 'liminal' encompasses a particular kind of social experience, in which the ritual subject passes through a period of ambiguity between the roles assigned by law and custom before being reintegrated into society with an enhanced and established position. In this perspective, migration can be experienced as an informal rite of passage, an unofficially established cultural formation through which people mediate between unofficially established and alternative models of personhood. More specifically, for young people and children from the countries of origin examined here (Albania, Morocco and Romania) and from most non-Western countries in general, imagined and lived physical displacement becomes a way to meet the contradictory set of priorities and roles addressing them as adults-in-the-making in radically contradictory ways.³

More specifically, imagining and enacting migration becomes a new liminal practice that mediates between, on the one hand, the established family-based models of personhood addressing young people as subjects of sacrifice, authority and discipline and, on the other, the visual and narrative scripts of entitlement to individual self-fulfilment disseminated by the Western media and reinforced by the narratives of current or returned migrants. The emergence of migrant youth as a new social group should be seen as corresponding to the search for new rituals accommodating the passage between adolescence and adulthood during a period in which the canons surrounding these concepts are undergoing a difficult process of transformation. Thus, imagined and lived migration is a way to respond to the opportunities and predicaments posed by the globalization of Western canons of adolescent experimentation and passage to adulthood.

In this context, 'making money' emerges as a key discourse and priority for independent young migrants. Besides its obvious economic meaning, 'making money' is a discourse and an aim enabling young people to justify their desire

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2. For an analysis of the utopian salience of prospective migrants' cultural construction of Italy, see Mai (2001).
 3. For an analysis of migration as subjective rather than simply physical displacement, see Mai (2001).

to achieve psychological autonomy and upward social mobility in a context characterized by poverty and the need to survive. It is this complex interplay between survival, individualization, the aspiration to hedonistic lifestyles, adolescent attachment/detachment from the family and the transformation of models of authority that shapes the contradictory and complex needs of migrant young people. In this perspective, migration can be a way of responding to the need to negotiate detachment/autonomy from parents, contribute to the economy of the family, explore new places, have fun, have sex, make enough money to get married, show off with the peer group/neighbours and look for alternative figures of affective attachment – basically, to grow up. It is within the interplay between this complexity and the individual life trajectories of every single young migrant that the aspects of vulnerability and/or resilience of their migratory selves can be identified.

A FOCUS ON THE KEY LEGAL AND THEORETICAL CATEGORIES

Unfortunately, the legal and sociological categories currently in use to understand and intervene in the independent migration of minors and young people fail to address it in its full complexity and end up further exacerbating the initial condition of social and cultural vulnerability of young migrants.

In continental Europe, the phenomenon of so-called unaccompanied or separated children raises particular concerns. These are groups of minors leaving 'home' in search of a better future for themselves and in order to secure the economic survival of their families. Although separated children are entitled to protection as minors, and as such are catered for by social services and other projects of social intervention in all EU Member States, the way they are addressed by these initiatives does not respond to the complexity of their priorities and needs. These contradictory conditions are shared by young neo-adult migrants, who become even more vulnerable when they come of age, as they are no longer entitled to protection and face the risk of deportation.

In recent years, the introduction of relatively new categories, such as 'unaccompanied minors' or 'separated children', has been consistent with fresh research (for example, Ruxton, 2003, p. 8) that has efficiently critiqued the policies and initiatives of social interventions targeting minor migrants at national and EU levels. However, the degree of agency enjoyed by minor migrants when shaping their migratory projects and trajectories and, most importantly, when engaging in illegal activities and strategies of survival, has been left unexplored. The emphasis in current research on the vulnerability and lack of agency characterizing children's migratory experiences does not address the complexity of their needs and priorities and, therefore, hampers sustainable policies of social intervention. For example, the definition of separated children used by the Separated Children in Europe Programme (SCEP, 2004) refers to:

children under 18 years of age who are outside their country of origin and separated from both parents, or previous/legal customary primary caregiver.

Some children are totally alone, while others ... 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. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.

The problems with addressing migrant young people through the framework of separated/unaccompanied children are:

- the emphasis on asylum-seeking children (who are a majority only in Northern Europe), to the detriment of young economic migrants. In the United Kingdom (UK), for example, research on unaccompanied minors has largely focused on the experiences of asylum-seeking and refugee children (Ayotte and Williamson, 2001; Stanley, 2001), leaving the reality of child migrants unexplored;
- the absence of any reference to the search for adventure and self-realization;
- the fact that this category defines young migrants as subjects of intervention only when they are minors, which leaves their potential vulnerabilities completely unattended once they become of age; and
- the fact that vulnerability is associated with the 'separated/unaccompanied' status, whereas parents and (extended) families often 'mis-accompany' children through migration.

The points outlined above deserve further explanation, as they have many consequences for the aims of this research. As far as the first two aspects are concerned, the majority of minor migrants leave home in the name of a complex migratory project, encompassing a range of desires, priorities and necessities, such as the aspiration to create a better life for themselves, the desire to contribute to the economic improvement and well-being of their families, *and* the necessity to escape brutality and oppression, whether these are experienced in the family and/or in the wider social context. These aspects are often all present and very tightly interwoven in the minors' migratory projects and need to be addressed in their complexity.

Second, most programmes of social intervention targeting migrant youth are bound by their legal condition as minors. This often means that minors can no longer receive support, are repatriated or disappear into the category of irregular migrants when they come of age and after having been supported for years towards their social integration.

Finally, concepts such as separated or unaccompanied children (or asylum seekers in the UK) are predicated on the idea of separateness from parents or other adults (such as extended family members) as holders of parental authority in the context of emigration. However, parents often migrate with the minor, who

is registered as separated to access regularization opportunities; or they can follow the migratory process from home. In some cases the presence, rather than the absence, of exploitative parents can increase the vulnerability of the minor, who is subject to economic and psychological pressure. On the other hand, a supporting relationship with parents, whether they are physically present or separated, could be integrated as a resource within the initiatives of social intervention supporting the minor migrants' process of integration.

The Save the Children research informing this study shows how, for example, particularly with the Roma population, parents often accompany children through their migratory journeys and play a key role either in complementing the support received by social intervention or in enforcing exploitation and abuse. In these cases, the best interest of the child is served if the quality rather than the proximity of the parental relationship is the criterion used to analyse the specific mix of vulnerability and resilience characterizing each minor migrant.

Another important framework that has emerged in continental Europe (particularly in France, Italy and Spain) is that of *errance*, which can be translated as 'errant mobility'. *Errance* became a prominent category for scientific analysis and social intervention in France in the late 1990s, a time characterized by the development of a securitizing, authoritarian and policing discourse towards marginalized young people and the emergence of resisting humanitarian paradigms (Pattegay, 2001, p. 274). On the one hand, *errance* is a powerful pathologizing discourse, perceiving young people who partake in it as lacking moral and social coordinates. On the other hand, the concept allowed the identification of non-repressive and more comprehensive social interventions targeting marginalized youth at a time when the French political environment was becoming more conservative and criminalizing towards migrants (p. 269).

Overall, both the *errance* and the separated child frameworks play the 'politics of compassion' leitmotiv, which is the hegemonic strategy used to legitimize social support in current neoliberal times (Fassin, 2005; Tiktin, 2006). This hegemony of victimhood narratives is consistent with a situation in which the complex system of needs and priorities of minor migrants is addressed univocally by European initiatives of social interventions, according to the regimes of social protections in force within each European country. This leads us to address a key problematic aspect embedded in current categories of social interventions targeting migrant youth – their Eurocentrism. The condition of potential vulnerability characterizing migrant children and young people is exacerbated by the contrast between different cultural constructions of adolescence in relation to different socio-economic and cultural backgrounds. Whereas in the West adolescents are seen primarily as bearers of rights, in many other contexts (including the poor strata of EU societies) they are seen primarily as bearers of duties.

In a parallel fashion, whereas European social services and institutions address migrant children and young people mainly as vulnerable victims in need of protection, the subjects see themselves as young adults who have to provide the means of subsistence for their families left at home and for themselves. In fact,

they feel victimized by the very instruments of protection preventing them from working as a way to avoid child exploitation. As a result, many leave the institutions and programmes targeting them and decide to live on the street, which is seen as offering better ways of meeting their aspirations and priorities. Paradoxically, the street and *errance* are the only spaces of social interaction allowing them to express their contradictory aspirations to a late modern lifestyle of fun and self-realization (freedom) and the necessity to provide for their families at home (money).

The real paradox, however, is that, in most EU countries, migrant minors and young people are prevented from working (and therefore de facto marginalized) as a means of safeguarding their rights as 'children' and because they are viewed as unlawfully present. Once they reach 18, they are then released into the wider social arena or repatriated as 'adults'. The most dramatic consequence of this situation is that in many cases European welfare systems, after having misread the needs of errant young people and having invested economically and socially in them according to a Eurocentric interpretation of these needs, do not capitalize on these investments; instead, they release into social marginality and irregularity young people who could make a positive economic and social contribution to the world they inhabit.

THE NEXUS BETWEEN YOUTH MIGRATION AND CRIMINAL BEHAVIOUR

The relationship between youth migration and young migrants' involvement in criminal or irregular activities is perhaps the most interesting and relevant explanation of the interplay between the dynamics, needs and priorities outlined above. The findings of the two research projects are summarized by referring to three key moments in the development of young people's migratory projects: the imagination and planning of the project in the context of origin; the first weeks after the arrival in the country of destination; and the social positioning within the country of destination in the medium to long term.

(i) The imagination and planning of the migratory project in the context of origin

Most of the migrant young people interviewed in the context of the two research studies left their countries of origin in the name of a dream of rapid linear social and economic improvement, stimulated by the success stories of their neighbours and friends who had migrated previously and by the images of wealth disseminated by the Western media. Although the role of the consumption of Western media in the emergence of youth migration should not be underestimated, the narratives of success circulated by returning migrants are by far the most important factor stimulating the desire to migrate and fostering the vulnerability of young migrants. Unfortunately, when recounting their experiences abroad, most young returnees need to be seen and confirmed as

successful men within the communities of origin and they end up reproducing the very same utopian success story in whose name they left home. The result is that their friends, who are listening, also end up in established marginal places. As the myth of utopian self-realization reproduces itself at home, more and more young men leave while being completely unaware of, and unprepared for, the challenges awaiting them.

(ii) Arriving in the country of destination

The first days after the arrival in the initial country of destination are usually the period during which the utopian dream of rapid and linear socio-economic improvement associated with the decision to migrate comes up against the logic, priorities and opportunities of established informal markets. Many young migrants are let down by the networks of friends and relatives encouraging their migratory projects and face the regime of social exclusion enforced on them by current migration legislation in most EU countries; this prevents them from accessing the regular labour market. Confronted with these structural barriers, all interviewees tried working in the informal productive sectors traditionally available to young male migrants (notably construction and agriculture), but could not do so because of their undocumented status.

Once they arrive in the West, most young people fall into places marked by specific sets of opportunities and possibilities, which are already established places of marginality and irregular/illegal livelihoods in the countries of destination. The survival strategies offered in these places are substantially three: stealing, selling drugs and selling sex. As a 20-year-old Moroccan living in Seville put it to me while showing me his Spanish papers: 'Look at this! I'm not allowed to work because I'm registered as a minor ... but I'm allowed to have sex with other men for money, can you believe it?'

The story of a 22-year-old Romanian man living in Amsterdam is a very good example of the emergence and transformation of young men's migratory projects and their experiences of marginalization and survival once in the country of destination:

In Romania everyone goes to Italy or Spain because many people go there and come back with money. And everybody can find work there; the languages are similar, so it's easier. But it's not true. ... Many people go back to Romania and say 'come, come!' and then ... I have my cousin there and I went. I called him first, asking him to find me a job. So he told me come, come. And I said no, I come, come, but find me a job, I don't want to come there like this ... so I went there and I called him from the station and he told me I can't stay with him and the employer didn't employ me because I didn't have a work visa and I felt like they were cutting my head. He gave me 35 euros and a sandwich because I was hungry, a beer and one pack of cigarettes. He suggested I could sleep in a park or in abandoned houses. ... There were a lot of Romanians sleeping there. ... I went with them to sleep

in an abandoned house for a month. I was stealing and ... the boys there told me many *bulangiu* [Romanian for 'queer'] come here and they suck you and you get money ...

(iii) The opportunities and predicaments of exclusion: between regular and irregular activities

Although many interviewees explained their involvement in sex work or in illegal activities by referring to their exclusion from 'regular' occupations, this can only be understood if we are prepared to accept that 'irregular' activities offer many young migrants a better answer to their main needs than other 'regular' possibilities, including initiatives of social intervention. These are a positive masculine identity, opportunities for economic survival and accommodation, the provision of free food and access to a peer group with which to share their existential condition of being in between contradictory social and economic worlds. The following excerpt from an interview with a 21-year-old Albanian man living in Rome illustrates the way that theft and selling sex can be experienced in terms of agency and control over one's life:

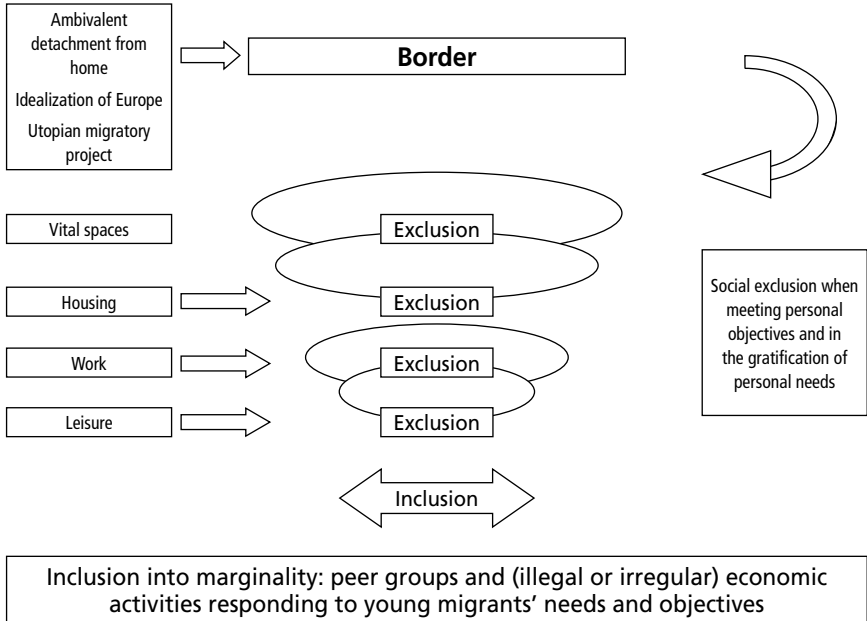
Look, this is how it is ... I don't want to work as a builder for 35 euros a day ... look at my hands ... they have to stay like this ... they're not builder's hands ... here in Rome I have to spend 600 euros in rent every week ... what can I do ... back at home I've already built the second floor ... for myself, when I go back ... I need money also for my friends and neighbours ... you know, when I go home I pretend ... I mean, I tell my friends that I'm a boss here ... they don't know anything ... they see I have money ... I've been living here since the age of 13 ... got here with my cousins and started selling drugs on their behalf ... dope ... pills, coke ... sometimes... Then they were arrested and I had to run up here to Rome ...

So how do you find the money now?

Can't you see what I'm wearing? It's all good stuff, Armani, look, look, Energie ... How the hell do I find the money for this, eh? Not working as a builder ... You know, when you live on the street you have to do a bit of everything ... sometimes rich people come here and bring you home ... sometimes you do what they want, sometimes you go there and empty their apartment ... what can you do ... they have so much money and we have nothing ...

The model in Figure 4.1, which was drawn up by Giancarlo Spagnoletto of Save the Children Italy, explains young migrants' recourse to illegal activities according to Mark Spivak's (1974) desocializing spiral theory.

Figure 4.1: Young migrants' recourse to illegal activities according to desocializing spiral theory



Source: G. Spagnoletto, Save the Children Italy, based on Spivak (1974).

At the basis of this model is the idea that the recourse to sex work and illegal behaviour enables the young male migrant to regain some control over himself, his masculine identity and the responsibility for his survival after having left the socio-cultural context of origin and a series of consecutive failures in relation to vital areas such as housing, work, care of the self, family and friends. Although young people detach themselves, while still at home, from their contexts of origin and draw up a migratory project under the pressure of socio-economic marginality, family expectations and peer competition, once they cross the border they experience an interruption of the sense of continuity and belonging to a place, a community, a specific geographic, social and cultural space and, most importantly, of meaningful affective ties.

Once in the country of destination, young migrants are marginalized by multiple dimensions of social exclusion when meeting personal objectives and in the gratification of personal needs. These are usually geared towards obtaining economic autonomy in the short term and do not include an investment in education. As Figure 4.1 shows, young migrants are thus excluded from the mainstream and included into marginality, as peer groups and illegal or irregular economic activities meet young migrants' needs and priorities better than the opportunities offered by mainstream initiatives of social intervention. In this context, engaging in sex work or criminal activities while living with groups of

peers on and off the street can be perceived as the best available source of survival. As the previous interview excerpt shows, selling sex becomes an important strategy of economic survival among a very restricted range of possibilities. These are ordered hierarchically according to the potential threat they are perceived as posing to young men's masculine honour and respectability, but also in relation to other pragmatic considerations to do with degrees of illegality.

However, these official hierarchies are interpreted by each individual according to his own proprieties and experience of the nexus between gender, sexuality and self-identification. So whereas for some young migrants, selling sex is preferable to stealing because it is not a criminal act, for others the danger of compromising one's heterosexual status and reputation takes priority. The hierarchical positioning of different strategies of survival according to the perceived level of masculine respectability is illustrated by the following excerpt from an 18-year-old Albanian man living in Rome, who occasionally sells sex:

So, what do you do for a living ...?

Well, I steal ... I do things ...

Like what?

Well, I usually pickpocket ... at the station ... at night ... I steal things in houses ...

Alone?

Well, sometimes alone, sometimes in a group ... sometimes it goes well, sometimes not ... I even ended up in jail ...

And what about this place here ... I mean going with other men for money ...?

Eh, I do it ... everybody does it ... I started doing like all the others ... for money ... it's not the kind of life that I would like doing ... but it's the life I was given and I try and live it as much as I can ...

What do you do more often, steal or sell sex?

I would rather steal and I do it more often ... I think it's better ... if you sell sex you are over, you're not a man any more ... it's better to go to jail than to become a queer ...

(iv) The tensions between economic and affective autonomy and exploitation

Across all the different contexts of the first study, the only cases of 'exploitation' encountered were those in which young men managed other young men and were morally justified in peer talk by referring to the necessity for older young men to 'tutor' younger and inexperienced 'boys'. The existence of a significant age and experience differential between the two men involved in this relationship

is crucial for its moral sustainability in the eyes of the peer group. In all cases of male-to-male subordination, the ‘tutored’ boy is a minor, usually between 14 and 16, while the ‘tutoring’ young man is between the ages of 20 and 22. In fact, this kind of relationship always ends with the – often violent – rebellion of the ‘tutored’ subject around the age of 17 or 18, when he starts seeing himself and being perceived by his peers as a ‘man’ and, as such, as unworthy of accepting any form of subordination to another man.

As far as the research undertaken for Save the Children in Rome is concerned, many interviewees stressed that young men and women (including minors) selling sex did so voluntarily, while the exploitation of minors dedicated to theft and begging was, on the contrary, relatively more common (Mai, 2008, pp. 46–51).⁴ Rather than exceptional cases, the dynamics of exploitation encountered in the context of the research represent ‘variations on a theme’ in relation to the migratory trajectories of migrant young people. These are characterized by the assumption of responsibility for the survival of their family at a very young age and by a decrease in their level of autonomy from their adult reference points. These trends must be seen as the result of a convergence of several factors: the lowering of the threshold for access to the regularization process provided by the Italian migration bill introduced in 2002, the so-called Bossi-Fini law; and the extension of the migratory phenomenon to lower age groups and different social groups (Roma) compared with a few years ago (pp. 21–22). It is within the context of these transformations and the diversification of the profiles of the migratory typologies that cases of ‘exploitation’ found within the context of the research must be identified.

Besides the more practical aspects, such as economic survival and accommodation, life in places of marginality can provide migrant young people with important affective resources, in the absence of parental and other important affective reference figures. What young migrants find in the places of marginality is a peer group that shares their existential condition of being in between the seemingly irreconcilable priorities of different economic and moral worlds, corresponding to the society of origin and the new context of emigration. This peer group provides young migrants not only with the means to survive, but also with a series of discourses and practices allowing them to feel in control of their lives and to articulate a powerful masculine identity. Most importantly, the peer group becomes a very important affective reference point, a sort of ‘street family’ providing young migrants with meaningful figures of attachment and identification. For example, the following two quotes from interviews undertaken with Romanian minors in Rome show how the street peer groups become a space where young children form important attachments, earn money and have fun, sometimes by engaging in illegal activities:

What’s the best thing you’ve done in Rome?

4. The final report of the Save the Children research (Mai, 2008) is available online (<http://www.savethechildren.it/2003/download/pubblicazioni/ODCMaiInglcorr2.pdf>).

I don't know ... But when I'm with friends, even now that I'm staying in the centre for minors, I go to see my friends in Anagnina.

You've just told me that you stole cars. Why? For money?

No, for fun. When I lived in Anagnina we went out in the evening to steal a car, to drive around and have fun. It was just to have some fun, a kid's game, a game ... But I've never stolen cars ... only twice.

Have you ever picked people's pockets in the subway or stolen cars, scooters, clothes or other things?

Yes, I stole cars, but not for money, for fun. One night we stole three, just to drive around and have fun with our friends.

And scooters?

I stole a lot of scooters, a hundred.

And what did you do with them? Did you sell them?

No. I had fun, driving around. Well, I sold some, but not for much. And then I stole lots of bicycles. I've even sent three to Romania, they were completely new.

The 'trafficking of human beings' has provoked much research and controversy and is currently a very 'hot' topic in public as well as academic debates. Many authors have attempted to distinguish outright exploitation and abuse from consensual migration and engagement in sex work (Agustín, 2004); others do not recognize this difference, thus arguing against the possibility of migrants consenting to sell sex (Kelly, 2000; Hughes, 2002). The problem with this latter perspective is that it simplifies the complexity of the choices and pressures faced by migrants according to a polarized scenario of 'villains' and 'victims', which does not explain the actual social, economic and cultural dynamics shaping the nexus between migration and the sex industry.

Current understanding of young migrants' involvement in sex work fails to acknowledge the complexity of their individual trajectories and positionings in the context of migration. Within prostitution studies, when the person selling sex is younger than 18, many people increasingly prefer to refer to 'sexual exploitation of children', as the term 'child prostitution' implies that the activity can be voluntary. The very possibility that a person who is under 18 years of age can actually choose to sell sex seems inconceivable for many researchers; and this is mirrored by the fact that research on young people selling sex is often addressed separately from that on adults selling sex.

Although recent work has recognized the widespread presence of minors selling sex in the EU (Barrett et al., 2002), the fact that young people may be exerting a sense of agency tends to be denied by government guidance, policies and the rhetoric of victimhood that informs them. However, the research material shows that selling sex often provides young men with an area of social interaction

where they can be valued and desired, in stark contrast to many other social settings where they are devalued and addressed as undesirable. The following excerpts from an interview with a 22-year-old Tunisian living in Paris and Amsterdam show evidence of this dimension of gratification for young men engaging in sex work:

Over there I did a bit of prostitution ... like that ... for pleasure ... and to get a bit of money ...

What do you mean for pleasure ... what did you like about this?

I like it ... everything ... most of all to be pampered ... 'you're beautiful ..., you're gorgeous ... I give you money!' Isn't this beautiful? I love it. When I enter a gay disco or a bar ... I like it so much ... everybody looks at me ... I like it ... I see a lot of people after me ... This is something special ...

Is it very different from other places you usually go to?

Completely different ... There you're just like everybody else ... You're nobody, but when you're in those places you get a lot of attention ... People really pay you attention ... they notice you ... they're after you ...

(v) Politics and the policies of infantilization

The assimilation of all minors to the condition of childhood threatens to eliminate important differences in the way the passage to adulthood takes place within and across different social and cultural settings. As far as the first dimension is concerned, it is important to stress that it is simply inappropriate to consider a 16-year-old and an 8-year-old as two 'children' with the same vulnerabilities, needs and priorities. The infantilization of adolescence and youth introduced by this strategy coincides with an underestimation of the level of agency and sexual awareness marking the lives of older adolescents. This underestimation is one of the main reasons behind many older adolescents' decision not to avail themselves of existing initiatives of social intervention and opportunities of integration.

