



Closing a Protection Gap

“You need to earn the title of guardian”

National Report
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Service Droit des Jeunes
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DEFENCE FOR CHILDREN
International

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1. Acknowledgement

It was a real pleasure and challenge to write this report on guardianship of separated children and the protection gaps of which they can be victims. This theme cuts across youth protection policy, migration policy, national, European and international legislation, intercultural communication, emotional welfare, interpersonal relations, and social rights amongst other things. The diversity of themes and elements to consider touching upon guardianship have made it a challenge to include all aspects but also made the research extremely interesting and diversified.

This report would have never seen the light of day if those (former) separated children, guardians and experts had not shared their expertise and insights with me. A special thanks goes out to them for the time, trust and knowledge they have given and shared. My gratitude goes also to Andrea Rea and the members of the national advisory group who were of great help with regards to methodological issues and most of all stimulated and contributed to deeper reflections on guardianship and this study.

2. Introduction

In the past few years increased attention has focused itself on separated children (SC). Guardianship has appeared as one of the element analysed in studies but was rarely the central subject of a study, even though guardians are the central actor in the protection of separated children. The instruments and reports on the rights of the child often stress the need to respect the right to be heard of the minor and their right to participate, however few studies applied those principles and rights within their research. In this national report we will integrate the perspective of the minors and closely analyse the qualifications of the guardian. The qualifications of the guardian are central to effective protection of the separated children. The most qualified guardian can however only obtain the aimed for results if the system around him or her gives the means and the guarantees necessary to do so. In this study the guardianship system will not be reviewed but we will analyze the profiles of the guardians and their qualifications.

The aim of this project is to improve the situation and development chances of separated children by means of: *closing a protection gap for separated children in Europe by developing core standards with a focus on qualifications of guardians based on the views of separated children in relation to their rights according to the CRC and EU directives.*

The mission of this report coincides with the communication from the European Commission to the European Parliament concerning the Action Plan 2010-2014 for unaccompanied minors where the Commission states to consider:

'Introducing review mechanisms to monitor the quality of guardianship in order to ensure that the best interests of the child are represented throughout the decision-making process and, in particular, to prevent abuse'.¹

On the basis of the good practices presented in each national report we will, with our Daphne partners, develop high European standards with regards to the qualifications of guardians in order to

¹ See for this communication: <http://www.statewatch.org/news/2010/may/eu-com-action-plan-unaccompanied-minors-com-213-3-10.pdf>. p. 10.

close the protection gaps concerning separated children in Belgium and in the European Union. Other underlying goals of this study are:

- To assist guardians in finding the right solution for the child
- Boost a European Community policy and harmonization of guardianship in practice
- Strengthen the attention of guardians and policy makers onto the Convention on the Rights of the Child

The partners in the project are divided into Research Development partners and Field Research partners. All eight partners will carry out the research in the same way but the Research Development partners have a bigger role in developing the core standards in 2011.

The partners in this project are:

Research Development partners:	
Defence for Children International -ECPAT	The Netherlands
Plate-forme Mineurs en exil –Service Droit des Jeunes	Belgium
Save the Children	Sweden
Defence for Children International	Italy
Field Research partners:	
Save the Children	Denmark
Slovene Philanthropy	Slovenia
Irish Refugee Council	Ireland
Bundesfachverband UMF	Germany

3. Methodology

The objective of this qualitative research is to collect existing research, information and legislation and collect the views on guardianship of separated children and guardians in eight EU Member States, analyze them and focus on good practices and recommendations in relation to the guardians in Belgium. The information from the eight national reports will subsequently be developed into core standards in 2011.

The methodology of the national research consists of a literature review including a study of the relevant research and legislation, at least ten interviews with (former) separated children and ten experts including guardians. The representativeness of this study is based on the panel of interviewees who were selected to ensure that the variety of profiles of guardians and minors were represented. A total of 32 persons have been interviewed. During these interviews the children and guardians are asked about subjects like: procedural aspects, qualifications of a guardian, the best interest of the child assessment, reception facilities, return, legal knowledge and communication².

² See annex 2 for the question lists that served as a guideline for the interviews with the separated children and the guardians.

In 2009 a pilot was conducted by Defence for Children in the Netherlands for the interviews with separated children and guardians.³ The results have been discussed with the partners at a kick off meeting in February 2010 and adjustments were made. The interviews with the separated children and guardians reflect qualitative semi-structured interviews with question lists as a guideline.⁴ It was essential for the consultations with the separated children and guardians to have as much ‘open interviews’ as possible. In this way it was possible to include new ideas, suggestions and recommendations from the interviewees in the report and not limit the results to the subjects in the question lists.

Terminology

In the Belgian legislation the separated child is referred to as an unaccompanied minor. The discussion on the terminology of those children is very specific to each legislation and national system and therefore varies a lot. For the sake of harmonising the terminology we will use the term “separated children” even though the Belgian legislation refers to the term “unaccompanied minors”. We will not however adapt the terminology used in the legislative texts and law as we want to insure an exact translation of the legislation. In this research the term “separated child” will be used according to the definition stated in the Statement of Good Practice of the Separated Children in Europe Programme⁵:

Separated child:

- Under 18 years of age;
- Outside their country of origin;
- Separated from both parents, or their previous legal or customary primary caregiver

Interviews

For the interviews of the separated children we have interviewed more asylum-seekers and refugees than minors with an irregular situation or other statuses. It was easier to interview asylum-seekers and refugees as they lived mostly in reception centre and often felt more confident to talk to an unknown person. We interviewed 10 separated children and 4 former separated children. All the former separated children were still in contact with their guardian, sometimes even 4 years later. We interviewed minors with different residence procedures, from different countries of origin, housed in different reception facilities, with different present in Belgium for varying lengths of time.

The fact that we interviewed minors who did not disappear from the system and that we mostly interviewed asylum-seeking or recognised refugees might have an impact on the conclusions of the study. Indeed the minors who did not have any trust in their guardians or who felt unprotected and left the guardianship system could not be interviewed as they have disappeared. This means that the different reasons for which the minor did not feel protected are still unknown.

³ See for this pilot: <http://www.defenceforchildren.nl/images/20/1098.pdf>.

⁴ The research ‘My Nidos’ by the Hogeschool Utrecht, worked with the method ‘story telling’. A recommendation from this report was to interview children instead to get a better respons and more information (see: Hogeschool Utrecht, “Mijn Nidos”, Utrecht: 2008., p 46).

⁵ Separated Children in Europe Programme, Statement of Good Practice, 4th revised Edition, 2009, p.3

The reactions of the minors in the interviews were very variable, some wanted to tell their life story, others were less responsive. Certain variables can explain why the response level was not equal: the duration of stay, the procedure, the past experiences of the minors, the language level, the education level, the personality of the minor.

There are no interviewed minors who have applied for the recognition as a victim of human trafficking⁶. There are several reasons for this. On a yearly basis there are very few separated children who apply for this status or are recognised as such victims. In 2009 there was just 1 minor who was recognised as a victim of human trafficking. Also, their highly traumatised past was an obstacle to finding minors who were willing to talk.

The interviewed separated children are between 16 and 22 years old, with the vast majority being 17 years old. Indeed most of the separated children in Belgium are between 15 and 17 years of age. Interviewing younger children was not possible for several reasons. The condition for doing an interview was to make sure that the children gave a genuine consent and therefore capable of discernment. Also older separated children were thought to have a more reflexive analysis and to have increased capacities in formulating their opinions and views.

In summary: the interviewed minors have 8 different nationalities, are in or have followed 4 different residence procedures, are in 5 different housing situations, have different duration of stay (between 3 months-16 years), are of different gender, and have guardians of different languages.

Here under you will find the overview of the interviews:

*Separated Children*⁷

Children	Gender	Age	Country of Origin	Procedure ⁸	Living environment ⁹
B1	Girl	18	Guinea	Recognised refugee	Reception centre for adult asylum-seekers
B2	Boy	18	Rwanda	Recognised refugee	With his grandmother
B3	Boy	19	Afghanistan	Recognised refugee	Independent studio
B4	Girl	22	Tibet	Humanitarian regularisation	Independent studio
B5	Boy	17	Guinea	Asylum-seeker	Reception centre for asylum seeking separated children
B6	Boy	17	Togo	Asylum-seeker	Reception centre for asylum seeking separated children

⁶ For the specifics on the procedure on human trafficking please consult page 25

⁷ The interviewed separated children were selected partly by asking guardians if they thought of any minor that we could interview and partly by going to the reception centers and interview the minors who volunteered for the interviews. A third option used was to ask social-legal services if a separated child had consulted their services and if the minors would be willing to do an interview. After each interview we tried to see what other profile of separated children would be interesting to interview (short or long period after arrival, different procedures, nationalities, age, gender, etc).

⁸ For the specifics on the different procedure, please consult pages 25-27

⁹ For the specifics on the different reception possibilities, please consult pages 27-29

B7	Boy	17	Guinea	Asylum-seeker	Reception centre for asylum seeking separated children
B8	Boy	17	Guinea	Asylum-seeker	Reception centre for asylum seeking separated children
B9	Boy	17	Guinea	Asylum-seeker	Reception centre for asylum seeking separated children
B10	Boy	17	Guinea	Asylum-seeker	Reception centre for asylum seeking separated children
B11	Boy	17	Chechnya	Medical regularization	Small living group
B12	Boy	17	Chechnya	Medical regularization	Small living group
B13	Girl	17	Kosovo	Circular 2005 ¹⁰	Small living group
B14	Boy	16	Morocco	Circular 2005	Observation and Orientation centre for separated children

For the selection of the guardians to interview we established a panel of 10 guardians who were French-speaking and Dutch-speaking; who had different statuses (employee-guardians and independent guardians); who had different amount of years of experience; who had different caseloads; who lived in different geographical areas, etc. This way we constituted a panel where the various profiles of the guardians were represented.

Guardians¹¹

Guardians	Gender	Length of experience	Status¹²	Case-load	Language
BG1	Male	5.5	Independent (self-employed)	20	French-speaking
BG2	Male	5.5	Independent	20	French-speaking
BG3	Female	3	Independent	10	French-speaking
BG4	Male	2	Employee-guardian	25	French-speaking
BG5	Male	5	Employee-guardian	13	Dutch-speaking
BG6	Male	2.5	Employee-guardian	25	Dutch-speaking
BG7	Female	5	Independent	5-12	Dutch-speaking

¹⁰ For the specifics of this procedure please consult page 26

¹¹ For the selection of the guardians to interview we first interviewed guardians randomly, partly some who we already had contacts with, others who were unknown. Then, to have a broad overview of the profiles of guardians we consulted different experts to recommend guardians for interview based on the less represented profiles (years of experiences, gender, background, status, age, language, geographical area, etc)

¹² For the specifics on the statuses of the guardian and their case-loads, please consult pages 15-17

BG8	Female	5	Independent	10	Dutch-speaking
BG9	Female	5.5	Independent	3	Dutch-speaking
BG10	Female	1	Independent	32	Dutch-speaking

Besides guardians we thought it was important to consult with other actors and experts who are also in regular contact with separated children and guardians. Those interviews were important to be able to analyze the communication and the collaboration of the guardians with other services or institutions.

Other experts¹³

Adults	Professional Title	Gender
BA1	Social worker in a reception centre for asylum seeking separated children	Female
BA2-BA3	Social workers for an emergency reception centre for minors in difficulty	Female-Male
BA4	Lawyer	Female
BA5	Social worker working for an organization specialized in preparing separated children for autonomy	Female
BA6-BA7-BA8	Social worker for the Family tracing Service	Female-Female-Male

Consent and confidentiality

All interviewees were guaranteed anonymity by signing a consent form. The consent form mentioned the aim of study and explained the use that would be made of the interviews, the respect of the anonymity of the interviewee and the fact that the interviewee could refuse to answer one or more questions. This way the interviewees felt enough freedom to express themselves. For the interviews of the minors the anonymity was of fundamental importance as, some, minors feared the reactions of their guardian or of migration authorities. The interviews were recorded, except for the interview of two minors who objected to it, to insure accurate transposition of the expressed views and quotes. We limited the information, given about the interviewees, to the minimum in order to respect their anonymity.

The national advisory group and the scientific supervision

The research was assisted by our national advisory group. The group was composed of:

¹³ The experts were selected according to their experience and regularity of contact with the guardians. Those experts were selected to provide another view on specific points relating to guardianship. For example the lawyer on the procedures, the workers of reception centers on the communication and collaboration, the family service tracing employee on the search of the family, etc.

- *Teun Degans*, a jurist working for the reception centre “Minor Ndako”, of the Flemish community, specialized in working with minors with vulnerable profiles (young children, minors with children, pregnant girls, victims of human trafficking)
- *Anne Graindorge*, a guardian, jurist and former director of an organization with a lot of experience with separated children with a “drifters “ profile
- *Géraldine Lenelle*, a specialised lawyer for separated children and is part of the specialised pool of lawyers for separated children of the Bar of Brussels
- *David Lowyck*, a employee-guardian of Caritas International who has been working as a guardian since the creation of the guardianship system
- *Hubert Mariage*, an independent guardian and former director of an organization of guardians.
- *Marie-Emmanuelle Moreau*, social worker in the reception centre (Orientation and Observation centre) of the Fedasil (Federal Agency for the reception of asylum seekers)
- *Benoît van Keirsbilck*, President of the “Service Droit des Jeunes” (legal services for youngsters) and Defence for Children International -Belgium
- *Charlotte van Zeebroeck*, jurist of the CBAR (refugee protection service) and former coordinator of the Platform “minors in exile”

The national advisory group functioned as a think and discussion group with regards to the areas of concern with regards to guardianship, the research methodology and the questionnaires. The national report was submitted to them for critical review. The members of the national advisory group, and their related organisations or institutions, do not however take the responsibility of the results and recommendations identified by the Daphne partners.

Besides the national advisory group the study was also submitted to the supervision of Andrea Rea, a professor of sociology at the Université Libre de Bruxelles and director of the GERME (Groupe d'études sur l'Ethnicité, le Racisme, les Migrations et l'Exclusion).¹⁴ He supervised the methodology of the study. Both the national advisory group and the supervisor of the study are also involved in the national qualitative evaluation of the guardianship system in Belgium, which is currently conducted in Belgium by the “Service droit des jeunes” (see below).

The good practices and recommendations

In this report we tried to bring forward good practices. The list of good practices is not exhaustive and certainly does not mean that guardians who do not apply those good practices are unqualified guardians. The good practices do not reflect the practices of all guardians, in some case it concerns a wide spread practice, in other cases it is a practice of an individual guardian which was considered interesting and thus mentioned. From the good practices or the remaining areas of concern, recommendations will arise. The good practices and recommendations are linked, when possible, to the articles of the Convention on the Rights of the Child.

¹⁴ Study group on ethnicity, racism, migrations and exclusion.

A qualitative evaluation of the guardianship system in Belgium

The Service Droit des Jeunes is currently also doing a qualitative evaluation of the guardianship system in Belgium. For this research we proceeded to interviews as well. Even though the primary goal of those interviews is not to complement the Daphne research we did find some information, relating to the qualifications of the guardian, that seem important for us to integrate into this national report. It offered us additional sources of information.

Difficulties encountered during the study.

With qualitative research special attention should be given to the treatment of the information gained through the interviews. On the one hand there is a risk to generalise practices that might only represent the practices of a few guardians. On the other hand there is a risk that we only treat the individual practices and that we only focus on case-studies which then does not give us reliable information on the qualifications of the guardians in Belgium. Therefore we will draw the tendencies in the practices of the guardian and then indicate what the main and the more sporadic tendencies are. The selection of the panel of interviewees, and their representativeness, should nevertheless allow us to depict the practices and qualifications with accuracy.

Furthermore it has been quite challenging to include recent and complete statistics in the study. First of all because each authority has their own statistical methods and database. A second reason is that most statistics are available on an annual basis and not a monthly basis. Most data therefore are from 2009. On a more general level, when we address a topic relating to separated children, we are confronted by the problem that many unaccompanied minors remain undetected. Those minors will remain therefore unprotected and will not appear in the statistics unless there are identified as separated children and thus protected as such.

The context of the research: the “reception crisis”

The current research on the practices of the guardians takes place at a moment where a reception crisis is occurring, affecting dozens of separated children. This report will not analyse the causes and context of this reception crisis as this is not the subject of the study. However this reception crisis has a great deal of impact on the definition of the role and the practices of the guardians. Therefore we will give a short explanation of the reception crisis for context, and its impact on the practices of the guardians and the respect of the rights of separated children.

The reception “crisis”¹⁵

Currently the pressure on the different types of reception centres is so high that not all separated children receive housing. For details of the organisation of housing for separated children see section 4 “Who is the unaccompanied minor in Belgium-*Reception facilities*”.

