

# Care for Unaccompanied Minors

Minimum standards,  
risk factors and  
recommendations  
for practitioners

**ENGI – Guardianship in practice**  
**Final report**



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# 1

## Introduction

The ENGI-network started as a project funded under the European Commission European Refugee Fund (ERF) in 2008. The aim is to improve guardianship services for Unaccompanied Minors (UMA's) in the EU Member States. ENGI has the ambition to be a supportive network to organizations in all EU Member States that work as guardians or are developing guardianship services. This report is a result of the project 'Guardianship in Practice' and is realised in cooperation with and with support of the European Commission (European Refugee Fund) and the European Programme for Integration and Migration (EPIM). The organisations cooperating within ENGI in the development of this report have been Nidos Foundation (NL), Caritas International (BE), The Finnish Refugee Advice Council (FI), SALAR (SE), The Social Board of Health and Welfare (SE), Refugium e.V. (DE) and the Scottish Refugee Council (UK).

ENGI provides insights and recommendations for improvement of guardianship systems in the EU Member States and takes the first steps by exchanging good practices and working together in Europe. By developing and making available best practices, training and methodologies it aims to improve the lives of unaccompanied minors by better equipping their guardians.

ENGI is a network evolving around guardianship institutions across Europe. It revolves around the central theme of children's rights and recognizes the fact that guardianship is not a solution for all actors and to all problems. Guardianship mainly seeks to resolve problems related to independent responsibility for unaccompanied minors. An issue that is discussed in all European Member States to different extents. This report goes beyond the sphere of guardianship and discusses all aspects of the minor's care. Solutions to the problems identified may be different in different contexts.

In its first report "Towards a European Network of Guardianship Organizations" ENGI concluded that a 'one-size-fits-all' system of guardianship is not likely to work:

*"The size, composition and nature of the group of unaccompanied minors is so different between Northwest, Southern and Eastern Europe that a completely similar system of guardianship will, at least on the short or medium term, not work." (2010, p. 77)*

A second major conclusion was that the different ways in which Member States have organized and structured care for unaccompanied minors leads to complex and diverse situations in which proposals for supporting UMA's demand massive law changes and reforms. This is naturally met with some resistance and a top-down approach in arranging a model of holistic guardianship - or other forms of representation with parental style responsibility and care - is therefore not likely to succeed in the near future. A clear example has been the handling of Member States of art. 19 of the Reception Directive<sup>1</sup>: it did lead to cosmetic changes in the law, but not to reforms in practice in most Member States<sup>2</sup>. Definitions have clearly been too broad to be driving change.

Following these conclusions and based on the feedback during the 2009 Amsterdam Conference 'Guardianship in Europe', ENGI formulated a project proposal and undertook the next steps towards creating the partnership project. Firstly, as Member States are the main responsible actors that need to be convinced to make improvements, recommendations and proposals should fit the current Member State's frameworks or at least be relevant to the Member State's legal structures. Hence, a first step is to come to solutions that are tested against national organizations working in practice with unaccompanied minors. As a second step an understanding of the relevant structures in each Member State is required so that there is a clear description of which organizations are 1.) respon-

sible and 2.) accountable for the key elements of care for unaccompanied minor asylum seekers – and, in more than an occasional case, where there is no clear responsibility and accountability. To develop these next steps and by doing this to improve guardianship services ENGI works on a 'child centered approach'. It was suggested that there should be a collective effort to make an assessment of the child's needs in a number of EU countries, to attribute responsibilities where possible, while taking the differences between national realities into account. The discussion paper available seeks to provide this information and questions what rights and needs UMA's have and how practitioners - both guardians and others - could best assist.

Stemming from the input of practitioners from six EU Member States<sup>3</sup>, this paper formulates standards for practitioners who work with UMA's. It is intended to assist in the facilitation of dialogue and discussion between the Guardianship Organizations and other actors with the appropriate leads on their national governments and counterparts as to how the system of dealing with- and assisting UMA's could be improved. It is by all means a practical tool, rather than a theoretical exercise. It should ensure the European Commission and a variety of other European and national policy-makers are provided with better background information and provides suggestions and areas in need of improvement, where there needs to be policy development in the years to come.

Children's rights are well documented in key treaties such as the Convention on the Rights of the Child (CRC). All actors in the field generally agree that these rights should be upheld. Yet, an often faced problem is how, and to what extent these sometimes abstract and often broadly defined notions should be translated to actual practice. This paper discusses briefly which facilities and services should exist on a minimal basis. Being a practical tool, the added value is that it provides suggestions upon actions that may be taken to safeguard the most widely accepted rights. This in turn should promote the debate on who is responsible and accountable. The paper offers a mirror to national systems to review services and responsibilities in the various systems, while at the same time pointing at some good examples and areas of good practice from neighboring countries. By doing so, the primary aim is to encourage both a national and an EU-wide debate on minimum standards and best practices in the field of supporting, protecting and caring for UMA's.

<sup>1</sup> 2003/9/EC, from here referred to as Reception Directive

<sup>2</sup> Towards a European Network of Guardianship Institutions, ENGI, 2010, project report of aforementioned ERF project of 2008

<sup>3</sup> Belgium, Finland, Germany, Scotland, Sweden, The Netherlands.

# 2

## Methodology

This paper discusses what assistance practitioners should provide to UMA's. 'UMA's' are defined as follows:

- Minors and/or children includes everyone under the age of 18. The position is held that they are persons with equal rights, equal in value and deserving as much respect as adults. Next to this, it is argued that children are more vulnerable than adults, and as such, deserve extra protection.
- When minors are separated from their parents they are considered unaccompanied.
- When they have the intention to- or are in the process of lodging an asylum claim they are considered asylum seekers.

