

Durable Solutions for Separated Children in Europe

National Report: Belgium

Forward

We would like to thank the guardians and all the other professionals working with separated children who took the time to discuss durable solutions and share their experiences. Their contribution to securing the welfare and a better future for unaccompanied minors is daily inspiration. We thank all the youths who kindly shared their experiences and their hopes for the future. You have many things to share with us adults. Our deep recognition goes to our colleagues and the other professionals who do everything to make these children do their best and achieve the maximum of their abilities, despite the difficult circumstances and the institutional obstacles. And finally we would especially like to thank Anne-Sophie Leloup, Cristelle Trifaux, Laetitia Van der Vennet, Jean-Pierre Verhaeghe and the members of the advisory committee for their useful tips and advice.

Many thanks!

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Disclaimer

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List of abbreviations

A38 : Annexe 38 –ordre de reconduire (deportation order)

AI : Attestation d'immatriculation (certificate of immatriculation)

AMU: Aide médicale urgente (urgent medical care)

CCE : Conseil du Contentieux des étrangers (Aliens Litigation Council)

CE : Conseil d'Etat (Council of State-Highest Administrative Court)

CEDOCA : Centre de documentation et de recherche du CGRA (Documentation centre of the Office of the Commissioner General for Refugees and Stateless Persons)

CGRA : Commissariat Général aux Réfugiés et Apatrides (Office of the Commissioner General for Refugees and Stateless Persons)

CIDE : Convention Internationale relative aux Droits de l'Enfant (Convention on the Rights of the Child)

CIRE : Certificat d'inscription au registre des étrangers (Certificate of registration in the Foreigner's register)

COO : Centre d'observation et orientation (Observation and Orientation Centre)

CPAS : Centre Public d'Action Sociale (Centre for Public Social Action-Welfare)

DASPA : Dispositif d'accueil et de scolarisation des primo-arrivants (Schoolclasses for the newcomers in in French community)

EEE : Espace Economique Européen (European Economic Area)

Fedasil : Agence fédérale pour l'accueil des demandeurs d'asile (Federal agency for the reception of asylum-seekers)

HCR : Haut Commissariat aux Réfugiés (High Commissioner for Refugees)

ILA : Initiative Locale d'Accueil (Local Reception Initiative)

MENA : Mineurs étrangers non accompagnés (Unaccompanied minors)

OE : Office des étrangers (Foreigners' Office)

OKAN : Onthaalklassen voor anderstalige nieuwkomers (Schoolclasses for newcomers in the Flemish community)

OIM : Organisation Internationale pour les Migrations (International Organization for Migration)

RVV : Raad Voor Vreemdelingenbetwistingen (Alien's Appeal Court)

SAJ : Service d'Aide à la Jeunesse (Youth care service)

SCEP : Separated Children in Europe Programme (Programme des enfants séparés en Europe-PESE)

SPF : Service Public Fédéral (Federal Public Service)

SPJ : Service de Protection Judiciaire (Youth protection service)

ST : Service des tutelles (Guardianship Service)

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1. Introduction

1.1. Unaccompanied Minors

Unaccompanied minors (UM), like adults, flee their countries for various reasons. Some leave their countries to join their families who have already emigrated. Others flee war, civil unrest, natural disasters or persecution. Others migrate in search of work, opportunities, education or to improve their living standards. Some emigrate to escape a difficult family environment. This may involve physical or sexual abuse or forced marriage. Some types of persecution are specific to children and especially female children. And then there are those who emigrate to escape female genital mutilation, child marriages or conscription into formal or informal armed forces.¹ Some UM are also sent by their parents to seek a better life for both children and parents.²

In the last few years, there have been many studies on the specific vulnerabilities of UM.³ This literature supports the fact that children who are separated from those responsible for protecting them and for their physical and emotional wellbeing can suffer traumatic experiences and they may become more vulnerable.⁴ These children are at a high risk of being:

- Sexually abused and exploited, including forced/child marriage and human trafficking.
- Enrolled in the armed forces
- Forced to work, including domestic work
- Placed in detention
- Discriminated against
- Neglected
- Subjected to violence⁵

When they arrive in the country of destination, unaccompanied minors are still particularly vulnerable due to the lack of primary care and the absence of traditional support networks from parents and the family.⁶ For this reason the European Commission and numerous experts declare that finding a durable solution for the unaccompanied child is a priority.⁷

1. See, generally: UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> [accessed 9 March 2015]

2. European Migration Network, Unaccompanied Minors – an EU comparative study (2010) at 22. Available at: http://emm.si/files/publikacije/00_emn_synthesis_report_unaccompanied_minors.pdf [Date accessed: 7th August 2014].

3. By 'separated child' we mean a child under 18 years of age who has been separated from both parents, or from their previous legal or customary primary care-giver. A separated child can be accompanied by other adult family members. These children are at risk of being separated from their families or customary caregivers during the chaos of conflict, flight and displacement. See : United Nations Convention on the Rights of the Child – General Comment No. 6 on Treatment of Unaccompanied and Separated Children Outside their Country of Origin, Committee on the Rights of the Child, 2005 (CRC/GC/2005/6).

4. See, for example: Russell, S. (1999) Unaccompanied Refugee Children in the United Kingdom. *International Journal of Refugee Law* 11(1), Bhabha, J. and Young, W. (1999) Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines. *International Journal of Refugee Law* 11(1) and Bhabha, J. (2004) Demography and rights: women, children and access to asylum. *International Journal of Refugee Law* 16(2).

5. See, generally: Bhabha, J. (2014) *Child Migration and Human Rights in a Global Age*. Princeton, Princeton University Press. & See, for example: Communication from the Commission to the European Parliament and the Council - Action Plan on Unaccompanied Minors (2010 – 2014) SEC(2010)534 /* COM/2010/0213 final and Bhabha, J. and Young, W. (1999) Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines. *International Journal of Refugee Law* 11(1).

6. See, generally: Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 9 March 2015].

7. European Commission, Report from the Commission to the Council and the European Parliament. Brussels 28.9.2012 COM(2012) 554 final.