These concerns are even more important at a cross-cultural level, as minors from countries undergoing dramatic socio-economic and cultural change tend to be subject to a process of early adultization and to conceive of themselves as young adults even earlier than in European contexts. These considerations are crucial when elaborating socially sustainable policies and practices of social intervention. If these claim to target young men according to the logic of infantilization addressing them as children, they are bound to fail, adolescence being a phase of life marked by the subject's need to negotiate his or her passage into adulthood. It is this foundational necessity that social intervention must accommodate, rather than challenge.

These considerations are not meant to relativize the specific conditions of vulnerability associated with childhood and youth nor to underestimate the extent to which selling sex can be a traumatic and disruptive experience, especially

when people feel forced by violence and social and economic circumstances. On the contrary, by criticizing the prevailing categories and paradigm we aim to examine the vulnerabilities and resources of young people and minors in their full complexity, in order to contribute to more efficient policies of social intervention.

CONCLUSIONS AND THE IMPLICATIONS FOR RESEARCH

The main aim of this final section is to summarize the findings and considerations presented above in order to offer alternative solutions and suggestions to improve the effectiveness of the system of social protection and social intervention targeting marginalized young migrants. Before dealing with the practical implications of the results of the research, it is important to recall the complexity and historical relevance of the phenomenon of youth migration. We do so by drawing on an essay by Umberto Eco (2000), 'Migration, tolerance and the intolerable', in which the author underlines how migrations are phenomena that cannot be stopped or controlled and that are destined to transform radically the social and cultural characteristics of the places involved. The most relevant implication of referring to Eco's analysis in the context of this research is that it implicitly encourages us to undertake a 'reality check' and substantially accept that migration is the outcome of irreversible and deep transformations. Second, it reminds us how the migration of minors and young people should be seen as an integral part of broader migratory flows and the deep demographic, social and geopolitical changes and imbalances encompassing them.

In this respect, the imagination and implementation of the migratory project by migrant young people, which must be seen as two central moments in the elaboration of a rite of passage to adulthood, are taking place in a historical moment in which the social experiences of being a 'child' and an 'adult' are undergoing a transformation, both in the contexts of origin and in those of destination. This is a fundamental point. While in traditional and stabilized societies, the rites of passage to adulthood tend to take place in relation to fixed points of departure and arrival from the affective, cognitive and economic points of view, the reality faced by minors and young people these days is increasingly complex and contradictory. On the one hand, 'traditional' figures of authority and the ethical, social and economic references are subject to a profound transformation. In this perspective, minors and young people who leave should be considered as 'social innovators' (Lăzăroiu and Alexandru, 2003, p. 22), reverting to international mobility as a way to access upward mobility. On the other hand, the context of arrival usually offers them an incoherent answer to the strategies of survival which can sustain this passage and is rarely able to meet the need for affective, educational and economic support of minor and young migrants.

The system of needs of minor or young migrants is very complex and deserves more thorough discussion – it is characterized by the fundamental contradiction between the need for individual autonomy from parents and the search for

alternative figures and contexts for affective containment and attachment in order to 'grow up'. This structural adolescent tension is exacerbated by the 'migratory' character of minors' and young people's identities, which are suspended between contradictory models and experiences. The renunciation of the immediate fulfilment of desire in favour of delayed gratification and the transfer of the control of oneself from external to internal – respectively, part of the passage to adulthood and of the process of socialization – take place in a context in which 'traditional' forms are refused (even if often only implicitly and ambivalently), while those aspired to are known mainly through utopian and narcissistic projections.

The desire for a higher degree of autonomy is a fundamental aspect of young people's migratory project. It is characterized by a strong ambivalence between contradictory experiences and models of subject formation, such as the refusal of the authoritarian value systems of parents (addressing the minor/young person as a subject of discipline) and the seduction by the Western consumerist/hedonistic one (addressing them as subjects of desire and entitlement). More specifically, many of the marginalized young migrants interviewed in the context of the two research projects analysed here come from poor (usually either too authoritarian or absent) experiences of parenthood and were forced to assume an 'adultized' role at a very early age. As a result, most of them find it difficult to endure the frustration of the impulse to achieve immediate satisfaction of desire and to delay gratification in the name of longer-term plans which could be in their best interests. The development of this ability is a key aspect of the socialization of the child/minor/young person into adulthood and can only be achieved by offering appropriate affective and psychological support, alongside opportunities for social and economic integration.

In this context, the temptation to engage in sex work or in illegal activities (theft, drug dealing) and the active pursuit of 'fast and easy cash' can be seen as related to the endurance of the imperative to have 'everything now' typical of children's narcissism and as structural factors of the existential condition of adultized children/young people. If we add to this existential/psychological configuration the post-communist (and/or post-colonial) cultural construction of the West as a place where luxury is at hand, it is easier to understand how engaging in illegal activities or prostitution can be seen as appealing: it allows marginalized minors and young migrants with difficult affective histories to think that they will quickly gain a 'successful' social status that they could never achieve by working as builders, in agriculture or as security guards.

In order to be successful, social intervention needs to address the complex relationship between marginalized minor and young migrants' affective and existential trajectories, the dynamics of social exclusion and inclusion they meet in the contexts of migration and their involvement in sex work and illegal activities. In this respect, *marginalized young and minor migrants would have the best chances of seeing their best interests guaranteed if they had access to an integrated and flexible system of initiatives and projects able to respond to the complexity of their needs and desires on a 'case-by-case' basis, rather than having to cope with 'one*

for all, *infantilizing and under-resourced solutions*. This system should be based on established procedures and criteria of identification of the best options available to facilitate the process of social integration and the personal development of the young and minor migrant, starting from the specific potential, life experience and desires of each individual. In this respect, social intervention initiatives need to offer young and minor migrants occasions to reconcile the complexity of their desires and ambitions with the moral worlds and cultural resources they bring with them.

At the same time, it is important to avoid pathologizing sex work and forcing marginalized young people to choose between receiving support and giving up livelihood strategies that are consistent with their chosen lifestyles. These are often predicated on the celebration of the possibility of leading a life that is free from social conventions, formalities and commitments. In this respect, rather than expecting minors and migrant young people to give up sex work in order to receive support, 'social solidarity and public health organizations and institutions should invest in initiatives ... enabling them to re-establish social relations with reference to work, the family and leisure' (Da Silva and Evangelista, 2004, pp. 138–39).

This last argument points to the necessity of taking charge of the complexity of the system of needs of marginalized young or minor migrants, rather than focusing on a particularly 'pathological' aspect of their behaviour. It is only by addressing these migrants 'in their unity' that we can reinforce their resilience.⁵ According to Vanistendael (2000, p. 183):

Resilience encourages us not to look at a person as a series of separated pieces, but as a living unity ... For example, a solid human relationship is almost a fundamental condition for resilience; however, in most cases, this condition is not sufficient in the long term. ... The acceptance of a person greatly influences the development of self-esteem and the ability to discover a meaning, and these three associated factors can foster the acquisition of skills. The resulting increase in self-confidence creates an environment that allows a greater disposition to humour. In return, the acquisition of new skills generally has a very positive impact on self-esteem and allows the development of new projects and so on ... (present author's translation).

The only way that existing mechanisms of social protection and support can become better alternatives for young and minor migrants than the involvement in sex work and illegal activities is by responding better to their system of needs and desires, so that the full potential of these migrant 'social innovators' can be capitalized on, rather than wasted by the social worlds they choose to inhabit.

5. This can be defined as the individual capacity to both oppose and resist the pressures of the surrounding social and cultural environment and to develop in a positive way in the future (Vanistendael, 2000, p. 19).

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‘Too much disappointing’:
the quest for protection by unaccompanied
migrant children outside Europe

Jacqueline Bhabha

Unaccompanied and separated children’s migration has only rather recently begun to attract the global community’s attention as a global phenomenon. This chapter examines the situation of unaccompanied and separated children and the policies dealing with their presence in two important destination countries outside the European Union: Australia and the United States of America. The chapter analyses legislation and protection, and protection gaps, in these states and offers a basis for comparing the extensive analysis of the situation and regulations in the European Union territory, examined elsewhere in the first part of the book, with other national regulations.

INTRODUCTION

Child migration has occupied an increasingly central place in the concerns and activities of contemporary human rights advocates and scholars of immigration over the past fifteen years or so. During the preceding quarter century, from the 1970s onwards, as immigration control agendas gradually replaced labour recruitment policies in the developed world, as Cold War refugee policies gradually gave way to more restrictive non-*entrée* policies towards asylum seekers from developing countries, little was thought or heard about child migration as a phenomenon in its own right. To be sure, children were known to be part of the migrant pool, but they were attended to primarily as family dependants, travelling with or to join adult heads of household, or as unaccompanied refugees within orderly international resettlement programmes.

From the mid-1990s onwards, however, there appears to have been a shift in perspective. International migration organizations such as the United Nations High Commissioner for Refugees (UNHCR) started tracking child migration statistics for the first time and issuing Executive Committee (EXCOM) recommendations and guidelines about children (UNHCR, 1993; 1994; 1997); governments set

up panels or committees concerned with special groups of child migrants;¹ and non-governmental organization (NGOs) started focusing on child-specific migrant issues and highlighting problems and lacunae in policy (Human Rights Watch, 1998; Amnesty International, 1999). Child migration had become an issue or a problem in its own right.

A dual justification for this shift in attention was advanced: aspects of child migration – unaccompanied, separated, smuggled, trafficked – were said to be new; and the numbers of children travelling alone were said to be increasing dramatically (Ruxton, 2003; Ayotte, 2000).

Several egregious incidents – such as the rescue and subsequent courtroom battle over the 6-year-old Cuban boy Elián González in the United States of America; the prolonged and traumatic incarceration of Afghan and other unaccompanied children in Woomera, the notorious, remote Australian detention centre; and the discovery of the corpses of two African boys in the undercarriage of a plane bound for Europe – all added fuel to the growing public concern over the issue.

THE NATURE OF CHILD MIGRATION TODAY

In fact, child migration is neither a new nor a demonstrably escalating phenomenon. For centuries children have travelled alone across borders, for good reasons and bad. They have fled war, turmoil and persecution at home; they have left behind destitution, hopelessness, unemployment, in search of opportunity. And they have been transported away from their families by state officials, exploiters or traffickers, intent on realizing purposes unrelated to child protection (Steinbock et al., 1988). Child migration has thus been driven by many different causes and actors, both benign and malign. It takes as many forms as adult migration, and the role that children themselves play in their migrations are as varied as those played by their adult counterparts. They may initiate their travels, they may resist, they may simply concur or obey parental wishes; they may accompany, they may lead, they may follow, they may diverge, they may escape. Child migration is as much about childhood enterprise, resilience and initiative as it is about child persecution and victimhood. However, the legal and political framework does not reflect this. Child migrants cannot usually bring their relatives to join them, nor can considerations affecting them generally prevent or slow family deportation. Children are seen as secondary rather than primary migration agents. None of this is new.

What is new, however, and what underlies the recent resurgence of interest in the topic, is the mismatch between public expectations about how children should be treated and growing public awareness of how a significant subset of children – migrant children with few resources to draw on – are in fact treated by the states to which they travel. From a concern with the vulnerability of children

1. UK Refugee Council Panel of Advisers for Unaccompanied Refugee Children established in 1994; Canadian Immigration and Refugee Board: Child Refugee Claimants: Procedural and Evidentiary Issues, 1996; US Guidelines for Children's Asylum Claims, 1998.

and their need for special protection, the emphasis is shifting to the negligence and irresponsibility of states, and their failure to carry out their obligations effectively. This shift in focus reflects public awareness that states do not have a consistent approach to the phenomenon of child migration and the policy challenges it produces. Instead of effectively implementing international undertakings reflected in domestic constitutional protections, states react ambivalently, torn between the mandate to protect and the pressure to exclude and marginalize.

As a result of this complex and confusing situation, international, regional and national bodies have been drawing attention to the gap between the provisions of binding law set out in the Convention on the Rights of the Child (CRC), the African Charter on Human and People's Rights or the European Convention on Human Rights, on the one hand, and the implementation of policies on the ground, at ports of entry, in detention centres and in social services offices, on the other. Within the last few years, the UN Committee on the Rights of the Child has issued a General Comment on the treatment of unaccompanied and separated children outside their country of origin; the European Network of Independent Experts on Fundamental Rights has issued a Thematic Comment on children in the European Union (EU), with a chapter on migrant children; and the Australian Human Rights and Equal Opportunities Commission has produced a report on the situation of children in immigration detention (Australian Government, 2004).

As for the scale of the migration, the lack of a consistent and institutionally vested interest in the topic has meant that there are very few longitudinal data on numbers of child migrants. Accordingly, it is difficult to assert with confidence that child migration is a recently growing phenomenon. What we do know, however, is that it is sizeable. In the USA, recent estimates suggest that 1.8 million children (or about 15 per cent of the estimated 12 million unauthorized migrants) are themselves unauthorized (Passel, 2007); as any child born in the USA (irrespective of parents' immigration or citizenship status) acquires US citizenship automatically by birth, it follows that all these children are migrants. Recent reports indicate that between 7,000 and 8,000 of these children are held in detention centres by the immigration authorities each year (Gross, 2006). Some of them are asylum seekers, others are victims of trafficking, yet others are migrants in search of family reunion or educational and employment opportunities.

Global figures give some idea of the scale of the different components of this child migration phenomenon. UNHCR data suggest that between 4 per cent and 5 per cent of all asylum applications received by industrialized countries come from unaccompanied minors; according to the US Department of State *Trafficking in Persons Report* (2007), approximately 800,000 people are trafficked across borders annually, of whom roughly 80 per cent are women and girls, and 50 per cent are minors. These are staggeringly high figures. Child labour migration, some of which is subsumed in the trafficking statistics, is also sizeable; very large numbers of children cross borders to engage in domestic work, agriculture or a range of manufacturing jobs in neighbouring countries. Accurate estimates are not available, but the International Labour Organization (ILO) estimated in 2000

that globally 23 per cent of children between 5 and 17 were economically active, so it is likely that very large numbers of migrant children work (ILO, 2002).

Much of the recent advocacy and research attention paid to unaccompanied child migration has been shaped by a series of dichotomous classifications: whether child migrants are accompanied or unaccompanied; whether their migration is consensual or coercive; and whether they are victims of persecution or youthful economic migrants. For example, several countries (including Canada and the USA) have devised guidelines for unaccompanied child asylum seekers, but they have not developed adequate legal frameworks for catering to the needs and legal rights of undocumented child migrants more generally. Some countries have crafted legislation focused on the needs of trafficked children, or abandoned and neglected children, without considering the overlaps between these categories and the commonalities in the needs of all unaccompanied migrant children. The process of classification and categorization has tended to highlight immigration particularities about children's cases – that they arrived alone, that they entered through the assistance of smugglers or traffickers, that they could not prove their age or nationality, that they were working, that they could not demonstrate a well-founded fear of persecution in their home country – and to obscure the fluidity and changes that characterize the circumstances of many child migrants without changing their underlying needs.

In fact, the majority of unaccompanied child migrants have overlapping and common needs that arise out of their common situation: they are children, they are aliens and they are separated from their families. They may enter as smuggled persons but then become domestic slaves or agricultural workers; they may travel with relatives but then find themselves alone; they may intend to seek family reunification but find themselves isolated and unable to return home. Their legal and immigration situation may change over time. What does not change is the need for consistent rights-respecting policies by receiving governments. For ease of exposition, we can identify four topics that particularly affect unaccompanied child migrants, and we can examine how two non-European states, the USA and Australia,² have addressed their responsibilities in these areas.

ACCESS/INTERDICTION

Gaining access to the desired destination country is both a necessary precondition for asylum or any other status, and a serious obstacle for many migrant children. In response to their growing concerns about irregular migration, all immigration destination countries have legal provisions that complicate this first step. Children

2. These countries were chosen for three reasons: first, each has focused considerable attention on the question of unaccompanied child migration in the last decade as a result of public concern and immigration pressures; second, they are on different continents, receive broadly different migrant populations, and therefore provide a useful spread and contrast; third, I have recently participated in an in-depth comparative study of unaccompanied child asylum seekers which included both countries: see Bhabha and Crock (2006).

are not exempt from the complications. The legal measures include visa requirements, carrier sanctions imposed on the means of transport that carry undocumented or irregular passengers and, increasingly, surveillance and intelligence systems operating at and near the borders, and further afield.

The USA, for example, has established a highly militarized system of border control along the southern border with Mexico, fully equipped with infrared light detection systems, 24-hour armed patrols and helicopter surveillance. It is eerily reminiscent of the water-borne patrols increasingly policing the Mediterranean. In addition, the USA collaborates with Mexico's highly restrictive patrolling of its southern border to restrict the entry of Central and Latin Americans headed north. As a result of these highly effective measures, irregular migrants to the USA, including unaccompanied child asylum seekers, are increasingly compelled to use the services of smugglers (*'cayotes'*) who escort them across the perilous Arizona desert – thousands of migrants find themselves lost and dehydrated in this process, and many lose their lives (Nazario, 2006).

The northern border between the USA and Canada is also an increasing obstacle for child migrants. In 2004, following the example of EU countries and in the wake of concerns raised by September 11, the USA and Canada established a Safe Third Country Agreement to prevent migrants from forum shopping between the two countries;³ unaccompanied children were not exempted from the provisions of the agreement, though they were not included in the 'expedited removal proceedings' (for return to countries of origin) unless special circumstances applied.

Australia has adopted similarly restrictive provisions, including visa controls, carrier sanctions and collaboration between sending and receiving country governments to track the migration movements of individuals. Not only does it bar all applications from individuals travelling from certain countries, but it has adopted provisions limiting its protective obligations to people who have spent seven days or more in a country where they could have sought protection, a modified 'safe third country' rule. All these measures affect children and complicate their access to protection.

In addition to these reactive measures, both the USA and Australia have adopted pre-emptive interdiction policies. These are used to interrupt the journeys of would-be migrants at source and at strategic points during their voyage. There is evidence, for example, that the Australian Government has taken initiatives in Indonesia to sabotage boats carrying asylum seekers to Australia (in fact, these

3. A Canadian Federal Court judge ruled on 29 November 2007 that this agreement violates Canada's Constitution because it does not meet Canada's obligations under the 1951 Convention on the Status of Refugees and the 1984 Torture Convention. On 27 June 2008, the Federal Court of Appeal allowed the appeal brought by the government. Although the Court overturned Justice Phelan's ruling, its decision did not find the USA a safe country for all refugees. Instead it concluded that the Court should not consider the actual situation for refugees in the USA. In September 2008, an application was filed with the Supreme Court of Canada for leave to appeal the decision of the Federal Court of Appeal. The Supreme Court declined to hear the case on 5 February 2009.

interdiction policies have provided a model for other – including some European – countries that have modelled their foreign ‘warehousing’ programmes on the Australian practice). A ‘regional cooperation arrangement’ was reached in 2000 whereby Australia paid Indonesia to intercept asylum seekers before they travelled to Australia, and also had the power to intercept and return to Indonesia boats heading for Australia.

It is not known how many children have been caught up by this interdiction policy. However, one particularly flagrant and highly publicized case – the interdiction of the Norwegian ship the MV *Tampa* – certainly involved unaccompanied children, who were eventually held on the tiny deserted island of Nauru, where their cases were processed. Other children intercepted by the Australians have been taken to another Pacific island, Papua New Guinea, for processing. Some children have been kept on these remote islands for as long as three years while their asylum cases are processed. No special procedures are in place for the children, either in terms of preferential accommodation and care, or in access to legal assistance in the preparation of their cases. Their isolation awaiting refugee processing stands out as an egregious failure of protection by the Australian Government.

The US interdiction programme predates the Australian one, and was in fact used as a model. Even though most of the irregular migrants, including children, come across the land border, US interdiction at sea through the Coast Guard is highly restrictive. The process is as problematic in terms of child protection as the Australian interdiction programme. Most of the interdictees are Haitians, though there are also sizeable numbers of Dominicans and Cubans, and, according to UNHCR, quite a large (though unknown) number of unaccompanied children. No special procedures or assistance are in place, however, for the children caught up in the process, and it is not clear that intercepted children are afforded any opportunity to express fears of return. The Coast Guard manual informally encourages staff to ‘solicit among the migrant families and single women for a sponsor to look after each child. If no sponsors are found, make special berthing and meal arrangements to ensure the safety and security of unaccompanied children’ (Bhabha and Crock, 2006). In fact, it is not clear that any special arrangements for the safety and security of children have been established.

These non-*entrée* and interdiction policies militate against the rights of all asylum seekers to access protection, but they are particularly devastating for unaccompanied children. Three years on a deserted island in the middle of the Pacific without access to adult mentoring and effective protection is an outrage, as is the return without the opportunity for legal advice of sea-borne unaccompanied children fleeing civil war. These policies violate fundamental children’s rights to seek asylum, to protect their liberty and security, and to claim basic humanitarian care. They also lay the ground for traumatic responses that are likely to have lifelong consequences – fear, sleeplessness, depression and other serious forms of mental illness, including suicidal tendencies.

Even when access to the territory is granted, children may face detention, sometimes for prolonged periods of time. On occasion, as within Europe,

detention is the result of a faulty age-determination process, which wrongly identifies a child as over 18. The flaws with age-determination systems – based as they still are in most countries on simplistic, single-dimension physical tests such as dental or wrist X-rays, or even completely unscientific subjective assessments by the immigration officer – are familiar, but attempts to shift state policy-makers away from these tests to more holistic and sophisticated measures of age have been remarkably unsuccessful so far. Nevertheless, as a result of intense civil society advocacy, including numerous human rights reports and parliamentary/congressional hearings, detention practices for unaccompanied children have improved substantially in both the USA and Australia. It is no longer normal or routine practice, as it was before, for children to be detained at length pending a determination of their immigration or asylum case. However egregious cases persist, including situations in the USA where unaccompanied child migrants find themselves handcuffed and shackled in secure juvenile jails simply because they lack a legal immigration status (Bhabha and Crock, 2006).

GUARDIANSHIP

One of the most obvious needs of an unaccompanied child migrant is for a guardian or mentor, an adult to act *in loco parentis*, as an adviser, a guide, a trusted figure and an intermediary between the child's fears and needs and the demands of the novel host society. In practice, however, the lack of effective adult support is a pervasive feature of migration systems dealing with children, a clear example of the absence of an integrating set of policies that views the migrant child as a child first and foremost. The absence of a comprehensive system of guardianship sets migrant children apart from their domestic counterparts, and illustrates the difficulties that result from a system of migration-based child protection that applies discrete and dichotomous categories to non-resident children.

The need for guardianship, in addition to the availability of free and effective legal representation, is widely acknowledged. Legal representatives are charged solely with representing their clients' expressed wishes, acting on their instructions; guardians, by contrast, have an obligation to explore the child's best interests and to advocate for them, even where these may conflict with the child's expressed desires. For example, a child may decide, following a period of detention, that returning home to the country of origin is the best course of action, even if this is not safe or in the child's best interests. A conflict between legal representative and guardian could ensue. In practice, the availability of independent guardianship is very limited for unaccompanied child migrants outside Europe. Even within Europe, the picture is mixed.⁴ But elsewhere, no mechanism exists for the

4. In some EU states, such as Belgium and Finland, every unaccompanied or separated migrant child is assigned a guardian, whereas in the UK no such provision exists. On the other hand, the UK does allocate independent advisers to some unaccompanied asylum-seeking children, and these advisers may play a more rights-enhancing role than some 'official' guardians, such as those automatically appointed under Spanish law, as the latter are always public authorities who

automatic appointment of an independent guardian for each unaccompanied child migrant, a serious gap in policy.

In Australia, the minister charged with enforcing Australian migration law also has legal guardianship of unaccompanied children, an institutional conflict of interest that clearly prevents effective implementation of the guardianship role. The extent to which this is unsatisfactory is demonstrated by past practice, where the minister would delegate the guardianship role to detention centre managers with custody of asylum-seeking children, a most unfortunate arrangement unlikely to assist detained children in securing justice. For children who are not detained, the minister's responsibilities rest with state welfare authorities, a more satisfactory arrangement, but still one that ultimately conflates the child protection and the immigration enforcement mandates into one role.