'Assistance by practitioners' is defined in its broadest possible sense. Such assistance can be given by state or non-state actors. It can and should include providing support within the legal-, social-, psychological-, physical- welfare- or other spheres. Assistance can take place before, during or after the asylum application. Practitioners are all those actors that can, or should, play a role in providing such assistance. From policy makers who design guidelines and procedures, budget holders who distribute resources, social workers who act as mentors, to guardians who provide practical support and/or parental care. The recommendations presented in this report seek to prompt debate and improve support. It addresses policy issues, practice arrangements, it recommends the review and consideration of organizational structures and touches the subject of pragmatic advice for individual practitioners.

Following the ENGI-1 report, special attention is given to the (potential) role of guardians/representatives in assisting UMA's. It should be noted that no specific definition of guardianship and/or representation exists. In the context of this paper these concepts are used to refer to either representation in the sense of article 19 of the Reception Directive and/or guardians in the sense of independent representatives responsible for the well-being of the child.

#### **The working group**

The working group consists of representatives from organizations involved in guardianship in six countries: Belgium, Finland, Germany, Scotland, Sweden, The Netherlands. They are mostly senior staff members working for guardianship organizations and have a good overview of both the national and international context. In order to look at specific detailed operational and practice issues working groups of guardians (day-to-day practitioners) in each country were asked to contribute.

#### **Themes**

Where the ENGI-1 project and report took a country based approach, the working group believed it to be important to structure this second discussion paper thematically. Doing so, the reader is informed about the standards, practices and risks that the various countries share, rather than which differences may exist.

In a number of sessions the working group identified which themes it deemed most relevant to discuss. All in all these themes virtually completely covered the complete 'asylum cycle' of initial reception in a European Member State to assistance in returning to the country of origin. The 10 selected themes are: initial reception, representatives, the asylum process, trafficked children and disappearances, housing, education, social welfare, healthcare, family tracing and contact, return and Dublin. Apart from, and in addition to, the 10 selected themes the working group deemed it important to include two topics in the discussion, though these fall formally outside the scope of the research focus. These themes are 18+ after care and the position of minors who have not applied for asylum.

# 3

## Minimum standards, risk factors and recommendations

The 10 selected themes are discussed in separate paragraphs. The timeline of an asylum application is followed as much as possible. In reality the themes often overlap in time. In each of the themed sections the paragraphs are laid out in the following way.

#### **Minimum standards**

As a *first step* basic rights that exist for UMA's regarding the theme are summarized. These are documented in multilateral treaties or can be taken from EU directives. The goal of this exercise is by no means to present an exhaustive list of rights, nor to trigger the discussion of how to exactly define or interpret these. Rather it is a method to list the most widely accepted and non contested rights. The rights can therefore be seen as non negotiable 'minimum legal standards' on a certain element of care or protection.

Presenting these rights serves as a clear and non controversial starting point for the next step.

*Secondly*, a top 5 of facilities or services is presented which should minimally exist in order to ensure that the before mentioned rights are upheld. These facilities or support services could be described as 'minimum executing standards'. How these facilities are safeguarded in a given country and which organization(s) is/are responsible for organizing these facilities is at this stage irrelevant. What matters, is a.) that the listed facilities are at least in each country available, and b.) that an UMA or his/her guardian/(legal) representative is able to enforce the availability of these facilities (for example by turning to the national Ombudsman or a similar independent organization).

#### **Risk factors and recommendations**

*Thirdly*, risk factors are identified and discussed; factors that (may) frustrate the process of providing the listed facilities are described in detail. What risks may rise and which stumbling blocks currently already exist? Special attention is given to how responsibility for certain facilities or services is arranged or is lacking and whether actors are equipped to execute the defined responsibility. Where applicable, recommendations are given on how standards could be ensured and identified problems be overcome.

# 4

## How to use this report

It is already mentioned that this paper aims to provide a practical tool, striving for incremental change and encouraging national discussions on the content and structure of responsibility for UMAs. Below we envisage how this paper can be used as a tool to develop improvements in your country. In principle, it should be useful to governments and other policy- and decision- makers to assess their national structures and services and to practitioners working with UMAs on a daily base to mirror their practical framework with the legal framework.

Finally, it is useful for NGOs that want to enter a structured discussion with governments on the quality of services provided. It is both applicable as a tool for national systems that do and do not have guardianship institutions. Whether a nation's system of guardianship

recruits and employs professional guardians or volunteers is not of importance for this piece of research however, it is likely that the results of the assessment are influenced by these contextual factors.

We envisage an organized discussion on a national level. Based on this paper, a thematic approach can be taken using the following questions as a framework for dialogue:

1. Do national actors in principle agree upon the top 5 facilities/ required services mentioned for each theme? There is a line of reasoning behind choosing the facilities under the themes, but it would be possible that actors occasionally fundamentally disagree, in which case a facility / particular service maybe disregarded.
2. Who is responsible for taking care or providing each service in your national context? Is this responsibility clearly defined? Is it divided, shared or the responsibility of a single actor? If no actor is responsible, does it ever - or could it ever - lead to problems in the future?
3. Is the responsible actor capable? Does it have the means to do the job? Is it accountable to meet the demands? If so, to whom? Which actor signals any shortcomings or breach of responsibility and can act if necessary?
4. How could any problems identified be solved? Which are the main constraints (e.g. organizational, financial, legal or in terms of skills and competences)?

The above exercise can bring potential problems back into proportional perspective. It can possibly lead to a solution in one area, while accepting a status quo in other areas. It helps put a focus on issues where there is basic agreement, instead of focusing on issues where this is lacking. In short, it offers leads to progress without calling for systemic policy shifts or for massive reforms.