1.2. Durable solutions: International Law and Guidance and the European Union

The European Commission in their Mid-term report on the implementation of the Action Plan on Unaccompanied Minors (2010-2014) has highlighted three main lines of action: prevention, reception and the search for a durable solution in order to promote a European-wide approach in the support of unaccompanied minors, urging the need for harmonisation at European level.⁸ European harmonisation of the three lines mentioned above cannot be achieved without understanding the key principles and the terminology in question. However, it is clear that there is a general lack of clarity surrounding the notion of ‘durable solution’.

The notion of ‘durable solution’, in the context of separated children, appears in many reviews, reports and directives. The European Commission,⁹ the High Commissioner for Refugees (UNHCR),¹⁰ the Separated Children in Europe Programme (SCEP),¹¹ the Committee on the Rights of the Child,¹² the Council of Europe’s Life Projects, UNICEF’s Child Notices, the Core Standards for Separated Children in Europe, the Fundamental Rights Agency of the European Union, UNHCR and UNICEF’s Safe and Sound report,¹³ as well as European legislation,¹⁴ all suggest that it is imperative to find a durable solution that is in the best interests of the child. UNHCR states that this principle applies equally in the case of a child who has been granted asylum and one who has received a negative decision in relation to an asylum claim. UNICEF and UNHCR highlight the importance of taking into consideration the specific protection needs of the child while looking for a durable solution including international protection (refugee or subsidiary protection).¹⁵ The identification of such a solution needs to be considered case by case and all aspects of the situation are to be weighted and profoundly considered in the light of the best interests of the child.¹⁶ SCEP and the Core Standards contend that the best interests of the child must be determined in the short- and the long-term. The ultimate objective, with regard to the future of unaccompanied or separated children, is to find a durable solution that addresses their protection needs, considers the child’s views, and if possible, leads to overcoming the situation of being unaccompanied or separated, including through exploring the possibility of family reunification in the host country, third party or even in the country of origin.¹⁷

8. Ibid.

9. 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 10002nd meeting of the Ministers’ Deputies.

10. UN High Commissioner for Refugees (UNHCR), Field Handbook for the Implementation of UNHCR BID Guidelines, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html> [accessed 9 March 2015].

11. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 9 March 2015].

12. UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 9 March 2015].

13. UN High Commissioner for Refugees (UNHCR), Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014, available at: <http://www.refworld.org/docid/5423da264.html> [accessed 9 March 2015].

14. European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, 2011/36/EU, available at: <http://www.refworld.org/docid/50ec1e172.html> [accessed 30 September 2014]. Preamble: Recital 23 & Article 16(2).

15. UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> [accessed 9 March 2015].

16. UN High Commissioner for Refugees (UNHCR), Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, available at: <http://www.refworld.org/docid/3ae6b3360.html> [accessed 30 September 2014].

17. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 30 September 2014], p 36.

The 'Life Projects' handbook asserts that the solution has to be durable,¹⁸ both for Member States and the minors themselves, in order to respond to the challenges caused by the migration of unaccompanied minors.¹⁹ The Fundamental Rights Agency of the European Union highlights the fact that children's rights must also be guaranteed for the future.²⁰ The Committee of the Rights of the Child also indicates that the identity of the child must be considered when determining his/her best interests. In accordance with European law, such a determination must consider the nationality of the child, his/her education, his/her vulnerabilities, ethnic, linguistic and cultural origin,²¹ and his/her specific protection needs, and the child's opinion depending on his/her age and maturity,²² including when determining accommodation conditions.²³

The 'Life Projects' handbook maintains that the aim in considering these factors is to allow for the development of the child's abilities and potential, helping him/her gain autonomy, responsibility and resilience so that each child can become an active member of society whether in the host country or when returning to the country of origin.²⁴ Taking into account the multidimensional nature of determining a durable solution, it is necessary to have a multidisciplinary approach.²⁵ In addition, the reports and directives mentioned above consider it is essential to make arrangements to ensure that the project is progressing, monitored, revised and updated on a regular basis and in response to changes in the minor's situation.

In summary, the directives, research and projects tell us that a durable solution is a lasting solution, determined as early as possible with the possibility of review and revision which takes into account the child's individual best interests by considering the child's family circumstances, background (including nationality, religion and culture), safety (including risks of trafficking, particular vulnerabilities and protection needs), and their views in accordance with their capacity.²⁶

However the existing research does not allow us to get an idea of the determination of a durable solution in practice. There are, nevertheless, a few exceptions. Thus, the national and international reports, especially the Core Standards and the Fundamental Rights Agency's manual, include state practice in their commentaries. These two projects did consider the concept of durable solutions but more as peripheral issues.

18. L. Drammeh (2010) *Life Projects for Unaccompanied Migrant Minors : A handbook for front-line professionals*. Council of Europe Publishing (hereinafter *Life Projects* 2010). Available at http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf [accessed 30 September 2014], p 9.

19. *Ibid.*

20. European Union: European Agency for Fundamental Rights, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, June 2014, ISBN 978-92-9239-464-6, available at: <http://www.refworld.org/docid/53b14fd34.html> (hereinafter *Handbook* 2014) [accessed 30 September 2014], p 92-98.

21. European Union: Council of the European Union, Directive 2013/33/UE of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) 29 June 2013, OJ L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html> [accessed 30 September 2014].

22. UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 30 September 2014], 79-94.

23. European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26, available at: <http://www.refworld.org/docid/4f197df02.html> [accessed 30 September 2014], Article 30(3).

24. *Supra* note

25. 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 10002nd meeting of the Ministers' Deputies. A Life Project is a plan, drawn up and negotiated between the minor and the authorities in the host country. It's a mutual commitment that describes the objectives point by point and defines the responsibilities of the minor and the competent authorities.

26. Definition of the project.

The goal of this project is to look at the existing considerations regarding the determination of durable solutions and to develop them, paying particular attention to the practice of durable solutions in Belgium, Cyprus, Germany, Greece, Ireland, Malta, the Netherlands, Slovakia and the United Kingdom. This project aims to establish the importance of the concept of durable solutions in Europe and to find examples of good practice, both proactive and innovative.

