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# PROMOTING INCLUSION FOR UNACCOMPANIED YOUNG ASYLUM SEEKERS AND IMMIGRANTS – A DUTY OF JUSTICE AND CARE



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**Promoting inclusion for unaccompanied young asylum seekers and immigrants  
– A duty of justice and care**

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# **PROMOTING INCLUSION FOR UNACCOMPANIED YOUNG ASYLUM SEEKERS AND IMMIGRANTS – A DUTY OF JUSTICE AND CARE**

The report of a two year transnational project involving government, local authorities NGOs and young asylum seekers.

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# 1. Introduction and Context

## 1.1 About this Report

This report is being prepared for the final workshop of the European Social Network's project 'Promoting inclusion for unaccompanied young asylum seekers and immigrants – A duty of justice and care'. The workshop is titled 'Promoting Learning and Development'. As well as a retrospective look at the work to date highlighted by the project, the workshop and this accompanying report, will also look to the future, identifying the current issues and making recommendations which will focus on the development of good practice. The report will not strive to be prescriptive; rather it will aim to stimulate discussion throughout the seminar as well as providing a vehicle for ongoing debate. It draws upon the written materials prepared for previous workshops (*see below*) and the comments of the Network's project partners throughout these workshops.

## 1.2 The European Social Network (ESN)

Across Europe social welfare and public social services are delivered under many different methods, within varying structures, and under different models of organisation. Likewise different forms of association have developed within each country to enable directors of public social services to meet with their colleagues on a local or national level; some are relatively informal whilst others are long established with more complex structures. What these various associations and groups have not had to date is a systematic means of communicating and working together at a European level. The ESN has therefore been established to provide its members with just such an effective European forum.

The Network's members are national associations, or groups of directors of local authority social services, social protection and social welfare from European countries. In some countries directors also manage health or other services such as education and/or housing. The ESN is a not-for-profit charitable company (*a non government organisation*) under United Kingdom law. It is politically independent and has a board of trustees who each represent a member organisation. The ESN also welcomes associate members who may include individual regional or municipal social service departments, research organisations, government departments or other organisations. Representatives of each of the member associations hold an Annual General Meeting (*AGM*) at the European Social Services Conference each year to review the past year's activity and to agree the business plan for the coming year.

The aims of the Network are,

- To promote social justice, inclusion, equality, and anti-poverty in Europe through development of quality public social services.
- To work with European national directors associations and other stakeholders to share knowledge, information, experience and expertise on social policy and practice issues.
- To provide a focus and mechanism for social services representation in Europe.

### **1.2.1 Promoting Inclusion for Unaccompanied Young Asylum Seekers and Immigrants – A duty of Justice and Care**

In order to achieve its aims the ESN runs a number of projects on a range of relevant themes. One of these is aimed specifically at the issue of unaccompanied refugee and migrant children.

This particular project is funded by the European Commission under the Transnational Exchange Programme, a part of the Community Action Programme to combat social exclusion. The project considers the growing and challenging issue of young unaccompanied asylum seekers who regularly arrive in the European Union member states and who become the responsibilities of social welfare services. Although national governments and local authorities are minded to respond with humanity and concern, the treatment of this vulnerable group of children is often inappropriate. There is not only a lack of reliable data, knowledge, awareness and sharing of good practice but an inconsistent application of rights and needs as well as unequal access to specially trained professionals.

Combating social exclusion amongst children and providing them with every opportunity for social integration is part of the common objectives in the fight against social exclusion and poverty, adopted by the Nice European Council in Dec. 2000. The European Union's report on social exclusion recognises that 'children from poor backgrounds and vulnerable groups are often particularly at risk of missing out in this regard'. Protecting unaccompanied children and young asylum seekers, one of the most socially excluded groups in our society, should therefore constitute a priority for national and local governments in the European Union.

The promoting inclusion for unaccompanied young asylum seekers and immigrants – a duty of justice and care project, has a number of specific aims,

- To improve understanding of the legal and welfare policy and practices regarding unaccompanied asylum-seeking children across Europe including the 'new member' countries.
- To develop a wider knowledge of good practice amongst policy makers, managers and professionals in local government.
- To contribute to the development of immigration and welfare policies that reflects the rights and needs of unaccompanied asylum seekers.
- To facilitate the involvement of asylum seekers in articulating their own experiences and views, for example through involvement in specially facilitated focus groups and perhaps in producing a video involving the children.

Three workshops, each focusing on a different theme have were held as part of this project,

- Reception and Assessment (*May 2004, Paris*)
- Care and Placement (*November 2004, Bologna*)
- Hearing the Voice of Young Asylum Seekers (*May 2005, Berlin*)

### 1.3 Unaccompanied Children

The United Nations High Commissioner for Refugees (*UNHCR*) estimates a total figure in the region of 25 million refugees worldwide and further estimate that approximately fifty percent of this figure would be children. Current estimates indicate that between 2% and 3% of this total would be unaccompanied children.