# 5

## Key themes



## 5.1

### Initial reception

#### Minimum standards

The working group holds that children have the right to a suitable initial reception upon arrival. In adherence to art. 3 CRC<sup>3</sup> and art. 27 CRC receiving states are obliged to provide an adequate standard of living and other appropriate facilities that are in their best interest. The working group holds it that in actual practice the following facilities should at least be available in each country:

- 1 The (potential) UMA is immediately or as soon as possible brought into contact with a guardian/representative
- 2 The (potential) UMA has immediate or next working day access to professional specialist lawyers
- 3 The (potential) UMA has immediate access to professional interpreters
- 4 The (potential) UMA has immediate access to education
- 5 The (potential) UMA has access to safe and appropriate housing

#### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 Upon reception it is sometimes questioned by immigration authorities if someone who claims to be both unaccompanied and a minor qualifies as such. In the process of investigation, however, applicants should be treated as UMA's and be swiftly (preferably within 24 hours) brought into contact with a guardian or specialized social worker who can act as a representative and oversee the UMA's physical and social well being.
- 2 Following from the above, it is imperative that a qualified and specialized lawyer is accordingly promptly appointed to safeguard the legal position of the (possible) UMA. No steps concerning the claimant's legal position - including interviews - should be taken before to the applicant as the opportunity to speak to a lawyer. These lawyers should be appointed by an independent authority or organization, e.g. the guardian. This is currently not the case in all countries. In some countries lawyers are appointed by the immigration services. The lack of independence in this system is undesirable.
- 3 Both from a social, legal and emotional point of view it is in the best interest of the child that (s) he is able to communicate freely and openly at this stage. Given the important legal conse-

quences of any oral statements, access to a professional and independent interpreter should therefore be facilitated. It is in this respect undesirable that adult applicants who also applied for asylum act as an interpreter.

- 4 Shortly after arrival the claimant should have access to full time education. Meeting other children, gaining knowledge, learning the indigenous language and having a daily structure is unquestionably in the best interest of the child.
- 5 All ENGI members differentiate between short term reception - at the airport, or in transit centers - and long term reception. Detention units or police prisons can *never* be regarded as proper housing. Not even as short term solution. Short term, furthermore, means 'short' term. It cannot be emphasized enough that initial reception should be as short as possible, because transfers by definition have a negative impact on the child. Children become attached to staff members and make friends at these facilities. It is essential that children stay for as short a period as possible in transition facilities with a non household environment. Short term housing should be "safe", which is in this regard defined broadly. It is recognized that specialized housing during the initial reception phase can for a number of practical reasons not always be provided. Certain steps could and should be taken to provide a child friendly environment: trained staff, a playground, special furniture, food etc.. By taking into account special wishes safety can be created: some children for example prefer to sleep privately, other communally.

<sup>3</sup> Convention of the Rights of the Child

## 5.2

# Representatives

### Minimum standards

Representatives are those persons who represent the UMA in formal affairs a minor is not able to handle. Art. 12 CRC states that children have the right to be represented in legal affairs. Given their age minors can also in other fields not always protect themselves, look after themselves and care for themselves. It is therefore in the best interest of the child (art. 3 CRC) that they are supervised and guided by a representative in all other spheres of life. Moreover, article 19.1 of Directive 2003/9/EC states that “Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organization which is responsible for the care and well-being of minors or by any other appropriate representation”. The working group holds it that the above means that in each country at least the following representation services should be available to each individual:

- 1 Lawyers, guardians and other representatives are accessible to the young person throughout the process
- 2 Lawyers are specialized
- 3 Guardians/ representatives are specially and appropriately trained
- 4 A guardian or other appointed representative should have full parental power according to the national law
- 5 The UMA should have access to recognized complaints procedures and be made aware of these

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 Access to representatives is not only imperative during the first phase of the asylum claim, but should be offered throughout the whole procedure. A sufficiently big pool of professionals and/or volunteers should be in place. In countries where guardians are volunteers it more often takes time to establish contact, as there sometimes are insufficient volunteers or volunteers are only temporarily available.
- 2 Lawyers need to have expertise in children’s rights and asylum law and preferably have

a demonstrated motivation to work in this area. Guardians or other institutions would be greatly assisted if lists are available with accredited and specialist qualified lawyers per region.

- 3 Day to day (legal) assistance for other matters outside of the asylum procedure is the responsibility of guardians or other representatives. They have the means to enforce a suitable environment, should have general knowledge about the asylum system, and know when to refer and who to refer to when other legal issues arise. They should furthermore have some financial training and be able to act as a person of trust when necessary. Especially in a system reliant on volunteers there may be a risk of a lack of professionalism and therefore ongoing training is crucial. Guardians may range in terms of education, age and commitment. Without denying the added value of individual volunteers or the exemplary dedication and commitment of some, a system of professional guardianship is in this regard preferred over a voluntary system. Should this be impossible, volunteers may well be a second best option or a back-up.
- 4 The balance of power in the relationship between a representative and a child is of a delicate nature. The representative can only execute its parental powers in the best interest of the child after informing that very same child about options available, explaining possible consequences of decisions, and consulting the child in the process. Simply appointing representatives without enabling them to take up their role seriously is for that reason not acceptable. Reality on paper should not frustrate reality on the ground and the caseload of a guardian should be realistic.
- 5 The relationship between the guardian and child should be built on trust. When this trust is somehow broken in the child’s perspective, a clearly formulated and independent complaints procedure should be in place. Ensuring a confidential counselor is available and a system of supervising guardians must be considered. If there is no system of independent counseling or supervision there is an ongoing risk of child exploitation or abuse, especially in systems that rely upon volunteers, as internal organizational checks and controls are missing in that case.