Since the end of October 2009, separated children who do not ask for asylum do not automatically receive housing. Dozens¹⁶ of them have temporarily lived or are still living on the streets. This

¹⁵ The context of the reception crisis can evolve so even though the information is accurate at the time of the writing of the report this might be not the case at the time of the reading.

situation is dramatic from a child-right's perspective. We will, in this report, only illustrate the consequences of having wards living in the streets from the perspective of the guardian.

We will further detail this in the report but a guardian with wards living on the streets will face several of the following difficulties: increased disappearances of minors, difficulties insuring the medical needs of the minors are met, negative impact on the relation of trust with the minor (trust in the guardian but also in the "system"), impossibility to register the minors in a school, difficulties in maintaining contact, increased exposure of the minors to criminal activities, a deep impact on the organisation of the work of the guardian as most of their energy goes to finding (emergency) housing for the minor, increased use and preparation to launch appeal procedures against the non-reception of those minors, etc. The guardian is almost powerless in a situation where a child has no food, cannot shower, and sleeps on the streets.

The difficulty is that there only a small pool of guardians who are willing to accept being appointed to minors on the streets. As a guardian states *"it is unacceptable, it puts the guardian in a situation where he or she is almost bound to fail"*. This situation puts the tasks of the guardian under a great amount of pressure but is also an interesting context to see how guardians develop other qualifications, respond, and adapt themselves to external situations.

The protection gaps revealed by previous research

When it comes to protection gaps it is to be noted that protection gaps can appear on different levels: in the legislation, in the practices of the institutions and on the level of the practices of the guardians. If the goal of the study is to analyse the practices of the guardians it seems to us that it is important to mention the protection gaps on the other levels as they influence the work of the guardian and the rights of separated children in Belgium.

In the ENGI report¹⁷, published in February 2010, several areas of concern were mentioned. First of all it appeared that even though the independence of the guardian is quite high in Belgium, the authorities expect that the guardian shares all the pertinent information. This can be problematic for the best interest of the child and can put the relation of trust with the minor under stress. It was also mentioned that "a guardian faced with conflict situations with the immigration services might not have an independent body to turn to and problems or breaches might not be signaled"¹⁸. A lack of information and knowledge on how to work on voluntary returns of minors has been raised by the ENGI report.

In the European Migration Network report (EMN) of July 2009 several other issues have been reported. An important question was raised on the status and the quality of the work of guardians. It appeared therefore fundamental is this current study to take into account the various profiles of minors and guardians and give this aspect specific attention. It has been claimed the "quality of the work of the guardian differs too much, depending on factors such as the competence and personality

¹⁶ It is difficult to establish the exact number of minors who live or lived on the streets. Many disappear and they are not always reported. According to the statistics of the Guardianship service there was in February (18), March(23), April (20), May (29) minors without any kind of housing.

¹⁷ ENGI, *Towards a European Network of Guardianship Institution*, Utrecht, February 2010

¹⁸ European Migration Network, *Separated children in Belgium. Reception, return and integration arrangement*, July 2009, p.16

of the guardian, but also the number of cases they take on”¹⁹. The disparity of the work between guardians and the lack of a code of deontology were considered problematic. Several concerns have also been raised about the Guardianship Service with regards to the delays in appointment of guardians, the monitoring of the guardians, the training of the guardians, the lack of coordination and the tense relationship between the Guardianship Service and the migration authorities²⁰.

Other areas of concern have been noted in previous studies and will be addressed in the thematic sections of this report. To analyse the qualifications of the guardians and the protection gaps we will first establish the legal framework of guardianship. Then we will examine who the guardian and the separated child in Belgium are. The qualifications of the guardians and the role of the guardian with regards to the various needs on separated children will be studied in the last parts of the report.

4. Legal framework guardianship

A guardianship system exists in Belgium since 2004. The creation of a guardianship system was triggered by the “Tabitha case”. The creation of a guardianship system had been demanded since the end of the nineties but the negotiations struggled. In 2002 a 5 year old Congolese girl called Tabitha arrived in Belgium with her uncle with the intention to join her mother in Canada who was recognized as a refugee there. The uncle did not possess the required documents to enter Belgium and was deported. The girl was left alone and confined in a closed centre for two months without an appointed guardian and then deported back to her country of origin where no family member was waiting for her. In the end the girl was reunited with her mother and in Belgium the controversy around this case sparked the political and legal discussions leading to the creation of a guardianship system. In 2006, the European Court of Human Rights condemned Belgium for violations of Articles 3 (prohibition of inhuman treatment), 5 (right to liberty and security) and 8 (right to respect for private and family life) of the European Convention on Human Rights (*Mubilanzila Mayeka et Kaniki Mitunga c . Belgique*).

The main legal instruments on guardianship in Belgian Law

- ✓ Guardianship Act of 24 December 2002, Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002 (published in the Belgian Official Journal of 31 December 2002). It was modified by the Programme Law of 22 December 2003 and the Programme Law of 27 December 2004.
- ✓ Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
- ✓ Circular of 19 April 2004 on taking charge of and identification of unaccompanied minor aliens by the Guardianship Service
- ✓ Circular of 2 August 2007 on European unaccompanied minors in a vulnerable situation

¹⁹ European Migration Network, *Separated children in Belgium. Reception, return and integration arrangement*, July 2009, p.64

²⁰ European Migration Network, *Separated children in Belgium. Reception, return and integration arrangement*, July 2009, p.65

Definition of the separated child

The guardianship Act refers to unaccompanied minors. In Belgium an unaccompanied minor, as defined by article 5 of the Guardianship Act, is a person who has to meet the following four conditions:

1. Being under 18 years old;
2. Being without the guidance of a person with parental authority or a person that has the guardianship over the minor;
3. Originating from a country that does not belong to the European Economic Area (EEA);
4. Applying for asylum or not fulfilling the conditions to enter or reside on the Belgian territory.

This definition of the unaccompanied minor, which gives the right to a guardian, does not include the following categories:

1. The separated children who are nationals of EEA. In particular this can be problematic for separated children (SCs) coming from Bulgaria or Romania, present in relatively large number in Belgium (when those two countries became member of the EU, many children fell out of the remit of this legislation, from one day to another and lost their protection)
2. The SCs who have valid travel document at entrance (for instance for family reunification, tourism, study, etc). They can be considered as SCs if their stay becomes irregular, after the validity of the documents expires.

In this national report we have based ourselves on the legal definition of unaccompanied minor, as only those minors are appointed a guardian. The absence of guardian for European separated children is however for us a clear gap in the protection of those minors, who are separated and vulnerable. This situation is contrary to the article 2 of the Convention of the Rights of the Child (CRC) which states that *“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*

Recommendation 1: the definition used in Belgian legislation to define an unaccompanied minor should be extended to European unaccompanied minors. All separated children should have a guardian and no distinction between separated children contrary to article 2 of the CRC should be authorised.

The Guardianship Service (GS)

The Guardianship Service is part of the Justice Federal Public Service (FPS) (in other words the Ministry of Justice).²¹ It was considered important to have a GS that is independent from the immigration and asylum authorities. The GS is responsible, among other things, for the protection of the separated children at their arrival, until the guardian is appointed. The GS has essentially the following tasks²²:

- Taking charge of the SC as soon as they are informed of their presence in the territory or at the border and finding initial accommodation, until the appointment of the guardian;
- Identifying the SC (and, if a doubt is expressed regarding age, determine the age of the minor);
- Appointing the guardian;
- Selecting the guardians;
- Coordinating and controlling the work of the guardians;
- Coordinating the contacts with the other authorities (immigration and asylum authorities and the authorities in the home-countries)

This legislation is the frame for the qualifications of the guardians and their practices and gives a good definition of the separated child and the rights that they are entitled to in Belgium according to the national legislation but also according to European and international legal instruments which are central to any rights-based society.

5. Who is the guardian in Belgium

There are on average 200 to 220 active guardians in Belgium. Within this number there are 15²³ employee-guardians. All together they have the guardianship of around 1800 separated children. More specific numbers cannot be given as the number of guardianships and the number of separated children in Belgium varies each day. Giving an average of guardianships per guardian is problematic as the case-load varies enormously and an average will not reflect this variation.

5.1. Tasks and responsibilities of the guardian as defined by the Guardianship Act

The main tasks and responsibilities of the guardian are:

- Legally represent and accompany the minor in all administrative or jurisdictional procedures (relative to the asylum claim, the immigration status or any other procedure);
- Ensuring that all decisions are in the best interest of the child;
- Appointing, without delay, a lawyer;

²¹ Article 3 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

²² Articles 4,6, 17-21 of the Guardianship Act of 24 December 2002, Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002 (published in the Belgian Official Journal of 31 December 2002). It was modified by the Programme Law of 22 December 2003 and the Programme Law of 27 December 2004 -Articles 1-8, 13,14, 19, 22 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

²³ This number will probably increase in the near future

- Being present at every hearing or interview
- Ensuring that the separated child is offered suitable care, accommodation, education, health care and psychological care (if needed);
- Building a relationship of trust with the SC and consult the minor to know his or her point of view before taking any decision in his name;
- Contributing to and making proposals for a durable solution in coherence with the child's best interest;
- Respecting the religious or political views of the minor
- Exploring the possibility of family tracing and reunification with the child;
- Administering the minor's assets;
- Preparing a report on the situation of the minor for the Guardianship Service (maximum 15 days after the appointment) and the justice of the peace (twice a year), and for both at the end of the guardianship.

Remark: The Belgian legislation sets a comprehensive set of tasks for the guardian which respects many articles of the CRC and which structure the work of the guardian. This is already an important step towards closing the protection gap for separated children.

5.2. Status, caseload, and compensation of guardians

In Belgium there are different types of statuses for the guardians: The “employee-guardian”, the “independent guardians”²⁴ and the volunteers. The employee-guardian will be employed by a NGO of the social and legal sector to be a guardian²⁵. Employee-guardians will averagely have 25 guardianships at the same time. The “independent guardians” are the guardians who take on guardianships as independent professions. They can have from 1 to 40 (the legal maximum) guardianships. They have the fiscal statute of self-employed. Then you also have volunteers who have 1 or 2 guardianships.

The case-load of the guardians has been subjected to quite some discussions. An organisation of guardians “A&A”²⁶ has made an estimation of the number of hours needed on average per child and per month on the basis of the counting of their members. An average of 10 hours a month was

²⁴ The term “independent” refers to the fiscal and legal status of as a self-employed worker and does not imply that employee-guardians are not independent in their working methods.

²⁵ Article 7 bis of Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

²⁶ « Aide & assistance aux Mena et à leurs tuteurs ». In English : “Aid and Assistance for separated children and their guardians”

estimated.²⁷ If we calculate that a month consists of an average of 160 working hours this would mean that a guardian should have between 15 and 20 guardianships. This average can give a good indication. Several variables can however influence that management of the case-load: the number of new guardianships, the level of complexity of the situations, the years of experience of the guardian, the network around the guardian, the share of responsibilities between the guardians and other professionals, the possibility to delegate administrative work, etc.

The guardians receive a yearly lump sum of 500 Euros for one guardianship and 85 Euros for administrative and travel expenses.²⁸ For the employee-guardians the system is a bit different. They are employed by a non-profit organisation or a public organisation. This organism has signed an agreement with the Guardianship Service and receives per guardian who accepted to take 25 guardianships simultaneously 3500 EUR a year²⁹. 25.20 EUR per guardianship and per month are allocated for the administrative and transport costs. For NGOs who want to employ guardians the sum given by the GS is also problematic because it means that the NGO has to find a large part of the finances in their own budget.

Among the independent guardians who are self-employed, there are three main situations. There are those who live completely from their guardianships, those who have a part-time activity or job next to guardianship and those who are retired and take on guardianships. As the allocated sum per guardianship is low this can lead to the risk of guardians taking on additional guardianships just to make a basic salary. This can appear with guardians who are completely dependent of their guardianships to have means of subsistence. A phenomenon of a guardianship “collecting” can arise. A constant concern is that the quantity of guardianships can be inversely proportional to the quality of it.

Volunteer guardians have one or two guardianships a year. The specificity on this status is that the lump sum cannot be subjected to the same taxation as a salary would. With less than three guardianship a year it is considered to be volunteer work.

Here under you will find the case-load of the interviewed guardians.

BG1	BG2	BG3	BG4	BG5	BG6	BG7	BG8	BG9	BG10
20	20	10	13	25	25	5-12	10	3	32

BG1, BG2, and BG10 have a (part-time) professional activity next to being a guardian. BG4, BG5, BG6 are employee-guardians. BG3, BG6, BG7 and BG8 are retired. BG1 and BG10 are working together with a volunteer or have secretary to handle the administrative side of being a guardian. This way they considered they could cope with their guardianship case-load, next to their other profession,

²⁷ AlterEchos, *Enfance en exil*, n°285-286, décembre 2009, p.29

²⁸ Articles 6 and 7 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

²⁹ Article 7 bis of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

and focus more on the relationship with the minor instead of on the administrative tasks. This shows that high-case load is not necessarily a high work-load.

Recommendation 2: The lump sum for each guardianship should be increased in order to ensure a decent salary for the guardians and to avoid having guardians taking additional guardianship just to make a decent salary

Recommendation 3: All guardians should manage their work-load in order to give the due attention to each child

The employee guardian versus the independent guardian

Often the term “professional guardian” was used to describe the “employee-guardian”. We consider this term to be highly problematic and not appropriate as a guardian should always be professional in their handling of their tasks. The term “professional” should refer to the methods, skills and practices, not to the legal or fiscal status. The term “independent” refers to the fiscal and legal status of as a self-employed worker and does not imply that employee-guardians are not independent in their working methods.

In the ENGI report it was mentioned that some feel that a system of employee guardians would be better as they consider that it would raise the training level and would make sure that the guardian has an organisation to rely on when facing difficulties. Others however considered that independent guardian are more motivated and more available, both of those elements increasing the quality of the personal contact.³⁰

5.3. Education and training of the guardian

The education and experience profile

There are no specific educational backgrounds required to become a guardian. Social workers or persons with a background in social sciences are very present within the pool of guardians. Others have a more legal background or are self-employed persons who seek for additional activity. Within the pool of interviewed guardians we have a majority of guardians who have a social and human science background. The self-employed guardians have professions which varied from the insurance sector, to a hairdresser, to an architect. If those guardians did not have an apparent link youth protection, they all had experience with the representation or protection of children. The insurance worker had followed additional training to insert young people into society and into the work place. The hairdresser had been a foster parent for over 25 years. The architect had supervised delinquent youth.

The training given by the Guardianship service and other organisations

³⁰ ENGI, *Towards a European Network of Guardianship Institutions*, Utrecht, February 2010, p.16

According to the legislation on guardianship the guardianship service should organise regularly training³¹. All guardians receive 5 days of training from the Guardianship Service. The training which is offered consists of sections on the law concerning foreigners, on the laws on youth protection, on the legislation concerning the management of assets, with regards to elements of psychology and pedagogy, including elements of how to deal with a multicultural work environment. Only after this first training can a person become a guardian. Each year a 4-day course is offered to the guardians. Guardians should be able to prove that they have pursued, at least once a year, additional multidisciplinary and continued training “organised by the guardianship service or others if the guardianship service recognises that training”³².

The interviewed guardians were generally satisfied with the training given but thought it was too much information given in too little time without enough practical elements. Also the lack of “life-long training” was brought up. Several other services also organise training for guardians. All guardians receive at the start of the guardianship experience the *Vademecum*³³ of the guardian. This publication of more than 400 pages covers different subjects: what happen to the minors before the appointment of the guardian, the procedure of appointment of the guardian, the role of the Guardianship Service, the first tasks of the guardian after the appointment, the practicalities of the residence procedures, the role of the guardian towards housing, the education of the minor, the psychological support, the access to health services, the search for a durable solution, the management of the assets of the minor, the demand of help from public services, the control of the guardian, ethical questions, the responsibilities of the minor, the social and fiscal statute of the guardian and the end of the guardianship.

Organisations that employ employee-guardians also organise regular training for their guardians and often involve more experienced guardians in the training in order to include practical knowledge. Independent guardians have also arranged themselves within organisation of guardians in order to share practical experience and organise additional trainings. Those organisations of guardians are however confronted with a lack of financing for their (training) activities.

Several other organisations propose training for guardians on procedures, mental health, reception, and communication with young people. The interviewed guardians indicated that they would have liked to have additional training in the handling of cases concerning human trafficking and would like also specific training on certain cultures, traditions and religions. Some updating sessions on the legislation and practices relating to the residence procedures were also welcome.