1.3. Methodology of the project

Desk research was performed to create a framework around the concept of ‘durable solution’ in the caring for unaccompanied minors in Europe. To do this, we reviewed the existing conceptualisations of the notion based on the International Convention on the Rights of the Child, the Committee on the Rights of the Child General Comment No. 6 and relevant European directives. A review of the literature and case law was also carried out. A framework and a brief literature review are included in the introduction of national reports from each of the nine partners and are developed in the international report.

The Irish Refugee Council coordinated the project. The Faculty of Applied Social Sciences of University College Dublin and the Social Work Team for Separated Children of the Child and Family Agency (Tusla) in Ireland, were both consultants for this project, participated in its elaboration and interim evaluation and also served on the monitoring committee. The Separated Children in Europe Programme (SCEP) was also consulted and its members have provided comments on the scope of the research. All these actors attended a meeting in London, where all the national partners reviewed the national findings, discussed the best way to present the findings and to highlight good practices. They also contributed to the development of the ‘Handbook’.

Key partners & national stakeholders	
Irish Refugee Council	Ireland
Department of Applied Social Science, University College Dublin	Ireland
Social Work Team for Separated Children of the Child and Family Agency	Ireland
European Partners	
Bundesfachverband Unbegleitete Minderjährige Flüchtlinge	Germany
Defence for Children – ECPAT	Holland
Greek Council for Refugees	Greece
Hope for Children UNCRC Policy Centre	Cyprus
Human Rights League	Slovakia
Service Droit de Jeunes	Belgium
The Children’s Society	United Kingdom
The People for Change Foundation	Malta
In collaboration with	
Separated Children in Europe Programme	

1.4. National Methodology

This study is based on the analysis of scientific literature on the issue of durable solutions for unaccompanied minors, on the analysis of international, European and national legislation and case law, and the analysis of interviews and focus groups. As part of this study, interviews were conducted with guardians, unaccompanied minors, professionals working with unaccompanied minors and people working for the authorities that influence the course of the minor in Belgium.

We opted for semi-structured interviews.²⁷ Semi-structured interviews are characterised by the fact that the questions are open but that there is an underlying thematic scheme, established in an interview guide, which allows for the interview to be structured. This also allows the interviewee to have the freedom to discuss the themes of their choice and to give more specific insights into some elements. Focus groups with unaccompanied minors and professionals were also held, and the anonymity of all interviewees was guaranteed.

We wanted to make the fullest possible study, with a reliable methodology, but we were faced with some limitations of the study. Both the allocated human resources (one researcher) and the time devoted to this study were limited. Some parts were not addressed in depth but can be detailed in future studies. In certain cases, we had to limit ourselves to making assumptions to explain phenomena without being able to verify them.

The choice of qualitative methodology, even if it is most appropriate for this type of study, is also limiting because it could not incorporate elements of quantitative studies. In the context of qualitative methodology, we conducted interviews with respondents selected on the basis of sampling. This sampling of experts was created on the basis of the diversity of their expertise, combining frontline and non-frontline actors and those working in associations (civil society) and institutions. The sampling of the separated children was done on the basis of a diversity of age, gender, nationality, type of procedure and the length of stay in Belgium. If our samples take several variables into account it is still impossible to state that all possible variables were taken into account.

The realities of migration, practices and legislation on unaccompanied minors often change. It is possible that some data and trends are no longer current at the time of the report.

1.4.1. National Participants

Unaccompanied minors

Focus groups were held on 21 January, 17 February and 19 February 2015. A third of the separated children interviewed were girls and two-thirds were boys. This is consistent with the general proportion of the number of unaccompanied minors arriving in Belgium each year. The ages of those interviewed ranged from 12 to 18 years with an average age of 15 years. They came from eight different countries. Six of the eight nationalities feature in the Top 10 of the numbers of unaccompanied minors arriving in Belgium, across all procedures.

UM	Gender	Age	COUNTRY OF ORIGIN	Procedure
M1	F	13	DR Congo	UM procedure-Certificate of Immatriculation
M2	M	15	Morocco	UM procedure-Annex 38
M3	F	14	Armenia	UM procedure-Annex 38
M4	F	16	DR Congo	UM procedure-Annex 38
M5	M	15	DR Congo	UM procedure-Certificate of Immatriculation
M6	M	14	DR Congo	UM procedure-Card A
M7	F	13	DR Congo	UM procedure-Certificate of Immatriculation
M8	M	14	Guinea	Subsidiary Protection
M9	M	15	Guinea	Subsidiary Protection
M10	F	16	Serbia	Asylum application
M11	M	12	Syria	Recognised Refugee

27. Refer to the questionnaire in Annexe 1. The interviews took place between July 2014 and March 2015.

M12	M	16	Angola	UM procedure-Annex 38
M13	M	17	Bangladesh	UM procedure-Annex 38
M14	M	16	Afghanistan	Recognised Refugee
M15	M	18	Afghanistan	Recognised Refugee

Focus groups and interviews with professionals

As for the professionals, some meetings were held in the form of semi-structured interviews and others were in the form of a ‘focus group’. These meetings focused on the practices and experiences of guardians. Particular attention was paid to a balance between French and Flemish players.

Guardians	Lawyer	Asylum and Immigration Institutions	Guardianship service	Workers in reception centres	Youth Services	Children’s Rights Experts	Total
16	1	4	7	3	2	3	36

National Advisory Panel

The Panel included both the authorities involved with unaccompanied minors in Belgium and associative actors working with unaccompanied minors.

Organisation	Represented by:
Guardianship Services	Sabina Sebastiano
Foreigners’ Office	Colette Van Lul
Commissariat General for Refugees and Stateless Persons (Office of the Commissioner General for Refugees and Stateless Persons)	Anja De Wilde
Legal Aid Bureau – UM Pool	Cécile Ghymers
CARITAS guardianship	Ugo Guillet-Laurence Bruyneel
National Commission on the Rights of the Child	Sarah D’hondt
Kinderrechtencommissariaat	Jean-Pierre Verhaeghe
UNHCR	Mieke Verrelst
IOM	Vernesa Music

The advisory panel served as a place of exchange and reflection on the methodology, practices and experiences on durable solutions. The conclusions and recommendations that are developed in this study do not commit the participants of the committee and the organizations or institutions to which they belong.