Children are always victims in times of war or conflict. Since the ending of the 2nd World War through to the present time, conflict, war and instability have continued to rage across much of the globe. Throughout the world violations of human rights continue unabated. Children are directly affected by this turmoil,

*'The impact on children has been catastrophic. Save the Children UK estimates that, in the last decade, more than 1.5 million children under 18 have been killed and more than 4 million children disabled or maimed, more than 5 million have been forced to live in camps, and more than 12 million have lost their homes.'*<sup>1</sup>

However fleeing conflict and persecution is not the sole factor behind the increase in the numbers of children moving across international boundaries. The ever expanding gap between the affluent and developing countries, in particular poverty and a lack of opportunity, as well as the growth in the numbers of children being trafficked for exploitation either in the sex trade or the unregulated economy has contributed to this rise.

*'The United Nations believes that the number of children trafficked annually, internally and externally is around 1.2 million.'*<sup>2</sup>

Trafficking requires the existence of a coercive on-going exploitative relationship and should not be confused with the term 'smuggling'. Smuggling involves a third party facilitating the illegal entry of a person into a country, for which they would usually be paid, but upon arrival at the country of destination this relationship terminates. There are also many children who are smuggled into Europe, and thus arrive without coming to the attention of the relevant authorities. Their intention is likely to be to seek employment. The economic migration of children to Europe is on the rise as more and more families see this as a means to improve their financial situations and break the cycles of deprivation that many of them are trapped in.

#### 1.3.1 The Needs of Unaccompanied Children

Following the Bologna workshop the ESN issued a joint communication on unaccompanied asylum seeking children and migrants. This communication assisted the Network in drawing out what it believed were the needs of this particular client group.

Unaccompanied children have the same broad needs as any other children. They are children first and foremost and the fact that they are seeking asylum should not be the sole definition of their identity. They must receive the same standards of care and protection offered to all children and their needs should not be overlooked even if their experiences are likely to have given them highly

<sup>1</sup> S. Ruxton *Separated Children Seeking Asylum in Europe, A Programme for Action, 2000*

<sup>2</sup> UNICEF, *End Child Exploitation, 'Stop the Traffic' July 2003.*



developed survival skills and maturity beyond their years. As asylum seekers they will also have particular needs, not least being the need to be protected from return to a potentially life threatening situation in their country of origin. Unaccompanied children need to be nurtured, to feel safe and loved and to have a supportive network of friends and family, where possible, and community.

They also need to be protected from other forms of harm and abuse and need somebody to safeguard and promote their welfare. In addition to food and shelter, they will need access to preventative and remedial health care including skilled intervention as appropriate to assist in dealing with the traumas and stresses that they have experienced before, during or after their flight into exile. Opportunities for play and stimulation as well as formal education are essential. All children need to grow up with a sense of identity and this is particularly true for unaccompanied children who may be isolated from their traditional cultural base and learning to adapt to the new, and often alien, cultural values to which they are exposed.

#### **1.4 Statutory Providers**

The context in which the various statutory agencies respond to the needs of unaccompanied children is set within a volatile and fast changing environment. Most arrivals are spontaneous and hence it is extremely difficult to plan in advance. Service providers whose remit covers recognised ports of entry may be better able to predict the demand on their services, though in these areas numbers of unaccompanied children are likely to be high and this places a further strain on resources already limited by the pressure to tightly scrutinise public spending.

Responding to a wide range of cultural and linguistic needs also poses challenges and the lack of knowledge around a child's case history can also make it difficult to plan appropriately. It can, for example be difficult to assess the standard of education a child has achieved and in consequence where to place them in their new school. Health needs may also be neglected without a full health history. In some cases children are reluctant to cooperate with assessments or provide information requested of them. This may be because their experiences have led them to instinctively distrust those in authority or they may have been told what to say or even threatened with harm if they diverge from agreed responses. In some instances children may literally not know the answers to what appear to be the simple questions they are being posed.

Difficult though it may be for those of us in the West to accept, some children genuinely do not know their date of birth and in consequence their age. Some children arrive extremely traumatised because of their experiences in their country of origin and their presenting problems can thus be very different to that of the majority of citizen children requiring support. Children may have witnessed extreme violence murder or rape and some may even have been the direct victims of these actions or forced to partake in such atrocities. These are unlikely to be the experiences of citizen children and some providers may be inexperienced and unskilled in dealing with these challenges.