Recommendation 4: continued training opportunities need to be developed. Practical experience should be included in this training. Financial and human resources should be made available to ensure the training. Moments of exchange of practices should be developed and supervised.

³¹ Article 15 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

³² Article 16 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002

³³ A book of ready reference, a manual

5.4. The appointment of the guardian

According to article 8 of the guardianship Act, the Guardianship Service (GS) proceeds immediately to the appointment of the guardian. The GS should, according to article 4 of the Guardianship Act, be available 24 hours a day. Separated children can therefore be referred to the guardianship institution directly after discovery. After the identification of a SC, the Guardianship Service contacts one of the guardians on its list, who can accept or refuse guardianship of the minor. The geographical proximity to the SC, the availability of the guardians, the experience of the guardian to handle a certain profile are elements that the GS tries to integrate in their choice of a guardian.

In practice however the appointment does not always happen immediately. Before the reception crisis it was common practice for the Orientation and Observation centres, the first reception centre for separated children, to first establish where the minor would be sent to and then the guardian, preferably from the region around the new reception centre for the minor, would be appointed. However now with the reception crisis, leading to a difficulty to find guardians willing to accept minors living on the streets, and the lack of guardians, the appointment can take longer. From the interviews with the guardians and the minors it appeared that the guardian is appointed within approximately two weeks to a month following the identification of the SC. The appointment was pointed out as an area of concern in previous studies and the collected data in this research seems to indicate that this can still be problematic in some cases. Some very exceptional cases of delays of a month or several months have been reported.

The minor does not have a choice of guardian. However in practice we noticed that if the minor clearly states a preference, efforts are made to find a guardian that fits the minor's needs or requests. This happens for instance when a minor is afraid to have a guardian who has the same nationality or origin as them, as they sometimes fear ethnical complications. Also it happens that pregnant girls, abused girls and girls who are victims of genital mutilation receive a female guardian. During the interviews, the minors did not state any particular preference as to the profile of the guardian. Age and religion were not considered important. The gender, however, was important for two young people who preferred a woman. One of them was a victim of genital mutilation and the other was a boy who had experienced a lot of violence at the hands of men and military and thought that a woman would not remind him of the violence. No young person indicated that he or she would have wanted a person from the same nationality or origin. One, explicitly did not want anyone from his country of origin as he feared possible ethnical tensions. Another was glad to have a Belgian guardian because he thought it would be best for his integration and his understanding of the country.

5.5. The age assessment

The age is the element which is the most challenging in the identification of a person as a separated child. The minority gives the right to a guardian, establishes other residence possibilities and ensures the applicability of the rights of the child. Age assessment can therefore be crucial to have access to certain rights.

The age assessment is done by means of a so-called “triple medical test”. This test is based on the clinical impression of a dentist, a radiological examination of the dentition, and the hand and wrist of the non-dominant hand and the medial ends of both collarbones. The tests are analysed by a medical expert (from three different hospitals that agree to do so) who gives an approximation between two ages. According to the Guardianship Act the lowest age must be taken into consideration (the law provides that the benefit of the doubt is to be applied). The Guardianship act leaves the possibility to also instate psycho-affective test. Those however have not been introduced in practice because there are a lot of unsolved practical issues (which tests, how to take the tests, the time needed to execute the tests) and not all professionals are convinced of the reliability of those tests.

	2006	2007	2008	2009
Number of tests	238	250	408	455
% minority	35,71%	35,20%	38,24%	26,98%
% majority	64,29%	61,60%	60,05%	73,02%

Source: Guardianship Service

Most of the time the guardian has not been appointed at the time of the age assessment so is not present during this examination. It is only when a temporary guardian has been appointed that the person can be accompanied by a guardian, and even then the test has often already taken place. Only a few interviewed guardians had been in a situation where a ward still needed to undergo age assessment. Four interviewed separated children had gone through an age assessment.

Half of the guardians, who had wards with a doubt on their age, accompanied the minor; the other half considered that considering their tight time schedule it was not a priority to accompany the minor. Those who did not accompany the minor made a point of explaining carefully the procedure. The guardians who had accompanied the minor were pleased with the way the age assessment was handled with regards to the information given to the minor, the consent and the possibility to have an interpreter present.

We do not have a precise age. We only have taskara³⁴ but my taskara had not arrived yet in Brussels so I had to take the test. They were touching my wrist, my teeth and my chest. It felt like I was a puppet or a horse. I was alone, it was very strange, and I did not receive much information on why they were doing this. (B3, former afghan separated child).

The medical test was viewed as odd or strange but was not considered as a particular difficult moment. None of the minors were accompanied by their guardian at the time of the test.

Guardians were sceptical towards the reliability of the age determination. They mentioned that some of their wards were declared adults and for them were clearly underage and the opposite was also true. This assessment was shared by all other interviewed experts. The age assessment is particularly difficult and problematic for minors who are almost 18. Indeed the age assessment is considered to

³⁴ Specific identity card in Afghanistan

have a margin of error of around 2 years. Normally the lowest age should be taken in to consideration, however different actors did not always have the impression that it was always the case. Inaccurate age assessment is very problematic as on the one hand there is a protection gap for separated children who are not recognised as such and on the other hand there are difficulties in working with a person who is not a minor anymore.

6. Who is the separated child in Belgium

6.1. The separated child in Belgium: numbers, profiles, routes and motivations

Since the beginning of the nineties separated children have been arriving in Belgium.³⁵ The phenomena stabilised itself in the early 2000s. Since 2008 and certainly in 2009 an increase in arrivals has been noted. Currently a least 5 separated children are signalled each day in Belgium. In 2009, 4094 persons have been signalled.³⁶ Among this amount there are persons who are signalled twice or three times and persons where the age assessment indicated that the person is over 18 years old. Overall 2501 separated children were identified.

The separated children in Belgium are characterized by their heterogeneity. Indeed few other EU countries receive such a variety of nationalities and profiles of separated children as Belgium does. To understand the variety of qualifications needed from a guardian we must analyse the variety of profiles of the minors in more depth.

Several sub-divisions have been proposed on the different profiles of the young people. Angéline Etiemble³⁷ distinguishes five “types” of separated children: the exiled children, the mandated children, the exploited children, the runaways and the drifters. Margot Cloet also proposed a more detailed typology, specific to separated children in Belgium, and divided them into eight sub-groups³⁸:

- Separated children that left their country of origin accompanied by their parents, their guardian or other family members. In times of conflict the departure is often impulsive and family members can lose one another easily along the way. Sometimes the separated child is left behind in the country of destination because, for instance the parents received a negative decision in the asylum procedure and they no longer see a way out. They leave the child in the knowledge that their child will have more rights as a separated child;
- Some separated children have been ‘chosen’ by their parents to travel, to live the dream they had. Often parents have high expectations for the separated children;

³⁵ Senovilla Hernandez, D., *La situation et le traitement des mineurs étrangers non accompagnés en Europe. Etude comparée de 6 pays : Allemagne, Belgique, Espagne, France, Italie et Royaume-Uni*, Observatoire International de la Justice Juvénile, septembre 2007, p.23

³⁶ Sources :statistics of the Guardianship Service

³⁷ Etiemble, A., « Les mineurs isolés en France », *Migration Etudes*, N°109, septembre-octobre 2002, pp. 6-7

³⁸ Cloet, M., *Voldongen feit? Opvang en begeleiding van buitenlandse, niet begeleide minderjarigen*, 2007, Garant, Antwerpen-Apeldoorn

- Another group encompasses the victim of human trafficking who are recognised as such by the government. These separated children are sent to the country of destination for sexual exploitation, illegal harbour, domestic labour, etc;
- The group of potential victims of human smuggling, who never filed a procedure and are thus not recognised as such.
- A fifth group consists of the runaways and drifters. They often take up different identities and move around in different groups of boys in the same situation. They are mainly boys between 14 and 18, with little to no education; they left on their own initiative and still have contact with their families;
- A sixth group consists of minors in transit. They do not intend to stay in Belgium, but are on their way to another country, such as the United Kingdom, Scandinavian countries and are intercepted on the way
- Some separated children are on their way to join their parents or family members. As the procedure for family reunification is sometimes complicated and takes a long time, the separated children try it another way;
- The last group consists of separated children who travel around in groups of people from the same community. Most of these young people belong to the Roma community and often work in the informal economy.

In 2009 754 separated children claimed asylum in Belgium. Around 30% of the asylum seeking children came from Afghanistan, followed by 18.6% from Guinea, 6.6% from Iraq, 6% from the Democratic Republic of Congo. The other 37% came from very diverse countries. Those tendencies and proportions seem to be confirmed by the statistics for the first 6 months of 2010. A slight difference is that in 2009 the fifth largest group of separated children claiming asylum were young people from Kosovo and in 2010 this 5th largest group is composed of Rwandan minors.³⁹

The Afghan separated children are mainly fleeing persecution on the basis of (indirect) political opposition, blood feuds, honour killings or the risk of being forced to become a child soldier.⁴⁰ The separated children from Guinea seeking asylum are often girls fleeing genital mutilation or forced marriages.⁴¹ The separated children of DR Congo often come from the Eastern part of the country where violent conflict and political persecution are present. The asylum seeking separated children can present a variety of reasons for fleeing:

³⁹ Source: the Office of the Commissioner General for Refugees and Stateless Persons (CGRS)

⁴⁰ De Grave Ilse, *Het profiel van Afghaanse minderjarigen in België*. Eindverhandeling. FOD P&O-OFO. Augustus 2008

⁴¹ European Migration Network, *Separated children in Belgium. Reception, return and integration arrangement*, July 2009

B6: My dad was a school director and was part of the Union for the Forces for Change (the opposition). The population was not happy with the government and protested and the government shot at the people in 2005. My dad was killed. He taught me about politics. After my diploma I started to go to meetings. We were still not allowed to express ourselves. [...] The Citizen's Movement for Peace was created on the 1st of January. When we tried to hold meetings military stopped us and sometimes beat us. I was arrested, among others just before the elections and was put in an isolated cell in a military camp with no light and we did not receive food. I did not know when it was day or when it was night. They beat me with the torches or chairs. My uncle, who worked for the military got me out.

The majority (60-70%) of the separated children arriving in Belgium do not ask for asylum. SCs, who do not ask for asylum often come from Maghreb Countries, mainly Morocco and Algeria. They have another profile as they often were street children who drifted from the streets of the Maghreb to the streets of Belgium. Habitually they have a network of friends and family within which they develop and have some trouble adapting to the rules and structures of the reception centres.

I left my family when I was 9 years old because there were so many problems. I come from Fez. I lived in Casablanca, in Marrakech et a lot of other places. I have lives a little while in Spain with extended family but I left because there were problems and I arrived in Belgium. [...] First I lived in the streets. Then someone proposed to let me stay in his apartment and I started to work in the market. There I met a street worker who told me that children should go to school in Belgium. He told me to go to a homeless shelter. They did not want to take me in because I was a minor and send me to another organization. The people of that organization made sure I was appointed a guardian and a place to stay. (B14, Morocco, 16, Circular 2005, lives in a orientation and observation centre)

Belgium is also a transit country for separated children who seek to go to the United Kingdom or Scandinavian countries. The UK represents for many separated children a land of opportunity. Some Scandinavian countries have already a significant community of asylum seekers from certain countries, like Iraq, that the minors want to join.⁴²

The routes and means of travelling to Belgium are difficult to research and certainly tricky to confirm with exact numbers. In 2005 Child focus and Fedasil examined the profile and the trajectory of 683 asylum seeking separated children.⁴³ This study indicated that 85% of African separated children came by plane.

I was brought out of a my cell (see the quote page 23) in the middle of the night. I did not know where I was going and he (the uncle) told me to follow him and we got in a car. He took me somewhere. I did not ask questions. At a house I was allowed to wash myself, eat and he gave me clothes. Then he met with a white male and told me to go with him. I didn't know if I could trust him. In the car I saw we were going to the airport. I told the man I did not have money. He told me my uncle took care of everything. He gave me my passport but it was not my name. In the plane the man was in his suit in the beginning of the plane, I was

⁴² European Migration Network, *Separated children in Belgium. Reception, return and integration arrangement*, July 2009

⁴³ Child Focus & Fedasil, *Het profiel en de trajectmonitoring van de niet-begeleide minderjarige asielzoeker in België*, juli 2005. Child Focus is a Foundation for missing and sexually exploited children. Fedasil is the Federal Agency for the reception of asylum-seekers.

alone at the back. We passed through France. In Brussels he bought me a jacket because it was cold and showed me the migration office. I slept at the north station (train station) and I went to the migration authorities the next morning. (B6, Togo, 17, asylum seeker, lives a reception centre for asylum seekers, arrived 6 months ago)

The others came by boat, train truck or a combination of these modes.⁴⁴ The separated children from Asia were reported to come by plane (40%), other combined several types of transport (35%) and a quarter of the minors came exclusively in truck, cars or buses.

“It took me two months to arrive in Belgium. On a horse, with various trucks, on foot, with the boat.... It was extremely difficult. If you would have seen us you would have thought that we were crazy. It was not human. People just want to leave, without even knowing where they will arrive”. (B3, Afghanistan, recognized refugee, 19 years old, arrived at 16, living in a studio).

Almost all the separated children from eastern or southern Europe took trucks or cars to arrive while all the separated children from the Americas took a plane. The study dates from 2005 so the numbers are not completely reliable but the composition of profiles of asylum seeking separated children have not fundamentally changed and there is no indication that the travel routes or means have changed as well.

6.2. The migration policy for separated children and the residence procedures

There are several legal residence possibilities in Belgium. The guardian, with the separated child and often the lawyer will decide among the following options:

1. The asylum application (and subsidiary protection status);
2. The recognition-procedure as a victim of human trafficking;
3. The procedure for separated children described in the Circular of 15 September 2005;
4. Regularisation on the basis of article 9bis (humanitarian) or article 9ter (medical) of the Aliens Act of 1980.

The asylum seeking minor will have the right to remain in Belgium while the procedure is ongoing. They will be interviewed by a team specialised in the interviewing of minors. The guardian will have an important role in the asylum procedure as he or she has to be present at every interview. With regard to the asylum procedure two tendencies are present among the guardians. A first tendency is that of the guardian who gives a lot of attention to prepare the asylum interview with the minors and the lawyer. Others will simply be there during the interview.

He told me to prepare myself for the interview. He did not tell how to do that. [...]I received just a bit of information. It was a lady at “Bon”⁴⁵ who explained how an asylum procedure goes. My guardian did not explain. [...] During my first interview with Commissariat (The Office of the Commissioner General for Refugees and Stateless Persons (CGRS) he fell asleep. He is old, I think he is tired. My lawyer was not present. (B5, 17 years old, asylum seeker from Guinea, living in a reception centre for asylum-seekers)

Other guardians were reported to make extensive effort to find tools and ways to help the minor

⁴⁴ *Ibid*, p.27

⁴⁵ An organization giving integration courses

during the asylum procedure. One guardian said she knew the minor had an asylum claim but that when the minor was interviewed he could not express himself. During months she tried to obtain pictures of the village in Iraq of the minor to see if that would help him formulate his story. She managed to obtain pictures after a year send by the family of the child and he was able to tell his story. In the end he was recognised as a refugee. Of course between these two examples there are a lot of shades of grey.

Another possibility is to be recognised as victim of human trafficking⁴⁶. The definition applied of separated children also includes European separated children. To benefit from this status the minor must fulfil the following three conditions:

- Break off contact with the suspected offenders;
- Receive obligatory guidance from specialised and approved centres⁴⁷ for victims of trafficking;
- Cooperate with the judicial authorities by making a statement or by instituting legal proceedings against the offenders.

It is mainly the third condition which is problematic as many minors fear to collaborate with the police. Statistically speaking there are only a few minors recognised each year as victims of trafficking. Those numbers do not necessarily coincide with the actual number of minors trafficked into the country. In 2007, 9 minors where recognised as victims of human trafficking, in 2008 there were 6 and in 2009 5 young people applied for this status but only one has obtained it .

The third possibility of obtaining a residence permit is the procedure under the Circular of 15 September 2005. The procedure is available for the minors who have not launched another residence procedure or who have been refused residence through the other procedures. This Circular, as it is not a law, has not a complete legally binding character. The aim of this procedure is to find a durable solution for the minor. Three durable solutions will be considered on an equal basis:

- Family reunification in Belgium or abroad;
- Return of the SC to the country of origin or any other country where he or she has a right of residence with certain guarantees on his or her reception condition;
- Unlimited stay or settlement in Belgium

Here the guardian plays an important role as it is the guardian who will make a proposal for a durable solution to the migration authorities.⁴⁸

A last possibility is regularisation on the basis of a humanitarian or a medical situation. This procedure is not a right but a favour. Elements to be regularised on the humanitarian basis are: good school results, good knowledge of the language, successful integration, no family left in the country of origin, etc. The medical regularisation can be obtained when the minor is seriously ill and can

⁴⁶ Conditions set in the Law of 15 September 2006 that amends the Aliens Act (Article 61§2 to article 61§5) and in articles 110 bis and 110ter of the Royal Decree of 8 October 1981.