## 5.3

# Asylum process

### Minimum standards

According to art. 6 of the European Convention of Human Rights (ECHR) everyone has the right to a fair trial and, consequently, a fair hearing throughout the asylum application procedure which may potentially lead to a trial. Receiving countries are obliged to ensure that an UMA can adequately prepare the asylum claim and that the asylum process is started and decided without delay. It is in the interest of the child (art. 3 CRC) that the child receives all relevant assistance during this phase. The working group holds it that this means that in each country at least the following services/facilities should be available:

- 1 The child should have enough time with a lawyer and/or other representative to prepare for the interview
- 2 All representatives should have access to interviews and all available documentation
- 3 A clear set of procedures regarding age assessment should exist
- 4 Interviewers should be sufficiently trained and child friendly information leaflets should be available
- 5 The asylum procedure should be limited in time

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations are presented below.

- 1 A fair application procedure exists only when applicants know their rights and duties. In some countries interviews are held before a lawyer or representative is contacted. Semantic discussions to what extent 'conversations' about the child's past count as interviews or not are rejected by the working group. It holds the position that any substantial dialogue (meaning: with consequences for the UMA's future) between an UMA and immigration services should not take place before a lawyer and/or other representative has contacted the minor. A so-called 'rest period' to prepare the life story before interviews take place should be provided. Youngsters need a period to settle down and 'land'. Such a period should, however, not exceed three months.
- 2 Situations still exist where lawyers and guardians/representatives are not aware that an applicant has an interview. They should always be duly informed. Also, all documentation related to the pending case should be brought to the attention of all representatives.

3 Age assessments should be the exception and only be conducted if there are manifest reasons to doubt the age given by the applicant. Should age assessments take place, a clear procedure should be in place. In actual practice reports are sometimes inadequately documented or incomprehensible. It is recommended that qualified specialists assess the age. This should entail more than merely 'looking' at the applicant. Ideally it should consist of both a physical and a psychological assessment. In some countries age assessments take place before a lawyer and/or other representative is consulted. This is not recommended, since certain rights can also during this phase be violated. UMA's should furthermore have the option to appeal the decision regarding an age assessment.

4 Interviewers from the immigration authorities are not always satisfactorily trained to handle the very sensitive nature of interviewing children. Interviewers should be able to phrase their questions in a non formal and understandable manner. Interviewers could consider taking 'child led' interviews instead of 'migration led' interviews. They should be able to clearly explain the decision making procedure and the rights and duties the UMA has, for example by referring to child friendly information fact sheets, visual aids and materials.

5 In many countries the asylum procedure is still a lengthy procedure, this is especially difficult for children and may negatively impact on their physical and mental well-being. As it is imperative this procedure is as short as a prudent procedure can be, it should be months and not years.

## 5.4

# Trafficked children and disappearances

### Minimum standards

To minimize the risk of a child going missing it is in the best interest of the child (art. 3 CRC) to investigate their whereabouts. It is in the best interest of the child (art. 3 CRC) to investigate if a UMA has been trafficked. Art. 6 of the UN CTOC Protocol<sup>4</sup> provides that each state party implements measures to provide for the physical, psychological and social recovery of victims of trafficking, especially children. The working group holds that this means that in each country at least the following facilities should be available:

- 1 All actors in the field should be sufficiently trained and cooperate and share relevant information on potential trafficking indicators
- 2 During the asylum procedure special attention should be given to the topic of trafficking
- 3 Special secured housing for potentially trafficked children must be made available to safeguard the child victims of trafficking
- 4 Relevant state authorities must be informed about missing children. Action must be taken.
- 5 Children should be informed about the consequences of absconding, running away, or going missing

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations are presented below.

- 1 It is recommended that awareness training is given to guardians, police, social workers, lawyers and other volunteers. In fact, anyone that is likely to come into contact with UMA's should receive such trainings. Especially in larger organizations it is advised that a special unit is on request available to answer questions or provide information. In some countries a so-called 'trafficking-indicator matrix' exists which could be beneficial to use.
- 2 The asylum procedure should be tailored to the needs of trafficked UMA's. In some countries the Immigration Services visit a trafficked UMA in the protected housing, instead of letting the UMA visit the (often unwelcoming) Immigration Services buildings. The adoption of such practice might be considered elsewhere.

3 In many countries (potentially) trafficked children reside in regular housing facilities. It is recommended that special well protected sections are available for potential victims. Ideally the children are not placed in facilities that also host adult victims of trafficking. Trafficked children should surely not be placed in the same sections as criminal children. A well trained staff could provide counseling. Placement in such a protected environment should always be discussed with the guardian/representative, since it could also contradict the best interests of the child. For example when (s)he has to leave his social network and move hundreds of kilometers.

4 When a 'regular' child goes missing it makes the headlines, when a UMA goes missing it doesn't even make a footnote in the news. Such is daily practice. No matter how difficult it may be to track down missing UMA's, state authorities should not regard such cases as 'lost' and commit themselves as much as they would with indigenous children to investigate these cases – especially if they are alerted by seriously worried guardians or social workers. A system and action plan should be in place when a UMA goes missing. The guardian/representative seems best suited to have to formal obligation to inform authorities of a missing child.

5 UMA's may find the living circumstances, especially in a protected location, difficult. It is therefore in the best interest of the child that he is fully informed about the possible risks of leaving the facility. The child itself should be made aware of his/her vulnerable position. Such information should always be given by well trained staff members.

<sup>4</sup> The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime.