In the USA, recent legal and administrative changes have removed the serious conflict of interest that existed where the Immigration and Naturalization Service (INS) were at once guardians and custodians of unaccompanied children: there is now a functional separation between the two roles. Formed in the wake of administrative upheavals after 9/11, the Department of Homeland Security through its Immigration and Customs Enforcement agency is responsible for all aspects of immigration enforcement; meanwhile, the Department of Health and Human Services now deals with the care and custody aspects of child migrants that were formerly also under the purview of the INS. However, although a radical improvement, the US picture is still unsatisfactory. Individual guardianship is not available to children, and institutional settings in which many children are held at length and without adequate opportunities to challenge their detention deprive many of the mentoring and support they urgently require. Responsibility for dealing with unaccompanied children in the USA is shared among a bewildering range of federal agencies, making coordination and cooperation problematic and preventing the emergence of a clear picture of what is in store for children within the process. In this field, non-European migration policies compare unfavourably with the higher level of individual provision and care available within the EU.

REPRESENTATION

Given the difficulties of accessing the desired destination state and securing a status within it, unaccompanied children are extremely dependent on competent and freely available legal representation. However, this is a commodity in scarce supply. Formal advice or briefing is non-existent for most children entering the asylum system, or indeed navigating other forms of immigration status, such as humanitarian leave, trafficking visas or the US special category of Special Immigrant Juvenile Visa (available to children who are abused, abandoned or neglected: see below). In both the US and the Australian systems, it seems clear that

may prioritize immigration enforcement over best interest considerations. For a very useful comparative discussion, see Senovilla Hernández (2007, pp. 39–42).

children generally do not know what they are applying for, what their options are or what the consequences of a particular status may be, a situation that exacerbates pre-existing trauma and anxiety. In Australia, children have no right to an adviser or a responsible adult during the initial screening-in stage when their eligibility for asylum is assessed; in the USA, similarly, unaccompanied children have no access to legal advice or assistance within the first, crucial seventy-two hours when they are placed in the care of the immigration enforcement authorities, before being handed over to the child welfare agencies. In this critical time, many children (often under pressure from immigration officials and in the absence of any expert advice) agree to 'voluntarily' return to their own countries, rather than face the prospect of prolonged detention.

Beyond the preliminary stage, representation problems continue. In the USA, there is still no entitlement to free legal representation for unaccompanied children going through the asylum application process. The US asylum application form consists of thirteen pages of instructions and eleven pages of fill-in-the-blanks text – a virtually insuperable hurdle for an unaccompanied child. A network of *pro bono* lawyers and representatives, and collective 'know your rights' presentations, partly alleviate some of the problems children face, but this is still a seriously deficient system. The Australian system does include state funding for migration agents to act as advisers to children once they have got through the preliminary screening, although problems of quality and timely availability of representation still arise. In general, the absence of reliable and effective state-funded legal representation for unaccompanied child migrants is a serious problem, undermining children's right to claim protection or to secure a legal immigration status for their long-term future.

PROTECTION OUTCOMES

Most important of all, of course, is the outcome of the migration process, whatever the procedure adopted. And unaccompanied migrant children seeking a legal migration status outside Europe do indeed have a range of protection options. Many children receive some form of protection during their minority; long-term permanent legal status is far less common, however. Procedural problems undermine the efficacy of the rules in place. In general, securing a valid legal status is dependent on the child having access to effective mentorship and legal representation, which is frequently not the case. Children are also beset with other problems that make the available remedies less accessible or effective than claimed. A pervasive climate of disbelief, reflected in the proliferation of age-disputed cases, detention of children and rejection of children's testimony, afflicts child migrants in many sectors of the migration system. Ignorance of the intricacies of immigration law on the part of child welfare or social work officials contributes to the absence of competent representation. As a result, a substantial number of unaccompanied child migrants end up undocumented, in temporary and unsatisfactory statuses where their future rights cannot be assured.

Within the options available, asylum is perhaps the most familiar protection outcome for unaccompanied minors, not because it is easily secured, but because it corresponds to the protection required of all States Parties to the 1951 Refugee Convention (as modified by the 1967 Protocol). However, in attempting to secure asylum, children face many difficulties over and above the access, guardianship and legal representation issues already described. A central concern is the persistent failure of immigration officials and decision-makers to effectively apply the refugee definition to children. This is the case both where children face similar harm to that faced by adults – such as political or religious persecution – and where children face ‘child-specific’ forms of persecution. Although the USA has promulgated specific guidelines concerning children’s asylum applications, it has not fostered the development of a consistent body of decision-making which incorporates some of the recommendations in the guidelines. A comprehensive doctrine of child-specific persecution that complements the broader, more generic concept is necessary to correct the prevailing blindness towards the special problems facing children.

At the same time, it is important to note that in the USA there have been some significant improvements in the application of refugee law to children in some specific cases. For example, sexual violence inflicted on a girl by her father has counted as the basis for an asylum claim, as has female genital mutilation, persecution as a street child and child abuse. In this respect, the USA provides some laudable examples of good practice, which other countries would do well to emulate. Australia, by contrast, has not produced any child-specific asylum guidelines and case law expanding the refugee concept to child-specific situations is still in its infancy.

Some countries have developed other statuses for according protection to migrant children. Both the USA and Australia have instituted special anti-trafficking statutes for victims of trafficking, including children. The main purpose of these measures is to criminalize the commercial networks involved in trafficking, but an important secondary goal is to provide protections for those who are trafficked and to establish that they are not prosecuted or penalized for their irregular entry. The US law has created a special ‘T Visa,’ which is available to victims of severe forms of trafficking in persons; children under 18 can benefit from this status and in theory they do not need to cooperate with law enforcement investigations by giving evidence against their traffickers. In practice, however, certification of a child as a victim of trafficking has come to depend on confirmation from law enforcement agencies of the child’s involvement, a practice which has deterred some children from applying for the visa for fear of retaliation. Moreover, the burden of proof on the child is very high. As a result, only a tiny number of children have received T Visas (thirty-two unaccompanied children between October 2001 and January 2005) (Bhabha and Crock, 2006, p. 185).

In Australia, a special visa subclass for trafficked persons – Class UM and Class DH visas – has been created to provide protection for victims; initially limited to a temporary stay of two years, the visa can be extended to a permanent

stay if the need for protection is ongoing. Children are eligible for this visa but they must cooperate in the prosecution of their trafficker, as a matter of law. This is an unfortunate requirement which places law enforcement above protection and acts as a deterrent for child victims. The numbers of child victim beneficiaries of these visas are negligible.

Various other protection outcomes are available to child migrants. Most notable is the US Special Immigrant Juvenile Status (SIJS) visa, an important innovation in child migrant protection which should be introduced elsewhere. SIJS affords permanent legal status and, eventually, citizenship to migrant children who are ineligible for asylum because they cannot prove a well-founded fear of persecution, but who nevertheless have a 'best interest' claim not to return home. These are children who have been inadequately cared for by parents, 'abused, abandoned or neglected', and for whom collaboration between child welfare and immigration authorities is required in order to secure the status. Though fairly complicated procedurally, because it involves the participation of the juvenile court as well as the immigration enforcement authorities before a status can be secured, SIJS provides a child-protection-based model that is responsive to the comprehensive needs of the child.

US law provides two other possible statuses for migrant children. Undocumented children who have been subjected to violence or abuse by a US citizen or permanent resident parent can lodge a Violence against Women's Act (VAWA) petition which, if successful, will enable them to stay permanently provided that certain conditions are met; and children who have suffered mental or physical abuse as a result of certain crimes committed in the USA (including rape, incest or female genital mutilation) can apply for a 'U Visa', initially available for three years but with the possibility of permanent residence.

Australia provides no similar protection for at-risk children. Moreover, children who enter Australia without a visa (the vast majority) can only receive permanent protection as refugees after a period of temporary protection lasting three years, at the end of which the refugee application process has to be started all over again. The deeply unsettling effect of this prolonged limbo, without the guarantee of permanent protection at the end, runs counter to received wisdom about the importance of 'permanency planning' in child welfare provision, particularly for children who have been subjected to trauma and disruption in the past.

CONCLUSION

Unaccompanied child migrants applying for asylum or other forms of protection outside Europe encounter a significant number of obstacles erected by destination states. Their vulnerability, therefore, is as much a product of the adversarial and rights-violating processes to which they are exposed – detention, lack of effective legal representation, interdiction, short-term statuses, the climate of disbelief – as it is a consequence of their difficult life circumstances. The incorporation of

migrant children into the domestic child welfare scheme of protection is still a long way off. Regrettably, child migrants continue to be seen as migrants first and foremost, despite the realization by some government representatives that this discriminatory approach is both harmful for the individual children concerned and potentially damaging to future prospects for national integration and security.

Asylum, the long-standing remedy created by the international community to address the problems inflicted on citizens by their own states, is particularly inaccessible to unaccompanied children because the risks they face are often disregarded. Other protections, such as the child welfare procedures available to unaccompanied children, including free provision of guardianship and adult mentoring, are also scarce. As a result, migrant children are largely thrown back on their own ingenuity and resilience to secure the social justice to which they have a claim in international law and as a matter of common humanity. No wonder they are often bitterly disappointed by what they encounter at the end of their journey. To end with a child's voice:

The thing is you think what is your fault? Leaving your country because it was war-torn, people had been dying – what's your crime? 'Cause you came here to save your life and to seek like a better life? ... it's like ... I don't know, it's hard to explain – too much disappointing (Crock, 2006).

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Part II

Social Contexts
at Origin and Factors
Pushing Children
to Independent
Migration

6

Bash n'ataq l-walidin ('to save my parents'): personal and social challenges of Moroccan unaccompanied children in Italy

Francesco Vacchiano

This chapter presents the results of field research carried out in Morocco on the migratory journeys of young migrants, based on conversations with them and their true stories, feelings and experiences. The experience of their journey is also linked to the connection between the representation and daily reality, with the tiredness, suffering, enthusiasm and contradictions related to 'growing up in exile'.

FATHERS AND SONS

In 2000 the original Arabic version of Mohammed Choukri's novel *al-Khubz al-hafi*¹ [For Bread Alone] was published in Morocco. The text had previously appeared in English in 1973, translated by Paul Bowles, and in French in 1980, translated by Tahar Ben Jelloun. The text was banned for a long time in Morocco, officially due to the many 'obscenities' it contained, but the real reason was the description of the social exclusion and violence in which the lowest social classes were kept (a narration that, as any description, is political in itself). Choukri's text constitutes the first part of his autobiography, narrating the difficult years of his childhood and adolescence between Tétouan and Tangier, in a context of poverty and social suffering in which all adults seem condemned to a condition of brutality and violence. The style is basic and terse, representing with great realism the degradation of the adults' role from the possibly formative exemplum to mere violence:

My mother now gave birth to another girl, whom she named Zohra, after the one who had just died. A rat bit her on the hand one night, and she died, too.

1. In this chapter, I use a simplified transcription of Arabic terms, not specifying long vowels or emphatic letters, in an attempt to give a phonetic idea of local pronunciation. I preserve the Arabic sound of the letter *ayn*, expressed by a single open inverted comma (').

My father had a habit of stealing up behind me in the street and seizing my shirt collar. Then with one hand he would twist my arm behind my back, while with the other he would beat me until the blood ran. ... And when his arms and legs were tired from beating and kicking, he would bite my shoulders and arms, pinch my ears, and buffet my face with his fists (Choukri, 1973, pp. 50–51).

The father's authority has lost all trace of power and majesty, all moral justification and all social legitimacy: it has been reduced to pure violence, empty like the blind rage of its expression and 'bare' like a life reduced to mere survival.

Choukri's novel could be inserted in a literary tradition – once defined as 'dismantling literature' (Mdahghri-Alaoui, 1996) – that Moroccan Francophone authors long pursued in many different forms. From the explosion of Driss Chraïbi's (1954) inaugural *Le passé simple* (see Arab, 2007),² to Rachid Boujedra's (1969) *La répudiation*,³ to Abdelhak Serhane's (1983) *Messaouda*, the post-colonial period was characterized by a rich literature focused on the figure of the father, depicted as a domestic tyrant whose social and familial authority is progressively declining. In Chraïbi, the father is still 'le Seigneur', and the possibility of his symbolic killing is delayed, waiting for a return in which the generational order could be recomposed (and Chraïbi, after the harsh controversies provoked by his first novel, did so in 1962 with *Succession ouverte* [Heirs to the Past]). In his subsequent writings, the father's power is clearly declining, no longer producing a possible substitute (Hammoudi, 2001), but only indelible wounds hindering the realization of a new monadic self. All along the way, something important was happening in the society.

Narration is so densely intertwined with reality that it is possible to consider it as a form of 'discourse', in a performative relationship with the objects of its description. Observed over the fifty years of Moroccan independence is a sort of coincidence between the narrative depiction of the declining social role of the father and the progressive erosion of his 'holding' a function in the poorest classes. This process is discussed by the Tunisian psychoanalyst Fethi Benslama (2002), who argued out the 'fall of the father myth' and the 'vertical exile of fathers' in Arab societies.

Following the thread of these suggestions, I attempt to explore the relationship between the 'vertical exile' of fathers and the 'horizontal exile' of children.

2. *Le passé simple* is an emblematic text for various reasons that we cannot go into here. I should simply like to recall the ambiguous relationship of the main character, Driss, with traditional values and imported Enlightenment values. The most effective metaphor for this newly experienced 'liminality' is represented by *la ligne mince* (the thin line), the recurrent vision of the young rebel, alluding to the thinness of the boundaries within which the new post-colonial subject is forced to find a balance (Pandolfo, 2000).

3. Boujedra is Algerian, but he participated in the same movement of Francophone Maghrebi authors. In fact, *La répudiation* deliberately follows the thread of Chraïbi's novel (Noiray, 1996).

INTERSECTING STORIES ...

Jalil arrived in Italy from Khouribga with a *passeur* (people smuggler) when he was 15. His father had been there for some years, but his 'irregular' circumstances had not allowed him to find a permanent job and an assured salary. For that reason, the family expected Jalil to join his father to boost the family's income. Just after Jalil's arrival, the father decided to leave for Spain, to try to regularize his position. The boy had to stay with some compatriots, selling small objects in the street in informal trading. One day he was stopped by the police and taken to the local social services unit,⁴ where he was offered a place in a specialized unit for minors. There he was able to attend a professional school and finally regularize his position in Italy.⁵ Nevertheless, Jalil continued to be under strong pressure from his father and the *bled*⁶ to become economically productive as soon as possible. This provoked a deep conflict between his personal desires (education and recreational activities) and the family's expectations. This conflict of loyalties, with the resulting anxiety, manifested itself through razor-cuts on his forearms and other such self-inflicted injuries.

After his return from the unsuccessful visit to Spain, Jalil's father went to the social services, explaining his difficulties in taking care of his son, but also accusing the boy of wasting his time and leading a life of pleasure, 'while the family in Morocco starves to death'. When Jalil tried to reply, his father flew into a rage and pronounced a true 'curse', disclaiming his son and calling him a renegade,⁷ and preventing all his relatives from speaking to him. The social worker tried to encourage a reconciliation on several occasions, explaining the programme to the father and requesting his cooperation, but the gap between her proposals and the

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4. The Office for Foreign Minors (Ufficio Minori Stranieri) is the specialized unit appointed by the Municipality of Turin for the reception and protection of 'unaccompanied minors'. Welfare intervention is undertaken by social workers, educators and 'cultural mediators'.
 5. Law No. 189/02, regulating the status of foreign citizens in Italy, provides for the grant of a residence permit for 'minor age' until the minor comes of age. At 18, this document can be converted into a permit for 'work reasons', but only for those minors who arrived at the age of 15 and who have attended a two-year 'programme of social and civil integration organized by a public or private body' (para. 25). In fact, law 189/02 severely limits the possibility of a lasting insertion for minors, as it excludes the most important group: those aged between 16 and 17. Moreover, the law does not allocate specific funds, leaving it up to municipal administrations to organize the reception (and as a charge to their budgets). It is only since 2007 that (a limited amount of) structural funding has been provided (see Rozzi, 2008; Giovannetti, 2008a). A Ministry of Interior memorandum, issued in March 2008, extended the right to a permit for 'work reasons' to all who arrived in Italy as minors, but only for six months. The effects of those changes are still not clear.
 6. In Morocco, the term *bled* (from classical Arabic *balad*, 'country', 'region', 'inhabited territory') is one of the most significant expressions of locality. It transmits at the same time the idea of the native country as the place of memory, territory of one's origins and land of identity. *Bled* can be the village of origin or more generally the countryside for the town-dweller, or Morocco for the emigrant. It is the Moroccan reconstructed identity where one lives (*bledi* or *wld l-bled*, 'son of the *bled*', or simply *bled*). In this sense, the term indicates a 'rhetorical country' carried out in the ties between human beings and places.
 7. The *sakht* (curse) is generally considered a fateful symbolic act: to be disclaimed as a child (*maskhut*) bars one from the family appreciation (*rida*, 'satisfaction') that is considered essential to earning eternal life after death (on the concept of *rida*, see below).

father's priorities always prevented an agreement. With incredible determination, Jalil did not drop out of the programme, acquired a school certificate and found a job. Only at his coming of age, after seeing his success, did his father make a new approach, but he received a cold welcome from the boy.

Samir was one of those boys generally classed as 'difficult', although he concealed a deep sensitivity behind his 'tough guy' appearance. He had been fatherless for years and arrived from Casablanca to join his brother in Turin when he was 14. Soon afterwards, however, his brother was arrested for drug dealing and Samir was left alone. Crushed by the situation and tormenting himself about the needs of his mother (although she had never explicitly asked for money), Samir started to deal in drugs, sometimes sending money home and personally consuming large quantities of hashish. He was arrested and reported to social services, where he was offered a place in a centre for minors in a rural area. Although accepting the proposal (thanks to the good relationship established with an educator), he had considerable difficulty in tolerating the distance from the urban context and the isolation of his new situation. Numerous disputes arose due to his wish to go to town, to hang out in bars and clubs. These activities were at first occasionally permitted, but gave rise to several dangerous situations: fights, alcohol and drug abuse, even an attempted robbery carried out with friends.

In quiet moments Samir could question these facts, acknowledging his difficulty in showing restraint. He also asked for help to stop using drugs and to understand his rage, and he attended regular sessions at a specialized centre for young people with addiction problems. Samir spoke repeatedly about the weight of a heavy duty – which he saw as *maktub* (destiny): this forced him to live on the margins between risk, illicit activities and perdition. This idea was associated with his present condition, but also with the unusual activity of his mother, who was working as a *shuwwafa* (fortune-teller and traditional healer).⁸ When Samir was a child, he participated in the rituals organized at home and went on the *ziyarat* (visits, pilgrimages) to saints' shrines, and now his dreams were full of presences that, in the vocabulary of traditional representations, were giving a shape to his feeling of suffering and illicitness.⁹

Malika arrived in Turin after a long trip through various European countries. She had been taken to the social services by some compatriots, who said that they could not take care of her. After some days in a centre for minors, she fell prey to

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8. In Morocco, the general attitude towards popular religious practices – and their practitioners – is often ambiguous: even if highly appreciated and attended by large numbers of people, these activities are publicly addressed using the canons of the 'modernist' discourse (in a secular and in a religious meaning), stigmatizing forms and contents as signs of ignorance and as illicit (*haram*) (Geertz, 1968; Eickelman, 1976). In Samir's words, we find the idea that a 'strong' mother (in a mystical sense), even if beloved, can represent a kind of danger for those around her. This allusion also seems related to the death of Samir's father.
 9. These presences were often 'impure' animals or dark and abandoned places, which popular tradition sees as inhabited by *jnun*, invisible 'spirits' that share the world with human beings. *Jnun* have the power to seize human bodies as a consequence of transgressions or temptations (Aouattah, 1993; Boudjenoun, 1999). In Samir's case, they were figures by means of which the sense of sin and incumbent perdition became manifest (for the idea of 'perdition', see below).

a convulsive crisis, which in the hospital – as usual in such cases – was ascribed to an epileptic pathology. Talking with her about her story of traumas and conflicts, the different origins of her symptoms quickly became apparent¹⁰ and the most dramatic manifestations disappeared.

Malika came from a lower middle-class family, with both parents working; they lived in a small house in a suburb of Casablanca. She described herself as an exuberant, bright child and narrated the many conflicts with her parents (mainly her father) during early adolescence. One evening, disobeying her parents' prohibition, she joined some friends in a club and accepted a lift from a young acquaintance. The boy made advances, then became more insistent and finally forced her to have sexual intercourse. Malika's family blamed the girl, and her father ordered her to leave the house. After a period at her grandmother's in the countryside, her family paid a *passeur* to take her to some compatriots in Europe.

Malika has tried to compensate for her alternate feelings of anger towards adults (now the educators at the host centre) and depression by adopting a striking appearance, running the risk of new and potentially dangerous situations. During one period of her stay at the centre, her deep quest for identity drove her to wear the *hijab*,¹¹ in an attempt to find her place in a public moral system that had expelled her long ago.

A SENSE OF THE MODERN

Moroccan history shows the weight of the social transformations characterizing the country since 1860, when the monarchy was first forced to enter the circuit of international trade and then directly placed under 'protection' by the French 'civilizing'¹² power (Burke, 1976). Many figures could be chosen to represent the appeal and impact of these changes: King Mawlay 'Abd al-'Aziz, who inaugurated the twentieth century with his fascination for all sorts of imported machines (Porch, 1982); the French Resident-General Hubert Lyautey, with his mystic planning of the colonial town (Abu-Lughod, 1980; Rachik, 1995); the renewed and reinvented power of local notables, re-establishing their economic and political supremacy under many flags (Mauret, 1954; Leveau, 1985) – all characters who stand as metaphors for the transformations in the social bond and give a particular shape to so-called 'modernity' in Morocco (Rabinow, 1989).

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10. Such manifestations are quite common in Moroccan popular contexts, in which fainting and convulsions (called generally *tah*, to fall down) are immediately attributed to the action of a 'spirit' taking possession of the 'ill' body (see note 9). The many-sided nature of falling down is thus related to the semantic field of 'possession' and used to give a physical shape to discomforts and hardships (Taliani and Vacchiano, 2006; Pandolfo, 2006; Beneduce, 2002). On the 'category fallacies' in the diagnosis of foreign patients, see Kleinman (1982; 1988).
 11. The garment covering body and hair, which, especially in contemporary reinterpretations of religious precepts, is recommended in order to express modesty.
 12. The *mission civilisatrice* was one of the rhetorical apparatuses used by the French colonial power to justify its operations in Africa (see the discussion in Said, 1993, and Rabinow, 1989).

Both before and after independence, it was around figures like these that the structural and relational organization of the country took shape: there was widespread migration from the rural to the urban areas, with the migrants occupying the new 'liminal' space of the shanty town (Abu-Lughod, 1980; Rachik, 1995); the masses became involved in a process of 'proletarianization', with employment in demeaning and underpaid areas of the labour market; and the population began to grow, saturating the peripheral spaces of the new marginal townships (Rivet, 2002; Refass, 2004). These social and economic changes were consistent with powerful transformations in cognitive and emotive attitudes: the progressive individualization of goals and strategies, the personalization of responsibilities, the nuclearization of the family (Chekroun, 1996; El Harras, 2004) and the affirmation of the category of 'youth' (*shabiba*), with its specific needs, languages and aspirations. It was in this way that, while the lifestyle changed radically in the new urban space, independence – together with emerging individuality – ratified the urgency of a new promise, represented by the school, as a possible means to social mobility, and by urban life as a sign of new possibilities. The achievement of these possibilities appeared to be a slow process until there was a realization of their unfeasibility and a progressive awareness of the new historical destiny of marginality. It is this transition that Choukri describes, giving his vicissitudes an emblematic significance: as if life in the poorest neighbourhoods could be defined by the experience of the weak and sadistic father and the orphaned and abandoned child.

These reflections are not aimed at condemning Moroccan families with an ineluctable and general verdict: a certain institutional discourse in both Morocco and Europe is inclined to depict families in trouble as inadequate and unable to respond to the needs of their children. It is a well-known process, reproduced in all those discursive practices that transform the poorer classes into dangerous classes and attribute the responsibility of failure to the most fragile in society. What we should like to stress is the deep social matrix of an active process of 'fragilization' of the primary structures, produced through many devices and on a path of wide historical significance.