⁴⁷ Payoke (Antwerp), Pag-asa (Brussels), Sürya (liège), Esperanto (hidden centre)

⁴⁸ For more detail, please consult pages 40-42

demonstrate that he or she cannot receive the adequate care in the country of origin. The permits received with such regularisations are temporary.

The statistics on the recognition rates as refugees and beneficiaries of subsidiary protection for separated children over the last three years are available below.

	Boys	Girls	Total
2007	24.6%	30.6%	26.9%
2008	36.9%	50.9%	41.7%
2009	57.9%	73.5%	62.3%

Source: Statistics of the Commissioner General for Refugees and Stateless Persons, annual assessment 2009

To explain the increase in recognition rates we can present several hypotheses. First of all there is an increase of subsidiary protection status. Also there is an increase in the number of young people who come from countries where persecution is likely (f.e Afghanistan , Irak). We were not able to retrieve reliable information on the number of separated children who received a permanent residence status under the other procedures.

6.3. The reception facilities for separated children

Detaining minors is no longer allowed in Belgium. There is one exception when there is doubt concerning the age of the person. Then the minor can be detained for 3 working days in a closed centre. This can be renewed for 3 additional working days. In exceptional cases where there is a weekend and other public holidays the legal detention time can run up to 9 days. Guardians have however mentioned that in a few exceptional cases they received guardianship over wards who spend weeks to months in the closed centres.

Reception of separated children is organised in three phases. In a first phase all the separated children (asylum-seekers or not) will be send to an Observation and Orientation Centre. During the time in these centres efforts will be made to confirm the identification of the minor (name, nationality and age) and the young people are observed so that their profile and needs can be identified. The unaccompanied children can stay there for 15 days, renewable once. If it is concluded that the person is indeed a minor the centre will then proceed to the orientation of the minors to a reception centre for the second phase which should be adapted to the profile and the needs of the minor. For the second and third phase of the reception path of minors a distinction is made between asylum-seekers and non asylum seekers. The second phase is considered as a transitional phase where the minor is housed during the search of the durable solution. In the third phase a more durable and stable housing is found for the minor.

After the first phase asylum seeking minors will be placed in the Fedasil (Federal agency for the reception of asylum seekers) reception centre. The minor who does not ask for asylum can be placed in smaller living units of the special youth care which fall under the responsibility of the Communities

and not the federal state. When the special youth care does not have places left, the minors can be sent to the Fedasil centres. Currently there is controversy surrounding who is ultimately responsible for the reception of minors who do not ask for asylum as all reception facilities, federal or not, do not have enough capacity to house them all. The causes, the legal implications and the discussion of the share of responsibilities between the Federal state and the communities would need a study in itself so we will restrict ourselves to listing the different reception possibilities for the minors.

- If the separated child has asked for asylum he or she will be housed in a collective reception facility of Fedasil. After four months the minor can ask to be housed in a smaller reception facility in a Local Reception Initiative, with the possibility to live autonomously but with follow-up;
- The minor can be housed through the Child Protection Services of the Communities;
- The minor can live autonomously with certain supervision. Here preparative work with the guardian is needed;
- If the minor is a potential victim of human trafficking, the minor can be housed in specialised reception centres;
- The minor can also reside within a host family. This can be within extended family (often for non asylum seeking minors) or within a foster family, mostly for younger children
- Other minors rent a studio or apartment. The rental contract is generally signed by the guardian. With social welfare and the support of other organisations helping with the rental guarantee, the furnishing, etc, the minors can get settled down.

In the context of the reception crisis separated children can also be found:

- In reception centre for adults
- In hotels paid by Fedasil, surrounded by other adults and without proper follow up
- In emergency youth reception centres
- On the streets.

The life in the reception centres was perceived very differently from minor to minor. For some it was like a family for others it was like a prison. The highlight of the life in the centre was often described as the evenings where they could cook themselves.

7. The qualifications of a guardian

7.1. The definition of the guardian: a trust person and/or a parent and/or or a case manager?

7.1.1. The definition of the role of the guardian

There is no formal definition of the role of the guardian but the definition of the tasks of the guardians is clearly defined by law⁴⁹. The definition and the perception of the role of the guardian vary a great deal. Throughout the interviews it appeared that there were three elements which were recurrent. First of all interviewed guardians mentioned that they were or tried to be a person of trust. A second element was to ensure their task as set by the legislation and coordinate a bit all the

⁴⁹ For the specifics of the tasks of the guardian, please consult pages 15-16

actions around the separated child. A third element was the fact that they viewed themselves as a person of reference, to which the minor can turn to with his or her questions and needs and who will follow the minor until the majority. Only a minority of guardians defined themselves as a case-manager.

Many noted that the minors sometimes expected them to be a parent. If the guardians did not consider themselves to be parents, some mentioned that they showed sometimes elements of parental behaviour, for example by instating rules and taking on a role with authority over the minor.

“I think it is a combination. A person of trust. But it is far from easy to always gain their trust. Sometimes a sort of parent, but it depends on your ward. I think some minors see you as a mother and then you have to see in how far you can take on that role. I think this element of the role of the guardian should be limited. I only take on the role of parent in the sense that I try to have clear rules and try to give them structures by also showing some authority. You also have to coordinate. You have to communicate with authorities, the lawyer, sometimes the host parents, the reception centres, the school. I think it is important the coordinate and to make sure everybody has the right information. It is a combination of a lot of factors”. (BG7, independent guardian)

The expectations of the minors towards the guardian

The definition and the perception of the role of the guardian and the expectations of the minors towards the guardian will influence a great deal the relationship and the fulfilment of the minor’s needs.

“It depends of a lot of things, of the relationship they used to have with their parents, of the country they are from, of the age, of the social background and of the trauma’s they might have encountered in the country of origin” (BA1, social worker, Fedasil reception centre of 2nd phase)

The expectations of the minor who did not have a family anymore or who did not have (much) contact with their family tended to have very high expectation of the guardian. Most of them defined the guardian as a “sort of parent” replacing the parental figure that they lost or never had. They expected to be able to spend time at the home of the guardian.

My guardian is first of all a person I can trust, to which I can tell everything. She will not tell what I told her to anyone else. I can always count on her. She is also a sort of parent for me, which is important for me because I never had real parents. (B2-18 years old, male, Rwanda, recognised refugee, living with his grandmother)

Also the fact that a minor already had lived in a family situation seems to make the need of having a person of reference greater.

The children with a drifter profile or former street children are reported to have a difficult time trusting the guardian and view the guardian more as a person who can arrange things for them.

There seems to be a paradoxical relationship between the definition of the guardians and the definition of the minor as the guardians tend to define their tasks in a professional way and the minors often define the role of the guardian in an emotional way.

These outlined profiles are not to be generalised and need to be researched more. They do however give an idea of the different expectations that minors can have towards their guardian.

Fun activities and free time

The minors seem to think that just talking to the guardian without any specific topics or agenda is already fun. The minors did not express the will to go for example to the movies or to a football match with their guardian. Guardians did not feel that doing fun things with the minors was their responsibility. One guardian thought that this might be the case if her wards were younger. There was also the concern for the guardians that they wanted to treat all their wards equally. If the sharing of free time with their wards was overall not a priority for the guardians, most of them made an important point in organising the free time of their wards in order to increase their socialisation and integration. This took the form of finding holiday camps, summer jobs and courses that interested the minors.

7.1.2. Motivation to become a guardian

Two elements were recurrent in the motivation to become a guardian. Being a guardian was considered attractive because it brings a lot of variation within the daily practice. The variety of topics (foreigners law, social welfare, education, health care, ...) and the variety of profiles and personalities were considered to bring a constant challenge.

Previous experience with vulnerable children or people within a migration or asylum context also played a role in the desire to become a guardian. Often the guardian had already come across the difficulties of separated children during their previous experience.

What attracted me on a professional level were the different approaches. Also it touches to different themes, social rights, medical care, and residence procedures. On a human level I find it interesting to approach those youngsters who have lived through so much and to know how they lived those events. It is challenging to think about how we can accompany them, how you can bring them to trust you and that is not easy as children have another vision of the world as adult might have. It is also confronting them with reality and finding the best solution for them. To find the tools to make them responsible adults. There is also the empathic side: a child alone in our system, in our institutions. [...] There are a lot of different profiles of minors and as many ways to work with them. (BG3, employee-guardian, social worker)

7.2. Methodologies of the guardians

When discussing the methodology of the guardian we will use the following definition of methodology “a body of methods, rules, and postulates employed by a discipline: a particular

procedure or set of procedures”⁵⁰. The tasks of the guardians as defined in the legislation and in the Vademecum⁵¹ of the guardian give structure to the methodologies of the guardians. With regards to methodology there were two trends within the guardians. There are the guardians who did not follow a specific methodology but followed the task description of the guardian as described in the legislation. Others followed the task of the guardian but also added additional tools to prioritise their work and assess the best interest of the child.

Several guardians mentioned that they used the Pyramid of Maslow⁵² as a (one of the) tool to organise their work and prioritise the approach they would have towards a minor. The underlying interpretation of the pyramid, used by some guardians, with regards to unaccompanied children can be summarised with the following scheme:

- The physiological needs are taken care of by the guardian by finding a reception centre for the minor who answers the basic needs;
- The launch of a residence procedure by the guardian answers the security needs of the minor;
- The psychological needs are supported by the guardian through the relationship of trust and psychological support. Here the guardian tries to support the social life of the minor;
- On the “esteem needs” level the guardian searches for a durable solution and figures out a life project with the minor, where the guardian, with the minor, tries to define who and what the minor wants to be as an adult and what the steps are to get there;
- On the experience purpose level, the guardian sees their role as to give the tools to the minor to do so, for example by preparing for the autonomy of the minor and life as an adult;
- The need for self-actualisation is seen as the goal for the minor, to which the guardian has tried to contribute. On this level the minor fulfilled his or her potential.

⁵⁰ Merriam-Webster Dictionary

⁵¹ Service Public Fédéral Justice, *Vade-mecum pour les tuteurs des mineurs étrangers non accompagnés*, première édition-mise à jour le 31 août 2007

⁵² Maslow, A., “A theory of Human Motivation”, *Psychological Review*, 1943, volume 50, 370-96



The pyramid of Maslow is a theory developed by Abraham Maslow in 1943 in *A theory of Human Motivation*. His theory, which he called the Hierarchy of Needs, is a pyramid depicting the levels of human needs, psychological and physical. At the bottom of the pyramid are the “Basic needs or Physiological needs” of a human being. The next level is “Safety Needs: Security, Order, and Stability.” These two steps are important to the physical survival of the person. Once individuals have basic nutrition, shelter and safety, they attempt to accomplish more. The third level of need is “Love and Belonging,” which are psychological need. The fourth level is achieved when individuals feel comfortable with what they have accomplished. This is the “Esteem” level, the level of success and status (from self and others). The top of the pyramid, “Need for Self-actualization,” occurs when individuals reach a state of harmony and understanding.

Critics mentioned that the theory of Maslow was too ethnocentric, based on a individualistic view of the human being, which was not shared by other cultures. It was also argued that fundamental human needs are non-hierarchical.

The idea behind the pyramid is that the needs of the upper level cannot be realised as long as the more basic needs situated at the bottom of the pyramid are not fulfilled. The pyramid did not seem to be used in a chronological and absolute hierarchical way but was more used as a tool to identify the different needs and to insure that the different types of human needs were, partially, being answered by the guardian. Several criticisms on the use of the pyramid of Maslow for guardianship were raised. The pyramid is considered by some too simplistic and many disagree with the hierarchical presentation of the needs. Separated children need a relationship of trust and need to work on their self esteem from the moment of arrival and not after the satisfaction of the other needs in the pyramid. The pyramid of Maslow was still considered by some as a simple tool to be used by new guardians which allows them to have a starting point in their working methodology and would ensure that those needs would be a part of the guardian’s work.

The best interest of the child

The methodologies used by the guardians were quite different on the assessment of the best interest of the child. The elements plays a particular role with respect to the best interest of the child: the definition given to the best interest of the child, the tools used to determine this best interest and the ways this best interest was defended by the guardians to the migration authorities. The definitions of the best interest of the child vary.

“The choices that give the maximal opportunities of development for the child” (BG9)

Other tools of methodology were also mentioned like the best interest of the child-model and the life-project. Those tools were mentioned but there few indications that they are used by guardians. It is however interesting to see what other tools exist. The best-interest of the child model can serve as a sort of check-list that guardians can use to identify the needs and the scope of their action. The questionnaire on the best interest of the child was considered interesting but needed to be adapted to the specific situation of a child being separated and being in a migration of asylum context. Also the checklist developed by Margrite Kalverboer was mentioned (see hereunder). This checklist was thought to give a good overview of all the elements that should be taken into consideration. Some however thought the checklist was made for children who lived in a family context and was not entirely adapted to the situations of separated children.

Developmental Conditions	Specified
1. Adequate physical care	<i>Health care, physical well-being, e.g.. a place to live, clothing to wear, enough food.</i>
2. Safe physical Environment	<i>Physical protection of the child in his family and neighbourhood, e.g.. the absence of physical danger in the house, no toxics, no threats in the house or neighbourhood.</i>
3. Affective Atmosphere	<i>Emotional protection, support and understanding by parents or caretakers.</i>
4. Supporting, flexible upbringing structure, adapted to the child	<i>Daily routine, encouragement, rules and limits, control on his or her behaviour, and enough space for his/her own initiative and a level of responsibility suitable for the child.</i>
5. Adequate examples by parents	<i>Opportunity for child to take on parental behaviour, values and cultural norms.</i>
6. Interest	<i>Showing interest by parents or caretakers for the Childs perception of the world.</i>
7. Continuity and stability in upbringing conditions, a future perspective	<i>Through parents or caretakers attachment bonds do develop, and a basic trust is to be continued.</i>
8. Safe physical wider environment	<i>Safe neighbourhood and society. No war.</i>
9. Respect	<i>The society and environment of the child take the child's needs serious.</i>
10. Social Network	<i>An available supportive network.</i>
11. Education	<i>Suitable education.</i>
12. Contact with peers or friends	<i>Opportunities for the child to meet friends, appropriate to the child's developmental level.</i>
13. Adequate examples in society	<i>Contact with others who are an example for current and future behaviour and societal values and norms.</i>
14. Stability in life circumstances, future perspective	<i>Continuity in life circumstances, Persons to identify oneself with and sources of social support are available to the child over time. Society offers the child chances and a future perspective.</i>

Several guardians thought that the “life-project” concept of the Council of Europe was also an interesting starting point, though they thought that the scheme would need to be adapted to the national system.

The following description has been given of a life project by the Council of Europe: *“Life projects aim to develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, life projects, fully in accord with the best interests of the child, as defined in the Convention on the Rights of the Child, pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment. Life projects are individual tools, based on a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration. They define the minor’s future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.”* The life-project takes the form of a written agreement between the guardian, the minor and other parties which sets out specific commitments to realise open-ended objectives.

A life project should take into account the specific situation of each child. In particular the following elements⁵³:

- i. the minor’s personal profile: age, gender, identity, legal status, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills
- ii. the minor’s migration itinerary: factors influencing his or her departure, circumstances of the journey, duration of residence and living arrangements in countries of transit and in Europe
- iii. the minor’s family environment and particularly the nature of his or her family relations
- iv. the minor’s expectations, wishes and perceptions
- v. the situation in the country of origin: the political, legislative, socio-economic, educative and cultural context, the human rights situation (taking account of ethnic, religious and sex discrimination and other potential dangers), the availability of appropriate care and support, including reception
- vi. the special guarantees afforded to unaccompanied minors seeking asylum, in particular regarding *non-refoulement* and the identification of durable solutions
- vii. the situation in the host country: the political, legislative and socio-cultural context

Overall there are few guardians who apply and use regularly methodological tools. Several reasons might explain this. First of all the existing methodological tools are not known to the majority of the guardians and are not well disseminated. The existing tools are also considered to be too simplistic or too theoretical and sometimes not adapted to the national situation or the variety of profiles. For example for the minors with a so-called drifters profile who are often very damaged there are no tools with alternative methods. Indeed a minor who has had no parental figures, no basic

⁵³ Recommendation CM/REC (2007)9 of the Committee of Ministers to member states on life projects for unaccompanied minors, 12th of July 2007

socialisation and education and who survived on the streets needs other working methods than an asylum –seeking minor coming from an intellectual and financial middle-class who arrived by plane. All separated children are vulnerable but their profiles vary and so should the methodologies applied to them in order to answers their needs.