An already complicated legislative framework is made harder by the constant reviews and amendments to existing laws, guidelines and regulations etc. This is exacerbated by the fact that

having to respond to the needs of unaccompanied children is often not the main part of a person's job and social workers, for example, have many other areas of their work that they must keep up to date with. It can thus be very difficult to maintain an accurate and up to date knowledge of the law and its practice.

Immigration and asylum have become major political issues in recent years and this doubtless impacts upon the services that are provided to unaccompanied children. Providers must constantly be able to defend challenges from the media and public alike regarding the level of support offered to asylum seekers and justify their priorities particularly if there is a perception that 'local' people are receiving inferior services as a result of provision to asylum seekers.

#### **Recommendation 1**

**In order to meet the particular needs of unaccompanied children, such services should be delivered by trained staff within specialist teams.**

## 2. The Project's Main Findings

### 2.1 General Observations

#### 2.1.1 Statistics.

It has proved difficult to gather reliable and comparable statistics from the ESN project partners, mainly due to the varying ways that statistics are gathered. Some countries do not distinguish between unaccompanied children and those with families when gathering figures and likewise some countries tend to group all, or most, unaccompanied children as asylum seekers whilst others do not, making a careful distinction between those in the asylum system and those who are perceived as economic migrants. There are also those children who enter illegally and remain out of sight of the authorities and by definition it is hard to quantify the numbers involved. This is in itself grounds for concern as it makes it problematic to assess the full scope of this issue and consequently identify the resources necessary to respond appropriately. We do know, however, that the figures are high. The Separated Children in Europe Programme, a joint venture between the International Save the Children Alliance and UNHCR conservatively estimate that there are in excess of 100,000 separated (*unaccompanied*) children in Europe.

#### Recommendation 2

**To coordinate policy and practice, governments should develop a common statistical framework to determine the numbers of unaccompanied children across Europe.**

#### 2.1.2 Geopolitical Diversity

Those European countries considered throughout the work of the project are certainly politically and constitutionally varied. Unaccompanied children view these countries very differently. Some of the countries represented by project partners are countries of origin, others are countries of transit, while some are countries of destination. Indeed some are all of these.

Romania, for example, is both a country of origin and a transit country from where final destinations can be approached. Some unaccompanied children who travel to other countries participating in the ESN project are originally from Romania. But Romania is also a place of transit that unaccompanied children cross in the course of their journey. It is also, finally, a country which offers asylum, though it is difficult to assess how many unaccompanied children make a permanent base there.

Its near neighbour, Hungary, is primarily a country of transit with unaccompanied children from former Yugoslavia, Albania, and Romania, amongst others, passing through on route to the countries of northern Europe. Germany, France and Italy are more usually viewed as countries of final destination though some unaccompanied children pass through them on route to other countries e.g. from Italy to France, or France to the United Kingdom. The United Kingdom is also a traditional country of reception but is also a transit country for unaccompanied children travelling to the United States and Canada.

### Recommendation 3

**The European Council Directive 'establishing the criteria for determining the member state responsible for examining an asylum application'. (Dublin II), must be applied sensitively and in the best interests of unaccompanied children.**

#### 2.1.3 The Legislative Framework

Asylum and immigration legislation is regularly reviewed, redrafted and re-introduced throughout all the countries that are represented by the project partners. Despite this seemingly endless introduction of legislation none of the participating project countries have a specific piece of legislation aimed exclusively at unaccompanied children. In all instances the framework for responding to the welfare needs of this group is placed firmly within existing mainstream childcare legislation. The strength of this approach is that, at least in theory, unaccompanied children should be able to access the same quality of service provision as citizen children without discrimination.

The downside is that some of the particular needs of unaccompanied children may be overlooked. Legislation usually stipulates that services should be provided by the appropriate statutory agencies where the child's needs first come to light but these needs may be better addressed by placing the child in another region, perhaps where there would be more appropriate community support available. Similarly in all the respondent countries unaccompanied children are subject to the provisions of existing immigration legislation, and again this is within mainstream provision rather than specific statute focusing on unaccompanied children.

This is not to suggest that provision made within these areas of legislation that does not consider responses to unaccompanied children. Indeed references to particular clauses, regulations etc outlining practice towards unaccompanied children is a theme raised by all the project partners. Broadly speaking these seek to clarify the entitlement of unaccompanied children to access support and identify the need to provide different asylum determination procedures for unaccompanied children vis-à-vis adults. In Switzerland Article 7 of the asylum regulations deals entirely with unaccompanied minors and Hungarian guidance prohibits the taking of fingerprints from children under 14 years old. In the United Kingdom there is specific guidance accompanying the 'Leaving Care Act' on arranging accommodation for asylum seeking children leaving public care and Federal Regulations in Berlin provide executive instructions about youth welfare for unaccompanied minor aliens.