## 5.5

# Housing

### Minimum standards

Every receiving country is obliged to ensure that an UMA has an adequate standard of living (art. 27 CRC) and a right to family life (art. 8 ECHR). Article 20(2) CRC accords to children temporarily or permanently deprived of their family environment the right to 'alternative care'. Such care may be informal-, formal-, kinship-, foster-, or residential care.<sup>5</sup> In actual practice this means that actual housing is taken care of, as well as the day-to-day needs of the child. The working group holds it that this means that in each country at least the following facilities should be available:

- 1 Sufficient, appropriate and specialized housing
- 2 Safe housing
- 3 A foster parents programme is in place
- 4 Food, clothes and pocket money are provided
- 5 Family members (e.g. siblings) are never separated except when deemed to be in the best interests of the child

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

1 Specialized housing means at least that minors do not stay in the same facilities as adults. In certain countries specialized housing is available for under 16 year olds, whereas above 16 year olds live in semi-independent living units and there are no safe houses for child trafficking victims. Such situations are not deemed safe. Specialized housing means that staff (also foster parents) are sufficiently trained and qualified to deal with this unique group of young people. Knowledge about the specifics of the asylum procedure, the process of trafficking, trauma indications is required. Ideally a range of especially small scale reception modalities should exist, where UMA's and guardians can gain access to bed spaces in a recognized centralized housing system. In various countries a limited availability of specialized housing leads to capacity problems when the influx increases considerably. UMA's could then end up in hotel rooms or regular reception centers. A structural solution needs to be found to ensure appropriate, specialized and consistently good quality accommodation is provided.

2 Housing should be 'technically' safe (fire security in place, child friendly furniture etc.), but should also 'emotionally' a safe haven. The well being of the child is the core task. In this respect, and again, a well trained and committed staff is essential. In addition, it is important to limit the number of children per facility. In some countries large scale reception facilities may house up to a hundred children; this is not suitable. Preferably no transfers to other facilities take place, unless this is in the best interest of the child. Furthermore, a facility may be safe when contracted, but conditions could deteriorate over time. Therefore it is recommended to regularly have unexpected inspections by an independent body to monitor technical safety. Guardians/representatives should at all times have access to housing to monitor the well being of the child. A clear set of regulations should in this regard be available.

3 Not all countries yet have a foster parents programme in place. It would, however, be a preferred situation if UMA's and their guardians are in the position to make a choice between large scale residential facilities and a number of foster parents. Those countries that have a foster parents programme, sometimes face capacity problems, especially to host adolescents. It is recommended that information sessions are organized to attract (more) foster parents or community care workers. When children stay in a family context with relatives their situation should be regularly monitored by an independent and specialized organization or guardian.

4 The most identified problem regarding distribution of clothing, pocket money and food is that these tasks are dispersed over different organisations. This could be overcome by making one organization, and preferably a guardian, responsible. It is furthermore advised to standardize the amount of pocket money country wide.

5 Especially when they enter separately from each other, difficulties arise with catering for sibling groups. Sometimes different reception facilities exist for different ages, which means that sibling groups may be separated.

<sup>5</sup> UN Draft Guidelines for the appropriate use and conditions of alternative care for children, June 2007.

## 5.6

# Education

### Minimum standards

Article 28 CRC is crystal clear about the right to education: "State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: a) make primary education compulsory and available free to all, and b) make higher education accessible to all on the basis of capacity by every appropriate means." The working group holds that this means that in each country at least the following facilities should be available:

- 1 A proper assessment of educational abilities
- 2 Access to full time education
- 3 Education tailored to the special needs of UMA's
- 4 Vocational trainings are offered, work placements are available
- 5 The guardian/representative should be in the position to supervise the educational process

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 Providing education is nothing but empty rhetoric if the child is unable to perform at his/her own level. Following education should never equal occupational therapy. It is therefore of utmost importance that a qualified professional is in the position to assess the educational level of the UMA shortly after arrival and to advise a school type- and level. It is recommended that specifically designed assessment instruments and guidelines are used country wide.
- 2 In some countries full time education is not or only limited accessible for UMA's above 16 years of age. This is especially problematic when these children turn to adulthood without having received any diploma. In certain countries children have no access to school at all. In other countries schools use quota or maximum capacity as a reason not to admit UMA's to education. The result is that UMA's end up on a waiting list. In many countries possibilities to enter education vary from region to region. None of these justifications or pretexts are valid reasons not to offer full time education.

3 Education is only accessible for UMA's when additional services are provided: language education is offered, teachers are preferably bilingual (otherwise the child should have access to interpreters), and homework assistance is available. Where possible UMA's should visit regular schools and have access to special facilities. This is preferred over 'special' UMA-schools since these do not promote integration. For the development of children, interaction with children of the same age. Moreover, integration does not prohibit return as long as procedures do not take years.

4 Many UMA's come from (and may eventually return to) societies where having vocational is more relevant than theoretical knowledge. In many receiving countries UMA's, however, have very limited access to vocational training centers or internships. If it is in the best interest of the child, options to follow vocational programmes should be available.

5 A child needs a trusted person to (proudly) show his/her report to and a teacher needs a responsible adult to discuss the child's performances with. As education is essential for the child's development and perspective, this development should be monitored by a responsible person. In other words; it is in the best interest of the child to have a guardian/representative to track a child's school career. Guardians/representatives can only do so when they can engage in school career planning. They must be proactively informed about the child's proceedings, be invited by the school to discuss these proceedings, and properly received by the schools when they request meeting the teacher.