Within organisation of guardians the topic of the durable solution and the best interest of the child determination were regularly discussed. Some research on this topic was launched by some of those organisations. The lack of finances of those organisations remains an obstacle for more advanced work on the topic.

Defence of best interest towards migration authorities

Defending the best interest of the child is strongly related to the defence of the durable solution that the guardian considers to be the best and more appropriate. A first and main means of defending the best interest of the child is to appeal against decision from migration authorities which are not considered conform to the durable solution considered by the guardians. This was the case for the interviewed guardians for the asylum procedure but certainly and often mainly for the procedure under the Circular 2005. Some guardians felt that the quality of the communication and collaboration with the migration authorities influences positively or negatively the demands of stay for the minor.

Good practice 1: Guardians reflect on their work, by searching additional tools to organise their work or share practices and methodologies with other guardians.

Recommendation 5: existing tools of methodology should be disseminated and additional tools should be developed, in particular tools for specific profiles like former street children or separated children with a drifter's profile. The methodological tools should guarantee an effective practical use of them.

7.3. Legal knowledge of the guardian and the communication with the lawyer

Legal knowledge of the guardian

In general the interviewed guardians seemed comfortable with the main residence procedures. Those with a background in social sciences felt less comfortable but often acquired the knowledge through experience, had a good collaboration with the lawyers or felt confident to rely on their network which, according to them, disposed of the required expertise. However most guardians thought that a regular updates of the residence procedures was needed as the legislation and the practices regularly changed.

Trafficking remains an issue. Guardians did not receive particular training on how to recognise signs of human trafficking or how to act with a potential victim. Guardian are aware of the legal procedure to recognise minors as victims of human trafficking but there are very few procedures started and thus very few guardian who know in practice how to act. The guardians who have more knowledge on human trafficking appear to be those who received training on this, often during another part of their career.

Communication and collaboration with lawyers

There are two tendencies among the guardians. A first set of guardian have a selection of lawyers that they contact according to the specialisation of the lawyer, whether it concerns the procedure, the country of origin or specific themes like female genital mutilation, human trafficking or persecution on the basis of sexual orientation. Other guardians seem to have often privileged relationship with one or two lawyers with who they closely work together.

When it comes to choosing the appropriate procedure for a separated child, several guardians mentioned that they consulted the lawyer to have a second opinion on the choice of the procedure. The assessment of the best procedure was considered particularly difficult by the guardians in some cases. This was the case for minors where the asylum claim was not very clear, or minor who had been trafficked or minor coming close to their majority.

The asylum claim is the main procedure where the guardian and the lawyers collaborate. The role of the guardians and the lawyer is viewed as complementary, certainly when it comes to preparing the asylum claim. The guardians viewed themselves as the persons who gives emotional support, put the minors at ease and helps them to structure their story. The lawyer was more viewed as the one who would identify the incoherencies and insist on the details needed to verify the accuracy of the narrative.

For the minors who falls under the Circular it is the responsibility of the guardian to introduce the procedure. Several guardians mentioned that they asked the lawyer to check their durable solution proposal within the Circular procedure.

Good practice 2: The guardian asks for the analysis and opinion of the minor's lawyers on the choice of the most appropriate procedure.

7.4. Informing, advising the child for them to participate in the decision-making

The first contact with the minor and the understanding of the role of the guardian

Several guardians mentioned the fact that they tried to retrieve information on the minor about the language skills, in which physical and mental state the minors seems to be before meeting the minors. The Guardianship Service or the observation and orientation centres are their main source of information.

The practices with regards to the first contact can vary between a guardian who tries to explain as much as possible and those who try to let the minors speak about what he wants to talk about and do not go into specifics. Most of the interviewed guardian did not have a standard formula. The age is a factor which appeared to play a role in the way the guardian explained his or her role and the amount of information given. Indeed if the minor is approaching majority the guardian has little time to fulfil his or her tasks and prepare the minor. In those case many guardian mentioned that they would give more information and proceed to more sensitive questions with regards to the motivation behind the departure of the country of origin.

Many interviewed guardians also indicated that they explain what is not their responsibility and in what they do not have anything to say. This relates to two main elements: the residence procedure and the reception facilities. The guardians explain that they are not responsible for the outcomes of the asylum claim or another residence procedure.

Many guardians mentioned that they first asked the minor if he or she knew what a guardian is. According to the level of knowledge the guardian then would correct or complete the information of the minor. Several techniques are used to make the minor comfortable. For example a guardian tried to learn a few words in the language of the minor, which often made them laugh and relaxes the atmosphere. The first meeting with a child requires flexibility, clarity and sometimes creativity.

Good practice 3: Seeking information with the authorities who already had contact with the minor on the communication possibilities and the state of mind of the minor, to prepare the first contact with the minor.

Good practice 4: The guardian asks whether the minor knows what a guardian is and let him or her explain what he has understood. Then the guardian corrects or develops the knowledge of the minor.

Good practice 5: The guardian adapts to the age, state of mind, the trajectory of the minor, the psychological and physical state of the minor, the amount of information to give to the child and the number of asked questions. The guardian makes sure that the minor does receive the lacking information during the next visits.

Information of the minor

The understanding of the role of the guardian and the knowledge about the rights as a separated child in Belgium is closely related to the information given to the minors. If most minors seems to understand the role of the guardian, there were still minors who did not, sometimes even after several months in the country. Some guardians and professionals tried to explain their rights with leaflets or drawings. Other just explained orally. The guardians also mentioned that they had to repeat the information regularly to make sure the minor remembered the information.

Some interviewed minors did not consider that the information methods were always appropriate and not always complete for their specific public.

You should, first of all, reassure them. Maybe organize an activity where they can feel at ease. They need the time to be able to talk among each other and with the persons who wants to help. Afterwards you can start talking about their rights and the tasks of the guardian. But they have to be at ease. You know, young people like me feel often alone and abandoned. If you do not reassure them and you just list their rights they won't care. It is not easy for us to know who we can trust.

(B1, girl, recognised refugee of 18 years old, Guinea, reception centre for asylum-seekers)

Other separated children seem to prefer alternative ways to explain the role of the guardian, with more interactivity. Suggestions were made towards the creation of a game of a role-play.

The decision making and the participation of the minor

The interviewed guardians thought that the participation of the minors into the decision was fundamental. The age and the topic on which the decision has to be made will influence the extent to which the minor can participate and make the decision. The participation of the minor and the

common decision-making is intimately linked to the information of the minor. The majority of the interviewed minors had the impression that the decisions were taken together with the guardian and that he or she really listen to their opinion.

She always lets me take a decision and then she tells me if she agrees with me or not. Even when she does not agree with me, she lets me take the decision.

(B1, girl, recognised refugee of 18 years old, Guinea, reception centre for asylum-seekers)

I always had the right to take the final decision. She gave me a lot of good advice, but I took the decisions. When I had to take an important decision, she always gave her opinion on what she thought was the best choice. Every time it appeared that she was right. I could always ask her questions on the decisions I had to take. (B2-18 years old, male, Rwanda, recognised refugee, living with his grandmother)

If the guardians made a point of trying to include the minors as much as possible in the decision-making, they considered that the level of participation had to be evaluated from case to case according to the age, the knowledge, maturity, the level of importance of the decision. Information of the minors, open communication and showing the minor what the likely consequences of each choice are, were considered to be the main ingredients to insure effective participation of the minor.

Good practice 6: The view of the minor is respected by the guardian. The guardian gives the information and indicates all possibilities and their possible outcome of every choice. This coincides with the right to participation and information as set by articles 12 and 13 of the CRC.

Good practice 7: The use of visual tools, like drawing or photographs can be very useful to explain certain elements to the minor of help prepare the asylum interview.

7.5. Communication with the minor

7.5.1. Dealing with cultural differences and languages barriers

All guardians mentioned giving specific attention to handling cultural differences. Most guardians warned against a too Eurocentric view and perception of human relationships, values and habits.

The use of cultural elements was generally considered very important but it was also often underlined that a balance should be found between using the culture of origin to increase mutual comprehension and trust and the teaching of the cultural codes of the host country in order to facilitate integration. Many guardians had tried to inform themselves about the religious and cultural habits of their wards. They considered that it was often very beneficial for their communications with the minors. The minors were often pleased that the guardian knew some elements about their religion or knew their cultural codes.

The interviewed minors did not appear to mind the presence of an interpreter. Guardians were in some cases more sceptical of the use of certain interpreters. Several mentions were made of interpreters who were not neutral in their translation and sometimes they felt that the translation was not always free from ethnical tensions or other prejudices. The guardians considered that it was

their role as a guardian to ensure that their wards would have access to a good interpreter and that they have the responsibility to change interpreter if difficulties became apparent.

7.5.2. The relationship of trust

The Guardianship Act in the article 11§2 states “The guardian has regular contact with the minor [...]He or she has contact with the minor to develop a relation of trust....”.

It has been noted by some guardians and professionals that the profile of the minors will play a role in the existence and the quality of the relationship of trust. Those who had lived in a family context and had left the country for other reason than familial problems appear to have less trouble trusting the guardian and adults in general. Those who never knew a regular family life often have trouble trusting an adult.

All interviewed guardians described one of more cases where they did not manage to build a relationship of trust.

“I had one case where the minor had lived terrible things and had a mental deficiency and I did not manage to create a bond or trust with him. The fact that we did not have a relation of trust does not stop me from doing my job. I took care of his procedure, I found him people who can help him, I found him the right school, the reception centre which answers his needs. But I did not get further than that, real contact was not possible”
(BG9, independent guardian)

Highly traumatised children, street children and children with mental deficiencies were reported by the guardians and the professionals to have more difficulties to establish relationships of trust.

The minors who had build a relationship of trust with the guardians attributed this to the fact that the guardian contacted them for no reason and seemed genuinely concerned about how they were doing and feeling. Also, the fact that decisions that were made with the guardian were afterwards confirmed as the “good decision” played a role in growing the trust.

Another element, not relating to the qualifications of the guardian, but nonetheless crucial, was the interpersonal sympathy between the guardian and the minor, often dating back from the first contact. Time is also a factor in the development of a relationship of trust. It appeared in the interviews that the trust grew often with the accumulation of what the minors thought to be “evidence” that the guardian was doing his or her job and that her or she was trustworthy. The establishment of a relation of trust depends of several variables and there is no automatic causal relation between the actions of the guardians and the feeling of trust of the minor. Some minors were reported to need years to learn how to trust, others developed a trust bond in several weeks of months.

7.5.3. Frequency of the contacts

It is difficult to quantify exactly the frequency of contacts as this frequency varies according to the facilities in which the minors stay, the geographical distance, the date of arrival of the minor (just arrived or already settled in), the emotional support needed by the minor, whether the interviews with the authorities already have been done or not, etc. The work load will be also a main factor which will influence the frequency and amount of contact between the guardian and his or her ward.

At arrival the interviewed guardians met the wards most often. The frequency of contacts revealed by the guardians, the minors, and the worker of the reception centre varied between several contacts a week and contact every two months. On average a guardian will meet a ward once every two weeks.

The telephone played an important role in the contact between the guardian and his or her ward. The interviewed minors said that they could always contact the guardian by phone if they had problems. Guardians also used telephonic contact as a way to compensate for their physical absence when they have a lot of work, as a tool to keep regular contact and to be informed of any problems that the minor might have.

Good practice 8: Guardians contact their ward for no special reason. This is important to create or maintain the relationship of trust

Good practice 9: The guardian adapts the frequency of the contact to the needs of the minor.

7.6. Communication with other parties involved: social workers, mentors, teachers, friends of the child, migration authorities etc.

Social worker

Communication and mutual respect were reported by the guardians and the social worker of the reception centres as sometimes being problematic. The main sources of tensions were, from the view point of the guardian, the lack of information on the mental state of the minor, the lack of consultation when a minor is transferred for disciplinary reasons, the lack of information on the initiatives launched by the social workers of the reception centre, etc. From the point of view of the reception centres the lack of information on the procedures and initiatives launched by the guardian, the lack of sometimes rapid response and the general lack of communication were mentioned as tension points. Several of those problems relate essentially to the lack of communication and a clear establishment of the responsibilities of each actor.

Teachers

The interviewed guardians regretted that they were not automatically informed by the schools and that school reports were only send to the reception centres. Many schools are not familiar with the role of the guardian. Also there are some practical problems as the school would need to send all documents to the reception centres and to the guardian. Many schools did not want to do this extra work. Also the share of tasks between the guardian and the social workers is not always clear among those actors and thus certainly not clear for the teachers.

Friends of the child

The minors are often pleased if the guardian knows who their friends are and sometimes asks how they are doing. Certain minors also considered the guardian as a friend. Not all guardians did however inform themselves about the friends of the minor or knew who the child was friends involved with.

All interviewed minors expressed difficulties making friends in the first months after arrival. The language, racism and the emotional state at arrival were mentioned as the main obstacles. Many minors felt the need to talk about the difficulty to make friends but not all discussed this with their guardian. They often discussed difficulties that they considered as more important with their guardian.

The family of the child

The guardian can have contact with the family in the country of origin or with the extended family present in Belgium. The contact with the family in the country of origin did not appear to be a regular practice as the guardians were confronted with language barriers and the fact that the minor did not let them have the contact. Also the language barriers were an obstacle for communication.

A separated children residing with extended family often requires additional efforts from the guardian to instate good communication for the benefit of the minor. The guardian has sometimes to act as a go-between the minor and the family. Besides gaining the trust of the minor, the guardian also has to gain the trust of the family. Many guardians reported that the families were quite hostile in the beginning towards the guardian, often out of fear that the guardian would interfere with their education or their role towards the minor. Here also a clear communication and a clear share of responsibilities appear to be fundamental.

Good practice 10: Guardians ensures good communication with the family of the minor, respecting the functioning of the family but also making sure that all the rights of the minor are respected.

Organisations of guardians

Communication with other guardians was considered by the interviewed guardians as very important. This communication takes place within an organisation of guardians or on a more informal manner.

Since the creation of the guardianship system there are several organisations that were created which gathered together numerous guardians. They organise training, conferences, exchange of practices, develop newsletters to inform people about the evaluation of the practices. It can also be a platform to express the difficulties related to tasks of a guardian, not only on the administrative side but also emotionally. Indeed, the vast majority of the guardians indicated that they had, at some point, difficulties keeping a distance from the situation of one of their wards. In general the guardians felt like their wards were not causing them to have sleepless nights, but all had lived through one or two cases where they were very touched and worried about their wards.

The main problem for those organisations is the lack of financing. This is a great obstacle for their activities and has as a consequence that all activities depend on the will and (unpaid) time that guardians can give to organise such activities.

Good practice 11: Guardians reflect on their work with other guardians and exchange good practices. This contributes to the development of the (shared) expertise of the guardians.

Recommendation 6: Sufficient means should be available to support this practice and expertise sharing of the guardians.

7.7. The durable solutions: Return, reunification, integration

The guardian plays a very important role for the finding of a durable solution. The durable solutions, as set by legislation, are: return, reunification with family members and stay. This is certainly the case within the procedure under the Circular of 15 September 2005⁵⁴. Indeed they make a proposal of a durable solution for the minor under this procedure and can appeal against decisions that they consider contrary to the durable solution they have proposed. The migration authorities will have the final say concerning the durable solution and their decision will translate into the delivery of the residence documents or a removal order.

The proposal of a durable solution will take the form of a written demand where the guardian often describes and argues around the past, the present and the future of the minor. In the past section the reasons for the departure of the minor and his or her family situation are described. In the present section how the minor is integrating and doing at school and with his new environment are described. In the section on the future of the minor the guardian describes the projects of the minor and the possibilities that are or can open for him or her.

Return can be considered a durable solution but it will not take effect before the legal maturity of the minor unless it is voluntary return. As separated children are considered to be vulnerable, the Belgium government decided not to forcibly return SCs before their maturity, even when a removal order has been issued.

Reunification is in the practice of the migration authorities intimately linked to return. Indeed reunification with the family in the country of origin is often proposed as the durable solution for the minor. No interviewee knew of a situation where the reunification with the family in Belgium has been proposed and accepted as a durable solution. Therefore we will essentially concentrate on return and integration, in this part of the study.