As one of the Italian partners noted, this straddling of two jurisdictions and in particular the lack of an integrated legal framework between them can lead to tension and contradictions. Childcare law is generally based on the rights of children and acknowledges their ability to participate in processes whereas Immigration law is 'far more restrictive, based on notions of public order and security and at least partially inspired by principles of control and defence'.

Throughout the participating project countries a child is defined as being under 18 years of age. In France not all unaccompanied children are asylum-seeking children and in Germany children aged

16 and 17 years old are treated as adults for the purpose of processing their asylum claim although their welfare needs would still be provided for under childcare law. Otherwise all respondent countries enable unaccompanied children to access asylum procedures and to enter systems of welfare provision without age related variances. The delivery of services, however, may differ and in particular most states deem it appropriate to offer a different level of support to the 16 and 17 year olds than they would to their younger peers. Generally the aim of statutory providers would be to provide younger children with substitute families or placements within regulated residential settings whereas many older children are expected to live independently or with minimal support from welfare professionals.

#### Recommendation 4

**Governments should consider enacting legislative framework which addresses the complex needs of unaccompanied children. This should be supported by a European Council Directive.**

## 2.2 Reception and Assessment in Immigration Processes

In all the countries considered throughout this project, unaccompanied children must enter an asylum determination procedure. States recognise refugee status; it is not merely granted, given or allowed. All applicants are subject to an assessment and verification of the substance of their claim to be a refugee and individual states have their own procedures and practices to aid their decision-making processes. It is inherent within the 1951 Convention on the Status of Refugees that these procedures are fair and transparent and are flexible in how applicants are allowed to evidence their claims. Further it is usual that where unaccompanied children come to the attention of the authorities at the point of arrival they would initially be held either in a transit or reception zone. In some instances this is effectively where the assessment process commences as unaccompanied children would usually be asked some initial questions at this stage.

The length of time unaccompanied children may be required to spend in these settings varies across the project participating countries and can be up to 20 days in France or Romania.

Once again a general point worth making is that children are not separated from adults during this period. This must be of concern as it is difficult to see how their particular needs as children can be met and they may witness events arising from the desperate actions of traumatised adults. Without the thorough vetting of all the adults in the same environment (*which it is reasonable to assume is impossible regarding newly arrived adult applicants*) there must be a risk that children may therefore not be adequately protected.

Most asylum determination procedures were designed with adult applicants in mind. Although there have been some amendments and adaptations in these procedures and various operational guidelines that, for example, omit unaccompanied children from fast track procedures, or allow for the principle of the benefit of the doubt to be applied, this is still invariably the case. In effect unaccompanied children are essentially subject to an adult asylum determination procedure.

### Recommendation 5

**Unaccompanied children should not enter an adapted asylum determination procedure primarily designed for adults, but rather one which adequately affords them protection and responds to their specific needs.**

The role of staff responsible for the maintenance of immigration control is doubtless a difficult task. It is by definition specialised but there is little evidence of staff training and development around the issues of providing care to frightened or traumatised children.

There is little consideration of child specific forms of persecution and similarly little thought has been applied to developing child friendly procedures that can assist a child to explain their circumstances and reasons for why they are unwilling to return to their country of origin.

However there is some existing good practice such as in both Italy and the UK where unaccompanied children are promptly referred to the appropriate welfare agencies immediately after an initial 'screening'.

### Recommendation 6

**Staff involved in the decision making process should be trained to deal with trauma and child specific forms of persecution.**

#### 2.2.1 Age Assessment Procedures

Some project partners noted difficulties in accurately establishing the age of adolescents. This is not surprising as it is a current issue throughout Europe. In practice a number of unaccompanied children do not arrive holding valid identity documents and in consequence many youngsters stated age is disputed by official agencies. This issue becomes particularly pertinent if the applicant, though claiming to be a child, is deemed to be an adult. The age, after all, of an unaccompanied child is a pivotal factor in determining the initial reception and care that they will receive.

Procedures for attempting to assess age seem somewhat deficient, usually taking the form of a physiological examination and there is inconsistency within the participating project countries around the application of these procedures. Most medical practitioners believe that age assessment is not an 'exact science'.

It is, perhaps, therefore surprising that most countries appear inflexible in the delivery of support and only Romania has developed services for older children, whose age may be in doubt, which acknowledges that their age is in the region of 18 years without demanding certainty. In the UK, X-rays may not be used as it is recognised that they have a wide margin of error and may have unforeseen medical side effects.