## 5.7

# Social welfare

### Minimum standards

Art. 14 CRC states that parties shall respect the right of the child to freedom of thought, conscience and religion. The working group holds it that this means that in each country at least the following facilities should be available:

- 1 The UMA is given a maximum of 'agency'
- 2 The UMA is immediately offered integration facilities when granted status
- 3 The UMA has access to services to build and maintain a social network
- 4 The UMA has access to adequate facilities to practice religion and express cultural identity
- 5 Guardian/representative acts as a 'person of confidence' and has the instruments to safeguard the social well being of the child

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 'Agency' in sociology refers to the capacity of individuals to act independently and to make their own free choices. Practitioners working with UMA's (teachers, social workers) do not always have the experience to recognize that what they consider as 'minor' issues might be considered as 'major' by UMA's. Everyone living in an institutionalized condition deems it important to have a say in day-to-day decisions: what to eat, when to eat, when to sleep, when and how to participate in recreational activity, what television channel to watch etc. The older they are, the more options UMA's should be given in this respect. Where possible UMA's wishes regarding such practical issues should be accommodated. It improves the child's quality of life and - therefore - the overall atmosphere in which the child may thrive.
- 2 Many aspects of life in Europe differ considerably from the local situation UMA's were used to back home. It is in their best interest to be informed about such differences and presented tools to successfully acclimatize to their new surroundings. Only when UMA's have a certain understanding of the 'workings' of the receiving country it is likely that they can fully function. It is recommended that qualified professionals run specifically designed programmes to introduce UMA's to the European/national context in order to orientate them.

3 Humans are social beings. Given their vulnerable position, unaccompanied minors more than anyone need to establish relations of friendship to 'ground' in the new societies they enter. They should therefore be given the possibility to meet like minded persons: practice sports at local clubs, have access to (digital) social networks, join social gatherings etc. When such networks are established, it too often happens that UMA's are transferred to different locations without the negative social impact it may have being taken into consideration by the professionals supporting the young person.

4 UMA's should be facilitated to practice their religion and culture freely. Places of worship should be accessible, staff members should know how to bring children into contact with religious institutions. Addresses of cultural institutions should be available. Furthermore, staff should be sensitive to certain prohibitions stemming from religion. Knowledge what food can(not) be served, for example, can prevent potential conflict. It is recommended that general information of common religions is widely distributed among practitioners.

5 UMA's need to be informed about the concept of a 'person of confidence'. It is recommended that guardians/representatives act as such. They - or another actor person with this role - should be in the position to sufficiently monitor and ensure the social well being of UMA's. It is recommended that they are periodically updated by social workers and that they themselves regularly discuss this issue with the UMA. Institutions should recognize guardians/representatives have a role and say in this respect and seriously consider any requests made.

## 5.8

### Health care

#### Minimum standards

“State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services” (art. 24 CRC). According to the working group this means that in each country at the very minimum the following services should be made available:

- 1 UMA has access to first health-check
- 2 A first health-check should include a psychological assessment.
- 3 UMA has full access to trauma counseling and other types of specialized health care such as sexual health screening
- 4 Guardians/representatives have a complete understanding of the child’s physical and mental health situation
- 5 Guardians/representatives should be in the position to refer children to all medical care, including trauma counseling

#### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 In most countries health checks are part of the initial reception procedure. However, not in all cases such assessments are done by independent and qualified doctors. Countries should be aware that they can only live up to the CRC if the child can enjoy ‘the highest attainable standard’, which is at the minimum an independent and qualified doctor.
- 2 In many countries health checks are still limited to marginal physical evaluations. The working group is of the opinion that especially for unaccompanied minors coming from war torn countries a health check should always contain a mental health check, if it is in the best interest of the child at this moment. The arrival in a strange country alone already constitutes psychological pressure, let alone if children have experienced traumatic situations in their country of origin or on their way to Europe. It needs no further explanations that such tests should also be executed by independent and qualified professionals.

3 Specialized mental health care often lacks capacity to care for the relatively large number of UMA’s. Properly trained staff should be structurally available. Situations where UMA’s visits to psychologists are limited to a few instances, are undesirable. Moreover, social workers or guardians who sense minors might face psychological problems should be able to assist on short notice. In other countries a situation exists in which children sometimes have to wait for 3 to 4 months before trauma assistance is available. These are unacceptable conditions. The working group is of the opinion that this is not in line with the CRC. Other types of specialized care such as dental care and prenatal care should be just as accessible to UMA’s as to other children in the receiving countries.

4 Guardians/representatives are not always updated about the health situation of the children. The working group believes it to be essential that such updates always take place, that all actors surrounding the child share information appropriately and have the responsibility to protect the young person. Both physical and mental problems may significantly hinder the child’s development and well being and it is therefore imperative that guardians/representatives are aware.

5 Guardians/representatives are more than any other actor responsible for the overall well being of the child. Following the above, guardians and representatives should be the authority or lead in identifying the young person’s needs and to decide – after consulting the minor - if a young person needs to be referred to health care professionals.



## 5.9

# Family tracing and contact

### Minimum standards

Article 8 ECHR states that everyone has the right to family life. In addition, the preamble of the CRC considers that it is in the interest of the full and harmonious development of the child's personality that (s)he grows up in a family environment. Lastly, family reunification is almost always in the best interest of the child (art. 3 CRC). Often a UMA is the sole surviving member of a family or has no knowledge of where his family members are. UMA's might still have family members living in the country of origin or other regions. Given the right to family life every receiving country should facilitate the UMA in tracing and contacting family members. The working group holds it that this means that in each country at least the following facilities and services should be available:

- 1 The UMA is always informed about the possibilities of family tracing
- 2 Family tracing is done structurally, systematically and safely
- 3 The guardian/representative decides if family tracing takes place
- 4 A variety of organizations offering family tracing
- 5 Family tracing should be available in all countries