1. 5. The results of the project

The international report is a synthesis report which provides a framework for the concept of ‘durable solutions in the care of unaccompanied minors in Europe. In addition, a handbook of best practices in the field of identification, implementation and reassessment of durable solutions for unaccompanied minors in Europe will be developed and will be annexed to the international report. This handbook is a model in this regard. It includes a checklist to identify, implement and reassess the durable solution.

1.6. Conclusion

This project aims to establish a framework for determining the concept of ‘durable solutions for unaccompanied minors in Europe’, taking into account the existing legislation and guidelines and other projects dealing

with the development of durable solution such as Life Projects; the Child Notices; Core Standards, etc. It also takes into account the views of young people involved in the project and existing practices in the nine European countries involved in the project. This Belgian national report outlines the practice and interpretation of the term 'durable solution' in Belgium. This research will then feed into a larger project conducting a comparative study as described above. The purpose of this research is to define the determination of 'durable solutions for unaccompanied minors' in Belgium.

2. The necessary prerequisites for the determination of durable solutions

2.1.1 The components necessary to determine durable solutions

Establishing durable solutions for unaccompanied minors is a process involving many actors and many steps. However, in order to determine a feasible durable solution, certain conditions must be met. This section presents the elements needed to create the space and the opportunity to determine the best interests and the implementation of a durable solution.

Firstly, the 'Life Projects' handbook maintains that it is essential to have a solid, legal framework that places the child at the centre and a willingness on the part of professionals to support and use this legislation in practice.²⁸ Several reports argue that the legal framework must include provisions for the appointment of guardians to every unaccompanied minor; assigning legal authority to representatives to determine the best interests of the child and durable solutions; and a general law on the care of children, which defends and protects unaccompanied minors.²⁹

Secondly, Life Projects, the handbook of the Fundamental Rights Agency and numerous other studies are confident that the guardians of separated children must have relevant skills to be able to determine the durable solution for the separated child in the context of his/her best interest.³⁰ Some reports estimate that a (psycho-) social education is important. Others are of the opinion that the guardian must have a legal education.³¹ Many studies also argue that in addition to the required qualification, it is necessary that guardians have training courses and focused professional development courses. This might involve training seminars on human trafficking, trauma, the right to asylum, etc.³²

Thirdly, a growing body of research also looks at the guardian's ability to establish a relationship of trust with the unaccompanied minor. Several studies and reports have shown that establishing a relationship of trust is crucial in determining the best interests of the child.

Planning - with and for the separated child - would be strengthened if it were done in the context of a positive relationship based on mutual trust.³³ Studies have shown that if a child has difficulty telling the truth and if the guardian finds it hard to believe them, this may hinder the determination of the best interests of the child.³⁴ That is why it is important that the State allow the guardian to establish a relationship of trust with

28. Life Projects 2010, p 12-13.

29. See for example: Goeman, M. et al., (2011), Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands; ENGI, 2010 Towards a European Network of Guardianship Institutions Utrecht, the Netherlands.

30. Ibid. and Life Projects 2010 et Handbook 2014.

31. Goeman, M. et al., (2011), Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

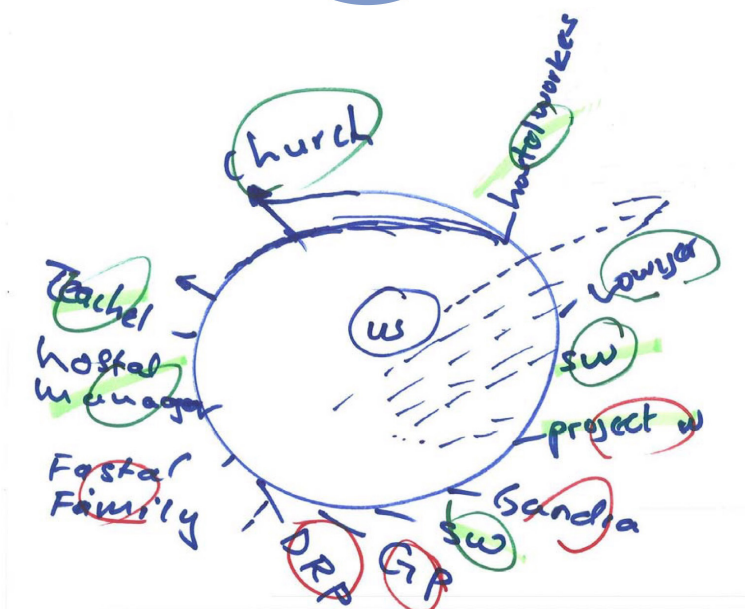
32. Ibid.

33. See for example: Goeman, M. et al., (2011), Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands; Arnold, S., 2011. Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland. Dublin: Irish Refugee Council; Ní Raghallaigh, M. (2013) 'The causes of mistrust amongst asylum seekers and refugees: insights from research with unaccompanied asylum seeking minors living in the Republic of Ireland'. Journal of Refugee Studies, 27 (1):82-100.

34. Ibid.

the unaccompanied minors. Some reports claim that independent guardianship would help and facilitate the guardian to act for the child when their best interests are being determined.³⁵

Finally, the same studies and reports (mentioned in this report) highlight the large number of actors in the life of a child. This can be seen, for example, in the diagram of the Fundamental Rights Agency,³⁶ and the design developed by a focus group of young people as part of the project on quality standards for guardians.³⁷



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35. Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

36. Handbook 2014, p 91.

37. Arnold, S., 2011. Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland. Dublin: Irish Refugee Council, p 61.

38. Inside circle: 'Us' representing the young people in the focus group. Outside circle: 'Church, Hostel workers, Lawyers, Social workers, Project workers (aftercare workers), Police, General Practitioner, Community Groups, Foster Families, Teachers' representing those involved in the lives of the separated children in the focus group.

The above studies advocate for a multidisciplinary approach to determining the best interests, durable solutions and other decision-making.³⁹

These prerequisites for determining durable solutions are discussed throughout this report. It analyses the extent to which structural elements were put in place in Belgium and were discussed in the international report.