## Recommendation 7

**Age assessment procedures should be developed which recognise that the most reliable and accurate assessments are likely to take place over time and involve the expertise of a range of specialists.**

### 2.3 Accommodation and Care

The countries participating in this project provide a range of placements for unaccompanied children. Here are some examples from a non-exhaustive list,

- Substitute or foster families.
- Mainstream residential units.
- Residential units specialising in unaccompanied children.
- Short-term reception or clearing houses.
- Emergency reception centres.
- 'Semi-independent' residential units.
- Hostels.
- Hotel or 'bed and breakfast' accommodation.
- Educational Communities.
- Shared houses – with other young people.
- Specialist mainstream provision, e.g. young mother and baby units.

There is also a wide range of agencies that deliver these services. Statutory providers are responsible for many, usually at regional or local government level and Non Governmental Organisations play an important role as well. In a few instances providers can be found within the private sector where they are contracted by local authorities. Most provision places unaccompanied children in accommodation specialising in this group although a few are placed alongside citizen children. This is presumably deemed to be the most appropriate way to respond to their particular needs as unaccompanied children, though careful consideration should be given as to whether this is the correct approach if sustained over a long period of time.

The risks are that children feel marginalised and that their integration and orientation into their country of arrival is made difficult. Despite the range and variety of placements available many statutory agencies have noted that they are often unhappy with the type or quality of accommodation that they can make available to unaccompanied children.

In the final analysis the 'strategic' or overall responsibility for unaccompanied children rests with statutory government bodies in all the participating project countries. All recognise that in the absence of responsible adults in a child's life the state must fill the gap and take the lead

responsibility for the welfare support available to unaccompanied children. As already noted this is usually administered at a local level and services are provided by a range of agencies across the statutory, voluntary and private sectors either singly or in partnership with each other. This is not to be confused with the day-to-day issues of advocating for, and supporting unaccompanied children along the lines of guardianship.

A good practice example here reflects provision in Hungary. Once an unaccompanied child has lodged an asylum application they are placed in a residential unit specialising in care for this group and their asylum application will be considered whilst they are living there. They receive education and health care and their subsistence needs are addressed within their placement.

### **2.3.1 Guardianship and Legal Responsibility**

Owing to their particular vulnerabilities there is a view in some quarters that the issue of Guardianship is perhaps the main issue that needs to be addressed regarding the support of unaccompanied children. By definition they are without adults to care for them. Accessing welfare support can be challenging, partly because of limited resources and partly because procedures can be complex and confusing. Without the support of a guardian unaccompanied children would invariably have to deal directly with the relevant Immigration authorities and as these departments are not primarily child welfare agencies many staff lack the appropriate skills for working directly with children. These issues can be exacerbated by linguistic and cultural factors and by the child's total lack of knowledge surrounding customs and practices within the country in which they have arrived.

As with so many other areas of policy and practice the responses to the issue of Guardianship throughout the participating project countries were varied. In some instances guardians were appointed by local courts, in other cases this was more centralised, being the remit of a 'guardianship magistrate'. Some states, e.g. Switzerland and Hungary would seek to appoint a guardian to all unaccompanied children, whereas in France, for example, the decision whether or not to appoint a guardian rests with the guardianship judge and is subject to an individual assessment procedure. The UK has no formal guardianship scheme although the Refugee Council is funded to provide advice and practical support in assisting unaccompanied children with lodging their asylum applications and accessing other services.

One of the areas that consistently lacks clarification from participating partner agencies is, where appointed, the role and standing of the guardian. There are frequent references that they will be responsible for the appointment of a legal representative and handle legal affairs on behalf of the child but little reference to other roles or the context of their work. Would they be expected to make decisions solely in the best interest of the child and would they have any legal authority to challenge the courts and other decision makers?

A similar question mark hangs over the independence of the guardian as the mechanisms for appointment seem, in the main, to be led and administered by the state. This may seem reasonable but if the guardian is accountable to those state bodies who appoint them can they truly be referred to as independent and be deemed able to always act in a child's best interests?



## Recommendation 8

**Unaccompanied children should have access to an independent guardian with clear understanding of that person's responsibilities, management support and accountability.**

### 2.3.2 Integration

Throughout Europe it often seems that integration is the missing chapter in the approach to the issue of asylum and immigration. For unaccompanied children the risk is that where integration is lacking many will feel dislocated and may drift to the margins of society where much of their potential will be wasted. Without effective integration a further risk is that they no longer feel that they have long-term opportunities in their countries of arrival and will move out of reach of the authorities, choosing to avoid schooling perhaps finding illegal work or drifting into petty crime or prostitution.