In this process, new expectations and new hopes are generated, in which 'social immobilization' and 'spatial banishment' from the centres of power and consumption are perceived as an overt betrayal of the promises of modernity. These possibilities are fulfilled, on the contrary, in the images from abroad, transmitted by consumer goods, the media and Moroccan emigrants coming home to visit. The frustration produced by this comparison becomes the reason for a massive investment in an 'elsewhere' loaded with compensatory representations: so expressive of one's 'right to flight' (Mezzadra, 2001) that it is no longer unthinkable to break the class barriers hindering the full achievement of the possibilities sensed in the 'new times'.¹³

13. Here I use the expression 'new times' to refer to modernity in an etymological sense: the late-Latin term *modernum* was originally used to convey the time expressions 'now', 'at present', 'at this time', and was also consistent with the idea of 'a certain way of present things' (coming

The importance of this systematic – and systematized – exclusion is increased by that 'uncomfortable' position that seems to characterize modernity almost everywhere and which Benslama (2002) has described as 'the desire of being other'. The two terms in this definition are, finally, the best reading of the long process that can be witnessed in Morocco, not only from a historical point of view, but also from an emotional and cognitive one. They become the features of a purely 'modern' attitude: the 'desire', legitimate indeed, is the transformation and the improvement of one's condition, the access to social and physical mobility and the availability of consumer goods; the 'other' is that alternative to oneself materializing a world of possibilities to which the only barrier is one's own will.

ELSEWHERE, ONESELF

In some peripheral, especially Berber-speaking, Moroccan areas, older people still remember the passing of 'Monsieur Morand', a sort of collective name that popular memory attributed to French agents travelling around the countryside in search of labour for the homeland industry. The agreement signed in 1963, ratifying the settlement in Casablanca of a branch of the French National Immigration Office (Office National de l'Immigration), constitutes only the most obvious episode in the long vicissitude of Moroccan migration to France (Fadlullah, 1994). With their more numerous Algerian colleagues, Moroccan soldiers were in fact employed in the French army during the two world wars and in the Indochina war. Similarly, Franco's army recruited from the Rif the Guardia Mora soldiers employed in the civil war. In the post-war periods and until the 1974 recession, the presence of Moroccan workers in the most important European industries (particularly in France) was a fundamental resource for national production, which needed unskilled labour to function (de Haas, 2005; Berriane, 2005).¹⁴

It was by virtue of this well-established process that migration started to assume greater visibility, intensifying over time as a consequence of the privatization promoted in the 1980s by structural readjustment programmes (Idali, 2002) and the rising unemployment rates of the 1990s. The growing importance of migration was shaped by the comparison between the expectations of well-being and social participation and the limits imposed by a system that reproduced hierarchies of class, age and gender. It is this perceived stillness that produces in youth that intolerable and alienating 'void of existence' foreshadowing the idea of leaving.

anyway from *modum*). From the nineteenth century onwards, it was used to communicate a sense of opposition between what is new and the 'old things', with a degree of evaluation between 'before' and 'after'.

14. It has been calculated that, under bilateral agreements, more than 300,000 Moroccan workers migrated to France, Belgium, the Netherlands, Germany and, to a lesser extent, Scandinavia, Austria, Switzerland, Spain and Gibraltar between 1962 and 1974 (Salemi, 2003). After greater restrictions on migration possibilities in 1974, the Moroccan community – previously composed mainly of men – began to assume diasporic features through family reunions (Berriane, 2005).

In Morocco, the term used by many young people to refer to this lack of prospects is *qnat*, from the classical Arabic *qanat*, a verbal form indicating despair and discouragement. On many occasions, however, the concept was explained to me as alluding to spatial and pragmatic features: the concept of 'isolation' (from which the adjective *maqnat*, 'isolated', derives) and the common expression *makayn maddir* ('there is nothing to do', with all its possible connotations). In both cases, the allusion is to a despairing segregation, conducive to the blurring of the senses. The ensuing sorrow can be soothed through the consumption of substances, alcohol and hashish, but also, in the most marginal contexts, *shemm* (glue sniffing) and *qarqobi* (anxiolytics and, sometimes, neuroleptics).

The comparison between forced inactivity and the winning images of mobility constitutes the most important limit to self-projection in the lived 'locality' of the places of origin. The image of 'elsewhere' is strongly confirmed by incontrovertible evidence: if, on the one hand, it is evident that only those who study abroad have a true future in the labour market (and well-off families habitually send their younger members to European and North American universities), on the other hand the emigrants' economic success, with its necessary and overflowing ostentation, produces the most noticeable effects (Taliani and Vacchiano, 2006). The visiting emigrants, those 'foreign compatriots' often called with envious contempt *smagria*¹⁵, constitute the most powerful vector of desire, as well as the references on which to encourage hopes of change and success. This is an achievement that, in the most marginal contexts, can be defined mainly by material standards: shoes for those who grew up with only slippers; designer trousers; and – queen of the imaginary – the car.

Seen from the *bled*, 'elsewhere' is the projective place of open possibilities, of the overturning of one's destiny, of the renewal experience produced by a 'cut'. 'Elsewhere', *fi ghayr makan*, 'the other place', is the place of movement and freedom, where an individual will finally find fulfilment and recognition, but also where a family could find compensation for its history. Its representation is not only geographical (sometimes even its location is uncertain), but above all metaphysical, being defined by multiple and diverse projections of reality and the self. Crossing its threshold is a way to demonstrate, to oneself and others, that one deserves its benefits.

The crossing of the border, whether undertaken in accordance with the family mandate or following a crisis in the domestic holding structure, is always the symbolic passing of a limit (*hadd*, in Arabic, means 'limit', 'border', 'frontier' and 'blade', at the same time). Noticeably an initiation passage, it introduces a suspended time in which the identity is transformed, in a synchronic way, in accordance with an impressive social mandate: to return as a winner or not to go back any more.

15. '*Smagria*' or '*zmagria*' means 'emigrant' in the Moroccan context and it is the opposite term to '*bledards*' (those who stayed in their home village and did not emigrate).

THE MIGRATION OF MINORS

The migration of minors, especially 'unaccompanied minors', occurs in this general framework, where a cognitive reference context – organizing actions and choices in a balance of cost and benefit – is set up. Moreover, the itinerary has already been drawn up by adults, constituting the real or imaginary reception network to plan a departure (Van der Erf and Heering, 2002). In the migration of minors, however, the weight of family dynamics is inevitably of particular importance. With some significant exceptions, family is – and not only for minors – the most relevant location in which a great many migratory projects are in gestation, if not directly formulated. The family generally mediates the social visibility of leaving, visiting or returning emigrants; produces a set of representations of the surrounding context and elaborates its emotional nuances (according to a feeling of 'relative deprivation' that contributes to the sense of perceived social alienation); and identifies the possible extended transnational ties supporting the migration project.

Furthermore, in some of the cases examined, we could identify in the family a general representation of the minor as a potential productive subject; the promotion of autonomy and responsibility; the conception of individual needs in material terms; the conception of growth as a process of measuring oneself with tests and obstacles; and a generic ambivalent relationship with the normative system, as something to transgress in order to survive (Empez et al., in press).

Needless to say, we observed some important exceptions, represented by minors without a family or minors leaving without their parents' agreement: in the first case they may have been previously institutionalized (in orphanages or institutions for deviant children), while in the second they may come from families with severe social difficulties, in which they experienced loss, bereavement or neglect (Jiménez Álvarez, 2004). These situations are often typical of the background of many young people living on the street or spending a great part of their day there, either in their towns of origin or around the main ports, where they try to embark for Europe (INAS/UNICEF/Al Khaima Maroc, 2007). In these cases, the impact of social destabilizing factors on the family is even more profound and influential.

In many institutional debates, as well as some analyses of the migration phenomenon, the importance of family in minors' itineraries is often interpreted as a form of parental responsibility for the high-risk travel of their children, strongly stigmatizing the adults. It is only when considering the general framework in which the phenomenon occurs that it is possible to understand the important resource that children might represent for a marginalized family. This condition of 'dispossession', moreover, does not make it easy to repress the desire to flee, which sometimes affects parents and children simultaneously. To these factors, we should add the sincere representation of the departure (of sons and, to a lesser extent, of daughters) as the only occasion for a different future from the perceived static fate.

In this system of truths and half-truths, an important factor is represented by school drop-out, which is both cause and effect of the migratory potential:

cause because failure at school generates the idea of investing personal energy elsewhere; and consequence because the onset of the idea of an alternative affects daily personal commitment.

In 2004 data from the Moroccan Ministry of National Education showed that 800,000 children in the whole country were not attending school. In spite of a labour code prohibiting work under 15 and a law on compulsory education (law 04-00), many children, especially in the rural context, contribute to the family income (*Le Journal Hébdomadaire*, pp. 171–2004). According to the Moroccan Directorate of Statistics (Direction de la Statistique), almost 2 million children did not attend school in the 1999/2000 academic year, either because they never enrolled or because they dropped out. Based on these figures, the overall rate of school attendance was 65.5 per cent at national level, with 73.7 per cent for age 7–12 (one in four out of school) and 49.7 per cent for age 13–15 (one in two) (Lahlou, 2002; Mijares and López García, 2005). Many Moroccan scholars recognize the need for a radical reform of the education system, which does not ensure a good standard of qualifications (Belkouch et al., 2007).

School drop-out is directly connected to the involvement in child labour, in insecure and underpaid conditions, where minors are often exposed to abuse and exploitation: according to the 1994 census, the number of working minors was 356,530, or 5.1 per cent of those employed on a national level, mostly male (65.5 per cent of cases). The number of working children under the age of 10 fell from 14.2 per cent in 1972 to 6.9 per cent in 1994 (59 per cent male; and 81 per cent in rural areas). However, the 1999 Directorate of Statistics report, *Activité, emploi, chômage* [Occupation, Work, Unemployment], highlighted an upturn, with the number of working children rising to 517,800 (45.2 per cent more than in the census): 88 per cent of them were found in rural areas (Lahlou, 2002). According to the Directorate, minors constituted 6.5 per cent of workers in the informal sector (123,741 cases) (Khachani, 2003).

Failure at school and child labour are common experiences for minors migrating alone from Morocco to Italy. Significantly, many of them report how the prospect of leaving the country, operating from an early age, discouraged engagement and family investment in their education. The representations frequently associated with education are marked by scepticism about its actual potential to give access to a profitable future. The idea of a meaningless commitment in the context of origin is reinforced in comparison with the image of emigrants:

Did you see how many unemployed we have in Morocco? A lot of graduates ... They study for years, and their family has to pay for that. For what? My neighbour Hisham ... he was *maqarish* [illiterate] and went back with a brand new car ... (Zakaria, 16 years old).

These representations are quite widespread among young people from different social conditions and migratory paths: those who had a family backing the migratory project, and for whom parents paid a large fee to a *passeur*, and those who decided to leave independently, under conditions of high risk. In Casablanca,

'*riskier*' is the slang expression to allude to clandestine migration (*hijra sirriya*), and the methods are part of a shared expertise: boys try to hide under a truck – in a small opening near the axle shaft where it is possible to curl up – or to get into a container, or to embark clandestinely on a boat leaving for Europe. Many children and adolescents from the working-class neighbourhoods and shanty towns of Casablanca say that they have left school and now spend the whole day near the merchant port or the trading company that sends goods to Europe by truck.¹⁶ In Tangier it is common to see youths climbing up the wall encircling the harbour, trying to gain access to the embarkation areas so that they can hide on a truck waiting to be loaded or slip onto a ship.¹⁷ Many adolescents, moreover, try to cross the borders of the Spanish enclaves of Ceuta and Melilla through the frontiers of Tarahal and Beni Nsar.

Self-organized attempts constitute the extreme strategy for the poorest, those without any other means. When possible, however, they turn to relatives, neighbours or 'patrons' in order to raise enough money to pay for the journey, which will be repaid to the 'sponsors' on arrival. The organizer can provide several options, with various different fares: the cheapest and riskiest, ranging from €1,500 to €3,000, is paid for crossing the Strait of Gibraltar by sea from the north of Morocco (Al Hoceima and Nador) or to sail from the south-west (Tarfaya) to the Canary Islands. With the addition of the plane fare, it is possible to pass through the Libyan Arab Jamahiriya, then embark on a clandestine boat for the Italian island of Lampedusa.¹⁸ A higher outlay corresponds to better treatment: in case of interception and immediate expulsion by the authorities,¹⁹ the second and third attempts are free of charge. The safest and surest way is also the most expensive (€5,000–€6,000) and, for minors, entails the involvement of the family: it consists in appearing, in photographs and forged papers, on the escort's passport

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16. In many of these cases, the element of risk blends with the sense of play and challenge, constituting an activity that fills up daily life and gives it a 'direction'. The young people often test one another in mnemonic exercises about departure timetables, the most favourable days and the travel details, showing off their detailed knowledge of the movements of goods and people. The dimension of danger, the accidents, the deaths of friends and acquaintances during their attempts to migrate are all common topics of discussion and comparison (Vacchiano, 2008).
 17. In Tangier, a large community of minors (estimated at around 150 children) lives permanently near or inside the port area. They come from different Moroccan regions and tend to stick together according to their origins. For these minors living on the streets, violence, abuse, disease and lack of hygiene are dramatic daily experiences (INAS/UNICEF/Al Khaima Maroc, 2007). Their vicissitudes are examples of migration being motivated by a wish to solve an extreme situation of suffering and breakdown.
 18. It is not easy to have an up-to-date picture of the itineraries, which are often rerouted according to border controls and changes in the political climate. Until 2007, for example, the Mediterranean route towards Andalusia seemed to be used less frequently, due to the combined effects of the SIVE (Sistema Integrado de Vigilancia Exterior) and the dismantling of some organizations in northern Morocco. Today, Moroccan boats can again be seen disembarking on the Spanish coasts, mainly bringing migrants from West Africa. After some arrests in the Libyan Arab Jamahiriya, the route towards Lampedusa now seems less used by Moroccan migrants.
 19. Though the denial of admission is formally prohibited for minors, we gained several young people's testimonies of their being immediately redelivered, by the Spanish and French authorities, to the crew of the boats in which they had sailed. Documented cases are also found in Italy, even if, for the different routes, not for Moroccan minors (Rozzi, 2008).

as his or her children. The crossing of the border is generally carried out by car or bus, and, as many adolescents remark, ‘The result is guaranteed, and you are delivered directly at your destination.’²⁰

In popular Moroccan jargon, irregular migrants are defined as *harraga*: the term derives from the Arabic root ‘*hrq*’, associated with the semantic field of ‘burning’. The term *harig* (pl. *harraga*) is an active participle that could be translated as ‘the one who burns’. In Morocco the expression, besides being used to refer to illegal migration, often alludes to the infringement of a prohibition or limit (e.g. ‘to burn a traffic light’ at a junction, but also, metaphorically, borders and limits). The expression, which may be attributed to the act of burning all traces of identity after arrival (a practice common in the past among irregular migrants), has many interesting resonances, not unlike other terms commonly used to classify the passing of the sea: *qta*‘ (to cut), the already cited ‘*riskier*’, and the more neutral ‘*ubur*’.²¹

ITALIAN ROUTES

As mentioned above, minors arrive in Italy by many different paths, marked by important differences in relation to destination and prospects: some travel with a professional trafficker with forged documents; some are accompanied by an acquaintance and face the clandestine journey by sea; some move in a highly independent way, passing through various places and reaching Italy sometimes by long and tortuous routes.

After their arrival in Italy, minors generally try to reach their adult references (relatives, former neighbours, compatriots, etc.), identified among those who directly promised help or who are thought to be able to provide it. For this reason, even when intercepted almost immediately by social workers – for example, after arrival by sea, where immediate insertion in a reception facility is generally provided – many young people prefer to leave soon, following more autonomous

20. See Arab (2007) for further analysis.

21. The image of fire and burning is a reminder by analogy of the narrative of the history of Islamic expansion, in which the conqueror prevents the temptation to run away by the symbolic act of burning the ships after landing. This is said of Tariq Ibn Ziyad, the conqueror of Andalusia in the eighth century, but it is also the myth of the conquest of Sicily by the troops of Assad Ibn Al-Furat in 827 (it is useful to remember that the term *fath*, used in Arabic for ‘open’, also gives the idea of ‘conquest’ ...). What is interesting here is the link between these images and that peculiar aspect of the migratory experience by which the ‘opener’ cannot go back unless he returns as a successful ‘conqueror’. The idea of the ‘cut’ is also interesting in relation to the possible analogies with the initiation to life, strongly implied by the migratory itinerary of minors. In their experience, the perspective of the subjective ‘risk’ – connected with loss, madness and death – constitutes a steady presence. It is also interesting to follow this metaphor in relation to the cuts that many boys make on their skin, in moments of dejection relating to failure and crisis. Significantly, many of them explain this behaviour by the need to ‘open’ a ‘way out from anguish’ (Vacchiano, 2008). ‘*Ubur*’ is the classical Arabic term used by the media to refer to the ‘passage’ and the ‘crossing’, but it also semantically embraces the idea of the ‘transitory’ and ‘ephemeral’ (*‘abir*) and what, at the same time, constitutes an ‘opening’ and a ‘gap’ (*ma‘bar*). For a thorough analysis of the complex resonances of ‘burning’, see Pandolfo (2007).

paths. This is often a rational choice, either because of the lack of a clear public reception project²² or because of the impossibility of achieving regularization when they come of age.²³

For these reasons, the majority of boys (and some girls) move to the big cities of northern Italy, where the presence of Moroccan immigrants is conspicuous. In Turin and Milan – the principal destinations – the number of Moroccan unaccompanied minors at the end of 2007 was 398 and 385 respectively. In Turin, there is a notable presence of minors from Casablanca (70 cases reported in 2007) – mostly from poor areas and shanty towns – followed by young people from the semi-rural province of Khouribga (42 cases); in Milan, minors come mainly from the rural province of Beni Mellal (60 cases reported). The majority of Moroccan minors recorded in Italy in 2007 thus came from Beni Mellal (210), Khouribga (185) and the urban belt of Casablanca (173).²⁴

These data are provided by the Foreign Minors Committee (Comitato Minori Stranieri),²⁵ to which all municipal administrations are required to report contacts with unaccompanied minors. At the end of 2006 Moroccan unaccompanied minors numbered 1,403, that is 21.8 per cent of all unaccompanied minors and the second nationality after Romanians (Giovannetti, 2008a). According to the committee, at the end of 2007 there were 1,492, representing 19.8 per cent of all unaccompanied minors in Italy.

These data are not necessarily complete, as they cannot record the presence of unaccompanied minors in contexts where programmes are not active or the

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22. Contradictory strategies have been adopted towards the presence of 'unaccompanied foreign minors', in a climate of conflicting opinions. In 1999 the Foreign Minors Committee (Comitato Minori Stranieri) was set up, initially at the Ministry of Work and Social Solidarity, in order to monitor the phenomenon and coordinate strategies. Direct responsibility for their reception was delegated to the municipal administrations, in the framework of the normal social responses to children in trouble (but without additional funds). Although this could have helped to introduce some normality, the lack of specific funds for reception created a highly differentiated picture: some administrations aimed at good practice, others completely ignored the phenomenon (see also note 5 above). For a thorough analysis of Italian provisions and their effects, see Rozzi (2008) and Giovannetti (2008a). For a comparison with other European countries, see Senovilla Hernández (2007b).
 23. According to current legislation (see note 5), many unaccompanied foreign minors, the majority of whom are between 16 and 17, are formally excluded from possible regularization. Here we see the paradoxes of regulations in which the control of migration flows is given more importance than requirements of protection and safeguarding of minors (Empez et al., in press). In this political framework, the mandate of the Foreign Minors Committee has gradually changed, transforming it into a body charged essentially with the repatriation of minors (Petti, 2004; Senovilla Hernández, 2007a). The 'right to family unity' (articles 9 and 10 of the CRC) is thus less important than concerns over border controls. Although the conditions in the countries of origin prevent most actual repatriations, this indicates an ideological approach to the phenomenon.
 24. In a very general way, we can associate the provenance with some specific profiles: minors from urban neighbourhoods generally migrate independently, with tortuous itineraries and particularly dramatic life experiences, while those from rural areas tend to be involved in migratory projects in which the family has directly invested. In similarly general terms, we could say that the latter tend to respond more favourably to insertion programmes, especially if well structured and arranged with the agreement of families in Morocco.
 25. See note 22.

possibility of multiple entries should young people give different names in different places. This last factor is indicative of a widespread diffidence among the minors towards social workers, either for fear that they might be repatriated or accused of involvement in petty crime or because of their desire for a life without constraints.

Life after arrival in the destination country is generally accompanied by a feeling of freedom and personal success, although a sense of responsibility for the family and an awareness of their explicit or implicit expectations gradually emerges. Many adolescents narrate with pride the investiture received while far away from their parents, sometimes expressed by means of a formula of 'satisfaction' (*rida'*) full of ritual implications: 'Now you've grown up; we're satisfied with you; now you have to think for yourself; be a man/woman; don't forget where you come from.'²⁶ These words evoke the sense of a family alliance that migration finally confirms, sometimes in a compensatory way. In many cases, however, Moroccan adolescents give a very precise explanation for their migration, stating that they left *bash n'ataq l-walidin* (to save the parents). This phrase, besides giving a vivid sense of an intergenerational loyalty oriented from children to parents, shows an awareness of the perceived mission. As 17-year-old 'Omar observed:

Your mother doesn't need to say: 'Send the money.' You know from the beginning that they need it. When you call them, and they tell you about their troubles, the loans, the lack of this and that ... you know perfectly well what you have to do ...

These contrasting feelings express the complexity of a reality that differs from what was visible from Morocco: as minors, work is formally illegal,²⁷ and in any case is not easy to find; moreover, the adults who promised help are often unable to give protection, as they themselves are in precarious situations. These limited social possibilities clash with the need for quick productivity imposed by the minors' situation and force them into marginal activities: selling small objects on the street, parking cars, washing car windows at road junctions, and so on.

Comparisons with other children, already made before departure, now become more significant in a moral competition for who is the best at making money in critical conditions. The measure of personal value moves progressively from strength of character expressing itself in resistance and moral fibre to an

26. The general sense of these words sounds like a blessing from the parents, a symbolic act still perceived as a confirmation, also from a religious point of view. In particular, the parents' blessing is considered as an important act for the weighing up of one's deeds on the Day of Judgment (see note 7).

27. According to Law 189/02, unaccompanied minors, in contrast to Italians over 16, are not allowed to work regularly. This does not prevent them from finding clandestine jobs, perhaps with a compatriot, although often in conditions of risk and exploitation. Minors on the insertion programmes can attend professional courses and serve an apprenticeship, but they cannot be employed until they come of age and are granted a residence permit for 'work reasons' (if they have the right to do so and with the agreement of the Foreign Minors Committee). The only exception is when a minor obtains a permit for 'family custody' and is in guardianship in a family (of compatriots or of Italians). However, only very few minors obtain custody within a family (7 per cent of minors of all nationalities: see Giovannetti, 2008a).

ability evaluated on a monetary parameter: it is in this way that *flus* (money) becomes the yardstick of achievement.

The possibility of escaping from the tensions of reality is thus expressed in a progressive slide into what is *haram* (illicit), often following the example of a drug dealer. With drug dealing, money flows in easily, but its possession frequently elicits mixed feelings due to its illegal nature (Aalla and Gecele, 2000). On the one hand, there is a sense of power and invulnerability, of the possibility, sometimes felt for the first time, of almost unrestrained consumption and freedom. On the other hand, the quality of life is bad, in the recurring exposure to violence, abuse, danger and the constant fear of the police. Some boys ironically acknowledge that 'the *haram* money has wings', because it is weightless and vanishes as rapidly as it arrived. The boys' pride in their bravery and strength of character – expressed in the vernacular expression *khud l-khubz men fum s-sbe* ('take the bread from the lion's mouth') – blends with the growing sensation of inconclusiveness ('to run without going anywhere') and the pain experienced because of the lack of alternatives.

This mixture of absence of limits and existential suspension gives rise to deep conflict and is often compensated for by the consumption of the same substances that are being sold (including anxiolytics) and alcohol. Under their effect, the minors start to feel anger because of their circumstances, together with a desire to take possession of the surrounding wealth, so close but at the same time impossible to reach.

Moroccan minors constitute the second group of foreigners reported to the Italian police between 2001 and 2004, with 2,024 offences mainly relating to the so-called 'predatory behaviours' – theft and robbery – and to drug peddling. If the percentage of the total number of reports is still low (between 5 per cent and 6 per cent of juveniles reported to the police in the same period were Moroccans), the presence of Moroccan minors in juvenile prisons – the true indicator of their general social condition – is statistically of much greater significance (Dal Lago, 2001; Wacquant, 1999; 2002): the lack of family and social resources of support precludes the alternatives to detention that are available for Italians and for minors of other nationalities. Between 2001 and 2006 the number of Moroccan minors in Italian juvenile prisons varied between seventy-one and fifty-eight a day (almost exclusively male), representing 14 per cent of all minors detained.