2.2. Building a relationship (of trust)

The Guardianship Act⁴⁰ states that the guardian “*must meet with him (the minor) in order to develop a relationship of trust.*”⁴¹ The 2013 general guidelines issued by the Guardianship Service give a list of behaviours to observe in order to promote this.⁴² Interviews and previous studies show that many variables influence the building of a relationship of trust: the relationship of the young person with adults in the past, the young person’s level of trauma, the possible mental impairments, the availability of the guardian, the presence or absence of socialisation within the family,⁴³ personal affinities between the guardian and the young person, the accumulation of ‘evidence’ indicating to the young person that the guardian is doing their job and the fact that the guardian gives them information that is corroborated by others.⁴⁴

The question now turns to the definition of the relationship of trust. Is it necessary only for the young person to trust their guardian or is it necessary for there to be a mutual trust to ensure a high standard of guardianship? How do the guardians manage the fact that some young people do not tell their true story from the start? Does this have an influence on how the guardian is able to determine a durable solution? Are there situations where the guardian does everything to establish a relationship of trust and yet this trust is still not entirely possible?

The issue of trust is closely related to the ability (or not) of the young person to share her/his true story and to move from a survival mode, where lying is often necessary, to a way of life based on (potential) truth. The issue of lying while recounting their story came up spontaneously when the separated children were being interviewed in the focus groups. The young people described three situations where they had not told the truth. The first scenario was where they were “too ashamed” of what had happened to them. The second was the fact that they found it too difficult and painful to recount their memories. Among the separated children who identified with the first two scenarios, this was often linked to a feeling of guilt (e.g. “It’s my fault if they killed my parents”), or shame (e.g. “I do not understand that they forced me ... I cannot forgive” in cases where parents forced the young person to do things against his/her code of ethics or will); or shame regarding themselves (e.g. “*I’m not good enough and I cannot tell the others that I’m not good enough*”), in the case where the family has not protected or has abandoned the child.

39. See: Life Projects 2010 p 13 and Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

40. 24TH DECEMBER 2002 - Programme act, Protection of unaccompanied minors

41. Article 11 §2 The Guardianship Act

42. General guidelines for guardians of unaccompanied minors – 2 décembre 2013, available at: http://www.atf-mena.be/images/documents_divers/loi/Directives%20generales%20pour%20tuteurs.pdf

43. « La socialisation désigne les mécanismes de transmission de la culture ainsi que la manière dont les individus reçoivent cette transmission et intériorisent les valeurs, les normes et les rôles qui régissent le fonctionnement de la vie sociale.[...]La socialisation primaire correspond à la période de l’enfance. Ce processus s’effectue d’abord dans la famille qui en constitue l’instance principale ; son action est essentielle pour la structuration de l’identité sociale ». Citation extraite de : CASTRA, M., « Socialisation », in Paugam Serge (dir.), Les 100 mots de la sociologie, Paris, Presses universitaires de France, coll. « Que Sais-Je ? », p. 97-98, translation: ‘Socialisation indicates the mechanisms of the transmission of culture as well as the manner in which individuals receive this transmission and internalise the values, norms and the roles which determine how social life functions, [...] Primary socialisation occurs at childhood. This process takes place first in the family, which constitutes the main unit of socialisation; the family’s role is essential for the building of a social identity.’

44. FOURNIER, K., “You need to earn the title of guardian- National Report Belgium”, Leiden, 2010, p. 39, available at: <http://www.defenceforchildren.nl/images/20/1267.pdf>

The third reason for not telling the truth was because they could not remember certain details of the story.⁴⁵ A young person explains that he was asked about the name of his teacher. He could not remember and had invented a name because he did not think he would be considered credible if he said he did not remember the name anymore. Since then, every night he would repeat the names of his teachers in his current school, so that in case he had to flee again, and was asked the same question he would be able to answer: “This time I could answer!” This example demonstrates the importance of the narrative and lies for separated children, which continues to affect them after the interview by the Commissioner General of Refugees and Stateless Persons (CGRS) or the Foreigners’ Office. Another young person explained that after the interview by the Foreigners’ Office he, for four months after, repeated out-loud his interview on the street, wondering whether he had forgotten anything. The impact of the narration of the story or that of the reality-adjustment on the mental health and well-being of the child is not to be underestimated.

As part of our research we were surprised by the number of (sensitive) elements spontaneously shared by the separated children. Many questions thus arise:

- Would the fact that personal questions are not asked create the ability to share information freely?
- Talking to a researcher who has no role in the residence/immigration procedure in Belgium does not cause issues. Therefore, is it easier to talk about the lived experiences or lying?
- Does the dynamic of a group help people to talk more freely?
- Does being in the country for a longer time allow the young person to return to elements of the narrative that were induced by others or by the fears of the young person (not to be seen as credible, to tell what is painful...)?
- Does the informal framework allow minors to feel more comfortable?

2.3. Conclusion

The establishment of a system for the determination of a durable solution for unaccompanied minors requires a legal framework that puts the child at the centre of proceedings and allows for a guardian who has the skills and a mandate to act in the process. A multidisciplinary approach and collaboration between the actors around the child is necessary. Moreover, a trusting relationship is a fundamental element in determining the best interests of the child and the durable solution. This trust is far from obvious. Separated children highlighted three elements explaining why they do not always tell their story (in its entirety): the shame related to memories, the pain that these memories evoke, and the fear to say that they have difficulty remembering some of the details which leads to the fear of not being believed.