The search and contact with the family members

Article 11§ 1 of the Guardianship Act says that the guardian “should take all necessary measures to search for the family of the minor.” The search for the family has two main implications. The first implication concerns the well-being of the child. The second one the procedures in which the separated child finds itself and the durable solution that will be proposed by the guardian and the migration authorities. The existence of family members in the country of origin has a lot of importance with regards to the residence procedure under the Circular of 2005. Indeed if the parents or one of the parents are still alive the migration authorities will conclude that the best interest of the child is to return, without necessarily verifying if the return conditions are suitable and are indeed consistent with the best interest of the child.

⁵⁴ See section migration policy on pages 24-26

In general it goes well. [...]The guardian tries to give his or her support to the child. [...]The guardian can give us additional information and can help the youngster to think: What does he or she remember, who could help, ...?

In some cases the guardian makes an appointment just because it is listed in his tasks. We had one situation where the minor said that both his parents were dead. The guardian still had made an appointment. The child did not understand why he had to come. Or you have minors who come to an appointment and do not know why they are here and who we are. (BA6-BA7-BA8, social workers from a family tracing service)

In a minority of cases it appeared that the minors were not always consulted by the guardian on their wishes to find their family or not. On the other hand we met one separated child who indicated during the interview that he would very much like to find their family but that the guardian, and no other person before this interview, had not informed him about the possibilities of family tracing. Besides the use of the family tracing of the Red Cross, some guardians also tried to find the family through NGOs which have antennas in the country of origin or through migrant organisations in the host country.

Good practice 12: Some guardians try to contact the family members through different ways: through the tracing service of the Red Cross, through other NGOs who have a team or office in the region of origin or through migrant organisations in Belgium who might have contacts in the country of origin that they can activate. These initiatives can be combined. The search of the family is done at the explicit demand of the minor.

Knowledge of the country of origin

The knowledge of the situations in the countries of origin seems to vary a lot between guardians. The *Vademecum* for the guardians gives a list of six pages of websites where the guardian can find information on the country of origin. This list mentions websites of NGO's, of local press, websites specialised in certain conflicts, on particular issues concerning some separated children (women's issues, homosexuality, religion, etc). Certain guardians are in charge of many children from the same country of origin and in this way gain expertise on those countries. Other mentioned contacting migrant organisations in Belgium to know more about the situation in the country of origin.

The story of the minor serves as a starting point for the guardian to extend his or her knowledge of the country of origin. Some guardians also try to inform the minor of the evolution of the situation in the country of origin. Two tendencies are present among the minors. Most of the interviewed minors thought that their guardian was well informed and interested in their country of origin. For a majority of the minors the country of origin was an important topic. Other minors share the opinion of this minor.

She asks me from time to time if I would like to have information on my country of origin, how the situation is now. I refused, because I want to leave the past behind me. I prefer to concentrate myself on my studies than on the past. (B2-18 years old, male, Rwanda, recognised refugee, living with his grandmother)

The role of the guardian before and after return (monitoring)

The guardian plays a central role with a separated child's request to return to the country of origin.

The role of the guardians is to first of all making sure that the minor indeed wants to return and that all conditions to a successful return are present.

Few of the interviewed guardians had experienced a return of one of their wards. The number of voluntary returns is low and there are no forced returns. In 2007 there were 16 voluntary returns, 22 in 2008 and 11 in 2009.⁵⁵ The few returns make it difficult to analyze or generalise the practices of guardians surrounding return. Within the interviewed guardians only one witnessed a return procedure, and a few others have cases where return was considered but the necessary conditions were not met and the return did not take place. We will therefore concentrate ourselves on the information and discussion practices on return.

The minors had difficulties discussing return during the interview. Guardians and other professionals reported as well that this was a very sensitive topic. Some minors interpreted a discussion on return as a sign of rejection of the guardian and thought that the guardian did not believe their story.

Many interviewed minors thought that the guardian should accompany a separated child if returned to “make sure that he or she falls into the rights hands”. Most guardians did not think that accompanying the child to the country of origin fell under their responsibility. They did consider that it was their role to monitor from a distance if the minor was doing well. The only interviewed guardian had seen one of his wards return had followed up the situation of the minor within the days after arrival and a month later. This return was quite recent and therefore we cannot give indications of the follow-up in the longer term.

Guardians and several minors thought that the topic of return was easier to discuss if the guardian mentioned return as one option among others, without insisting too much. For the young people who did not obtain a residence permit and turned 18 the discussion on return was easier. Several guardians mentioned that their former wards had contacted them to inform themselves about return when they could not cope with life in an undocumented migrant.

The guardian and the integration of the unaccompanied minor

Integration will be defined here as the “incorporation as equals into society”⁵⁶. In the practices of the guardian three main elements came forward as elements to ensure integration: the knowledge of their rights, the language, and the elaboration of projects and/of a life-goal. Throughout their daily practices and the information that they give to the minors, the interviewed guardians tried to make sure that the minors were aware of their rights and tried to defend those rights. A strong emphasis is laid by the interviewed guardian on the learning of the language as a tool to integrate. For the minors the interviewed guardians were also viewed as a sort of guide for the way of living and habits of the host country. Many interviewed minors expressed that they wanted their guardians to explain and/or show how “Belgians lived”.

Support of education and establishment of a project with the minor were also considered to be fundamental for the integration of the minor. Leisure activities were also considered by some guardians as a necessary mean to ensure integration, notably through sport activities.

⁵⁵ Source : IOM Brussels Office

⁵⁶ Merriam Webster’s definition

I think my guardian was important for my life. I needed structure. I was not good at school. In the beginning I was not a social boy, I did naughty things. A bit after my guardian came into my life, I decided for myself that I needed to build my life and that I should work more for my studies. Since then everything is getting better and better. (B2-18 years old, male, Rwanda, recognised refugee, living with his grandmother)

7.8. The end of the guardianship

In Belgium the guardianship ceases in several cases: when the minor dies, when the minor gets married, when the minor gets adopted, when a person with parental authority or official guardianship takes over, when the minor receives the Belgian nationality or a nationality from the European Economic Area, when the minor gets emancipated, when the minor returns, when the minor becomes 18, when the minor obtains a permanent residence permit and when the minor disappears for more than 4 months.⁵⁷ We will focus here on the last three possibilities as they are the most common.

7.8.1. The approach of the legal maturity

When a minor becomes 18 he or she is faced with several changes: he or she has to leave the reception facilities (there are some exceptions), he or she will no longer be represented legally, the support of community services will end except if the person is considered vulnerable⁵⁸, the financial support will stop for those who did not obtain a permit, there is a risk of detention and expulsion for those who did not obtain a permit and other difficulties relating to education, work or health insurance can appear. The role of the guardian is very important when it comes to prepare the minors for the consequences of become 18 years old. It is often a very frightening moment, especially for the minors who did not obtain a valid residence permit.

“For me it was a very stressful time. My guardian had warned me for those changes and told what we should do before I turned 18 and what I should be able to do myself. She told me we needed to look for an apartment. I live now in the adult part of the reception centre. I cried, cried and cried when I had to leave the section for the minors. It was just like a family for me. My guardian was there for me. Now I have a lot more responsibilities. I do not have the impression that I’m completely an adult, but I am working towards it.”
(B1, girl, recognised refugee of 18 years old, Guinea, reception centre for asylum-seekers)

Some interviewed minors, however, did not seem at all aware that turning 18 would change anything about their situation, even if they were sometimes very close to becoming 18. Those young people suspected that that they would have to change accommodation and that they should have obtained their papers by then but they were not conscious of the fact that they would not have a guardian after 18.

Others seem to be prepared for all the main events after 18. The preparation for legal maturity would vary from the finding of an apartment, to the preparing of a residence procedure or the study or work choices.

“I know a guardian whose ward was turning 18 and her asylum interview was taking place after her 18th”

⁵⁷ Articles 23 and 24 of the Guardianship Act

⁵⁸ The support community services like Youth Welfare Services and the social service of the juvenile court can be extended to the age of 20 in the French Community or 21 in the Flemish community, but an official request has to be made before the 18th birthday.

birthday. The guardian already prepared the asylum interview with the girl beforehand". (BA1, social worker reception centre for asylum-seeking separated children)

There were also minors who had been prepared for the changes coming with their 18th birthday would have like to be prepared for adult life in the longer term.

"I would have liked to be a bit more prepared for life as an adult. My guardian could have given me more practical information, a bit more information on how to live in this country. Also I would have liked to know things like, how to buy a house, how do you have to fill in your tax form, how many hours are you supposed to work, etc." (BG4, former unaccompanied minor, living on her own)

Having contact with the guardian after their 18th birthday seemed to be very important for the minors. The former interviewed separated children all indicated that they still have contact with their guardian, even years after the end of the guardianship. The other minors, who considered that they had a good relationship with their guardian, wanted and sometimes assumed that their guardian would still be by their side after they turned 18. The motivation behind the wish to stay in touch with the guardians was often partially divided between their practical and emotional needs.

7.8.2. The permanent residence permit

When a minor receives a permanent residence permit the guardianship can be stopped and civil guardianship or guardianship of the Social Welfare systems can take over if the guardian takes the necessary steps to organise another guardianship. This situation can be problematic certainly with very young asylum seekers who are recognised as a refugee and have no guardian anymore. Civil guardianship is well developed but often takes places within extended family. Other minors will be placed in the guardianship of the Social Welfare centre (welfare guardianship) of the district of the minor. This type of guardianship has hardly ever been researched and we have little data on it. Several areas of concern have been reported on the welfare guardianship as the welfare institutions are not always aware that this guardianship exists and what the tasks and responsibilities are towards the minor.

Recommendation 7: A guardian should remain present until the legal maturity of the minor

7.8.3. Disappearances

Guardianship ceases 4 months after the disappearance of a minor. Several interviewed guardians already faced this situation. All the interviewed guardians who had faced this situation knew where to signal and how to signal the disappearance. The collaboration with the police appeared to have gone quite smoothly.

It was mentioned that some guardians felt that maybe some minors thought that if they disappeared from the centres or if they their situation became irregular or dysfunctional they should also stop having contacts with the guardian.

Recommendation 8: Clear information should be given to the minor on the fact that the guardian is still there for them if they want to leave the reception centre, or have problems with justice or any other problem. It should be clear that the guardian is bound to confidentiality, in all situations.

8. The qualifications of a guardian with regards to other needs and rights

Article 10, §1 of the Guardianship Act defines several other rights in the Convention on the right of the child that the guardian is supposed to protect:

“The guardian takes care of the separated children during his or her stay in Belgium. The guardian has to make sure that the minor receives an education and receives psychological support and receives the appropriate medical care.

When access to the territory is granted and that housing has not been decided in a specific centre for separated children, the guardian has to see to the fact that the competent authorities take the appropriate measures to find appropriate housing for the minor [...]

The guardian has to make sure the political, philosophical and religious opinions of the minors are respected.”

8.1. Education of the child

The Guardianship Act states that the guardian must make sure that the minor receives an education. The Act does not indicate whether legally the guardian is responsible for registering the minor or just has to make sure that someone registers the minors in a school. Here there is a potentially grey area where the distribution of tasks is not clear between guardian and reception centre and thus a source of potential conflict.

BG7: “I go to the school meetings. And if there are some problems I will be the first one to go to the school. And when the minor has to talk to the direction, I will be there too. I want the school to communicate with me!”

This quote gives a good indication on how certain interviewed guardians feel about their role towards the education of their minors. Education is viewed as important for the development of the minor, as a tool for the future and for their integration. However there were also other conception about the role of the guardian and the education of the child. Those guardians viewed their role as prominently centred on obtaining papers for the minor. The definition of the role as a guardian and the case-load are determinant factors in the implications in the education of the minor. There is also the fact that the minor is residing or not in a reception centre that seems to play an important role on how the guardian will involve him or herself in the education of the minor. When the reception centre thinks it is the guardian who follows up the education and the guardian thinks the opposite you get the following situation:

“My guardian never comes at the school meetings. He is never there. At the last meeting he was not there but also the educators from the centre were not there. That day we had to decide about the section and the year I would be subscribed in. They decided with me that I could go to the 4th general. It’s going really well at school. They told me to start thinking about my options. I asked my guardian but he did not explain anything. I would like to talk about the school options to somebody”.

(B5, 16 years old, asylum seeker from Guinea, living in a reception centre for asylum-seekers)

Good practice 13: Some guardians sign every week the school agendas, follow closely the evolution of the education of the minor, discuss the option choices and go to the school meetings. If the guardian does not follow up on the education of the minors he makes sure that another person does.

8.2. The health care for separated children and the role of the guardian

In general there seem to be little problems receiving healthcare for the children. An area which is, in practice, not always clear is how the responsibilities are shared between the guardian and the reception facilities and that this can lead to certain dysfunctional situations. Several guardians however said to be present before and after surgeries and had experience with accompanying their wards through their pregnancy.

Good practice 14: The guardian accompanies the minor for important medical procedures (surgery, pregnancy follow-up, delivery, etc) or makes sure that the minor is accompanied by a person of trust.

In the current situation of the reception crisis, the minors on the street have difficulties accessing health care. There is no staff of a reception centre who could follow up on eventual health problems. Also the fact that the minors are constantly changing address and not always easily contactable makes it hard for guardians to ensure that appropriate health care is given to those young people. Mental health is another problem. Several actors, guardians and worker from reception centres mentioned the suicidal tendencies of certain minors. Symptoms of post traumatic stress, self mutilation and slight to severe psychological problems are not uncommon. Here it is primary importance that the guardian has access to a specialised network and receives support from this network in order to help the minor for the better. It appeared in a few interviews that the guardian was not always informed when a minor had attempted suicide. On the other side some guardians had been pressured to divulge the contents of the sessions with the psychologist of the minor.

Recommendation 9: clear communication is needed between the guardian, the staff of the reception facilities and the minor. Responsibilities should be clearly identified. The minor, if capable of discernment, should decide to who the information on his or her mental health can be communicated.

8.3. Emotional well-being and emotional support

Providing emotional support for the separated child is not explicitly stated as a task of the guardian but the guardians all provided, to various extents, emotional support or supervised the emotional well-being of their ward. The involvement of the guardian in the emotional well-being will depend upon the definition of the role of a guardian that each guardian applies for themselves.

"I'm someone who is very sensitive and who needs affection and tenderness. She gave me a lot of attention and affection, she showed that she was there for me. She called me all the time in the beginning, just to know how I was doing. I had a lot of stress, and she really played her role as a guardian. It is difficult when you first arrive here. There is also the fact that she was very active and present during the procedure (asylum-procedure). She was there all the time. She came with during the interviews, even those who took place after my 18th birthday. It has touched me." (B1, girl, recognised refugee of 18 years old, Guinea, reception centre for asylum-seekers)

The emotional well-being of separated children appeared to be put under a lot stress at mainly three moments: in the country of origin, during the journey and during the first months of arrival. For the emotional distress coming from the (traumatic) experiences in the country of origin or the journey to Belgium guardians often referred to other professional services. The emotional well-being of separated children was put under stress at arrival by the changes that are included in arriving in another country and the welcome given to the minors.

All of the interviewed minors, except one, mentioned that they had been victims of, regular, acts of racism in Belgium. This was something that was experienced as extremely difficult by the minors and adding a lot of stress to the difficulties to adapt in the first months. Many were not prepared for this and did not understand the reactions. The racist acts reported by the interviewed minors consisted of verbal aggression and acts of disdain like refusal to address or answer the minors. It was not always clear whether all actions could be considered as acts of racism or if some acts could be more described as inter-cultural misunderstandings. In each case a strong sense of rejection came across during the interviews. Only a minority of children seemed to discuss this with their guardian. One minor indicated to have needed psychological consultation to face this problem.

Going to school was one of the elements that the many minors considered as central as they get a lot of satisfaction and pride from going to school.

Good practice 15: Guardians pay attention to the psychological welfare of the minor, support the minor and appeal to specialised organisations to follow the minor if needed.

8.4. Monitoring of the guardian (internally and/or externally)

The guardian is controlled by the Guardianship Service and by the judge of peace of the district of the residence of the minor. The GS performs an administrative control of the day to day material organisation of the guardian. The judge of peace controls whether the guardian manages the assets of the minors and if the guardian does indeed searches for the durable solution for the minor. The judge of peace also settles conflict between the minor and its guardian. If the guardian fails to accomplish his or her mission with diligence or if there are graves divergences of view between the guardian and the minor, the judge of peace can end the appointment of the guardian⁵⁹.

⁵⁹ Article 20 of the Guardianship Act

The guardians must also write several reports: a first report after the two first weeks of guardianship, reports twice a year during the guardianship and a report at the end of a guardianship. Several concerns have been noted about these reports. The use made of these reports is unclear for guardians and other experts. Almost all interviewed guardians were under the strong impression that those reports were never read. Further there were several concerns about the protection of the confidentiality of the information. Indeed some questions remained on the amount of information that should be given in those reports and if guardians were allowed to put in information in those reports that the minor did not want to be known. Several ethical questions remained unanswered. Some guardian mentioned organising a meeting with the separated child after the end of the guardianship to collect the impression and appreciation of their former wards. Employee-guardians are also submitted to their internal monitoring of their employer.