In the enclosed penitentiary space, the condition of these young people grows markedly worse. Personal status is often represented by the idea of being *da'yy* (lost), or being impure and condemned by destiny – *al-maktub* (what is written) – to an illicit life. The imaginary becomes populated by characters and visions representing the status of 'damnation' and 'perdition', first of all the *jinniyya*²⁸ 'Aisha Qandisha, the camel-footed woman ravishing the men seduced by her promises and driving them to madness' (Crapanzano, 1973; 1992).

28. The feminine of *jinn*, invisible creatures who inhabit the world near to human beings, but represent the negative and the shadow of socialization (see note 9).

The thoughts about family, future and personal condition, combined with the closed cell and, sometimes, abstinence from the usual psychotropes, produce a condition of almost permanent anxiety. To calm this anxiety, the minors repeatedly demand anxiolytics from the medical staff, or resort to self-harm (reported to relieve the feelings of sorrow and regret).

In this way, the 'cut' in the continuity of the experience, inaugurated with the liberating breaking of the social limit, is embodied in a metaphor: self-punishing themes are combined with the desire for freedom and, in the impossibility of articulating a different 'voice',²⁹ with the dull pain provoked by new borders, terribly similar to the old ones.

CONCLUSIONS: ON FAMILY AGAIN

Turin, March 2005

One afternoon in March 2005 I was with some friends in front of the main steps of the University of Turin, when a young Moroccan boy, loaded with objects to sell, came up to me. Nothing strange about that – I'm familiar with the youths, all from the same family, who've covered the area for some time, carrying out their informal trade. That day, however, I was struck by the youth of my interlocutor, doubtless still a child. I dared to ask his age and when he gave me an answer that was clearly untrue (15 years old) I replied with some jokes about his childlike appearance. I was even more surprised, however, when I asked his name and he answered, without any hesitation, '*Flus* [money]'

Through the 'surplus of sense' that characterizes our words, this exchange emblematically highlights a dimension of the experience that is not so different from the one described by Francophone Moroccan post-colonial authors. In their novels, the transmission of *nasab* (lineage, descent, origin, represented in our example by the name) is facing an impasse. These reflections are meant to outline the characters of a 'discourse' and not to describe a form of determinism: certainly, the majority of Moroccan families are able to provide a structured and nurturing environment, but this attitude seems to be situated in a wider horizon of crisis, due essentially to a combination of social change and the delegitimization of the less well-off classes.

When youths tell of their unemployed fathers, who are unable to provide the minimum standards by which dignity is measured today; when mothers relate their lack of arguments to dissuade their children from the idea of leaving; when everybody acknowledges the lack of instruments to filter the image of the neighbour who leaves as *maqarish* (illiterate) and returns with a car; when minors emphatically report the desire to redeem the historical fate of their parents, we are touching on the lack of resources, both material and psychological, that a family possesses to manage the power of the legitimate quest for change.

29. On the concept of 'voice', see particularly Morris (1997).

To emphasize these aspects does not mean undervaluing the individual spirit of initiative, the agency expressed by the young people or their challenge to the conditioning normative systems. The migratory project of Moroccan minors constitutes a reversal of the social order experienced as class, age and, in some cases, gender hierarchy. With their movement, they renegotiate the public role, in the attempt to pass from a marginal to a central position (Suárez Navaz, 2006; Jiménez Álvarez, 2007). At the same time, it is impossible to reduce this movement to a simple individual choice. The stories presented here, and those encountered every day, highlight the importance of considering the vicissitudes of the family as a whole. This does not mean considering the family as 'guilty', but neither does it mean ignoring the process of 'parentification' in progress (Bargach, 2008).

While investigating this process, and observing the consequences for young lives, we should like to emphasize a profile that has frequently been ignored – in institutional debates as well as in the press – of two stereotyped opposing images: on the one hand, the minor as a threat to public order, a wandering adventurer, a dangerous 'clandestine'; and on the other hand, the minor as a helpless victim, a passive subject, an object of someone else's practices and discourses.

Beyond these mirror images, it is legitimate to examine the needs that minors express directly. Listening to their stories allows us to recognize the difficulty of growing up and finding one's way alone in a complex and contradictory world: how to face the power of the images of otherness in a world now transformed, and bewildered, by the emerging market? How to respond to the claim for change that, from a condition of systematic disadvantage, the family expresses? How to manage the long-term change? How to reconcile the desire for freedom with the role of an immigrant, living legitimately in the host country as a well-disciplined and submissive worker?

Well-conceived social reception paths show the need for orientation expressed by the adolescents, after their initial reluctance, when it is possible to develop a climate of mutual trust with the social operators. This does not mean that they will not experience sorrow because of all the contradictions they experience, but it encourages negotiation in the choice to postpone autonomy until a future date. To carry out this difficult task, it is necessary to renegotiate with the parents and their objectives, in order to find a different solution from that defined in the 'all or nothing' projections of departure.

This process highlights the centrality of rules, a source of major ambiguity: although rules constitute the basic condition of life in a collective context, immigrants often see them as a constraint, sometimes akin to persecution. In accepting a municipal reception programme, a youth also agrees to exchange independence – contradictory and often painful, but rewarding in many aspects – for the long discipline of training for the labour market, the only possible prospect 'by force of law'.³⁰ This presupposes a form of 'subjection' as the only alternative to the endless circuit between exploitation, self-exploitation and repression.

30. The expression alludes to the reflections of Derrida (1994).

This is not the place for a thorough analysis of this point. Suffice it to recall the reflection on the 'paradox of subjectivation' that Judith Butler (1997, p. 17) reformulates from the work of Michel Foucault: 'Subjection (*assujétissement*) is certainly a power exerted on a subject, but it is also a power assumed by a subject, an assumption which constitutes the same instrument of the becoming of the subject.' In this passage, an appeal is made to the social operator to lean on the productive side of his ambiguous role, the one promoting the appropriation of personal empowerment: if the assumption of the productive role prescribed by the contexts of origin and arrival is really mandatory, it is at least desirable that an ounce of bargaining power could counterbalance procedures that restrict the number of choices.

This is the challenge of a reception that interprets the protection not only as a 're-educational' priority, but as a mutual construction of new possibilities of sociality and life.

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The international migration of children from rural north-east Albania

Aida Orgocka

Although fieldwork conducted by non-governmental organizations shows that Albanian children leave their parents behind to work abroad and help with the survival of the household, the phenomenon has received scant attention in research. This chapter reports findings from a quantitative survey conducted between February and April 2006 in four border districts of north-east Albania with 805 rural children from 6 to 18 years old. The descriptive analysis conducted across age groups and gender seeks to comment on three issues: first, the perceived extent of the phenomenon of child migration from the rural north-east; second, children's own attempts to migrate; and third, children's intention to leave Albania and the modalities of this decision.

The findings showed that a significant number of children knew of other children (predominantly males in the 15–17 age group) who had migrated primarily to the United Kingdom (UK), Italy and Greece. Other children themselves had tried to migrate seasonally. Migration was linked to children's belief that they have a responsibility to bring income to the family. The decision to leave was a family affair; not only would children discuss their decision to migrate with their family, but the majority were convinced that their parents would give money to a relative to help with the migration. Finally, the implications of programmes for applied work on child migration are discussed.

INTRODUCTION

Reports and anecdotal evidence about trafficking of children from Albania have shown that these children may be found in Italy and the UK, but also in border areas in Kosovo, The former Yugoslav Republic of Macedonia and Greece, and

that they are primarily exploited for work, sometimes with the knowledge of their parents (e.g. Dottridge, 2004; Kane, 2005). The number of these children may be close to 6,000, the majority found in neighbouring countries.¹ In contrast to this, a few Albanian not-for-profit organizations have recently been contracted to assess the living conditions of families whose children migrated independently and have been intercepted in a host country, particularly Italy, and are in the process of being returned. For example, the Albanian Office of International Social Services reports that for the 2003–2008 period, some 1,460 such cases of youths, predominantly males in the 15–17 age group, were encountered.² A considerable number of these were from the north-east of Albania, noted for male migration especially to Greece, Italy and the UK.

While there is a steady growth of studies on adult migration from Albania (see e.g. King et al., 2005; Vullnetari, 2007), the phenomenon of independent child migration has received scant attention in research, and even then, the data: (a) concern children who have already migrated; and (b) concentrate on their situation in the host country (see e.g. Campani et al., 2002, on Albanian youth in Rome). As most of this movement for work occurs illegally, it is difficult to track children who intend to migrate.

Anecdotal evidence, however, suggests that such migration probably started in the early 1990s, originally for study abroad, in the form of au pair schemes, scholarship schemes whereby families and Western high schools/colleges contributed jointly, or church group schemes whereby a group became responsible for the education and protection of a child in a Western country. Most of the children leaving Albania through these types of scheme belonged to well-off families with parents who, before the change of regime, had had an opportunity to interact with the outside world and had either befriended or established work relations with colleagues outside Albania. It is important to stress that this type of migration occurred legally in conformity with the laws of the destination country.

Based again on such anecdotal evidence and not-for-profit organizations' work, child migration for work appears to be a more recent phenomenon, probably dating from the late 1990s and early 2000s. This group of children, however, comes from rural/urban poor families, and such movement is usually illegal. It follows the pattern of 'chain migration', i.e. children either join a parent or cousin in a destination country, or migrate seasonally for agricultural work in neighbouring countries.

The invisibility of migrant children is also noticeable in policy documents and migration management programmes designed and implemented by the Albanian Government and international organizations working in the country.

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1. This figure is reported in Albania's *National Strategy Against Trafficking of Children and Protection of Children Victims of Trafficking 2005–2007*, which comments that these are figures reported by international and national not-for-profit organizations. Due to the clandestine nature of the phenomenon and the lack of information from destination countries, it is very difficult to produce reliable figures.
 2. Personal communication between the author and the director of the Albanian Office of International Social Services.

A reluctance to acknowledge the political and economic failures that make children leave Albania has created a culture of silence around the phenomenon. While children are generally valued by parents and families, the case of children migrating for work away from their families and communities is an illustration of child neglect from the perspective of child well-being policies and programmes: not only are children's basic physical and emotional needs disregarded, but their future prospects are not encouraged or invested in. Child protection as a framework for such initiatives addressing child neglect has yet to make inroads in the Albanian context.

The conclusion of Whitehead and Hashim (2005, p. 18), that 'we are very far from understanding the meanings and social contexts of children's moving to work', may be equally applied to our knowledge of the independent movement of Albanian children abroad. The purpose of this chapter is to offer descriptive data on child migration from the north-east of Albania, an area noted for population migration both internally and abroad.³

BEING A CHILD IN NORTH-EAST ALBANIA

Largely described as in the grip of the informal economy, north-east Albania comprises several districts, including Tropojë, Kukës, Has and Dibër. It is the most depressed region in the country, with the rural areas having little arable land, poor infrastructure, high unemployment and heavy male migration. Close to 50 per cent of the population receive social aid. Poverty in these areas has directly affected the living conditions of children, who make up close to 40 per cent of the 300,000 population. Over the past two decades, teaching staff have continually migrated towards the capital and other large metropolitan areas, leaving behind under-qualified personnel. This has resulted in the creation of two categories of students: those who openly leave school, especially those above 10 years old (officially estimated at 7 per cent), thus defying Albanian educational legislation that makes education compulsory until the age of 16; and those who continue their schooling, but are academically challenged (no estimates available other than anecdotal evidence) – these are otherwise called hidden drop-outs. Furthermore, the areas have poor health and social protection services, which represents a serious threat to the well-being of children in all age groups.⁴

While the region's poverty has an undeniable effect on children's lives, children are also part of a local culture that considers them indispensable to the household economy, whose survival requires all of the family's resources to be utilized. As family members, children are part of collective routine activities that keep the household afloat in the conditions of a largely informal economy. They are socialized from their early years to contribute several hours a day to this economy,

3. For related research on the issues of child trafficking and smuggling from this area, see Orgocka (2006).

4. These figures have been extracted from the 2004 Regional MDG Development Strategy of Kukës and Dibër areas that constitute the north-eastern area of Albania.

at times at the expense of other activities otherwise deemed appropriate for their age, such as school attendance and leisure. A study of 1,200 children from the north-east (Orgocka, 2007) found that, irrespective of gender, some 35 per cent of children start working earlier than 10 years of age and some 47 per cent between the ages of 10 and 12, while 50 per cent are engaged in housework for more than three hours a day. Caring for a sibling or doing other household work were the main reasons for not attending school regularly.

Another study on school drop-out recently conducted in the Kukës district (Hajdari, 2008) showed that, compared with male children, almost twice as many female children in the 14–16 age group drop out of school: the reason given was that girls do not need much education as they have to work at home and receive guidance in household management in preparation for married life. The same study also revealed that although the number of male children who have dropped out of school is smaller than that of females, several of them engage in seasonal and long-term unaccompanied economic migration due to the difficult economic situation of their families.

While unpaid household work may help with the daily routine of survival, it does not necessarily translate into increased household income for daily consumption. In the absence of regular employment for parents, children may take on the role of bringing in income, a role customarily taken by adults. For many children, especially in the adolescent years, migration for work is not an unfamiliar concept. Many have grown up with the model of an emigrant father and some aspire to join their parents, as staying in Albania offers few opportunities either to learn or to play (Orgocka, 2007). The findings described below relate to perceptions of the extent of migration, children's own attempts to migrate and their intention to migrate in the future.

THE STUDY

The study concentrated on economic child migration, a child being defined as anyone between the ages of 0 and 18 and 'economic child migrants' meaning any child who migrates particularly for work (Huijsmans, 2006). Based on a descriptive study of household needs and child international migration from the rural north-eastern region of Albania, it sought to shed light on:

- the perceived extent of the phenomenon of independent child migration from rural north-east Albania;
- children's own attempts to migrate; and
- children's future intention to leave Albania and the modalities of their decision.

While participants in the study included 1,500 adults and children selected randomly from north-eastern border areas and other areas noted for migratory movements outside Albania, we report on the data collected in face-to-face structured interviews with 805 children carried out between February and April

2006. The children were in the age groups of under 10 years (25 per cent of all males and 21 per cent of all females), 10–14 years (50 per cent of all males and 50 per cent of all females) and 15–18 years (25 per cent of all males and 29 per cent of all females).⁵ While over 95 per cent of the children under 10 and in the 10–14 age group reported that they were attending school at the time of the survey, close to 85 per cent of children in the 15–18 age group reported doing so. The children came from families in which parents had elementary or advanced elementary schooling in 71 per cent of cases, and were unemployed in 54 per cent of cases (66 per cent female parent and 43 per cent male parent). About 65 per cent of the families had a monthly income of less than €250, and for 45 per cent the main source of income was state aid (approximately €17 a month). Close to 33 per cent of the families reported steady sources of income and about 86 per cent of the parents reported spending money exclusively on basic food. The survey had access only to children who lived in the stated area and those who had tried to migrate seasonally.

Analysis showed that most children, irrespective of age and gender, contributed to the family economy (Table 7.1).

Table 7.1: Children's work activities by age and gender (%)

	Under 10 years		10–14 years		15–18 years	
	Male	Female	Male	Female	Male	Female
Tending livestock	37	52	43	65	23	60
Tilling the land	9	3	18	10	57	34
Making dairy products	10	46	10	78	18	89
Caring for fruit trees	21	9	46	23	71	30
Fetching water	48	82	64	89	62	93
Fetching wood	29	19	64	22	84	32

Participating children believed that it was their duty to help with increasing the household income irrespective of the perception of sufficient household income. In Table 7.2 we report only percentages of children who believe they have a responsibility to contribute to the family income. Within each age group we distinguish by gender and derive percentages based on groups' perceptions of sufficient/insufficient family income. For example, 50 per cent of the male children and 85 per cent of the female children under 10 who believe their family has sufficient income also believe that it is their responsibility to help out with the family income.

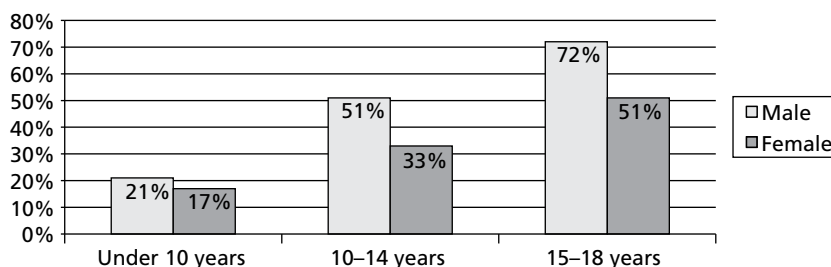
5. Percentages reported for each gender across age groups.

Table 7.2: Children's belief that they should help with family income, by age, gender and perception of income (%)

Family has sufficient income	Under 10 years		10–14 years		15–18 years	
	Male	Female	Male	Female	Male	Female
Yes	50	85	100	100	100	100
No	9	3	18	10	57	34
Perhaps	10	46	10	78	18	89

THE PERCEIVED EXTENT OF THE PHENOMENON OF CHILD MIGRATION IN THE RURAL NORTH-EAST

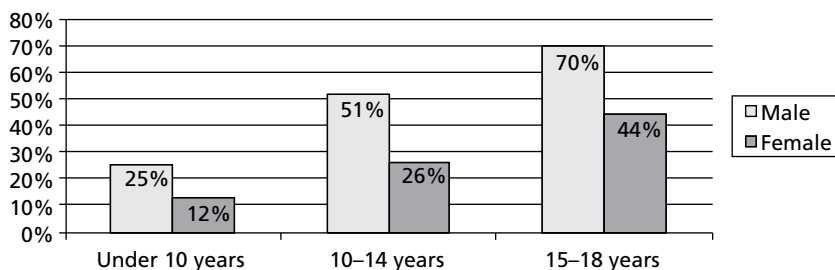
As children almost always leave the region by illegal means, it is almost impossible to estimate the numbers who have migrated within any specific timeframe. An acknowledgement of the fact that a child has migrated usually happens months after the event, most often when they have reached their destination and have had an opportunity to notify the family. Most of this sharing of news happens between families who often comfort each other that the decision to allow the child to migrate, while not the best option, may turn out beneficial for both child and family. Thus, to obtain information on the extent of child migration, we depended on reports by participating children. We asked them whether they knew of other children who had left the area for work. The findings showed that a significant number of children knew of others who had left the area. More children, particularly male, in the 15–18 age group knew of such children. Figure 7.1 shows only the percentages of children who knew of children who had migrated for work purposes, by gender within each age group.

Figure 7.1: Children knowing of other children who have migrated

Overwhelmingly, both male and female children reported that they knew of male children who had migrated. With a few exceptions, most of them reported that they knew of children who had migrated to Italy (77 per cent), Greece (62 per cent) and the UK (27 per cent).

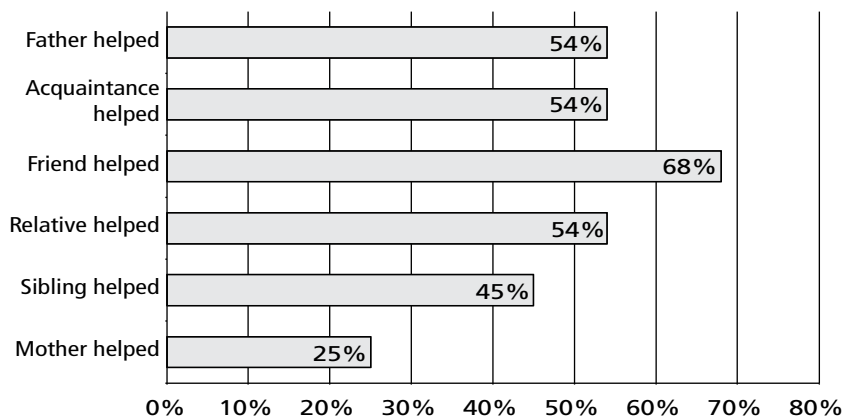
The findings also showed that experiences were shared between children who emigrated and those who did not. Sharing such experiences occurred especially in the 15–18 age group in both genders (Figure 7.2).

Figure 7.2: Sharing migration experiences



It is not surprising that more male than female children reported having shared experiences with children who had migrated. Anecdotal evidence shows that male children particularly leave the north-east to work and that their peers are usually influential in such decisions. Children were asked to report whether they knew who had helped these children to migrate. As Figure 7.3 shows, the individuals that helped least often were their mothers and those that helped most often were their peers.

Figure 7.3: Individuals who helped with children’s migration



Most child migrants known by the participating children had shared with the latter information on the kind of activities that bring a quick income. The activities that were reported as bringing the most significant income were begging (62 per cent) and working in other people’s homes (82 per cent). However, these comments have to be interpreted within the context of age group and gender of the migrant child as well as duration of migration. Current data do not allow for this kind

of analysis, but these answers probably relate to short-term/seasonal migration. They also mirror some of the findings on child trafficking from Albania. For example, the International Labour Organization (ILO's) International Programme on the Elimination of Child Labour (IPEC) (Kane, 2005) indicates that while the majority of child victims of trafficking from Albania are teenagers, younger children (between 11 and 12) can also be found, especially boys sent out to work. The latter are trafficked into begging either alongside their parents or as part of a group of children put to beg on the streets with a 'handler'.

CHILDREN'S OWN ATTEMPTS TO MIGRATE

Of the total sample, only 64 children or 7 per cent (16 female and 48 male) reported having migrated seasonally; thus the findings should be interpreted with caution and warrant further investigation. Seasonal migration of children started earlier than 10 years of age and occurred in the summer months. Close to 11 per cent of the participating children who reported seasonal migration were under the age of 10 and another 41 per cent were in the 10–14 age group. More male children reported seasonal migration (75 per cent male against 25 per cent female). Close to 55 per cent reported that they ate only two meals a day, 84 per cent reported being constantly hungry and 20 per cent went to bed hungry almost every day of the week prior to the interview. Only 22 per cent slept in their own bed, and 46 per cent shared a bed with a sibling. About 33 per cent could only write their names and 66 per cent believed that it was a child's responsibility to help with the household income.

Of the two main activities in which migrant children were involved, begging brought an income for children under 10 (80 per cent) and children of 10–14 (61 per cent), while working in someone else's home brought an income for more children in the 15–18 age group (about 83 per cent as against 72 per cent among children 10–14 years old). While family members helped the children to migrate, a significant number had been helped by their peers. This was particularly emphasized in the 10–14 (80 per cent) and 15–18 (77 per cent) age groups. About 50 per cent of these children reported that they had taken the decision to migrate seasonally themselves.

CHILDREN'S INTENTION TO LEAVE ALBANIA AND THE MODALITIES OF THIS DECISION

Children were asked about their future plans and whether they would be in a different village or region or whether they would have left Albania altogether in three years' time. Only 15 per cent of the participating children answered this question, and of those 85 per cent planned to be outside Albania in three years' time, in contrast to 11 per cent who expected to be in a different village and 4 per cent in a different region. About 8 per cent of the under-10s (equally distributed by gender), 39 per cent in the 10–14 age group (46 per cent female against 54 per cent male) and 53 per cent (36 per cent female against 64 per cent male) in the

15–18 age group planned to be outside Albania in three years’ time. Further analysis concentrates only on this last group of children.

Analysis showed that child migration is a family affair. Children would discuss their decision to migrate with their family. Almost 90 per cent of the children aged under 10 would discuss their decision to migrate with their father, mother and siblings. Although these figures are lower for the other two age groups – respectively, 86 per cent for 10–14 years and 77 per cent for 15–18 years – it was interesting to note that across age groups more children reported that they would discuss their decision with the father, followed by the mother and then a sibling.

Children were also convinced that it was their parents who would most frequently help them financially with their migration (Table 7.3).

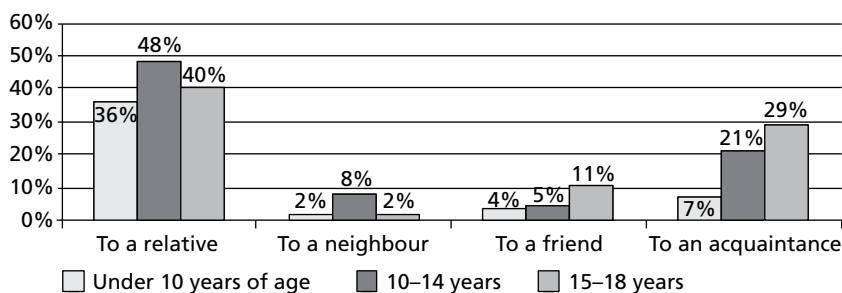
Table 7.3: Children’s perceptions of individuals who will help them financially to migrate, by child age and gender (%)

	Father will help		Mother will help		Older sibling will help	
	Male	Female	Male	Female	Male	Female
Under 10 years	86	57	4	0	9	5
10–14 years	9	6	3	0	33	17
15–18 years	16	0	14	3	62	18

A very interesting finding from the study is the prevalence of younger children’s belief that their father would help. They indicate indirectly that, from early on, children are introduced to and familiarize themselves with the concept of migration for work, and the primary agents for such socialization are fathers. Girls also held the belief that a fiancé would help with the departure (10 per cent in the 10–14 age group and 33 per cent in the 15–18 age group).