3. Background of the unaccompanied minor’s process in Belgium

3.1. Demography and its limits

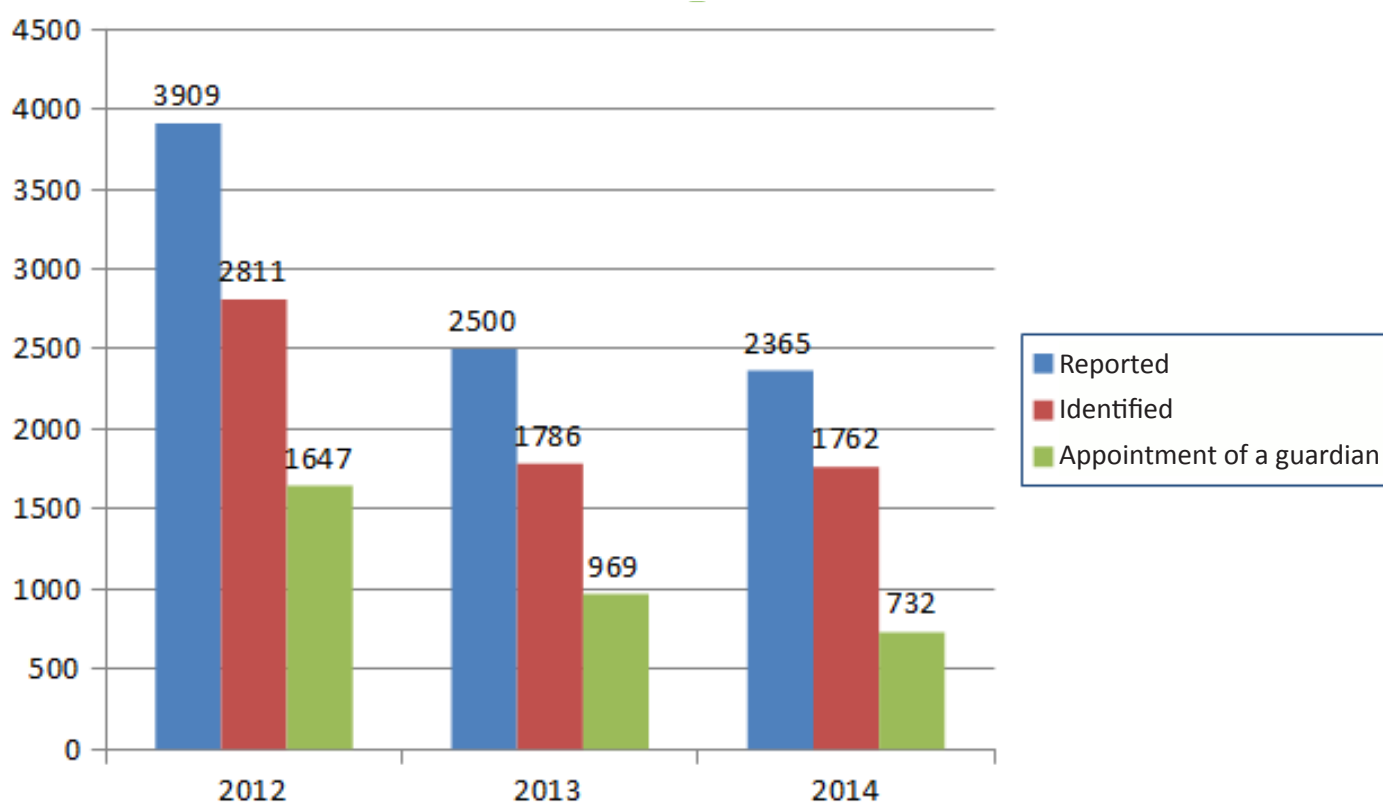
It is extremely difficult to know how many unaccompanied minors arrive in Belgium each year and how many are currently living in Belgium. The first issue is that not all unaccompanied minors are reported to the authorities, particularly the Guardianship Service. One wonders how many young people live in Belgium without coming into contact with the authorities or who live with their extended family irregularly. The practices involved in discovering the young people, reporting and identifying them will have a significant impact on official figures. The need for more systematic detection and for all actors potentially in contact with unaccompanied minors to be more aware, were specifically raised by the migration authority interviewed in this study.⁴⁶

45. In Chapter 8, other elements around the interview are addressed.

46. Interview with actors in the institution responsible in matters of migration 13.02.2015

Having reliable figures for unaccompanied minors in Belgium is a major challenge, given the large difference between the number of unaccompanied minors reported and the number of unaccompanied minors actually identified as such. A further difficulty results from the fact that the figures vary from day to day: according to the arrivals, the number of unaccompanied minors found on the territory and the number of young people who turn 18 during the year. This would therefore require the existence of a database that allows the analysis of the situation in real time and on an annual basis. The issue of statistics is crucial. On the one hand, for public policies that need to adapt according to the situation on the ground. On the other hand because every young person who is not part of the statistics is a young person that does not exist in the eyes of the State and falls outside any protection.

Table 1: Reports, unaccompanied minors identified and appointment of a guardian



Source: Guardianship Service, 2015

In 2011 and 2012 an increasing number of unaccompanied minors arriving in Belgium were recognised by the Belgian authorities. In 2013 and 2014 the number of arrivals declined, although this is only partially true for 2014. In fact, from the second half of 2014 a further increase seems to be confirmed.⁴⁷ For 2013, we see that 420 unaccompanied minors applied for asylum (679 before the age assessment⁴⁸) and 911 did not apply

47. Monthly figures from the Guardianship service.

48. When a young person is suspected of being an unaccompanied minor the Guardianship service will make checks to identify the young person as an unaccompanied minor or not, i.e. are they under 18, not from Belgium and not accompanied. Documents belonging to the minor, or information given by the minor will be used to identify them. If after verifying documents or if the minor does not possess any documentation and there exists a doubt about the person's age, the Guardianship service or another authority (the police, the Foreigners' Office, for example) will ask for a medical test to determine the age of the young person. This test comprises three components: a bone test of the wrist, an x-ray of the collar bone and a dental examination. There have been many criticisms of the use of these medical tests for administrative and/or judicial purposes and scientific doctrine calls into question the reliability of these tests. Some young people will be declared to be adults on the basis of this determination of age and will not be considered in the statistics as unaccompanied minors.

for asylum.⁴⁹ The proportion of unaccompanied minors seeking asylum to unaccompanied minors not seeking asylum remains through the years at a ratio of 30-40% of asylum seekers, 60-70% of non-asylum seekers.

3.2. General framework for immigration and asylum procedures

The guardian has a central and fundamental role in the introduction, the support and the application of the residence procedures (including (legal) remedies). Indeed Article Art. 9 § 1. of the Guardianship Act states that *“the guardian has as a mission to represent the unaccompanied minor in all legal acts in the procedures under the legislation on access to the territory, residence, establishment and expulsion of foreigners, and any other administrative or judicial proceedings.”*

The guardian is responsible for submitting an asylum application or a residence permit and the exercise of legal remedies.⁵⁰ However, an unaccompanied minor may submit an asylum application without being represented by his guardian.