There appear to be no coordinated schemes for the integration of unaccompanied children into the communities and societies of the participating project countries. Integration seems to be ad-hoc, usually revolving around education and schooling although there was some broad consistency in the provision of language classes. Placing a child promptly into an educational setting is an important step in reintroducing stability and normality into their world. It is an important part of the process in helping a child rebuild their life and is essential if the child is to successfully integrate into the host community. In Hungary, for example, attempts are made to assist unaccompanied children learn about Hungarian and European culture. In the UK the view has been expressed that the response to the integration of unaccompanied children is not being planned strategically across the country and that there was also further evidence that it was not linked to other areas of strategic planning for children.

Both the German and Italian project partners have commented that support is offered to assist children access vocational training and employment although a recent ruling in Italy, that a child's residence permit did not give them permission to work and nor could it be converted into other types of permit when the child reached 18, has surely undermined this approach. Indeed restricted access to employment is the norm for asylum seekers within the participating project countries. This presumably reflects national and EU policies aimed at protecting the labour market for the benefit of citizen employees.

It is, however, widely acknowledged that some unaccompanied adolescents arrive in Europe primarily to seek employment. There is therefore a danger that in denying access to the labour market these youngsters are forced into the illegal and unregulated economy. This is likely to be exploitative, potentially dangerous and may enable unscrupulous adults to acquire a level of control over a youngster which they will further exploit, perhaps forcing them into criminal activity. It does seem quite contradictory that youngsters who are willing and able to work are prevented from doing so and therefore become dependent on the state.

### Recommendation 9

**Unaccompanied children awarded a status within that country, should have access to a systematic programme of integration which includes accommodation, education and employment.**

#### 2.3.3 Return and Family Reunification in a Third Country

The return of unaccompanied children from the participating project countries, whether forced or voluntary is exceptionally rare and some project partners have reported that it has never happened within their territory. Perhaps surprisingly returning children does not appear to have happened within the jurisdiction of the Dublin Convention(s) even though some partners have outlined that their governments perceive certain countries as 'safe' for the purpose of return. Currently legislation or guidelines apply in most participating project countries and these call upon governments to make extensive enquires prior to return and this would appear to be a factor in making the practice difficult. However there seems to be a growing feeling by governments that the issue of return in relation to unaccompanied children should be addressed and new initiatives are currently being considered in a number of European countries. France has, since 2002, developed an arrangement with Romania to facilitate the return of children to that country. Protocols have been drawn up to engage professionals from both countries to make decisions on return and where agreed to make the necessary arrangements in a planned manner. In practice this initiative has tended to be limited to children living in Paris. It is estimated that about 30 children have been returned using this approach.

Only in Switzerland was there a specific reference to decisions on the return of unaccompanied children being made within the context of the best interests of the child. This principle was seen as a major element in assessing the appropriateness of removal. Although not strictly within the parameters of return, cases have been reported in France of children being refused entry at the frontier thus effectively being returned to the country they travelled from before they have been able to register a claim for asylum.

Reference has also been made to the importance of liaison with the countries of proposed return both as a necessary procedure and an important safeguard. What was not clear was the mechanism for doing this and any assessment of its effectiveness.

### Recommendation 10

**The decision to return an unaccompanied child to their country of origin should be made solely in the best interests of the child.**

### **3. Hearing the Voices of Unaccompanied Children**

The young people who were consulted during the preparation of this report acknowledged that their experiences as asylum seekers were significant events in their lives and as such gave them a commonality with other unaccompanied children. However they were equally clear that there was 'more to them' than their experiences in exile and as such they invariably asserted that they should not be defined or ascribed a status within our communities based solely on the fact that they are 'refugees'. Some unaccompanied children can find it challenging to take full advantage of opportunities to participate in the development of policy and practice or to outline their concerns or provide feedback on services.

In some instances this is because they are too traumatised by their experiences to engage with the process. They may be reluctant to contribute or share ideas because their experiences gained in their countries of origin have made them very wary and distrustful of the state or authority figures. Being provided with opportunities for participation may also be a new experience for some unaccompanied children because they come from cultures where children are not usually afforded such opportunities and where even adults are not able to voice their opinions without fear of repercussions. Thus it can feel uncomfortable for some children to be invited to engage in consultation and participation exercises.

Although the evidence suggests that most statutory providers appreciate the value of children's participation as a principle of their work, it can be a difficult concept to put into practice. As well as the difficulties that children may find in taking part in participatory processes there are also resource issues for hard-pressed statutory agencies. These may include interpreters, effective training, and time to consult with children. Statutory providers sometimes feel that consultation has limited use as much of their work, is by definition, set within a rigorous legal framework where there are no opportunities for negotiation.

#### **3.1 The Meaning of Children's Participation**

There does not appear to be any formal working definition of the term 'children's participation' within the statutory providers of the countries involved in the project. However the project partners have a broad consensus of opinion that there are two aspects to the participation of children. Firstly, allowing them to take part in the decision making processes that affect them and, secondly, enabling them to input into the design of the services that they will use. In order for this to be effective children should be empowered to express their views and opinions and will need access to all relevant information.