Furthermore, when asked to whom their parents would give money to facilitate illegal child migration/smuggling, children reported that their parents would probably give money to a relative (Figure 7.4). In response to this question, the answers did not differ significantly in terms of gender.

Figure 7.4: Giving money to help with child migration



Only a minority of children in the 10–14 and 15–18 age groups⁶ shared information on how migration would occur. About 2 per cent in each group reported that their parents would pay someone to help them to cross the border. Almost 2 per cent of the children aged 15–18 said that they would apply to study abroad. Of more concern, however, is that about 10 per cent of the 10–14 and 3 per cent of the 15–18 age groups were intending to find false papers. Asked how they would cross the border, children reported that they would use different means depending on the destination; thus, only 2 per cent of the 10–14-year-olds would go across the mountains, while the others would take the plane or a ferry.

Asked whether aspiring migrant children would return to Albania, about 75 per cent of the under-10s said they would do so every now and then, compared with 38 per cent in the 10–14 and 38 per cent in the 15–18 age groups. Another 25 per cent (all male) in the under-10, 52 per cent in the 10–14 and 60 per cent (57 per cent female against 60 per cent male) in the 15–18 age groups said they would return every year. Lastly, only 10 per cent in the 10–14 and 2 per cent (all female) in the 15–18 age groups would never return to Albania. Table 7.4 shows this information disaggregated by gender.

Table 7.4: Children's plans to return, by age and gender (%)

	Occasionally		Every year		Never	
	Male	Female	Male	Female	Male	Female
Under 10 years	33	77	25	0	0	0
10–14 years	45	22	45	67	10	11
15–18 years	40	29	60	57	0	2

CONCLUSIONS AND RECOMMENDATIONS FOR A PROGRAMMED RESPONSE

While the Albanian authorities do not officially track the numbers of migrant children who have returned home via formal channels involving the Albanian or host country governments such as Italy or Greece, the evidence is clear. Large numbers of children are attempting to migrate illegally for a better life. This study has offered modest data on child emigration from north-east Albania. It supports the idea that child migration from the region is now an established strategy for meeting the needs of children and households to offset poverty and that this will continue in the near future. The migrant children knocking especially on European Union (EU) doors are in their adolescent years and are poorly educated in a formal sense, although they are equipped with basic skills to do routine work. Furthermore, not only do children make efforts to migrate, their migratory moves

6. This is a very small base and thus needs further exploration.

occur with the blessing of their parents and with help from their peers and other community members.

Three basic insights follow from this analysis. The first concerns the general relevance of expanding migration research in Albania to include children. To the author's knowledge, most research on children and migration currently focuses on child trafficking. Given the high rates of children's movements for economic reasons, the invisibility of migrant children is not justified. As households rely more and more on children to offset poverty, the discussion of unaccompanied child migration for labour purposes beyond child trafficking becomes crucial. In fact, a focus on unaccompanied child migration provides important clues to the relationship between trafficking, child labour and family survival mechanisms. Various economic and social factors may force children to migrate and family demands on children may unintentionally shape the nature and experience of this phenomenon. The exclusive attention paid to child trafficking as distinct from illegal migration (presumably voluntary) ignores the complexity of the situation, where coercion may exist even in non-sexual labour and in formally voluntary arrangements. It has been argued that unaccompanied migration may expose children to the risk of being trafficked as the routes, as well as parts of the trafficking process, are often similar to migration, whether during recruitment, travel or the stay abroad. In practice, an 'ordinary' migration can turn into a case of trafficking if any of the issues associated with trafficking take place along the migration 'chain'.

Without denying that there are instances of child abduction for trafficking, most trafficking probably occurs when an established migration flow already exists. In most of these cases, there needs to be a motivation for wanting to migrate in order for trafficking to take place (see e.g. Bastia, 2005). Neither can the need for more research on unaccompanied minors be disputed from the perspective of the destination country. Research has already demonstrated that in order to help unaccompanied child asylum seekers, we need to look back to their ordinary lives, as their stories hardly begin when they become visible as asylum seekers in a destination country (see Kohli, 2006, for further details).

Within this prospective research effort, there are three 'moments' to capture. The first concerns a child's decision to migrate. The descriptive data show that around fifty of the children had themselves decided to migrate. Thus it would be futile to adopt the approach that children are sent away because their families cannot afford to raise them. Without discounting this completely, children themselves are not just one more mouth to feed; they are social actors who position themselves as a solution to the poverty in which families find themselves.

The second 'moment' acknowledges the fact that children do not live and take decisions to migrate in isolation, and their situations cannot be adequately analysed as if they did so. The data show that child migration is not a decision taken by a child alone, but occurs in the context of the family, which can rarely be devoid of negotiations, including which child to send away and when. It has been suggested that in the north-east of Albania the family usually decides to send male

adolescents away because the parents have to remain in the country to take care of the rest of the family.⁷ More attention needs to be paid to household dynamics in this process. Furthermore, the data show that peers play an important role in fuelling the decision to migrate. The argument has been made that when children migrate illegally, they leave behind the social networks such as family and community ties that provide a traditional framework for support to their development. However, it is most likely that the child will find new social networks that may help/hinder the process of migration and adjustment. While the role played by networks in enabling adult migration has been extensively researched, more research is needed on how peer networks influence the ecology of the migrating child.

The third 'moment' refers to the gender of children who migrate. The findings reveal that more male than female adolescents were migrating from the north-east. Without discounting the fact that male children from this area are exposing themselves to the vulnerabilities of trafficking, the act of migration considered as an opportunity to achieve a better life and as an alternative preparation for adult life has already differentiated them in terms of gender-based advantages. The freedom to migrate from home alone is already perpetuating certain stereotypical expectations towards both genders, thus aligning children from early on with the 'privilege' that male children may express and cultivate their independence by migrating, while female children have to stay at home and prepare for adult life.

The second insight relates to the types of children who succeed in entering the EU. The data imply that children who have few academic achievements may be unprepared for the country to which they migrate. Not only will they have little information about that country, but they may have little or no language training and marginal academic skills, thus exposing themselves to a number of risks, including trafficking and exploitative work. While the migration of children cannot be stopped, parents and children need to be informed of the process of migration and the skills demanded in the workplace in the host countries. This informative process, however, needs to be designed with caution as anecdotal evidence shows that only stories of children who have succeeded abroad tend to make it back to Albania. Recognition of the failure to 'make it' in the 'land of opportunities' brings shame on the family and thus often goes unreported.⁸

The third insight concerns the type of movement these children contemplate and how it is interpreted. Essentially, child migration as reported from the data constitutes an illegal action; thus, it is problematic from the perspective of both the sending and the receiving countries and a target for control measures. There is no denying the fact that Albania has been accorded generous funding to address issues of child trafficking, but this remains selective and primarily focuses on awareness campaigns and capacity-building without addressing the root causes of migration pressure. That children from the north-east of Albania continue to seek an economic livelihood at a young age away from home through illegal

7. Author's communication with parents of migrating children, July 2008.

8. See the contribution by Mai (Chapter 4 of the present volume) for findings that support this statement.

means, instead of continuing their education, may be indicative of the fact that the context in which they grow up offers little more than poor-quality schooling and scant socio-emotional nourishment, thus justifying the illegality of the move and invalidating efforts to advertise the contrary. More attention to the benefits of intervention for children in these areas is thus warranted.

Such an understanding derived from the data needs to inform all programmed responses aimed at prospective migrating children and their families. The Albanian Ministry of Labour, Social Affairs and Equal Opportunities has drafted a Framework Law on the Rights of Children, a comprehensive law that not only guarantees the rights of children, but clearly defines the institutions responsible for guaranteeing these rights. Creating an optimum legal environment that protects children from harm, including that caused by illegal migration, may be a first step towards breaking the silence associated with the programmed response to children who migrate.

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The migration of unaccompanied and separated Senegalese children to Spain

Nelly Robin and Daniel Senovilla Hernández

This chapter aims to analyse from a South/North point of view, first, the real scope of the migration of supposed unaccompanied or separated children on the Senegalese maritime route to the Canary Islands, as well as the migratory and social context where this migration is being conceived; second, the place and role of Senegalese teenagers as active participants in this migration adventure and the linked notions of family relations in this West African region – realities that could be in contradiction with the definition of these children as unaccompanied or separated; and third, the lack of coherence of the legal and policy responses to this new phenomenon in both countries.

SUB-SAHARAN CHILDREN: SIGNS OF THE DIVERSIFICATION OF RECENT CHILD MIGRATION INTO SPAIN

Today, Spain is one of the principal destinations of migrant workers. Although they come from all parts of the world, they mainly hail from South America, Africa and Eastern Europe. Two main factors lie behind this phenomenon: Spain's geographical location in south-west Europe, close to the African continent; and the dramatic economic growth the country has experienced since it entered the European Union (EU) in 1986.¹ The phenomenon is recent – the first use of the term 'immigration' in an official Spanish document dates from 1991, the year of the first regularization of illegal immigrants.² In a period of fifteen years, the number of aliens with residence

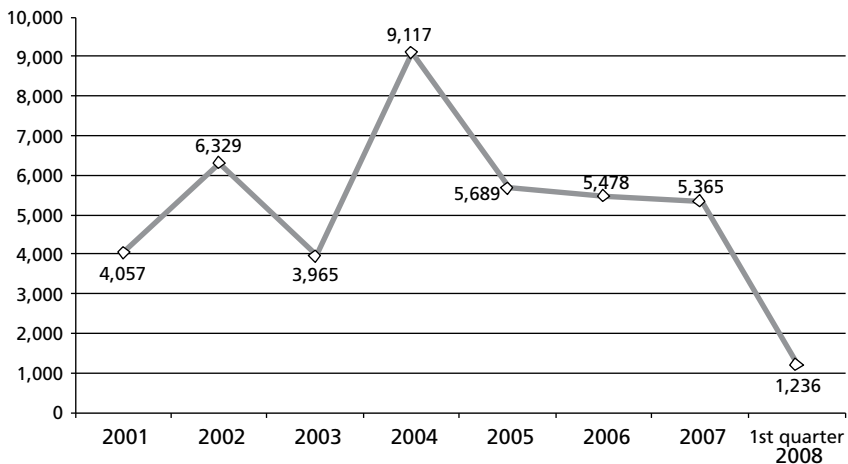
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1. Along with these two official factors, many experts see the importance of Spain's informal economy as the main factor behind the 'magnet effect' that favours the increasing arrival of the immigrants who settle there. A survey by the European Commission (2007) shows that migrants are considered by 33 per cent of the interviewees as the group that is the most involved in the informal job market.
 2. This refers to a *Proposición no de ley*, adopted by the Congress of Deputies on 9 April 1991; under para. 1 of the Bill, the government is asked to develop an active immigration policy, so that the authorities have the initiative to control and organize the flows of legal immigration according to the labour needs of the national economy and the capacity of the society to assimilate them. According to Domingo i Valls (2003), the regularization of 1991 was required by the EU, which wanted control over migratory flows following the signing of the Schengen

permits rose from about 400,000 in 1990 (three-quarters of these residents came from Europe and other developed countries) to over 4.7 million at the end of 2009 (Observatorio Permanente de la Inmigración, 2010). Spain, which used to be a land of emigration, is now the second destination of international migration in the world, just behind the United States of America (Pereda, 2007).

At the same time, the independent and spontaneous immigration of children aged under 18 into Spain was first seen in the second half of the 1990s, i.e. a little after other European countries. And, unlike most countries, which only regulated that form of migration after several years, a specific regulation was prepared in Spain in 1996, in spite of the small number of migrant children who arrived independently in that period. But the new type of immigration had major social repercussions and was the subject of much media attention in the late 1990s and above all in the early 2000s.

The latest official figures in Spain relating to unaccompanied and separated migrant children³ who are taken into care by the protection systems of the various autonomous communities (former regions) date from the end of 2008 (Figure 8.1).

Figure 8.1: Unaccompanied and separated children received in Spain (2001–2008)



Sources: 2001–2003, Third and Fourth Reports of 30 May 2008 to the United Nations Committee on the Rights of the Child; 2004–2007: *Boletín Oficial de las Cortes Generales*, 2 July 2008, Series D, No. 45, p. 130; 2008: *Boletín Oficial de las Cortes Generales*, 6 October 2009, Series D, No. 266, p. 27.

Convention of June 1990. Over 125,000 applications for regularization were registered and approximately 108,000 foreign nationals were given documents in Spain. The figures continued to rise over the following two decades.

3. The 'official' term in Spain is *menores extranjeros no acompañados*, as reflected in Section 35 of the Aliens Law and Section 92 of the Aliens Decree. The present chapter uses the terms 'unaccompanied' and 'separated'. For further details, see the section below on 'Unaccompanied children or separated children?'

These figures show the broad trends but must be interpreted with caution, as the same child may be counted several times under the same identity or different identities by different regional authorities, and thus be registered more than once.

The autonomous communities that experience the most immigration by children are Andalusia and those with large conurbations such as Barcelona, Madrid and Valencia. At the start of the 2000s, 90 per cent of the unaccompanied and separated children received in Spain (Senovilla Hernández, 2005, pp. 10, 11) were of Moroccan origin and came directly from Morocco. They arrived from the north or from rural areas of the hinterland, near the towns of Beni Mellal and Khouribga. These children hid in the underside of lorries or crossed the Strait of Gibraltar from Tangier as stowaways in boats. Yet others took a small boat (called *patera*) from Nador or Al Hoceima to reach the east coast of Andalusia and, to a lesser extent, from the south-west coast (port of Tarfaya) to the Canary Islands (Serifi Villar and Jiménez Álvarez, 2005, pp. 12–13). In 2004 children of Moroccan origin only accounted for 49 per cent of the children looked after by all the social services of Spain (Dirección General de Inmigración, 2006).

From 2006, the movement of children from West Africa to the Canary Islands became stronger, along with an increasing flow of adult clandestine migrants. That year, out of a total of 931 children in the care of the islands' protection services, almost half (453, or 48.7 per cent) claimed to be of Senegalese origin. Moroccan children, who mainly came from the south of the country, made up the second nationality (290, or 31.1 per cent), followed by Malians (115, or 12.3 per cent). The others (73) were from West Africa – they were principally Mauritanian, Gambian or Guinean (Conakry). Most of them were aged 16 and 17 (62 per cent) and a little over a third (32 per cent) were 14 and 15 (Parliament of the Canaries, 2007, pp. 24ff).

Even though the official detailed data by country of origin at the national level are not available for the period 2006–2009, the immigration of children of African origin into the Canary Islands continued during 2007 and 2008 (over 750 arrivals each year according to the data provided by the authorities of the region) and started decreasing in 2009. This new presence of unaccompanied or separated children from West Africa has made it necessary for the Spanish authorities (who are used to taking care of children from Morocco) to address the increasing heterogeneity of migrant children's origins.

THE EMIGRATION OF SENEGALESE CHILDREN TO SPAIN: INCREASING SOCIAL DEMAND AND THE NEW POSSIBILITY OF TRANSPORT BY SEA

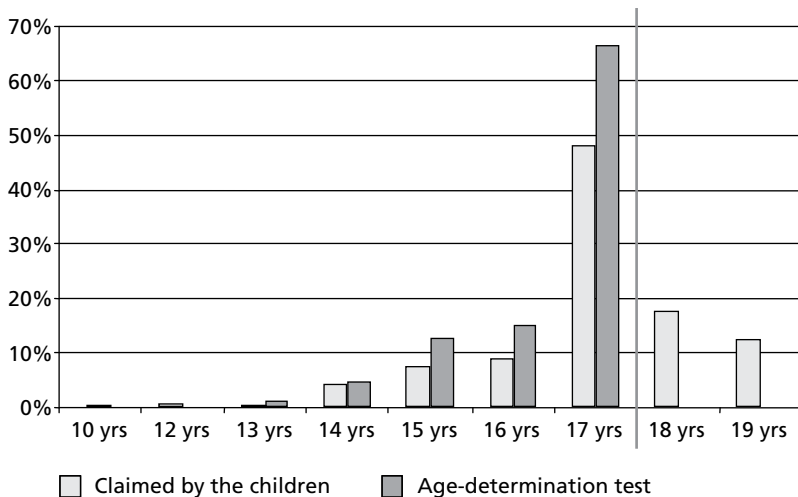
There has so far been very little detailed research on the determinants of these new maritime migrations between West Africa and the Canary Islands. Our analysis is based in part on a survey carried out in 2007 of 312 Senegalese children who

arrived in the Canary Islands between January 2006 and June 2007.⁴ The results obtained are sometimes compared with another study of potential migrants intercepted on or off the coast of Senegal during 2006.⁵

According to official data produced by the Parliament of the Canary Islands (2007, pp. 24ff), the children arrived mostly between April and September 2006; the majority preferred the months of August and September and landed on the island of Tenerife.

Under Spanish regulations, all unaccompanied foreign children who are identified at the borders or within the country are required to undergo a bone X-ray to determine their age. The sample of children studied makes it possible to compare the age reported by the child upon arrival with the result of the X-ray. Most of the Senegalese children were aged 16 or 17 – this represents 74 per cent of the total according to the age-determination test and 52 per cent according to the claims made by the children. The same trend was apparent in children aged 15: that is, 26 per cent and 12 per cent respectively (Figure 8.2).

Figure 8.2: Age structure of Senegalese children received in Spain (2006) (%)



Source: Proyecto Alondra survey (2007).

A comparison between these two variables shows that a large number of migrants who initially claimed to be adults were assessed as children following the results of bone-age testing (113 cases, or 36 per cent of the total). Two hypotheses may be put forward: these were indeed children claiming to be adults in order to be able

- Unreleased survey carried out as part of the 'Proyecto Alondra' programme for transferring unaccompanied children of sub-Saharan origin from the Canary Islands to other continental Spanish regions. We should like to thank the directors of the Nuevo Sol Foundation for permission to use the data.
- These are people arrested by the competent authorities in Senegal and brought before the Senegalese courts.

to work; or the age estimated by means of the test is incorrect.⁶ Interestingly, the trend goes against the hypothesis generally put forward by the Spanish authorities that a large number of young adult migrants claim to be under age in order to take advantage of child protection systems.

The children studied mainly hail from the regions of Thiès, Dakar and St Louis. These are the three major fishing regions of Senegal, in addition to Casamance with sea fishing (Ziguinchor area) or river fishing (Kolda area). Then come the groundnut-growing areas and to a lesser extent eastern Senegal. Basically, the children come from areas that are not only experiencing a crisis in the farming and fishing sectors, but have also been the main regions of emigration over the past ten years. The population is more urban than rural.

The distribution of the children according to their place of residence may be compared to that of their place of origin. Only five of them reported that they lived outside Senegal, in Gambia, Guinea-Bissau or Mauritania. Overall, ten out of eleven Senegalese regions were affected by child emigration, so it is clear that this is a national phenomenon.

The geographical distribution of the points of departure concerns five regions: Thiès, Ziguinchor, Dakar, St Louis and Fatick. These departure areas, spread from the north to the south of the Senegalese coast, are supplemented by other places located on the coast of Mauritania. The places of origin and residence are near the points of departure along the coast. If we consider Thiès, the main region for child migration in our sample, 75 per cent of those who left from this area (specifically from the ports of Kayar or Mbour) actually lived there. In general, there is a close correlation between the fishing ports and the centres of emigration by sea.

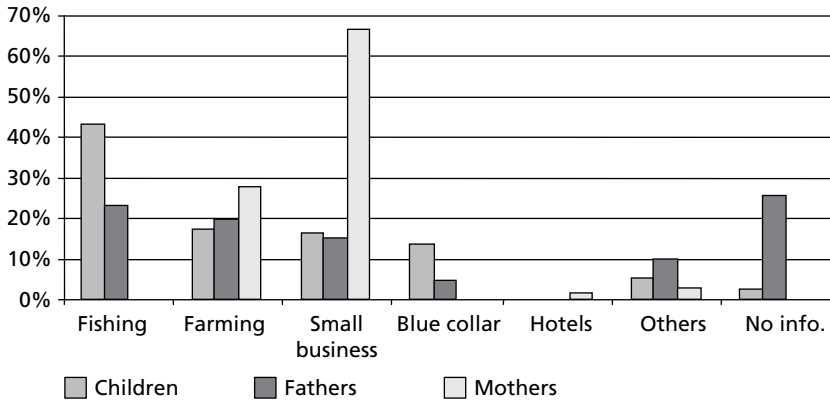
As with adults, the navigational skills of fishermen provide a new technical facility for migration, and meet a social demand that is extending spatially, diversifying socially and thus increasing numerically. The close link with the fishing sector raises three questions: first, the social origins of the children; second, the conditions of departure; and third, their status as *unaccompanied or separated*.

In order to try and answer these questions, we shall look at the places of origin, residence or boarding of the children and the areas of activity of the children themselves, their fathers and their mothers. For the purposes of this study, five areas of activity have been selected: fishing, farming, small businesses, the blue-collar sector and the hotel industry. An 'others' category has been added to these (Figure 8.3). This classification applies only to the gainfully employed, or 82 per cent of the children, 79 per cent of the fathers and only 50 per cent of the mothers. Most of the children in the sample had an occupation, for which they received a small monthly wage that was usually less than €50, but could in

6. The reliability of age-determination tests, particularly the Greulich and Pyle method used in Spain, is widely disputed by many experts. Among others, the report of 16 January 2007 of the French National Academy of Medicine, 'about the reliability of medical examinations aimed at determining age for judiciary purposes and the possibility of improvement in the area for unaccompanied foreign children', concludes that these tests make it possible only to 'appreciate the development age of adolescents below the age of 15 fairly correctly'.

some cases even reach €200, and which came chiefly from the fishing industry. The emigrating children were thus not necessarily unemployed, nor were they from the poorest families. That is a consistent finding in the area of migration: the cost of travel in particular requires some degree of financial resources. The areas in which most of the children, fathers and mothers worked, however, have been seriously affected by Senegal's recent economic and urban crises. Forty-four per cent of the children worked in fishing, although the overall rate varied according to their place of origin or residence and the area of work of the father. For example, 62 per cent of the children who left from Thiès were residents of that region and worked in fishing, which was also the main activity of their fathers.

Figure 8.3: Occupation of Senegalese children received in Spain, compared with that of their fathers and mothers (%)



Source: Proyecto Alondra survey (2007).

That spatial and occupational closeness, also observed in the regions of Dakar, Fatick and Ziguinchor, leads to the following hypothesis: these children did not necessarily leave alone and sometimes travelled with other members or friends of their family, neighbours or members of crews with which they usually went on fishing trips, and their parents had elected to entrust them to the care of responsible persons. Several testimonies collected in Senegal in the areas of departure confirm that supposition. It seems all the more valid as it bears out:

a major characteristic of African family systems – the movement of children between families through the so-called practice of ‘*confiage*’ [traditional fosterage]. While the phenomenon is observed elsewhere in the world, it seems to be of particular importance in sub-Saharan Africa, especially in West Africa where it is extremely prevalent ... The reasons for entrusting a child to somebody's care are very diverse – the reinforcement of bonds within kinship groups, socio-economic solidarities, the need for labour, investment in human capital, etc. (Pilon and Vignikin, 1996).

Further, the practice is particularly widespread in Senegal in the social groups to which the children studied belong. In the Murid community, which comes from the groundnut-growing regions, it is customary to entrust boys from the age of 6 to a traditional religious leader called a marabout, to whom the parents delegate all their authority. To learn a trade, children may also be entrusted to a craftsman or a fisherman, for example, who takes care of their entire upbringing. In the sample, a third of the children did not pay for their journey and it is very likely that they had special occupational or family relations with the crew of the pirogue⁷ that took them on board. This mode of social organization raises new questions about the relevance of the terms 'unaccompanied children' and 'separated children' in this context. Nevertheless, we should not ignore the testimonies of some mothers who said their children left without the knowledge of their families (though this does not rule out the possibility that they migrated with known and trusted adults).

Whatever the conditions of such migration, it reflects a growing social demand. Against that background, children play a part at an ever younger age in the survival strategies developed by their families. For 60 per cent of the children studied, the funds for the journey by pirogue came from one or more members of their family (father, brother, uncle or cousin).