Article 9 states in its second paragraph that *“The guardian supports the minor in each phase of the procedures referred to in § 1 and should be present at each of the hearings”* and in its third paragraph that *“The guardian should automatically and without delay seek the assistance of a lawyer.”*

In order for the unaccompanied minor to receive high quality representation, the guardian must know and understand the different procedures for which the unaccompanied minor could apply. This is necessary in order to choose the most appropriate procedure. The guardian should ensure that they are collaborating with a specialised lawyer in these matters, and they should take time with the young person to prepare for the procedure. The guardian should be present during the hearings of the residence process and they should be present after the hearing to speak with the young person about his/her feelings. The guardian must apply for appeals/legal remedies if necessary.

Choosing the most suitable residence procedure is not always simple. According to interviews and various studies, several elements that will guide the guardian’s choice of procedure include: the age, the story of the young person, the country or region of origin, the psychological state of the young person, and their ability to tell their life story. Gaps in the guardian’s training may also hinder the choice of the most appropriate procedure.

Several procedures are relevant for unaccompanied minors: application for international protection (asylum and subsidiary protection), the ‘unaccompanied minor procedure’ based on the law of 12th September 2011,⁵¹ the human trafficking procedure and the procedures of humanitarian regularisation (9bis) and medical regularisation (9ter).⁵²

3.3. General framework of reception and support

First phase

The Centre for Observation and Orientation (COO) is the first reception facility once the young person is referred to the guardianship service. There are two centres in Belgium: one in Neder-over-Heembeek (Francophone), the other in Steenokkerzeel (Dutch), both managed by Fedasil.⁵³ Moreover a COO was created for non-asylum seeking unaccompanied minors in Sugny. This COO looks after the unaccompanied minor for a period of 4 months. They are then directed to a reception centre for the ‘second phase’.

49. European Migration Network, Policies, Practices and Data on Unaccompanied Minors in Belgium (2014 update), October 2014, available at: http://www.emnbelgium.be/sites/default/files/publications/be_contribution_emn_study_on_unaccompanied_minors.pdf

50. Article 9§2, §3 The Guardianship Act

51. 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor

52. 15TH DECEMBER 1980 - Law on access to the territory, the stay, establishment and removal of foreigners. For more information see Chapter 5.

53. Federal agency for the reception of asylum seekers.

The purpose of this stay is to “make an initial medical, psychological and social profile and detect any vulnerable situation in order to give adequate support to the separated child.”⁵⁴ At this stage particularly vulnerable young people (young pregnant girls, young people with psychological problems, victims of human trafficking...) can be directed straight to more appropriate structures by Fedasil.⁵⁵

Second phase

During this phase, the reception facility must, in consultation with the guardian and the young person, establish a life project, develop a ‘durable solution’ for the future of the young person. After a period of adapting and an assessment within the second phase reception centre, either the young person remains in the facility that was designated to him/her or he/she is directed to a more appropriate facility if special needs are recognised.

Third phase

After the reception phase, a more durable home, on a smaller scale and more suitable, is sought in a third phase. The durable solution is the goal sought by all stakeholders surrounding the unaccompanied minor.⁵⁶ When this objective is achieved, it obviously comprises a durable home, for example with family members, in an independent house or a collective adapted structure. In this context, there are several possibilities of reception: in the Local Reception Initiative (LRI) third phase, in supervised apartments, in private apartments, etc. Often this phase of reception is in conjunction with a work towards an independent and assisted living.

Some young people, who require more specialised assistance, are also hosted within structures of the youth welfare or jeugdzorg. A few hundred unaccompanied minors are hosted in private homes, often in a context of extended family. Some of these families are followed by the youth assistance or pleegzorg.

My Future

In September 2014 Fedasil began a pilot project entitled ‘My Future’ for unaccompanied minors who have no prospect of staying in Belgium. The project aims to intensively prepare the young people for the possible scenarios at the end of their stay in a reception centre.⁵⁷ The care path comprises three pillars:

1. The information is centred on the possible options (voluntary return, undocumented life, continued migration, family reunification abroad);
2. Supporting the young person’s choice with individual coaching and group sessions
3. Access to training offering education suited to his/her needs (in his country of origin or elsewhere).

The project is open to young people from the age of 16 years and participation is on a voluntary basis. If the young person decides to benefit from it, their participation does not impact their future choices (either he/she opts for undocumented life, continues his/her journey of exile or returns to his/her country). The approach is based on developing the young person’s capacity to act, empowering them. The social workers have therefore a role of coaching and link in with the network of the young person (guardian, family, friends), in order to support him/her in their choice. The pilot project is currently being implemented in the Fedasil reception centres Bovigny and Arendonk. The pilot phase is planned for a year and will be the subject of an internal evaluation.

54. See art. 2 of the Royal Decree of 9th April 2007 determining the regime and working rules applicable to observation and guidance centres for unaccompanied foreign minors (MB 7th May 2007), hereinafter, “AR COO”, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007040944&table_name=loi

55. Art. 7 AR COO.

56. Primarily by the guardian in accordance with the law programme of 24 décembre 2002 (I) (art. 479), Titre XIII – Chapitre VI Protection of unaccompanied foreign minors (hereinafter, “protection law”), art 3§2, 4°.

57. If the minor turns 18 and does not have any residence documents he/she does not have the right to social welfare or reception from the CPAS. If the minor turns 18 but their asylum application is still processing then they will be transferred to a reception centre for adults.

3.4. General Framework of Guardianship

The Belgian legislation defines the guardian's tasks without giving a specific definition of the role of guardian. The guardian's tasks are as follows:

- Representing the separated child in the different processes concerning their stay and the judicial and administrative procedures;
- Submitting an asylum application or a residence permit;
- Explaining the decisions taken by the authorities to the minor;
- Applying for legal remedies;
- Attending the asylum hearings and residence;
- Seeking the assistance of a lawyer;
- Taking care of the child during his/her stay (schooling, psychological support, health);
- Ensuring a specific accommodation;
- Ensuring that the political, philosophical and religious views of the child are respected;
- Managing the property of the minor without gain;
- Taking appropriate measures in order that the minor receives assistance from the government;
- Searching for durable solutions in accordance with the interests of the minor;
- Taking all appropriate measures to search for family members of the minor;
- Establishing monitoring reports on the situation of the child: a report is required within fifteen days after the guardian is appointed and every six months subsequent to that. A final report must be written within fifteen days of guardianship ceasing.⁵⁸

3.5. General framework of the care of unaccompanied minors

For the unaccompanied minor education, health, well being (mental health) and the establishment of a social network will, among others, also be fundamentally important.⁵⁹ The guardian, staff of the reception centres, and any other person in contact with the child have an important role to play so that these aspects of the child's life are taken into account. The impact of these aspects must not be underestimated when it comes to determining a durable solution.