Good practice 16: Guardians organise evaluation meetings with their former ward after the end of the guardianship in order to evaluate themselves

Recommendation 10: Guardians should be regularly evaluated and monitored, according to clear standards. Special attention should be given to guardians who have just started to work as a guardian.

8.5. Complaint mechanism for the child and/or the guardian?

In general the minors only have one guardian during their stay in Belgium. If they want to change guardian they can ask the guardianship service to mediate or directly go the judge of peace. It appeared however that almost all minors did not know how and where they could complain about their guardian. They did not believe that if they would complain something would change. Most minors would try to solve their problems on their own or maybe talk to the staff in the reception centres. The possibility for a minor to complain about their guardian differs according the reception facility. Indeed a minor living in a reception centre, in a host family or with extended family will probably not receive the same information on how to complain about the guardian, unless all those actors have themselves received the information about the change of guardians and the complaint mechanisms.

Few guardians declared to explain the complaint mechanism to the minors. Only one guardian explained the complaint mechanisms in the first meeting. Several guardians mentioned that in a conflict situation they would discuss the possibility to change guardian. All those guardians noticed that mentioning the possibility that the minor could change guardian during a conflict situation made the reasons behind the conflict easier to discuss and the minor, in the end, did not want to change guardian. This of course is not to be generalised but shows that communication and mentioning all the options to a separated child are often beneficial for the relation of trust between the guardian and their ward.

Some guardians encountered the situation that other minors asked them how to change guardian or how the guardian could become their guardian. The guardians felt very uncomfortable with the

situation. First of all because they thought it was not their role to evaluate their fellow guardians. Also there is the risk that the minor might want another guardian for other reasons than the lack of qualifications of the guardian. Some minors seem to consider that the “good” guardian is the one who obtains the papers for them. Others are very angry if the guardian does not take him or her home, on weekends of holidays or allows him or her to live with them.

Recommendation 11: Clear information should be given to the separated child on the complaint possibilities and mechanisms. This coincides with the right to information as stated by article 13 of the CRC.

9. When a separated child would become a guardian...?

The majority of the interviewed minors did not want to become a guardian, mainly for two reasons. Some had very precise plans for the future that they wanted to realize. B1 wants to become a paediatrician or a gynaecologist, B7 wants to be an electrician, B13 a social worker, etc. Others, the majority, seemed to think that they wouldn't be able to be a guardian, that they wouldn't have the skills to do the work well. They viewed the guardian as someone who had a lot of knowledge and who was good at helping people.

Those who were pleased with their guardian thought that they would have the same approach as their guardian had towards them. Some interviewees indicate that they would have prepared a bit more for adult life. Not only for the period after their 18th birthday but also in the medium and long term.

Others, the minority, did not seem to know what a guardian should do for them and therefore did not see the use of becoming a guardian. It was hard for them to imagine what a guardian could do to make a child feel safe as no adult made them feel safe.

Only one minor explicitly stated that this experience as a separated child would him be of use to be a guardian.

Yes I would like to become a guardian. It would be good to see from where you come and what you become. It would be a sign of recognition towards the guardians but also for me. My experience and my life story could help me. I was raised and lived the hard way. I know the journey, I know the difficulties. (B14, Morocco, 16, Circular 2005, lives in a orientation and observation centre)

Some final suggestions for the guardians:

All guardians should be there for the minors, to reassure them, to listen to them. It is important for young people. It is important to know that a person exist that is there for you, on which you can count. I think all guardians should be available for their wards. I think all guardians should do that. Not necessarily like my guardian because that would mean she's perfect and nobody is perfect. But I do think they should follow her example. You have to earn the title of “guardian”. It's like a doctor. If he doesn't cure, if he doesn't help, then he is useless. That's wrong. The guardians should know more their job. They are not just there for the interviews or to accompany you to the lawyer. They have to be there for the minor. There are a lot of other minors around me who only see their guardian for the interviews. They feel alone and say things like “my

guardian doesn't care about me". It hurts to hear other minors like me say that, to know they are still alone. Because a guardian is sort of your "parent".

B1, girl, recognised refugee of 18 years old, Guinea, reception centre for asylum-seekers)

Conclusion

The guardian is the central actor who stands for the respect of the rights of separated children and accompanies the child in its most formative years, from childhood to adulthood. The needs of separated children to have a guardian appeared throughout this study. The profiles and expectations of separated children are as diverse as their personalities. This asks from the guardian a lot of flexibility while being strict on the respect of the rights of the child. It appeared throughout the interviews with the minor that the role of the guardians was considered important to help with the residence procedure. However the vast majority of the interviewed minors have expressed that their guardian had a role and an importance in their life that went far beyond just the procedural role.

"Yes, I have a goal for my life now. I want to work, I want to make it. Before I didn't want all those things, but that changed when my guardian came into my life. Sometimes I try to imagine how my life would have been without her (silence). It was important that my guardian got me on the right track. (B2-18 years old, male, Rwanda, recognised refugee, living with his grandmother)

Overall the interviewed separated children were pleased that they had a guardian and considered that he or she had a (very) positive impact in their lives.

Even though guardianship in Belgium has shown many positive elements and is in itself a great progress to close the protection gap for separated children a few areas of concern remain. European separated children remain unprotected by a guardian in Belgium. Even though this is not a problem of the qualifications of the guardians but of the legislation, it is a serious gap in the protection of European separated children.

Communication and network skills have appeared to be essential. The communication is central to the relation of trust, to the good preparation of the residence procedure, to the preparation of voluntary return, to the good collaboration with reception facilities and with migration authorities.

Preparing for the adulthood and for the period after 18 years has shown to be fundamental. However it seems that transparent and respectful communication remains an issue. The sometimes dysfunctional communication between, for example, the guardian and the reception centres can have an impact on the follow-up of the education, health and mental health of the minors. This is closely related to the need of a clear share of responsibilities between the guardian and other actors around the separated children.

All previous studies and this one also reveal that the lack of a code of deontology is an issue as the question of independence, of professional secrecy and other questions specific to dealing with an underage public need to be explicitly addressed. This should be addressed in the training of the guardians. Six years after the creation of a guardianship system in Belgium there is still a need to develop further the methodological tools for the guardians, certainly in the determination of the best interest of the child.

Additional efforts should be made to insure that guardians receive the most complete training to start with and continues to receive training which includes more practical elements. The training and the knowledge on human trafficking seems to be lacking. The guardians who knew how to handle, legally and psycho-pedagogically, those cases were guardians who had received training on this in previous professions.

A worrying result is the lack of knowledge on how to complain about a guardian and on how to change guardian. Few guardians give the information and other actors do not seem to address this question with the minor either. This is particularly problematic as there seems to be a lack of monitoring and regular evaluation of the guardians. There seems to be lack of clarity on how the GS evaluates the guardians and how the reports of the guardians are being used. Increased monitoring is needed.

Guardians are crucial to insure the rights of separated children and to accompany the minors to adulthood. The practices of the guardians should be harmonised to insure to all separated children the same level of care and good practices should be extended. Financial means should be made available to insure a decent compensation for the guardians, to organise regular trainings and to support initiatives that allow the exchange of good practices and stimulate the guardians to reflect on their work.

On the basis of the report and the good practices and recommendations⁶⁰ identified in this study we will develop with our Daphne partners high standards for guardianship as the guardians are the central actors who can protect separated children and guide them to adulthood.

Recommendation 11: The practices of the guardians should be harmonised to insure to all separated children the same level of care

Recommendation 12 : Financial means should be made available to insure a decent compensation for the guardians, to organise regular trainings and to support initiatives that allow the exchange of good practices and stimulate the guardians to reflect on their work.

⁶⁰ Please consult the annex which regroups all the good practices and recommendations identified throughout this report.

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Legislation

- ✓ Convention on the Rights of the Child, 20th of November 1989
- ✓ Guardianship Act of 24 December 2002, Title XIII, Chapter VI "Unaccompanied minor aliens" of the Programme Law of 24 December 2002 (published in the Belgian Official Journal of 31 December 2002). It was modified by the Programme Law of 22 December 2003 and the Programme Law of 27 December 2004.

- ✓ Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
- ✓ Circular of 19 April 2004 on taking charge of and identification of unaccompanied minor aliens by the Guardianship Service
- ✓ Circular of 2 August 2007 on European unaccompanied minors in a vulnerable situation

Annexes

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Annex 1: question list interviews with separated children

Question list interviews with separated children

These questions are a guideline for the interviews with the children. You do not have to ask these questions one at a time. You can have a conversation with the child and check by the end of the interview if you have an answer to the questions.

Start by explaining the project, your organization and potentially something about yourself. Discuss the informed consent document and explain that everything discussed is confidential.

1. General information

- Name and contact information:
- Gender:
- Date of birth:
- Country of origin:

Make notes of non-verbal communication and describe the setting of the interview.

2. Situation analysis

- How long are you staying in the country?
- Can you tell me something about your journey and the reasons why you came to this country? **You do not have to ask this question at the beginning of the interview. Maybe it sounds a bit like a “migration office” interview question. Maybe the child will explain spontaneously how he came to the country otherwise you must not begin with such questions, as the goal of the project is to look at the qualifications of the guardians to ensure protection of the child.**
- Did you have your age assessed when you entered the country? Was a guardian present? Did he or she inform you about this procedure?
- Can you tell me something about the location where you are staying now (detention center, on the streets, in a foster family, living group etc.)? Do you like the place? Who is in the accommodation with you (other children, adults etc.)? Where would you like to live? Have you lived in different places before reaching the one you are staying now?
- Do you feel safe where you are staying now?
- Legal info/knowledge. Do you know in which procedure you are? Did somebody tell you what rights you are entitled to as a minor (everybody with reference to his country)?
- Can you tell me something about how your day normally looks like? What do you do? What would you like to do?

3. Appointment of a guardian

- Do you have a guardian now?
- Did you get a guardian immediately on the moment you arrived? Do you remember if your guardian was always with you or if sometimes, you had to do some interviews on your own?

- Did you have a choice? Prefer a man or a woman? Religion? Age?
- Did you understand the role of the guardian when you first met him/her?
- How many guardians did you have?

4. Qualifications of the guardian

- Can you tell me what your guardian does for you?
- What do you think a guardian should help you with?/What would you like your guardian to do for you?
- What have you been told about the guardianship institution and the tasks and responsibilities of your guardian?
- How often do you see your guardian often? Is this enough? In which way is there contact (skype, phone)? Can you reach him/her when you have a problem?
- Do you understand what your guardian tells you?
- Was/is translation needed?
- What do you do when you have a problem? Who would be your trust person? Your guardian or someone else?
- What do you know about your guardian? Do you have the feeling you know him a little bit? Would you like to know him better? What would you like to know?
- Do you think every child should have a guardian? Why?
- How many children should a guardian take care of? Would you like a guardian who only works with you?
- How old do you think a guardian should be? Do you think yours is too old or too young?
- Do you know who is your guardians boss? Who 'pays' him/her?

5. Return/reunification

- Has your guardian talked to you about the situation in your country of origin? Does your guardian know anything about your country and is he interested in your country of origin?
- Does your guardian support you in your contact with your family?
- When children return, do you think a guardian should join them? Not: when the government says you need to go home, what would you like your guardian to do? What should a guardian arrange for children when they return to their country of origin?
- Has a family member talked to your guardian? Do they agree with the guardian? Do you (or would you) like that your guardian has contact with your family?
- Do you know if something changes when you turn 18? Do you speak to someone about that (your lawyer or guardian)?

6. Other needs and rights

- Education: are you going to school? What do you learn there? Do you think your guardian is interested? Does he/she advise you? Does he/she attend meetings at school?
- Healthcare: have you been ill/has your guardian helped you? Did you experience difficulties receiving healthcare?
- Do you get enough to eat, how much money do you receive? What kind of expenses can you do with this money?
- Social life: do you have friends? Where are they coming from? Do you tell your guardian anything about them?

- Emotional support: depending on age of the child. Were/are you unhappy about something? Is there anyone you could feel you could talk to?
- Do you feel secure? Can be in social life, education, residence situation etc.
- Would you know how and where to complain about your guardian?
- Participation/right to be heard: Does your guardian ask for your opinion on decisions to be made?
- What kind of information would you like to receive? In what way (brochure, internet)? Do you have ideas how we can inform children about their rights and the role of the guardian?

7. Would you like to become a guardian? What would you do when you were a guardian?

8. Would you like to add or comment something that you have not been asked?

Annex 2: question list guardians

Question list guardians

These questions are a guideline for the interviews with the guardians. You do not have to ask these questions one at a time. You can have a conversation with the guardian and check by the end of the interview if you have an answer to the questions.

Start by explaining the project, your organization and potentially something about yourself. Discuss the informed consent document and explain that everything discussed is confidential. Do not discuss things a child mentioned about this guardian.

9. General information

- Name and contact information:
- Gender:
- Date of birth:
- Country of origin:
- Education, training:
- How long are you working as a guardian?

Make notes of non-verbal communication and describe the setting of the interview.

10. Introduction/Situation analysis

- How would you describe the role of a guardian?
- Why have you become a guardian?
- Can you tell me something about how your day/week normally looks like? What do you do? What would you like to do?
- What do you like most about being a guardian? What don't you like?

11. Appointment of a guardian

- In which facility do you work? How many days per week?
- What is your caseload? Do you think this is too much (if yes, why)?
- When do you first meet a child? Do you think this takes too long?
- Are you present when an age assessment takes place?
- How does your first meeting with a child look like? What do you talk about? What is the setting?
- How many times do you meet a child (per month)?
- How do you divide your time?/ Do you have time to accompany a child when he has an interview, court hearing?
- Do you experience a lot of differences between the level of understanding of children (when it comes to explaining the procedures etc.). How do you make sure that a child understands what you are telling him/her?
- Do you feel you have enough knowledge about the migration procedure and children's rights or would you like to get more training?

12. Qualifications of the guardian

- How would you describe a 'good guardian' (maybe think of a colleague you really appreciate as a good guardian) Which qualifications and qualities does a good guardian need?
- How would you describe your role as a guardian?
- Could you tell me something about your methodology? Has it changed over the years? What do you think is good about it? What would you do differently?
- How do you explain to a child what your role is as a guardian?
- Do you think a child –after you explained so- understands what your role is?
- Do you experience that children have different expectations of you?
- What do you think a guardian should help a child with?
- Do you think a guardian is responsible for doing fun activities with a child?
- Can a child reach you whenever he or she has a problem?
- What do you tell children about yourself?
- How do you deal with language and cultural differences? Can you tell me something about your experiences with that?
- Do you think a guardian should always be a paid person?
- How would you describe the communication/relation with lawyers, mentors etc? Are you in contact on regular basis? Are there good/bad examples?
- How do you assess the best interest of the child? And how do you defend this best interest (do you feel it is difficult to protest against decisions of migration authorities)?
- Do you have enough time to work on a bond (of trust) with the child?
- Which kind of training would you attend? What would you like to learn more? How should this training look like?
- Do you think guardians need different skills on the basis of the location/facility where they work (for example different skills for a guardian working in a detention facility or a guardian of a child in a foster family)
- Do you think a guardian should be a social worker (with training on legal aspects) or do you think a guardian should be a legal specialist (with training in social work)?

13. Return/reunification

- What do you think is necessary for a successful return of a child? What is the role of a guardian in relation to return?
- How do you discuss possible return of the child to the country of origin?
- Do you know something about the countries the children are coming from?
- Do you talk to the child about the situation in the country of origin?
- Have you ever been in contact with a child after they have returned?
- Do you assess the situation in the country of origin? Are you in contact with authorities over there?
- Do children often have contact with their family (maybe in other European countries)? Do you support this contact and how?
- When children return, do you think a guardian should join them?
- How do you prepare a child for turning 18? What is the role of the guardian after the child turns 18?

14. Other needs and rights

- Education: how do you act when a child has difficulties at school? Do you have contact with teachers?
- Healthcare: have you ever experienced difficulties receiving healthcare for the child?
- Social life: Do children talk easily about friends? About their daily life (school etc)? About their history?
- Have you ever experienced a conflict of interest (for example that you needed to breach the confidentiality). How do you deal with this?
- Would you know how and where a child can complain about a guardian?
- Participation/right to be heard: How do you involve the child in the decision making process?
- Do you have ideas how we can inform children about their rights and the role of the guardian?
- What do you do when you experience a difficult situation? Have questions? Are there people in your organization you can turn to?
- Do you ever experience difficulties when you maybe get too involved with the child (sleeping problems etc.)