In its work around this particular project the project has sought to consult with unaccompanied children. One of the young people who was interviewed as part of this process defined participation as 'the power to manage your own life'. Another stated that 'it means your views are carried along, including decisions'. The written materials of one self advocacy group stated that self advocacy is about having your voice heard on the issues that affect your life; 'it is about working together to change things for the better' and finally it is about 'knowing your rights and standing up for them'. Perhaps it is significant that some youngsters struggled to provide an answer when asked what they understand by the term children's participation. One young man commented that 'it was difficult to describe'.

The report that was presented to the project partners at the workshop focusing on children's participation noted a number of points that partners seemed to openly embrace. In order to be meaningful, they felt that the process needed to ensure that all the participants felt free to express their opinions. This may mean being proactive in finding methods that facilitate and encourage the involvement of children who may be naturally reserved, lacking in confidence, intimidated, or missing the necessary communication skills.

There will clearly be particular challenges in delivering this for children who are marginalised, socially excluded or who have disabilities or other special needs. Children should be able to design the process of participation so that it is appropriate for them and they should be supported in dealing with any new information that comes to light during the process. But critical to meaningful participation is the provision of genuine opportunities to influence decisions. At the outset this needs to be balanced against any realistic constraints that are likely to impact on possibilities for change, e.g. children should be advised that it is very difficult to amend primary legislation, particularly after it has been voted on by parliamentarians and entered into law.

Additionally, children's participation will only be meaningful if time is allowed for children to develop relationships with their peers and any adults involved in the process. Every aspect needs to be appropriate for children, from the timing and venues of meetings to the use of language and presentation of information. This will call for flexibility and a willingness to respond to children at differing ages and levels of maturity and development.

Project partners outlined a range of initiatives to enable children to comment on and inform the development of services and in some instances to be involved in the decision making process. The following list gives an indication of the variety of opportunities available for unaccompanied children to participate.

- Meetings of young people living in residential establishments.
- Formal and statutory care reviews.
- Children and young people being invited to sit on the 'steering groups' of projects.
- Complaints procedures (*some of which have been designed or adapted specifically for children*).
- Independent children's rights officers who can help children communicate their views.
- Involving children in the recruitment of staff, e.g. a child may form part of an interview panel.
- Services user feedback forms (*some of which have been designed or adapted specifically for children*).
- Access to files policies.
- Individual interviews and 'key work' sessions.

Ultimately it is unlikely that participation will be effective without a genuine commitment by adults (*and agencies*) to respect children and to listen to them and to take their contributions seriously. In effect 'children's participation' is a value that needs to underpin how agencies go about their business.

The participating project partners identified a number of reasons why the principle of children's participation was important in the design and delivery of services. As a starting point domestic legislation usually requires consideration of the views of children and Article 12 of the United Nations Convention on the Rights of the Child (*CRC*) outlines that children have a right to be heard, and that states should facilitate methods enabling this to happen. Project partners also felt that allowing children to input into the design of services made them relevant, appropriate and thus effective with the additional bonus that children were more likely to use services that they have helped design. Similarly involving children enabled the issues that matter to them to be identified.

Partners also outlined that the process of participation had a number of benefits for unaccompanied children. Participation of children enables them to learn more about the world in which they live and helps them to develop the skills and decision making processes that they will need as adults thus helping them prepare for a responsible adult life. Additionally participation allows children to learn from each other, to value and respect experiences of others and to develop their confidence and their communication skills. Finally for some children it will be an opportunity to develop social skills, to feel empowered and to improve self-esteem. It can be fun and for some children can provide a brief respite from the harsh realities of their everyday lives.

One young man described how he felt powerless to improve his situation within the country where he had arrived. However he became part of a support group for young refugees and through this found that 'by supporting others he learned how to help himself'. Other comments were that 'getting involved in participatory projects helps to motivate you for many areas in your life' and many youngsters said it helped their confidence and also assisted with integration into their new country. The comment was also made that 'expressing your feelings helps relieve stress'.

In general young people felt positive about what participatory projects can achieve. Although there is currently no formal Dutch partner within the ESN project, it is worthwhile to note that there is a long-standing project running in the Netherlands, which seeks to raise the profile of young refugees and asylum seekers through self-advocacy. known as - SAMAH, Stichting Alleenstaande Minderjarige Asielzoekers Humanitas, (*Foundation of Unaccompanied Minor Refugees*). Young people have liaised directly with the media in their attempts to present a balanced coverage of refugee issues for which they have received appropriate training.. SAMAH has also organised a National Unaccompanied Minor Refugee Assembly to find a voice for unaccompanied children to shape future projects.