The participation of children in international migration is a new phenomenon to Senegal. That change is related to the development of economic precariousness, which now affects social categories that were previously spared. Approximately 70 per cent of the mothers of the children in the sample work as street vendors or hawkers. Most of them have tiny stalls and sell a few vegetables, pieces of fish, groundnuts or fritters, which they hope will pay for their daily expenditure and put food on the table.

As a result, any approach to the modalities for resettling the children that may be initiated by the destination countries in Europe must take account of the different factors that play a role in their migration process. Otherwise returning the children is bound to fail and will simply be followed by other attempts to emigrate, including the recourse to trafficking networks (which is not currently the case in Senegal).

UNACCOMPANIED CHILDREN OR SEPARATED CHILDREN?

In the European context, different terms are used to designate the phenomenon of the independent migration of young people below the age of 18. These terms initially matched the different political traditions in each country and the different models based on the application of international standards governing the granting of asylum or the classical consideration of migrants as part of the labour force (Senovilla Hernández, 2007*b*).

At the same time, a distinction must be made between those children who, during their migratory process, are totally alone or accompanied by other adults

7. Long coloured boats used by fishermen in this African region.

who do not have parental authority over them, and those who are accompanied by a family member other than their parents or guardians. Even though most countries (Belgium, Germany, Italy, Spain) and the EU use the term ‘unaccompanied’,⁸ the United Nations High Commissioner for Refugees (UNHCR) and the international organization Save the Children – partners in the Separated Children in Europe Programme – support the concept of ‘separated children’, because they believe it provides a more accurate and broader definition of the situation of these children, who suffer socially and psychologically because they are separated from their parents or legal guardians.

Lastly, General Comment No. 6 of the Committee on the Rights of the Child has set out a dual definition that differentiates ‘unaccompanied children’ (those who are not accompanied by their parents or guardians or by any other responsible adult) from ‘separated children’ (who are effectively separated from their parents or legal guardians but may be accompanied by other members of their family).⁹

In the specific case of the migration of Senegalese children to the Canary Islands, the analysis above reveals that a significant number of these migrant children do not start out on their migratory route alone, but are often accompanied by other adults with whom they have family, occupational, friendship or neighbourly relations in particular. The question here is whether the *traditional fosterage* system followed in this part of Africa can and must, from a European standpoint, be *assimilated with a delegation of parental authority* and whether children entrusted in this way are neither separated nor unaccompanied. Only more in-depth research will make it possible to answer this fundamental question.

Nevertheless, a child arriving by pirogue in the Canary Islands, after a long and testing journey, is a child in need and must therefore benefit from the protection provided by the Spanish regulations covering children who are deprived of their family environment.

WHAT RESPONSE FROM THE AFFECTED STATES?

If the results of the age-determination test confirm that an individual is not of age, the child protection services (which are normally within the remit of the autonomous communities) must take care of the migrant child according to Spanish law. The regional protection institution certifies that the child is in a ‘situation of abandonment’ (*situación de desamparo*), as defined by the Civil Code.¹⁰ That administrative resolution (*declaración de desamparo*) determines the automatic

8. Council Directives 2005/85/EC of 1 December 2005, 2004/83/EC and 2004/81/EC of 29 April 2004, 2003/9/EC of 27 January 2003 and 2001/55/EC of 20 July 2001 all contain a definition of ‘unaccompanied minor’ that is equivalent to that stated in article 1 of the Council Resolution of 26 June 1997 relating to unaccompanied minors from non Member States (97/C 221/03).

9. General Comment No. 6, relating to the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6, 1 September 2005), paras 7 and 8 (see Chapter 1, note 1, in the present book). This definition can also be found in ICRC (2004, p. 13).

10. See article 172 of the Spanish Civil Code, which defines the *situación de desamparo* (<http://www.ucm.es/info/civil/jgstorch/leyes/ccivil.htm>).

appointment of a public guardian. The public child protection institution becomes the guardian of the separated child.

Along with such access to protection and guardianship, the regulations under the immigration law applied to unaccompanied children in Spain very clearly provide for repatriation as the priority solution for those who are within its borders. Forced return, which implies that children are reunited with their families or go into the care of the protection authorities in the country of origin, is indeed the first pillar of Spanish policy in response to such migration. The integration of migrant children into Spain is only considered to be a secondary solution.

However, the repatriation policy is far from being effective in practice. According to the available figures, on average fewer than 1 per cent of the children received are finally repatriated.¹¹ The difficulties encountered in executing these forced returns (to date, they have mainly concerned children of Moroccan origin), and the criticism directed at the modalities of such repatriation,¹² have led the Spanish authorities to sign readmission agreements with the main countries of origin to facilitate these returns.¹³

The care of sub-Saharan children, including Senegalese children, who arrive in the Canary Islands has in recent years become a political issue, with the different authorities attempting to shift the responsibility for protection onto each other. The regional authorities of the Canaries (General Directorate for Child and Family Protection) state that they are unable to care for these migrant children on a long-term basis. In 2007 the region's care system provided for fewer than 300 places (Parliament of the Canaries, 2007, p. 23), a number that is far from sufficient for an annual inflow of children estimated to range between 500 and 1,000. A specialized emergency system with about 500 places was created in 2006 (p. 23), even though the quality of the care has been disputed.¹⁴

As a result, the Canary Islands authorities have put pressure on the central government to make it share the task of caring for the migrant children present in the islands. A few Spanish regions have agreed to receive migrant children from the Canaries (Cantabria, Extremadura, Navarre, etc.). Some associations have also received subsidies to set up ad hoc systems to care for these children. As a result, two Royal Decrees were approved in December 2006 and July 2007,¹⁵ in order to

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11. According to the National Prosecution Service (Fiscalía General del Estado, 2009, p. 737), in the 2004–2008 period only 270 unaccompanied children were repatriated to their country of origin. The annual number of forced repatriations peaked in 2006 (111 repatriations) and decreased significantly in 2007 (26) and 2008 (10).
 12. The criticism has come from (among others) the UN Committee on the Rights of the Child and the international organization Human Rights Watch in 2002, and also the Special Rapporteur of the UN Commission for Human Rights in 2004. At national level, the National People's Defence and its regional counterparts, not forgetting collective defence associations, have all expressed criticism.
 13. Apart from Senegal, Spain signed a memorandum of understanding with Morocco in 2003, which became a bilateral agreement in 2007. An agreement was also signed with Romania in 2006.
 14. See the Human Rights Watch report on the conditions of such care (Troller, 2007).
 15. See *Real Decreto 1515/2006*, 7 December, and *Real Decreto 868/2007*, 2 July, both issued by the Ministry for Employment and Social Affairs.

manage the transfer of about 1,000 children (500 per decree) from the Canaries to various territories of continental Spain. One peculiarity of these programmes is that they provide for assistance once the transferred child is on the continent, but *guardianship* continues to be exercised by the authorities of the Canaries, located thousands of kilometres away from the child's new domicile.

In respect of the return of Senegalese children following the arrivals in 2006, Spain hastily negotiated a repatriation agreement with Senegal, signed in Dakar on 5 December 2006.¹⁶ One article of that international instrument is devoted to the repatriation procedure. In short, the decision to repatriate is made by the Spanish authorities, and the organization of care for the child after being returned is taken charge of by the Senegalese authorities. Thus repatriation must comply with Spanish national laws, international standards and, in particular, the Convention on the Rights of the Child.¹⁷ The bilateral agreement came into force on 1 July 2008.¹⁸

CONCLUSION

Early analysis of available data on the migration of children of Senegalese origin allows us to formulate the following hypothesis: the factors that make these children leave are the same as those that make adults migrate, and adult migration to Spain has grown in recent years (approximately 33,000 arrivals in 2006, according to the Spanish Ministry of Interior).

These changes are indicative of a feeling of despair that is shared by adults and children from ever wider social categories in Senegal. The accelerated degradation of the economic and political situation is making rural and urban populations take the 'chance' of migration at the risk of their lives, in full knowledge of the facts.

The countries of origin and of destination cannot afford to ignore this background if they wish to find a relevant response to the migration crisis. The children who migrate have frequently been working for many years already, thus helping their families to survive. The policy for receiving children in Spain must take account of these circumstances and offer protection that makes young migrants more independent through occupational training and employment.

The policy of forced returns initiated by the Spanish authorities cannot in itself be a response to such crisis situations. Effective resettlement of the children in their country of origin must be associated with efficient development programmes that can offer all these young people suitable occupational opportunities so that they can enjoy a decent future with their families.

16. Acuerdo entre la República de Senegal y el Reino de España sobre cooperación en el ámbito de la prevención de la emigración ilegal de menores de edad senegaleses no acompañados, su protección, repatriación y reinserción, hecho en Dakar el 5 de diciembre de 2006, *Boletín Oficial de las Cortes Generales*, 20 April 2007.

17. See article 5 of the agreement between Senegal and Spain of 5 December 2006.

18. The agreement was published in the Spanish Official Journal [*Boletín Oficial del Estado*], 18 July 2008, No. 173, pp. 31413–31415 (<http://www.boe.es/boe/dias/2008/07/18/pdfs/A31413-31415.pdf>).

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9

Assessing the risks in children's independent migration: back to the origins

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This chapter develops a framework in which to understand the risks to children if they migrate independently of parents or adult guardians. This has tended to be understood as various risks during the journey or at destination – in other words, risks arising entirely after a child leaves home. Moreover, the risks have been assumed to be identical among children, regardless of their differing backgrounds. But children from developing countries already face severe risks at their ‘places of origin’ in several dimensions of well-being, even if they do not migrate; children of different socio-economic groups can face different levels and types of risks; these risks and the ability of their families to protect them may be part of the complex process that affects which children migrate, how they travel, and the extent of support and protection they can access from kinship and other networks at their destination.

The literature on developing countries, from where many independent child migrants originate, shows how risks at origins may affect children's migration. It is hoped that the present chapter will clarify more of the drivers, incentives and contexts of children's migration, and suggest ways of developing policies that are well targeted as well as better balanced in terms of protecting children from risks in migration, while also responding to their participation, agency and resilience. Understanding the variation in independent child migrants' risks across space, and more importantly across socio-economic groups, is an important aspect of assessing these risks.

1. The views expressed in this chapter are those of the author alone. Thanks go to Luisa Cavalieri for help with the literature search, and Eva Jespersen for comments.

INTRODUCTION

Thousands of migrant children under 18 years of age in Europe and North America live independently of parents or adult guardians.² Many arrive after precarious journeys across sea and desert.³ Nearly all come from developing countries or former socialist countries. Research has helped to show how independent migrant children's risks depend on their immigration status at places of destination. Overlaps between categories of asylum seekers, trafficked victims and immigrants give rise to numerous grey areas of treatment, with consequences for children's access to health, education, housing and care (O'Connell Davidson and Farrow, 2007).

While obstacles to migrant children's rights persist in destination countries, the focus on them has been disconnected from a far broader set of risks that these children face. Children in communities of origin can face multiple and different types of risk due to mass and extreme poverty, seasonal hunger, the lack of health and education services, and weak child protection systems. Migration is partly a response to these, as well as a potential cause of new risks.

Understanding whether migration increases or decreases children's risks, or changes the types of risk children face, needs an assessment of the counterfactual: the risks children face if they do not migrate. Constructing the counterfactual is difficult. One approach suggested here is to make a fuller account of the risks faced by children of different socio-economic groups at the places from where they migrate; to document in detail the highly varied processes of movement itself; and to capture the full variations in children's situations at destination (including harmed and non-harmed children).

The view that children's migration risks are defined mainly at destination has tended to encourage the strong assumption that children moving independently are always trafficked or asylum seeking. This contrasts with increasing evidence from countries of origin that indicates a more complex picture. If children are moved against their will and are subsequently exploited, then clearly they have been trafficked. Alternatively, if children want to migrate but have few opportunities to do so, unsafe forms of migration are more likely to occur, and these may be difficult to distinguish from trafficking when simply taking into consideration children at their destination.

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2. For a minority, independence during travel may differ from independence at destination. Children may be independent at destination after travelling with families, because of parental death or deportation. Some cases have been noted of children independent from the border onwards. Conversely, some children may travel independently but not be independent at destination, because their travel is for family reunification, such as when undocumented migrants cannot return to collect their children.
 3. See, for example: 'Children highlight migrants' desperation in Canary Islands journey' (*Fox News*, 30 May 2006); 'Human rights groups urge compassion toward minors crossing illegally from Africa to Europe' (*Christian Science Monitor*, 2 May 2003); 'Child migrants die in shipwreck' (*Adelaide Now*, 28 November 2006); 'Mexico says growing number of children found crossing border illegally' (*San Diego Union Tribune*, 14 April 2006); and 'Growing number of migrant kids held in US shelters' (*Arizona Republic*, 23 May 2004).

By giving a voice to children and their families, the research summarized here reveals the agency of some children in their independent migration. Crime and persecution explain many children's independent movements, but for many others they are not entirely relevant and migration is a better option. Many children seek independence to enhance their intra-family positions and futures by being active family members, and as migrants they maintain contact with their families back home – this differentiates them from 'runaways'. Many seek to be economic migrants to some extent, highlight economic motives when asked, and appear to respond to economic factors. Apart from work, children seem to want to migrate independently for education, cultural reasons, experience and other factors, including an avoidance of harmful societal or family situations. These background factors may contribute to defining the risks that independent child migrants face (and are willing to face).

Adult in purpose in many respects, they are however children in their psychological attributes, knowledge, physical abilities, social status and legal rights. These child-characteristics – and the combination of children undertaking adult tasks outside the family – would seem to set this group of migrants apart. Children's particular vulnerabilities and resilience may mean that they are affected differently by migration. Their particular physical, emotional and life-cycle needs may affect their migration choices (such as balancing immediate consumption against care and family needs, future-seeking and self-protection).

Children's 'baseline' risks at origin may influence subsequent risks when they migrate independently. The best-laid migration plans can go wrong; children can become stranded in third countries that are neither their country of origin nor their intended destination; and children's situations at destination can become harmful even if parents and children take protective measures (such as having a caregiver relative at destination). Other things being equal, however, children's migration due to family stress or shocks is probably riskier than if migration is a planned strategy to take advantage of opportunities that are unavailable at home. Family stress and shocks could affect the degree and nature of adult help and resources invested in independent children's migration. This would suggest that riskier migration is more likely to be undertaken by children whose origins are already risky.

It should be stressed that inequalities between children need to be better recognized, because children are not all at identical risk. Poorer, marginalized children have fewer material and social resources for migration, and this can compromise travel arrangements, residence and care at destination, contacts with family back home, a safety net and the opportunity to return in case of trouble, and social capital at destination to unlock basic services and livelihoods and to help with integration after migration. It seems likely therefore that migration by poorer children is riskier.

The following discussion offers an analytical approach to understand children's migratory risks, introducing issues at origins that may affect both the process of migration and the outcome at destination. The subsequent section assesses these issues by drawing on the literature on countries of origin to understand the nature

and extent of children's roles and motives in migrating away from their families. In conclusion, some implications for child protection are considered.

CONTEXTUALIZING CHILDREN'S RISKS IN MIGRATION

The link between migration and children's risks runs in both directions. Whereas migration may cause new risks, existing risks at origin may cause migration. Households in developing countries of origin face a whole set of risks related to disease, weather and seasonal changes, swings in labour and product markets, and social and other factors. A major contribution to mass well-being in today's affluent countries, especially since the 1940s, has been to socialize these risks through, for example, an infrastructure to protect productive capacity against natural hazards; widening access to financial systems to help smooth consumption; state-funded social security, health insurance and other social policies; and practically universal social insurance against extreme harm.

In contrast, the bulk of households in developing countries largely fend for themselves against risks. Around one person in two in developing countries subsists on less than US\$2.15 per day, with little saved for contingencies (Chen and Ravallion, 2007). Access to insurance or social protection or informal safety nets – whether through private markets, government services or kinship networks – is highly selective. Correspondingly, longitudinal data tracking people over time show that poverty is not a static state, and a large proportion of the populations of developing countries experience considerable fluctuations in their consumption (and other dimensions of well-being) because of their inability to protect themselves against risks (Yaqub, 2000).

A long-standing strand of migration literature has emphasized family strategies as a response to household risks (e.g. Stark, 1991; for a review, see de Haan and Yaqub, 2007). The family is conceptualized as a coalition vis-à-vis the rest of the world, which shares the costs and rewards of migration. The literature recognizes that migration helps families to manage risks by:

- reducing overall exposure to risk, such as by moving somewhere safer;
- coping with shock – for example, migration of part or all of the family if the breadwinner dies or the harvest fails;
- diversifying production and consumption by having family members spread across different agro-climatic areas and economic sectors; and
- risk-taking towards new opportunities – a certain amount of risk-taking is necessary to access beneficial outcomes.

This suggests that migration may occur under very different contexts. For some households, it is an ex-post response to harmful and unexpected events (such as coping with shock); for others, say with sufficient household members, migration can be a pre-emptive move against prevailing risks (such as income diversification); and for yet other households, migration may be a strategy to seek out new opportunities, thus a somewhat more planned process.

Although the migration literature on risks scarcely considers child migrants, children are probably part of these family strategies, especially by the time they have reached adolescence. This would be particularly true where a long period of adolescent economic dependency is unaffordable. Risks might force children out of the family and into migration in much the same way that they can force children out of school or into child labour (and indeed these factors are probably linked to similar processes in the family). Some children's migration seems more about shifting the burden of their consumption and care out of the family, while for others it seems more about investment in their current and future labour productivity.

It is probable that migration planned by families largely involves adults and older children (15- to 17-year-olds), who are able to gain better rewards from labour markets, schooling and social contacts. Younger children from poorer households that are unable to support them might be more likely to migrate, and their independent migration would seem more concentrated inside their country's borders or involve a neighbouring developing country with fewer border controls.

Inequality in risks may play a determining role. Children in poorer households tend to be exposed to greater risks – their families farm the worst land, do the worst jobs and have the worst access to public services, social networks and political capital (Sinha et al., 2002). 'Poverty means more than inadequate consumption, education, and health ... it also means dreading the future – knowing that a crisis may descend at any time, not knowing whether one will cope' (World Bank, 2000, p. 135). In other words, poverty is not only low *levels* of well-being, but also a lack of protection against *fluctuations* in well-being. Land and irrigation, in particular, are highly unequal in most rural communities, leaving poorer households with smallholder rainfed-farming that is highly subject to seasonal and weather risks, with knock-on effects on other dimensions of well-being that may strongly affect children.

A lack of protection against risk means that the poor are frequently forced to choose between different risks, such as when health risks are traded against consumption risks when the poor undertake hazardous labour. Children's independent migration might be part of these difficult choices, within an overall intra-household allocation of unprotected risks across household members. This point builds on evidence which recognizes that risks are partially shared within households, with the general conclusion that income-earners and the very youngest are usually protected first (Yaqub, 1999). Other household members would be expected to bear greater risks, and if harmful shocks do occur, to cope by working harder and/or going hungry. In some communities, older children might increasingly include themselves in family decisions on production and consumption as a sign of growing up, increased maturity and contributing to the family.

In summary, this section has attempted to develop a broader perspective on children's migration risks, rooted in their pre-migration contexts at origin. First,

the context of unprotected household risks in developing countries suggests that it may be worthwhile to think of different types of independent child migration. Second, protection within the household, through the sharing of risks across family members, may depend on age, gender and other childhood characteristics, and may be further conditional on cultural, legal and other notions of childhood, maturity and age of responsibility. The extent to which these issues might play out in independent child migration would seem to depend on children's roles, motives and agency in the migration process.

A REVIEW OF THE LITERATURE ON THE ORIGINS OF INDEPENDENT CHILD MIGRATION

This section considers independent child migrants' contexts of origin, where both the decision to migrate and the channel of migration are determined. Qualitative research with child migrants, parents and some employers has shed light on their decision-making. Many studies recognize the obvious research challenge that decisions are multi-layered, and uncovering the process is difficult. The in-depth, multiple-sourced and highly contextual accounts from ethnography and participatory research methods have helped considerably in building the evidence base.

(i) Children's agency

In some communities from where large numbers of independent child migrants originate, it appears that it is normal for a child to decide to migrate, or to play a substantial role in that decision. Sometimes migration is entirely initiated and executed by children. Key indicators of this include who the decision-makers are; the organization and financing of the journey; how shelter at destination is secured (if at all); and children's planned activities at destination (recruitment into work, school, unpaid work or some combination of these).

These parameters are seen in Iversen (2002), who studied the degree of children's autonomy in migration within India. Interviews were conducted at both origin and destination, with children and parents providing separate accounts of the decision-making. A strict definition of children's autonomous migration was adopted whereby it had to be an 'unambiguous reflection of a migrant's independent wish to leave home, without any parental pressure on the migrant to leave, and without any parental involvement in decision-making, in employment or shelter arrangement' (p. 821). Consequently, this excluded several cases where migration was the child's decision but involved some parental support.

Some 25 per cent of children's migration was clearly autonomous (in the other 75 per cent, some form of co-decisions with parents took place). All were boys, representing 3.6 per cent of all the boys in the village. Of the autonomous migrants, over two-thirds did not seek parental consent and three-quarters overrode parental wishes on work/residence. On the other hand, these were not

runaways in that the relationship with the family was generally maintained, even where the migration involved conflicting preferences.

Children also took responsibility for the organization (or lack of it) of migration. Around 58 per cent migrated without prearranged work (almost all found work in a day at their destination); 29 per cent arranged their own work via older migrants outside the kinship network; 12 per cent arranged it via relatives; and, strikingly, none arranged it via peers, who seemed to have few practical contacts (Iversen, 2006). Most children travelled with peers or relatives; they rarely travelled alone.

Orgocka and Jasini (2007) asked 150 children and 150 adults (parents and others) in rural north-west Albania about who facilitated children's independent out-migration from their communities (Table 9.1). Large majorities cited both children and parents (first two columns). While child facilitation and parental facilitation were cited fairly uniformly by most types of respondent, the last two columns show that peers were cited far more by the oldest children, and far less by adults. While older children noted the importance of peers' adults (including parents) largely failed to do so.

Table 9.1: Who facilitates children's independent migration from Albania?

Respondents	Agreement on facilitation (%) ¹			
	Children	Parents	Peers	Emigrants
16–18 years	85	59	62	75
13–15 years	86	54	44	53
10–12 years	90	67	43	63
Parents	67	40	17	73
Community members	63	50	23	63
Border police	100	100	20	60
Anti-trafficking police	84	60	36	76
Teachers	71	67	32	62
State employees	57	63	10	63

1. The column headed 'Children' shows the percentage agreeing that 'Children are led by someone who promises them a better life abroad'; 'Parents' shows agreement that parents pay someone to facilitate the migration; 'Peers' shows agreement that a peer known to the child organizes the journey; 'Emigrants' shows agreement that emigrants facilitate children's migration.

Source: Adapted from Orgocka and Jasini, 2007, pp. 25–27.

Orgocka and Jasini (2007) also report the proportions wanting to migrate in the near future: 10 per cent of 10- to 12-year-olds, 15 per cent of 13- to 15-year-olds and 26 per cent of 16- to 18-year-olds. Almost all children were aware that work at destination would be necessary, and the majority reported knowing about the

risks of being exploited in various ways. Forged papers and walking over the mountains were cited by children as possible aspects of their journey.

Similar results on children's awareness of migration are reported in Ghana. Beauchemin (1999) surveyed 805 children in junior secondary schools in rural Ghana. Two-thirds had migrant friends aged under 20 and migrant relatives. Girls said that migration helped to avoid early marriage, and also to prepare for eventual marriage. Over 80 per cent of the children would have liked to leave their locality to seek new opportunities. The study also interviewed 174 children who had dropped out of school, three-quarters because of lack of means to pay the fees. The majority wanted to migrate, commonly indicating a desire to escape what they saw as the hopelessness of their rural lives.

Beauchemin (1999) also interviewed 282 parents in several villages in Ghana. Many parents said that their children had simply left. Eighty-one per cent approved or thought that their child's decision to migrate was a good idea. Half had more than one migrant child. Most parents knew where their children had gone, although they had contact only once or twice a year (8 per cent had no contact). Many children migrated for around half the year in the low season, and returned to continue schooling by using their earnings.