15. If you were an unaccompanied minor asylumseeker, what would you like your guardian to do for you?

16. Would you like to add or comment something that you have not been asked?

Annex 3: The Convention on the Rights of the Child

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

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

Article 10

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

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

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

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States 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.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States 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;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

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

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

- States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
 - (b) The exploitative use of children in prostitution or other unlawful sexual practices;
 - (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel,

inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.^{1/} The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

1/ The General Assembly, in its resolution 50/155 of 21 December 1995 , approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

Annex 4: life project model for unaccompanied minors

Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors

(Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its member states;

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its Protocols;

Recalling the 1996 European Social Charter (revised) (ETS No. 163);

Recalling the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

Recalling the 1989 United Nations Convention on the Rights of the Child and its two optional Protocols;

Recalling the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol;

Recalling the 2000 United Nations Convention against Transnational Organised Crime and its two Protocols;

Having regard to General Comment No. 6 (2005) of the United Nations Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin;

Having regard to the Inter-agency Guiding Principles on Unaccompanied and Separated Children adopted by the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the International Rescue Committee (IRC), the Save the Children UK (SCUK) and the World Vision International (WVI) in 2004;

Having regard to the 1997 Guiding Principles of the United Nations High Commissioner for Refugees (UNHCR) on policies and procedures applicable to unaccompanied children seeking asylum, and the 2006 UNHCR Guiding Principles on Formal Determination of the Best Interests of the Child;

Considering the recommendations of the Parliamentary Assembly of the Council of Europe, Recommendation 1596 (2003) on the situation of young migrants in Europe and Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum;

Having regard to the Twenty Guidelines on Forced Return adopted by the Committee of Ministers of the Council of Europe in 2005;

Considering the Statement of Good Practice of the Separated Children in Europe Programme adopted by the International Save the Children Alliance in Europe and the United Nations High Commissioner for Refugees in 2004;

Taking account of the work of the Council of Europe Regional Conference entitled “Migration of unaccompanied minors: acting in the best interest of the child”, held in Málaga (Spain) on 27 and 28 October 2005 and in particular its conclusions;

Considering that there are in the member states of the Council of Europe or at their borders an increasing number of unaccompanied migrant minors who find themselves alone, in situations of vulnerability, far from their family environment, separated from their parents or families and exposed to multiple risks;

Considering that migration policies in general, and in relation to unaccompanied migrant minors in particular, require a range of measures that go beyond border controls and action against irregular migration;

Stressing the necessity to improve the management of migration of unaccompanied minors in order to overcome the difficulties of member states in taking care of them;

Considering the need to reduce the risks faced by unaccompanied migrant minors that endanger their health, their development and in some cases their lives;

Considering the need to support the efforts of countries of origin in providing information on the risks, dangers, and vulnerabilities relating to the situation of unaccompanied migrant minors and in preventing their migration;

Considering that the best interests of unaccompanied migrant minors should be the primary consideration in all decisions relating to them and that any action taken in relation to them must protect their rights and safety and promote their personal development;

Stressing that the diversity and heterogeneity of the situation of unaccompanied migrant minors based on their origin, gender, personal history, cultural diversity, legal status or any other condition, must be taken into account in accordance with an individualised, multidisciplinary and participatory approach;

Being convinced that the member and non-member states of the Council of Europe can, by strengthening their co-operation, contribute to finding lasting solutions for and with unaccompanied migrant minors that will help them to build life projects guaranteeing them a better future,

Recommends that the governments of member states:

a. take steps to implement in their policy, law and practice the principles and measures set out in the appendix to this recommendation;

b. promote the implementation of these principles and measures by the relevant governmental agencies and authorities dealing directly or indirectly with the elaboration and implementation of national policies regarding non accompanied migrant minors;

c. ratify as soon as possible the 2005 Council of Europe Convention on Action against Trafficking in Human Beings if they have not yet done so.

Appendix to Recommendation CM/Rec(2007)9

I. Concepts

Life projects

1. Life projects aim to develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, life projects, fully in accord with the best interests of the child, as defined in the Convention on the Rights of the Child, pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment.

2. Life projects are individual tools, based on a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration. They define the minor's future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.

3. Life projects are a lasting solution for both member states and the minors themselves, meeting the challenges arising out of the migration of unaccompanied minors. They shall therefore be an integrated policy tool available to member states in order to meet the needs of such minors and to tackle the many difficulties arising out of this migration.

Unaccompanied migrant minors

4. This recommendation concerns unaccompanied migrant minors who are outside their country of origin, regardless of their status, irrespective of the reasons for their migration and whether or not they are asylum seekers. The expression 'unaccompanied migrant minors' includes separated children and minors who have been left to their own devices after entering the territory of the member state.

5. Unaccompanied minors are children under the age of 18 who have been separated from both parents and other relatives and are in the care of an adult who, by law or custom, is responsible for doing so.

6. Separated children are children under the age of 18 who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. They may, therefore, be children accompanied by other adult family members.

II. Life projects: an integrated policy tool

7. Every life project is based on a comprehensive, integrated and therefore multidisciplinary approach.

8. Drawing on a holistic approach, every life project should take account of the child's specific situation. It should take account of several elements, in particular:

i. the minor's personal profile: age, gender, identity, legal status, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills;

ii. the minor's migration itinerary: factors influencing his or her departure, circumstances of the journey, duration of residence and living arrangements in countries of transit and in Europe;

iii. the minor's family environment and particularly the nature of his or her family relations;

iv. the minor's expectations, wishes and perceptions;

v. the situation in the country of origin: the political, legislative, socio-economic, educative and cultural context, the human rights situation (taking account of ethnic, religious and sex discrimination and other potential dangers), the availability of appropriate care and support, including reception;

vi. the special guarantees afforded to unaccompanied minors seeking asylum, in particular regarding *non-refoulement* and the identification of durable solutions;

vii. the situation in the host country: the political, legislative and socio-cultural context; availability of opportunities for the minor, including level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country.

9. Unaccompanied migrant minors should be able to enjoy all rights recognised by the relevant international and European standards and in particular the United Nations Convention on the Rights of the Child, which are preconditions for the realisation of their life projects. In order to ensure effective access to these rights the member states should take action, in particular, in the political, legal, social, health, educational, economic and cultural areas.

10. In order to contribute to the full realisation of life projects, the co-ordination of policy and practice should be a priority. Accordingly, member states should take the action set out below:

i. establish and/or support national bodies for co-ordinating the various agencies dealing with unaccompanied migrant minors and, where appropriate, allocate the requisite material, human and financial resources for creating such bodies;

ii. create and operate European networks for information exchange involving not only origin, transit and host countries but also the relevant international organisations and representatives of civil society;

iii. strengthen co-operation with the non-member states representing the main countries of origin of unaccompanied migrant minors with a view to establishing long-term relations of trust based on a clear definition of the respective responsibilities in implementing the minors' life projects.

11. Bilateral agreements should set out minimum conditions under which unaccompanied migrant minors can implement their life projects in their countries of origin and provide for exchanges between social workers specialising in the care of minors.

12. Within the framework of their co-operation, the member states should refrain from divulging information on asylum seekers and refugees.

13. Alongside national schemes for co-operating with the countries of origin, exchanges between local authorities or NGO representatives directly involved in providing for unaccompanied minors should be supported and further developed.

14. Member states, along with countries of origin, should foster public information and awareness-raising campaigns on the risks linked to child migration, particularly the dangers of networks involved in clandestine immigration, exploitation of minors and organised crime.

III. Life projects: a mutual commitment

15. Life projects should be formalised by a written agreement setting out the respective commitments of both parties and signed by them and/or by the guardian of the unaccompanied migrant minor.

16. Life projects should comprise individualised, open-ended objectives which the minor undertakes to pursue, the arrangements for monitoring their implementation and a regular assessment based on exchanges between

the minor and the competent authorities. They should take account of the unaccompanied migrant minor's personal profile and expectations, as well as the opportunities provided for him or her in the host country and the country of origin.

17. The competent authorities should undertake to ensure that the life project comprises measures to protect the minors in order to help them achieve the aforementioned objectives. These measures should include access to:

- appropriate accommodation;
- specialised support provided by properly trained personnel;
- appointment of specially trained guardians and/or legal representatives;
- clear and full information about his or her situation in a language that he or she understands;
- basic services, including food, medical care and education.

18. The competent authorities should undertake as soon as possible an analysis of the unaccompanied migrant minor's family situation and prioritise the search for the parents or legal or customary guardian in order to establish, as appropriate and always respecting the child's best interests, direct or indirect contacts with a view to possible family reunion.

19. The competent authorities should ensure the funding of all action to identify, accommodate, assess the situation and protect unaccompanied migrant minors.

20. Life projects should create favourable conditions for guaranteeing genuine dialogue between the competent authorities and the unaccompanied migrant minors in order to enable them to understand the opportunities they are being offered and to guarantee their participation and involvement in all stages of the formulation and implementation of their life project.

IV. The conditions required to implement life projects

21. Member states should define the responsibilities of each partner, in particular national and local authorities, welfare services, youth workers, families and legal representatives, in implementing and monitoring life projects and ensuring their co-ordination. Member states should provide in particular for appropriate funding and distribution of funds.

22. The member states should establish or reinforce procedures guaranteeing the identification and registration of unaccompanied migrant minors and the issuing to them of the necessary documents, including, if necessary, proper travel documents.

23. Special attention should be given to the case of unaccompanied minors seeking asylum. Asylum procedures should not affect the effective preparation and implementation of life projects for these minors, for whom enhanced protection is necessary, in particular with regard to the principle of *non-refoulement*.

24. The life project may, depending on its particular objectives, be implemented either in the host country or, alternatively, in the host country and in the country of origin, or in the country of origin. In specific cases, in particular in the case of family reunion with parents residing lawfully in a third country, the life project might be implemented in this country. In this case, in addition to the measures mentioned in paragraphs 28 and 29, the member states should facilitate the minor's departure and implementation of his or her life project in this country.

Life projects in the host country

25. For as long as the life project is implemented in the host country, the member state should guarantee access for the unaccompanied migrant minor to classes in the language of the host country, to education and/or to appropriate vocational training on an equal footing with nationals. The minor should also have the possibility of entering the labour market.

26. Where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.

Life projects in both the host country and the country of origin

27. Where the life project begins in the host country and continues in the country of origin, member states should take all practical steps to ensure its continuity and satisfactory conclusion.

Life projects in the country of origin

28. Where the life project is implemented in the country of origin, member states should define the conditions that will guarantee its success. These conditions should include at least the following:

- i. consideration of the needs corresponding to age and degree of maturity of the minor;
- ii. reception, protection and appropriate care and support in the country of origin, guaranteed either by the parents or guardian and/or other legal guardian, or by governmental or non-governmental authorities, always respecting the best interests of the child;
- iii. involvement of the local authorities in implementing the life project in the country of origin, including protective measures for the minor, social, health and educational services and the selection of local bodies (for example, NGOs) capable of helping implement and monitor the life project;
- iv. funding, as far as possible, of training courses for specialist staff or local bodies assisting with the life project.

29. Where the minors return to their country of origin, member states should request the support of non governmental organisations or relevant international organisations in this field, such as the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF) and the International Organisation for Migration (IOM), in accordance with their respective mandates.

V. Communication strategy and follow-up to the recommendation

30. Member states should take specific measures to identify and inform professionals working, in particular, in agencies and institutions in charge of the reception, social assistance, protection and monitoring of unaccompanied migrant minors. This could be carried out through awareness-raising campaigns, training courses, conferences and seminars, networks to exchange experience (partnerships) or any other way that might improve their knowledge of life projects and expertise in implementing them. Member states should inform the competent authorities from origin and transit countries of the principles of this recommendation.

31. With a view to promoting life projects, member states should also widely disseminate the principles of this recommendation, especially to media, non-governmental organisations and other actors. The objective is to raise awareness in public opinion concerning migration and the unavoidable presence of unaccompanied minors in the member states, their fragility and the risks that a precarious situation entails for them, as well as the need for the competent authorities to take care of them through life projects.

32. Member states are encouraged to devise indicators to gauge the formulation, implementation and evaluation of life projects in their respective countries.

33. Where possible, member states are encouraged to list the measures taken to implement the recommendation in their respective national reports on the implementation of the United Nations Convention on the Rights of the Child.

Annex 5: list recommendations

Recommendation 1: The definition used in Belgian legislation to define an unaccompanied minor should be extended to European unaccompanied minors. All separated children should have a guardian and no distinction between separated children contrary to article 2 of the CRC should be authorised.

Recommendation 2: The lump sum for each guardianship should be increased in order to ensure a decent salary for the guardians and to avoid having guardians taking additional guardianship just to make a decent salary

Recommendation 3: All guardians should manage their work-load in order to give the due attention to each child

Recommendation 4: Continued trainings opportunities need to be developed. Practical experience should be included in those trainings. Financial and human means should be made available to ensure the trainings. Moments of exchange of practices should be developed and supervised.

Recommendation 5: Existing tools of methodology should be disseminated and additional tools should be developed, in particular tools for specific profiles like former street children or separated children with a drifter's profile. The methodological tools should guarantee an effective practical use of them.

Recommendation 6: Sufficient means should be available to support this practice and expertise sharing of the guardians.

Recommendation 7: A guardian should remain present until the majority of the minor

Recommendation 8: Clear information should be given to the minor on the fact that the guardian is still there for them if they want to leave the reception centre, or have problems with justice or any other problem. It should be clear that the guardian is bound to confidentiality, in all situations.

Recommendation 9: Clear communication is needed between the guardian, the staff of the reception facilities and the minor. Responsibilities should be clearly identified. The minor, if capable of discernment, should decide to who the information on his or her mental health can be communicated.

Recommendation 10: Guardians should be regularly evaluated and monitored, according to clear standards. Special attention should be given to guardian who have just started to work as a guardian.

Recommendation 11: The practices of the guardians should be harmonised to insure to all separated children the same level of care

Recommendation 12 : Financial means should be made available to insure a decent compensation for the guardians, to organise regular trainings and to support initiatives that allow the exchange of good practices and stimulate the guardians to reflect on their work.

Annex 6: list good practices

Good practice 1: Guardians reflect on their work, by searching additional tools to organise their work or share practices and methodologies with other guardians.

Good practice 2: The guardian asks for the analysis and opinion of the minor's lawyers on the choice of the most appropriate procedure.

Good practice 3: Seeking information with the authorities who already had contact with the minor on the communication possibilities and the state of mind of the minor, to prepare the first contact with the minor.

Good practice 4: The guardian asks whether the minor knows what a guardian is and let him or her explain what he has understood. Then the guardian corrects or develops the knowledge of the minor.

Good practice 5: The guardian adapts to the age, state of mind, the trajectory of the minor, the psychological and physical state of the minor, the amount of information to give to the child and the number of asked questions. The guardian makes sure that the minor does receive the lacking information during the next visits.

Good practice 6: The view of the minor is respected by the guardian. The guardian gives the information and indicates all possibilities and their possible outcome of every choice. This coincides with the right to participation and information as set by articles 12 and 13 of the CRC.

Good practice 7: The use of visual tools, like drawing or photographs can be very useful to explain certain elements to the minor of help prepare the asylum interview.

Good practice 8: Guardians contact their ward for no special reason. This is important to create or maintain the relation of trust

Good practice 9: The guardian adapts the frequency of the contact to the needs of the minor.

Good practice 10: Guardians ensures good communication with the family of the minor, respecting the functioning of the family but also making sure that all the rights of the minor are respected.

Good practice 11: Guardians reflect on their work with other guardians and exchange good practices. This contributes to the development of the (shared) expertise of the guardians.

Good practice 12: Some guardians try to contact the family members through different ways: through the tracing service of the Red Cross, through other NGOs who have a team or office in the region of origin or through migrant organization in Belgium who might have contacts in the country of origin that they can activate. These initiatives can be combined. The search of the family is done at the explicit demand of the minor.

Good practice 13: Some guardians sign every week the school agendas, follow closely the evolution of the education of the minor, discuss the option choices and go to the school meetings. If the guardian does not follow up on the education of the minors he makes sure that another person does.

Good practice 14: The guardian accompanies the minor for important medical procedures (surgery, pregnancy follow-up, delivery, etc) or makes sure that the minor is accompanied by a person of trust.

Good practice 15: Guardians pay attention to the psychological welfare of the minor, support the minor and appeal to specialised organisations to follow the minor if needed.

Good practice 16: Guardians organise evaluation meetings with their former ward after the end of the guardianship in order to evaluate themselves