Perhaps SAMAH's most notable achievement to date was the involvement of a group of unaccompanied children in the conference 'Freedom. Security and Justice for Separated Children' – Emerging EU Asylum and Immigration Policy. The conference, on the eve of the Tampere II Summit in Brussels, was to inform the media and politicians about children's rights in asylum policy.

#### Recommendation 11

**Opportunities for children's participation and self advocacy should be provided.  
A European network for young asylum seekers and refugees might usefully support developments.**

## 4. Conclusion

This ESN led project – 'promoting inclusion for unaccompanied young asylum seekers and immigrants, a duty of justice and care, has brought together many practitioners and managers from a varied range of backgrounds and countries. Over the two years that the project has been operational, the project has discussed many of the relevant issues that impact directly on unaccompanied children.

There has also been a credible attempt at providing an opportunity for unaccompanied children to input into the project discussions and to inform its work and direction. It is perhaps inevitable, that in the fast changing arena of asylum and migration, it has not been possible to focus attention on the full range of issues. For example previous workshops have had little opportunity to discuss unaccompanied children's access to the employment market, or to consider an appropriate response to former child soldiers. When the project opened its initial phase there was little awareness of, for example, biometric testing yet as science makes more and more technical advances this is fast becoming a topical issue. However, notwithstanding these issues, there has been much fruitful debate.

Not surprisingly one of the main findings to emerge from the project is a confirmation that the maintenance of immigration control takes precedence over the rights of children. This goes beyond the instances of Germany and the UK entering reservations on the CRC regarding immigration and reflects practice across the project partner countries of the project and the wider EU where the agenda is increasingly influenced by security and control requirements.

Whilst it is clearly true that European cultural diversity may be a strength, the inconsistency of countries approach to their asylum and immigration policies and practices must remain of major concern.

The various directives, resolutions and regulations emerging from within the EU often fail to demonstrate that there has been any 'joined up thinking'. However the project has identified many areas of good practice in local government and NGOs with examples of a flexible and holistic approach to delivering services which responds to the differing issues for unaccompanied children.

The project devoted significant attention to consulting with unaccompanied children and the Berlin workshop focused exclusively on 'hearing the voices' of this group. The main messages that emerged from discussions with groups of unaccompanied children were that although they felt that they were usually consulted and, in general, their wishes taken into account regarding their daily lives, they felt powerless to inform or influence the bigger picture regarding asylum and immigration legislation, policy and practice.

However on a positive note it is clear that amongst the participating project partners there is a desire to embrace children and young people into the design of services and a widespread commitment to meaningful consultation with them.

As the project draws to a close the challenge is how to take the work forward. It is sobering to think that most of the issues identified by the project are well known to legislators, policy makers and

practitioners alike yet little seems to change and services to unaccompanied children rarely seem to improve.

This project has certainly established that there are many dedicated, committed, skilled and resourceful practitioners working with, and listening to unaccompanied children. Sadly this doesn't always appear to be enough. Perhaps what is really needed is a change of political will and the vision to fully appreciate the positive contribution unaccompanied children can make to European society.

### **Recommendations**

As a result of their learning and understanding, the project partners believe that consideration should be given to the following actions:

- 1** In order to meet the particular needs of unaccompanied children, such services should be delivered by trained staff within specialist teams.
- 2** To coordinate policy and practice, governments should develop a common statistical framework to determine the numbers of unaccompanied children across Europe.
- 3** The European Council Directive 'establishing the criteria for determining the Member State responsible for examining an asylum application...' (*Dublin II*), should be applied sensitively and in the best interests of the unaccompanied children.
- 4** Governments should consider enacting legislative frameworks which address the complex needs of unaccompanied children. This should be supported by a European Council Directive.
- 5** Unaccompanied children should not enter an adapted asylum determination procedure primarily designed for adults, but rather one which adequately affords them protection and responds to their specific needs.
- 6** Staff involved in the decision making process should be trained to deal with trauma and child specific forms of persecution. Those in key positions should have a recognised professional social work qualification.
- 7** Age assessment procedures should be developed which recognise that the most reliable and accurate assessments are likely to take place over time and involve the expertise of a range of specialists.
- 8** Unaccompanied children should have access to an independent guardian with clear understanding of that person's responsibilities, management support and accountability.
- 9** Unaccompanied children awarded a status within that country should have access to a systematic programme of integration which includes accommodation, education and employment.
- 10** The decision to return an unaccompanied child to their country of origin should be made solely in the best interests of the child.
- 11** Opportunities for children's participation and self advocacy should be provided. A European network for young asylum seekers and refugees might usefully support such developments.

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