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 Most countries offer family tracing facilities for UMA's through large NGOs such as the Red Cross. Shortly after arrival and with regular intervals UMA's should be made aware of the existence of these services.
- 2 In many countries authorities only start family tracing activities upon request of the UMA. The working group recommends that family tracing always takes place. In other words, it advises that family tracing is a fully embedded activity in the structure of reception and assistance. Clear guidelines should exist detailing who is responsible (guardian/representative), which organizations are involved and which actors have which roles. It is recommended that especially mentors/social workers bring up the subject of family tracing on a regular basis.
- 3 In some countries Migration Services formulate the wish to trace family in the country

of origin. An important reason to do so is to repatriate the child. It should be noted, however, that in some instances family tracing and especially establishing contact with family members may not be in the best interest of the child. The child may have escaped the very same parents contacted via family tracing. Not only general safety in the region and the existence of family members should be taken into account when deciding upon return. But also – and foremost – the individual situation of the minor upon return. It is therefore imperative that no steps family tracing and establishing contact with family members are taken without careful planning and consent of the child's guardian/representative.

- 4 Most countries solely rely on the activities of the Red Cross regarding family tracing. All representatives in the working group agree that the experiences with this organization are generally positive. Some exceptions exist to the positive experience, especially concerning the limited feedback when a request for tracing has proven unsuccessful. Given the importance of family tracing the working group would wish for more organizations also engaging in this activity. Such organizations already exist, since Caritas International for example also offers such services.
- 5 In actual practice it is not always possible to trace family in certain countries. Currently, the situation in Somalia, Afghanistan and parts of Iraq for example makes this difficult. Efforts should be made to enable family tracing in these countries as soon as possible.

## 5.10

# Return & Dublin claims

### Minimum standards

Following from the earlier mentioned rights to family life (art. 8 ECHR) and the best interest of the child (art. 3 CRC) every UMA has the right to be facilitated to return to the country of origin. Yet, it might also be in the best interest of the child (art. 3 CRC) not to return to the country of origin. Receiving countries in this respect may have the obligation to assist in voluntary return, as well the obligation to under certain circumstances challenge return. The same applies to transferring UMA's to other EU countries on the basis of a so-called *Dublin claim*.<sup>6</sup> Concerning return the working group holds it that that in each country at least the following services should be made available:

- 1 The UMA should be informed about the existence of return-assistance-programs
- 2 Custody should only be handed over if a fully trusted partner exists in the country of origin or Dublin country – there should be adequate care available
- 3 Guardians/representatives have the formal responsibility to decide if a UMA can return or be transferred on the basis of a Dublin claim.
- 4 Monitoring of the well-being of the child after return

### Risk factors & recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- 1 UMA's are constantly reminded and conscious of return. Questions regarding return may arise at any time or stage in the process. It is therefore important that all practitioners working with UMA's have basic knowledge about the possibilities (and impossibilities!) to return. UMA's should - preferably by the guardian/representative, or another trusted person - proactively be informed about the options to return from shortly after arriving until after a definite decision on having to return.
- 2 It is by no means acceptable to have a UMA return when it cannot be guaranteed that adequate care is available. In certain instances UMA's are returned to for instance Iraq and Belarus after an evaluation of the receiving partner in the country of origin, done by the Immigration Services. The mere fact that orphanages exist in such countries is, however, not a sufficient or adequate reception arrangement. A sound methodology should be in place to assess if adequate living conditions for the individual child exist in

any given context. Currently several countries are considering or experimenting with setting up and financing 'adequate reception facilities'. While return to a place with adequate reception is not necessarily negative, it must be responsive to certain pre-conditions. In judging whether to return a minor or not, the well-being and best interest of the child should remain the central issues. Furthermore, with adequate reception should come parental responsibility that is arranged properly. The working group believes return is only possible if either the parent or another fully trusted partner can take care of the child. For further information on this difficult topic, please check [www.engi.eu](http://www.engi.eu) for the position paper.

- 3 The guardian/representative is the last in line to decide what is in the best interest of the child. Guardians/representatives should therefore have access to all available information about receiving organizations in order to assess if custody can be handed over. Only when they are convinced reception is adequate and safe and there is someone or an organization who can assume parental responsibility should transfer to country of origin take place. In case there are serious reasons for considering that children were victimized (e.g. human trafficking) in another EU country, the UMA should not be returned to that country under the Dublin Convention.
- 5 It is by no means standard practice that the well being of children is structurally monitored after their return. The working group is of the opinion that such monitoring should always take place for two reasons. First of all, this is in the best interest of the individual child. Secondly, monitoring could be used as an evaluation tool to improve assistance and learn valuable lessons. Thirdly, information can help other children in similar circumstances to take an informed decision on their return. For how long and by which organization monitoring should take place is a topic that needs to be discussed, piloted and evaluated. At least, such an organization should have an independent position.

<sup>6</sup> The "Dublin claim" refers to a situation in which country A can transfer asylum seekers to country B when there are serious reasons to believe that the respective asylum applicant has applied for asylum in country B in the past (the 'country of first asylum').

## 5.11

### Special themes

Apart from the above mentioned themes the working group discussed a number of other issues that on a practical level urgently need improvement. Two of these themes fall outside the scope and framework of this discussion paper, but are nonetheless deemed so important that these are given attention in this paragraph: 18+ after care and the position of minors outside of the asylum procedure.

#### 18+ after care

Many national jurisdictions provide an obligation for parents and/or guardians to also care for the child after (s)he turned 18. Often parents are financially responsible to care for their offspring until they are 21 years of age. In actual practice this means that parents should provide means of support for housing, insurances and study. In this regard, the working group notes that the current practice in all countries is that virtually all assistance provided to UMA's stops from the moment (s)he turns 18. Where it is accepted that some sort of 'transitional arrangements' should be provided for children, this is not common practice for UMA's.