Camacho's (1999) interviews with fifty migrant child domestic workers in Manila (the Philippines) found that many started as provincial migrants when young, and then migrated to Manila when older. Over half were under 15 years old when they started in domestic service, and 22 per cent were under 15 when they migrated to the capital. The Manila jobs were found by an agency in 8 per cent of cases, by parents in 6 per cent, by the children themselves in 4 per cent, and the rest by friends or relatives. Around 80 per cent of the children said that the decision to work was theirs, and 14 per cent consulted neither parent. For the majority, parents and siblings participated in the decisions, although the ultimate decision rested with the migrating child. Camacho describes how families try (not always successfully) to use social networks to provide protective environments, even long distance.

Dezso et al. (2005) describe a Romanian mother's thoughts about her son's migration abroad. The family was landless, and both parents were unemployed except for seasonal work. Their son let them know that he would seek work abroad because he had heard how well things were going for their fellow villagers there. The parents could not offer a better option, so they let their 14-year-old son go to France. Dezso et al. found that over a third of respondents at places of origin believed that migrant children from their communities were begging, stealing or engaged in prostitution; however, many were unwilling to talk about this in focus groups, and mentioned it only in the survey.

Heissler (2008) discusses ways that children may manipulate constraining factors and social structures around their migration, to serve their individual choices. The author interviewed 58 independent child migrants in Dhaka (Bangladesh), and 105 parents and community members at origins. Heissler argues that better education has raised community-wide aspirations for salaried work, but

this is out of reach of all but the wealthiest children, because most children leave school around puberty. The availability of non-farm income sources was crucial because of the high rate of landlessness, and children were often under pressure to migrate because of the abandonment or death of the male breadwinner. Heissler noted that in the absence of better opportunities, some children migrated to do types of work that they would be unable to do locally because it would be beneath their family's social status (and, related to this, other children refused to migrate because migration would mark their family as low status).

(ii) Children's motives

Many children see their migration both as part of their families' livelihood strategies, and as part of their own goals of progress, independence and transition to adulthood. Some use migration to escape domestic abuse, violence or early marriage. Economic and health shocks in the family may also cause children's independent migration.

Family roles

In Camacho's (2006) study in the Philippines, independent migrant children reported that they felt their position in the family had improved. Camacho argues that children's migration is a complex site for negotiation, with interweaving family and personal goals. Children's position therein depends on the extent of their independent social networks and access to work (although they may share decisions over migration in order to maintain family relations).

Punch (2002) proposes the notion of 'negotiated interdependence' as a useful way of understanding how independent migrant children work within their structural limitations while fulfilling both individual and family needs, and asserting some level of agency over their life choices. Punch's study collected information at origins and destinations to understand Bolivian independent child migration to rural areas of Argentina.

Some studies have found children's migration motives formulated in terms of earning their own possessions. Of course, this partly concerns consumption choices, but it also seems to be part of family roles because of the particular items that children want. Castle and Diarra's study (2003) in Mali found that girls wanted things for their marriage, whereas boys wanted things to increase their status. Other studies have noted children's remittances back to their family (Anarfi et al., 2005). Independent earnings – and sending remittances – may contribute to strengthening children's intra-household positions, for much the same reasons that it does for women, as research has shown. A motive for children's independent migration appears to be independence itself, but located within the family structure and as part of children's life-cycle transitions.

Of course, children's family roles are connected to perceptions of childhood. A study in Burkina Faso (TdH, 2003) asked adults about this. It found varied responses from those defining childhood as under 10 years of age (based on

ideas about capacity for self-reflection), under 15 (based on ideas about decision-making) or older adolescence (unmarried). Around 40 per cent of adults felt that 10- to 14-year-olds should do the same tasks as adults. Migrant children in Ghana and the Gambia cite 'strong expectations in family systems that children should start "giving back" to their parents as soon as they are able, usually by their early teens' (Chant and Jones, 2005, p. 191).

Future-seeking

Some research suggests that migration may be seen as one of the few routes to socio-economic mobility, particularly for children endowed with limited opportunities from their parents and communities. Hashim's (2005) research was based on tracing sixty-five rural/rural and rural/urban independent child migrants from north-east Ghana. Schooling was seen as one of several factors influencing a child's future, including job prospects and family livelihoods. Most households invested in post-primary schooling for only the most able and determined child, with other children having to increasingly negotiate as they reached productive age. Hashim found that independent migration was often a way for children to earn an income to continue their schooling where families had left off (or more rarely to finance siblings' schooling).

In reference to Burkina Faso, based on interviews with parents and migrant children, Thorsen (2007) argues that families might diversify across children to take advantage of available opportunities, reduce sibling rivalry, and optimize conditions within resource constraints. This might mean that children are treated differently within the family, in terms of support for schooling, fostering, apprenticeship and work (and the role of migration in these). These choices are seen as different for boys and girls; and in the context of polygamous families, they are approached differently by fathers and mothers.

In research in Thailand, Curran (1996) found that household decisions concerning 12- to 21-year-olds and their education versus rural/urban migration depended on gender and sibling order. The author considers both of these to be markers of intra-household positions. The villages studied were poor and had high migration rates, high fertility and scarcity of land. Sons were preferred for education, both sons and daughters migrated, but daughters were more likely to remit wages because of their greater reliance on the kinship network.

Self-protection

Aduigna (2006) quotes an independent child migrant in Ethiopia:

My parents didn't want to send me to town. My mother was crying while I left the village ... I said I better go somewhere and try my best instead of dying of hunger there. I saw poverty in my mother's face.

Aduigna surveyed fifty independent migrants aged 8–18 living on the streets of Addis Ababa. While 12 per cent were orphans, three-quarters had at least one surviving parent. Aduigna found that work was overwhelmingly the main reason

for migration, but domestic violence and escaping marriage were also cited. Half of the children maintained contact with their families, mainly visiting home once or twice a year.

Illness, death and other shocks within families are also likely to be triggers and conditioning factors. Ansell and van Blerk (2004) found that in communities with high rates of HIV, children migrated for work and to care for sick relatives, and children sometimes experienced multiple moves. Akresh (2004) shows that income shocks trigger informal child fostering in West Africa. Some authors argue that children's work may act as a buffer for the rest of the family against unforeseen adverse events (Beegle et al., 2006; Maitra et al., 2006; Fitzsimons, 2004; Curran et al., 2003).

Conticini and Hulme (2006) found that in Bangladesh, while poverty was cited, children also stated that economic independence was a means to freedom from excessive control and abuse. The authors argue that many types of programme attempt to assist migrant children in street situations, but high spatial mobility, independence and suspicion of adults mean that attempts to provide support and reintegration are problematic and often unsuccessful. Even when food, accommodation and basic income are provided by shelters, many children return to the street; this is thought to be due to the strength of the social bonds they form there – a process of adaptation takes place as children learn self-reliance. The independence aspect of this has obvious parallels with independent child migrants in other social contexts.

Stites et al. (2007) found that in Uganda domestic abuse, hunger and abandonment by families were reasons why children migrated, and why they were living and working on the streets. Some abandoned children held on to the belief that family members would return to collect them, in some cases even after two years. Sometimes adults orchestrated the actual movement to the destination, before abandoning the children or before the children left the family, thus underlining the importance of a broad notion of children's migratory risks.

This section has reviewed the literature on independent child migrants at destinations, and their communities at origins in developing countries, to understand the processes that lead to children migrating away from their parents and adult guardians. The research suggests that some children have independently decided to migrate, or have played a key role in the decision. Adult involvement – helpful or otherwise – in organizing the migration can vary across children. Substantial numbers of testimonies and case studies, from various contexts, reveal children's participation in the migration process. Their motives include roles in family livelihood strategies and intra-household positioning; accumulation of assets and human capital as part of 'future seeking'; and self-protection in response to economic and health shocks, or intra-family conflict. Children can value independent migration for independence itself, but still maintain family relationships.

TOWARDS 'MULTI-LOCAL' CHILD PROTECTION: SAFER MIGRANTS AND SAFER MIGRATION

Migration connects children's risks across geographical space. A clamp-down at borders and in cities, intensified repatriation, or even improved child protection at destination, without simultaneously addressing issues at origin, might have adverse consequences. Children in poor and stressed families, already with few migration opportunities, might become more vulnerable to other forms of children's independent movement, such as trafficking, early marriage and fostering with work.

Multi-local migration research at both origin and destination is difficult, time-consuming and expensive; hence there is virtually none on migrant children. But such research is needed to understand spatial interconnections in child protection. The content and delivery of services, the targeting of children and other stakeholders, and advocacy on policies could all be enhanced by a greater understanding of the interconnections of issues across space. There is insufficient appreciation of the fact that independent children affect migration, and are affected by migration, through their roles within the families and communities they leave behind at origins. The problem is partly structural, rooted in ideas about childhood that underplay children's socio-economic contributions, agency, and evolving capacities as they grow up.

A *balanced* recognition of children's independent migration is needed. On the one hand, some aspects of migration can lead to situations that infringe and endanger the enjoyment of children's rights, but on the other hand, ignoring poor children's early responsibilities, lack of opportunities, aspirations and agency could oversimplify their reality and lead to incorrect or inefficient responses. A balance needs to be found somewhere between simplifying independent child migration (often the current situation), adopting a rescue mentality (partly linked to assuming that children who move independently are always trafficked) and treating children like adult migrants (without recognizing children's distinctiveness).

Policy-makers, practitioners and researchers on issues such as child labour, fostering with work, street-children and others are often aware of the overlaps with children's independent migration. Some working children are migrants (and others not), some street-children are migrants (and others not), and so on. However, this topic-specific awareness has not led to a broad-based understanding of root causes. One of the greatest implications of this is an over-focus on movement as a cause of children's risks, at the expense of underlying socio-economic disadvantages.

Children's risks in migration start at home in terms of socio-economic disadvantages that influence which children become independent migrants and why. Children's risks continue to be defined after leaving home through a range of factors that influence their socio-economic exclusion at destination. Further understanding along these lines could help to alter some of the incentives and dynamics that underlie children's independent migration and linkages to many overlapping child-contexts.

The starting point for a deeper analysis is to note that children's risks are not constants but depend on which children are being considered, and where in the migration process they are located. This suggests a two-dimensional view of children's risks in migration: one, across children; and, two, across geographical space. Variations across children may exist because of differences in their individual characteristics (age, gender, etc.) and socio-economic backgrounds (parental income, orphanhood, crisis migration, etc.). Spatial variations may exist because the nature and types of children's risks may differ at origin, travel and destination, and also because their protection context changes (being without parents or adult guardians, undocumented, working in informal economic activities, living in slums, etc.).

Approaches to identify risk factors have been used widely in child research, such as HIV, early pregnancy, etc. Some child labour research, for example, tries to identify factors that increase the risks of a child being in work, rather than at school; or work and school; or neither. Similarly, if children's migration outcomes could be classified into categories (such as success, failure and exploitation), then risks towards these categories could be identified in factors that differentiate one child's migration from another's (such as the child's characteristics and family background, the process of migration, protection and social services in different jurisdictions, etc.).

Such an analytical approach could show how the probability of children's migratory success varies according to (policy-relevant) characteristics, holding other factors constant. Does the child's parental income raise the probability of success for the child, or is the child's age at migration more important? Or is children's access to public services the dominant factor, playing a greater role than household characteristics? This has implications for the relative emphasis on universal and targeted interventions, and advocacy towards duty-bearers. And are there observable markers between migrant children and trafficked children, or perhaps none can be found?

Although we are far from being able to apply direct multivariate modelling (because it needs much better data sets than exist), the general analytical approach is valuable in terms of systematically breaking down children's risks in migration to understand their various sources, and connecting them to children's migration outcomes. These are likely to influence assessments by children, families and communities of whether children's independent migration is worthwhile, and how much to invest in it.

In practice, child protection strategies can be neither about promoting nor about preventing migration (a ready parallel exists in health).⁴ Protection should

4. In terms of reducing health risks through sexual abstinence: 'teenagers face considerable risk to their reproductive health from unintended pregnancy and infections, ... including HIV. ... Abstinence from sexual intercourse, while theoretically fully protective, often fails to protect against pregnancy and disease in actual practice because abstinence is not maintained' (Santelli et al., 2006, p. 83). This has led to greater recognition of the importance of mixed policies that place children's risks within stronger behavioural frameworks, aimed at altering incentives and contexts.

not only tackle the root causes of children's risks in migration (about which little is known) but also provide a safety net for its negative symptoms. Potentially a two-pronged protective strategy might emerge, consisting of:

- interventions at origin to select out the already-at-risk children from independent migration, by strengthening support to their families and communities, and enhancing children's protective environment; and
- interventions at destination to safeguard children's rights and promote children's resilience, participation, opportunities and best interests, when they do migrate independently.

Clearly, coherence across the two prongs could be increased if there was engagement between destination and origin countries, including possible consideration of the role of migration within international development cooperation. The evidence for making linkages across interventions at origins and destinations would be greatly strengthened through multi-local migration research to assess children's risks and protection needs across space and socio-economic groups.

Protection strategies could aim towards both *safer migrants* and *safer migration*. This perspective builds on increasing recognition of the importance of integrating child protection and social protection. It goes beyond income issues and includes: the development and implementation of legislation, policies and regulations to protect families' access to resources and employment; the provision of support for families in their child-care role and responsibilities; the protection of inheritance rights and anti-discrimination; and the deployment of social transfers and basic services to mitigate poverty. The difficulty is that, beyond these general principles, not enough is known about even the basic features of children's independent migration, and its contexts at origins, on the basis of which programmes and policies might be designed.

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Unaccompanied and separated migrant children in Europe: legal perspectives and policy challenges

Thomas Hammarberg

Children are vulnerable. Children who are in the migration process and separated from their parents or caregivers are even more vulnerable. The most vulnerable are those who become and remain clandestine and irregular in many European countries. They are outside any legal framework – and they easily fall victim to traffickers or other unscrupulous adults who exploit them. Separated or unaccompanied children need all our attention.

Public authorities are often confused about the legal status of separated migrant children. Should they be treated first as migrants, or as children, or as orphans? States nowadays express their full support for the idea that children do have rights and also recognize that the ageing continent of Europe will need migration, not least young migrants. However, a number of these states appear unable to draw the necessary conclusions.

Throughout Europe, little is being done to collect comprehensive, reliable statistics on separated children. Reliable statistics and other relevant data are unavailable on almost all aspects of the migration cycle: on who are arriving at the borders, and what happens to them; on those who are in the country without a permit, whether they are in school or in employment and with whom they live; and on the social situation of those who have residence permits. In most countries, the only separated children who are properly registered are those who apply for asylum. But how many more are there? We simply do not know.

The lack of data tends to make these children invisible. Without reliable facts, it is difficult to assess the full scope of this issue and consequently to design an effective strategy and identify the resources necessary to respond appropriately.

Although the scope and precise nature of the problem is partly hidden, we know enough to realize that the situation is worrying. In fact, international and European standards have now been set, research undertaken to understand the reasons for migration, and children's needs broadly identified.

A specific programme, the Separated Children in Europe Programme (SCEP), had already been established jointly by the UN High Commissioner for Refugees (UNHCR) and Save the Children in 1997 with the objective of offering

a regional response in order to improve these children's situation. Therefore the lack of precise statistics and facts cannot be an excuse for political passivity. While efforts are made to collect data, a more energetic policy should be developed to protect and implement the rights of these children.

Today, not even the agreed rules and guidelines are always enforced. One reason is obviously xenophobia. There are extreme political parties and groups promoting prejudice and fear in several European countries today. Some of these have found a foothold in parliaments or local assemblies. Unfortunately, some of the larger political parties have adjusted their message to reflect such tendencies instead of exposing them. Extremist media have also played a particularly negative role and disseminated stereotypes, in some cases even hate propaganda.

Xenophobia and the fear of xenophobia have tended to focus the migration debate on border security – whether migrants should be allowed in or not – rather than on the broader picture of migration in all its aspects. This has become worse after 11 September 2001 and the increased 'Islamophobia' during recent years. The consequences have been negative for all migrants and have caused further social exclusion. Many European governments have introduced stricter regulations on immigration, often with reference to the threat of terrorism or security. Separated children are often directly affected by these laws and their special needs are rarely taken into account. It is unfortunate that so few politicians highlight the value of diversity and multiculturalism in today's world.

What should be done specifically to protect and promote the rights of separated migrant children? How should the international and European legislation and guidelines be implemented? The starting point must be that migrant children are first and foremost children. They are vulnerable and have the same rights as other children living regularly on a given territory. The principle of the best interest of the child means that each child must be seen as an individual and special consideration must be given to his or her particular circumstances. All children should be listened to with respect.

Many migrant children have been uprooted once, twice or even more frequently. Separation from earlier homes, relatives and friends causes trauma and puts them at risk. This makes it even more crucial that adult support is found. The appointment of a legal guardian or representative for each arriving separated child is therefore fundamental. These children have the right to be treated with respect and to be looked after by people who have the training and capacity to understand them. As other children, they should be listened to with respect and they should be heard in any proceedings affecting them directly.

Respecting separated children's rights also means that they should not be arbitrarily deprived of their liberty. International standards clearly recognize that detention is not appropriate for any minor. It is an even less appropriate measure when the concerned child is separated from their family, social and emotional ties, in an unknown country.

Separated children should also be protected through placement in appropriate reception structures. An alarming phenomenon is the disappearance of children from reception centres. Some of them never arrive at the institution

to which they have been assigned by the authorities. A number of children who disappear are runaways but many others are probably intercepted by smugglers, traffickers or other criminal networks and become victims of abuse, ill-treatment and neglect. Placement in appropriate reception structures should be ensured for all separated children, including those who do not apply for asylum.

The child's need to retain close contacts with their family should also be looked at with great attention. Having left their country of origin and their family, migrant children often wish to keep in close contact. Efforts should therefore be made to trace parents as well as other family members. This tracing should be undertaken swiftly but in constant consultation with the child. Its objective should be to (re)establish a dialogue between the parents and the child but also between the parents and the caring authorities. Such a process could easily harm the child if it is not made in an appropriate manner. Therefore particular attention should be paid to the child's emotional and psychological stability.

The possibility of returning a child to the country of origin can also be explored, but should only be done if adequate reception and care are guaranteed and in full compliance with the child's best interest. This possibility should of course be excluded in case of a pending asylum procedure or when refugee status has been granted. Repatriation decisions by the competent authorities should always be subject to an effective judicial review.

The right to family reunification applies to all children and does not automatically mean that it has to be the separated child who must return to the country of origin. Family reunification could mean that parents are entitled to reunify with their child in the host country. This may be seen as controversial in some political camps, but it is fully in line with the agreed international and European norms on children's rights.

Separated children's access to adequate health care should be given priority. Poverty and poor housing conditions undermine health in general. Also, many migrant children have a background of very difficult experiences that may require somatic and psychological support. In the process that led them to the host country, they have often faced considerable stress as well as physically exhausting experiences. This is an area where schools have a key role, not least for the detection of problems, but also for the follow-up, which could include supportive treatment.

Whatever the child's background, the right to education is absolutely central as school should give the separated child the necessary tools to integrate in the host society. Migrant children should be granted access to education on arrival. It is crucial that the quality of the schooling received is guaranteed and that pupils have the possibility of learning the majority language while also developing their own mother tongue. One of the problems in some countries has been a lack of trained teachers who can care ably for migrant children.

Although there are international, European and even national rules providing for a number of specific rights for these children, many of them continue to have their rights violated across Europe. The most worrying concern is that so many separated children continue to be detained. This risk is present at almost every

stage of their stay in the host country. As an example, many states offer specific protection only to children who claim to be minors. Children not declaring themselves as such will therefore be considered as adults.

If treated as adults, they could be detained for periods up to or over 18 months. The recently adopted European Union (EU) Directive allows such detention.¹ On the other hand, when children declare themselves to be under 18, this is frequently viewed with suspicion by national authorities. The alleged child is interrogated and medically tested in order to assess their age. In many cases, they are presumed to be adults and are therefore kept in detention on the assumption that the declaration of minority was false. In some European states, all located children have to undergo an age-determination medical test even when they hold valid identification documents.

In other cases, separated children end up in detention facilities simply because of the lack of an available care establishment. These examples illustrate difficulties in the protection of children's basic rights in reality. Awareness of children's rights, training but also clear legislative instructions and guidelines are all crucial. It is shameful that unaccompanied children in Europe are still locked up while waiting for decisions about their fate or before being deported.

Upon arrival and registration by the national or local authorities, separated children should immediately be granted a residence permit. This permit should not be linked to the refugee status of the child, but merely recognize the need for specific protection.

The legal representation of separated children on arrival is also occasionally problematic. When arriving and registered by the host authorities, migrant children should be appointed a legal representative or guardian who would have the responsibility to represent and advise the child in administrative procedures. The representative plays a critical role in helping the newly arrived child to settle down and integrate in the host society. Unfortunately, this legal representation is all too often partial or non-existent. In other cases, the appointment procedure of the guardian is extremely slow and leads to the absence of effective protection for the child in the crucial first weeks after arrival. Finally, even when guardians are swiftly appointed, they frequently lack the appropriate training to provide the relevant advice and support for the child.

Directly related to the lack of representation is the difficulty found by many separated children in accessing education, especially vocational training. The arriving children usually have difficulty speaking and understanding the local language and they are keen to gain quick access to the labour market as it is critical for them to be rapidly self-sufficient. Therefore, vocational training is often an ideal means of rapid integration. Unfortunately, accessing such training is often extremely difficult, if not impossible.

1. European Parliament legislative Resolution of 18 June 2008 on the proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third country nationals.

While the majority of separated migrant children are boys, there are also some unaccompanied migrant girls. Because most separated young girls are unregistered and therefore invisible, national authorities tend to forget them. Experience has shown that these girls have experienced even harsher situations than many of the boys. War, violence, abuse, forced marriage and rape are part of their background and their motivation to leave their country. In addressing their needs, state authorities should keep in mind their specific background and offer them necessary protection to prevent any risk of multiple victimization.

To properly address the issues of reception, registration, protection and integration of separated children, the interventions of numerous stakeholders at local, regional and national level are necessary. Indeed, several administrations dealing with immigration, national registration or social welfare must be involved as well as the police, judicial authorities or social workers.

Children's Ombudspersons, who have the responsibility to promote and safeguard children's rights at national level, also play an important role in ensuring that separated children's rights are respected. An analysis of state policies and practices in this area demonstrates the lack – if not the absence – of coordination between the different competent authorities. For example, one authority may consider a person as a separated child in need of protection and another may consider the same person as an irregular migrant adult who should be deported.

The correct approach is for objectives to be jointly defined by the child and the competent authorities on the minor's future prospects – promoting the best interests of the child without discrimination and providing a long-term response to their needs.

These so-called 'life projects' aim at developing the capacities of minors, allowing them to acquire and strengthen their skills to become independent, responsible and active in society. In order to achieve this, such projects should allow the social integration of children and their personal development. Also of importance are their fundamental social rights, such as access to housing, health, education and vocational training, and eventually employment.

Life projects are therefore mutual commitments that comprise individualized and clear objectives, arrangements for monitoring implementation and regular assessment based on exchanges between the minor and the competent authorities. They should take into account children's personal profiles and expectations, as well as the opportunities provided for them in the host country and the country of origin.

The implementation of life projects requires an important reform and even a rethinking of how states receive and support separated children. Indeed, state authorities have to define the responsibilities of each partner, in particular national and local authorities, but also in the different sector activities: welfare services, youth workers, families and legal representatives, as well as the police and the judicial authorities. It is also crucial to coordinate all these actors. Above all, governments should provide appropriate financial and human resources to ensure that the agreed project can be fully implemented.

Despite the adoption of the Recommendation on life projects for unaccompanied migrant minors,² no country in Europe has fully achieved this necessary rethinking of its various mechanisms of protecting children who arrive on their territory without parents or close relatives.

Another issue that remains to be addressed is these children's long-term stability and safety when they reach the age of 18. Indeed, the specific rights offered to separated children due to their particular vulnerability evaporate when they become adults. From one day to the next, a child who is a legal resident becomes an irregular migrant under potential threat of expulsion. In the absence of a mechanism that could allow young adults to remain in the country, they are sometimes forced to interrupt their studies or begin an underground life. This interruption of the residence permit has obvious consequences as a child may have spent a long time in the country and made efforts to integrate into the host society. All the efforts made by the child and social workers – learning the language, finding appropriate accommodation, assimilating in the host culture and developing a social network – risk being undermined. This should change. Separated children who have successfully integrated should be granted an extension of their residence permit when they come of age.

Europe cannot afford to fail our young newcomers; their fate is ours and they have much to contribute – if given a chance. The first step is to recognize that they have human rights.

2. Recommendation by the Committee of Ministers of the Council of Europe on life projects for unaccompanied migrant minors, 12 July 2007.

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