#### Risk factors and recommendations

- The ramifications of turning 18 may be exceptionally difficult for UMA's. In many countries they suddenly lack the support of their guardian/representative, must give up their housing, and lose financial means to continue their studies. The working group recommends that counseling by preferably the guardian/representative remains available until the age of 21. It furthermore believes it to be in the best interest of the ex-UMA that (s)he is in the position to continue education – if he or she wishes to.

#### Position of minors without an asylum procedure

Minors who have not applied for asylum are children with generally the same set of rights as UMA's as described above. This has far reaching implications for countries who signed the CRC. These countries should note that *all minors* - irrespective of their legal status - should have access to virtually all of the earlier mentioned facilities. This means that they have access to guardians/representatives, specialized social workers, interpreters, education, health care, adequate housing, family reunification and return assistance.

#### Risk factors and recommendations

In actual practice these facilities/services are not in all countries or at all times accessible. Risks are identified and recommendations presented below.

- In some countries minors without an asylum procedure reside on the streets or in hotels before more suitable reception facilities are available. Vulnerable as they are, this poses a threat to themselves. Desperate as they are, this might pose a threat to society. The reception crisis for this group should be solved as a matter of urgency.
- In many countries minors outside of the asylum process do not contact health services, fearing the authorities. In order not to withhold these children their undisputed right to health care – and in the interest of the national health security of the receiving country – it is recommended that independent professionals proactively approach this group and inform them about the rights they have and existing possibilities.

# 6

## Conclusion and recommendations

This discussion paper has provided the reader with information about rights and needs of UMA's and how practitioners - both guardians/representatives and other actors - could best assist. Stemming from the input of practitioners from six EU Member States, the paper has formulated standards for practitioners who work with UMA's and provided pragmatic suggestions to improve facilities and services.

Overseeing the above, we identified four key elements which over and again complicate and/or frustrate practitioners in providing UMA's the assistance and care they are entitled to. These are 1.) Lack of capacity, 2.) Lack of responsibility and accountability, 3.) Lack of training and professionalism and 4.) Lack of monitoring and information. It is recommended that both policy makers, politicians and practitioners jointly make an effort to solve

these problems. When these overarching problems can be tackled the situation of UMA's in the various European Member States is most likely to improve. This could essentially be done by setting up clear arrangements between various executing parties and by making appropriate resources available.

#### **Lack of Capacity**

Capacity problems are related to all themes. Shortage of housing, interpreters, professional lawyers, guardians are issues that were over and again discussed within the working group. Lack of capacity can, however, never be used as an excuse not to provide the minimum standards mentioned in this report. Lack of capacity is essentially caused by lack of resources and/or lack of accountability. When pressure on the system stems from a sudden influx only a *temporary* capacity problem may serve as an excuse. Everything possible should be done to provide suitable reception and assistance in due time. Furthermore, it is an extra argument to further European cooperation on this point as much as possible. It is imperative to come to an even division of UMA's between Member States, which will be more stable over the years and less depending on sudden political or policy shifts in neighbouring countries.

Recommendation: Asylum migration is often generated by a variety of different push factors. Crises can occur overnight and so can the influx of UMA's. Take a pro-active approach: even though numbers of UMA's may be relatively low at the moment, ensure that a solid system is in place when numbers rise.

#### **Lack of Responsibility & Accountability**

In ENGI-1 it was concluded that in many instances responsibilities were ill defined. Again, the working group comes to the conclusion that many risk factors stem from blurred and imprecise divisions of labour. It is often not clear which actor is responsible to provide certain facilities. The main problem is often that various parties are responsible, which in the end makes no one responsible. And even more important, makes no one accountable. In case one actor is clearly responsible, it is often questionable if it is realistic that this actor is in actual practice able to provide sufficient assistance.

Recommendation: Create a clear division of labour on each of the items mentioned in this report. Responsibility and accountability will make that problems are addressed and solutions found or demanded for. A suggestion is to give one organization a leading position in caring for UMA's during the full asylum cycle, making use of services and facilities of other organizations. The leading organization can be held accountable should the quality of facilities/services be questioned. This, in its turn, will lead to the situation that accountable organizations will voice a lack of means or a lack of information rather than cut the levels of service.

#### **Lack of Training & Professionalism**

Just like working with different ethnicities and nationalities requires specific qualities, so does working with children require specific skills and expertise. Practitioners normally working with adults easily resort to using standardized formats when dealing with children. However, working with children may demand - and often *does* demand - a different approach. Where adults can be asked to fill out some forms if they have any complaints, this is for example not an option for many children. How to approach? How to establish trust? What to say? What *not* to say? What characterizes a victim of trafficking? These are all skills which persons working with UMA's should master. Professionals and volunteers should continuously learn and update these abilities.

*Recommendation:* Provide on a regular base specialized trainings for both professionals and volunteers working with UMA's.

#### **Lack of Monitoring and Information**

When a UMA is out of sight practitioners often have one key worry "What has become of him/her?" This is at play when the UMA changes from reception center within the country or reception. But even more this is the case when a child is transferred to a different EU country via a Dublin claim or returns to the country of origin. It is in this respect crucial that one organization monitors the complete asylum cycle of the UMA. A sound system of monitoring could significantly improve the information position of both practitioners and policy makers. Transparency will increase insight in patterns and possible good practices.

Recommendation: Make one organization responsible for monitoring all steps taken by a UMA. Ideally, this is the very same organization that is responsible and accountable for safeguarding the UMA's rights are upheld.