The interaction between education and issues concerning residence permits and the durable solution must be noted. Education may be one of the unaccompanied minor's (main) motivations for migrating. However, the child's education can be impacted when their future remains insecure. The school is also a vehicle for socialisation and integration and this will influence the conceptualisation of the durable solution. The school may also raise questions, such as those concerning the place, role and objectives of school when the durable solution is to return to the country of origin.

In order to take into account all aspects of the child's life, it is important to assess the child's abilities and their needs in all aspects of life. However, it should be noted that no method or formal plan is established in Belgium that, in each aspect of life, considers the abilities, needs and establishes objectives of and for the unaccompanied minor. In several national and international reports,⁶⁰ mention is made of 'Care Planning'⁶¹ or of a 'Guidance Plan'⁶². These plans evaluate the unaccompanied minor's overall situation. They also establish objectives (for example, developing abilities or responding to a particular need) and divide up tasks between the different

58. Articles 9 to 19 of 24TH DECEMBER 2002 - Programme act, Protection of unaccompanied minors

59. Focus group with unaccompanied minors 18.02.2015; Focus group with unaccompanied minors 17.02.2015; Interview with an actor from a reception centre 17.02.2015; Interview with an expert on the rights of the child 12.02.2015; Focus group with unaccompanied minors 21.01.2015; Focus group with professionals 20.01.2015; Interview with an expert on the rights of the child 07.01.2015; Interview with an expert on the rights of the child 20.08.2014; Interview with actors in reception centres du 17.07.2014.

60. CONNECT project, Working with the Unaccompanied Child. A Tool to Support the Collection of Children's Views on Protection and Reception Services, http://www.connectproject.eu/PDF/CONNECT-NLD_Tool2.pdf

61. Planification des soins

62. Plan d'orientation

actors. This support plan may be revised. As many actors consider that all aspects of the unaccompanied minor's life must be taken into account, using a multidisciplinary approach, it would be interesting to have a formal care plan for the child in the determination of the durable solution, which can be a source of important information providing an overview on the past and present needs and abilities of the child.

3.6. Unaccompanied minors from Europe

Since the 21st November 2014,⁶³ the definition of an unaccompanied minor in the Guardianship Law includes unaccompanied minors from countries of the European Economic Area (EEA) and Switzerland. Thus, a person under eighteen will be entitled to a guardian if they:

- are a national of a member state of the European Economic Area or Switzerland;
- are not accompanied by a person exercising parental authority or guardianship under the applicable law in accordance with Article 35 of the Law of 16th July 2004 of the Code of Private International Law;
- do not have a legal document certifying that the person exercising parental authority or guardianship has given them permission to travel and reside in Belgium;
- are not registered in the population register;

And if they are in one of the following situations:

- they have asked for a temporary residence permit on the basis of Article 61/2, § 2, paragraph 2, of the Law of 15th December 1980 on access to the territory, stay, establishment and return of foreigners;
- Or they are in a vulnerable situation.

Article 11 of the Guardianship Law, which states that it is the guardian's duty to find a durable solution for the unaccompanied minor, thus also applies to unaccompanied minors from Europe. However, the applicable procedure for unaccompanied minors⁶⁴ does not apply to those from Europe as the legislation employs the old definition of 'unaccompanied minors', which excludes nationals of the EEA. This raises the question of how the issues of return or stay will be considered for these particular unaccompanied minors. One hypothesis, based on parliamentary discussions conducted when the guardianship system was created, is that the guardian should try to find a durable solution with the embassy of the unaccompanied minor's country of origin. However, it would seem that in this scenario the only durable solution proposed is the minor's return or family reunification in the country of origin or in the country where they were permitted to stay. If this is the case, this may conflict with the role of the guardian to protect the best interests of the child which requires an examination of all possible durable solutions without privileging one in particular.

Recommendation 1: A legal framework needs to be developed allowing the guardian to exercise their role in finding a durable solution which takes into account the three possible options for unaccompanied minors from Europe: family reunification, return to country of origin and stay in Belgium. Checks that adequate and appropriate reception is guaranteed should also apply in the case of return within the European Economic Area or to Switzerland.

63. 12TH MAY 2014 - Law modifying title XIII, chapter VI, of programme act (I) of 24th December 2002 concerning the <protection> of unaccompanied foreign minors, published on 21st November 2014

64. 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor

3.7. Conclusion

Between 1,700 and 2,500 separated children arrive in Belgium each year. It remains difficult, without systematic identification to Belgian authorities, to have a quantitative analysis of the unaccompanied minors arriving and those already residing in the territory. Every minor who is not detected, reported or identified as separated is a minor who is left unprotected. Once an unaccompanied minor is identified, he/she will be entitled to a guardian, a suitable home and will be accompanied by his/her guardian and lawyer in the asylum process or in a procedure for residence. The unaccompanied minor's durable solution or life project will be the key thread throughout all stages of the unaccompanied minor's process in Belgium.

4. The dilemma of defining durable solution⁶⁵

4.1. Indefinite terminology and various interpretations

The Belgian legislation defines durable solution as family reunification, return to the country of origin or stay in Belgium.⁶⁶ Throughout this study, it became clear that many players struggle with this terminology and sometimes have a different definition in mind. Some use the terminology of 'durable solution' while others think rather in terms of 'life project'. The first issue that arose during this research was how to define durable solution with respect to its aim and also when to implement it. In each interview and focus group the question was posed as to whether the durable solutions were considered as determined by the residence or asylum procedure or whether the choice of durable solution determined the future of the child without reference to other factors.

The definition determines the objective sought but it also determines the tools, the procedure and the method to be used to determine the durable solution for the separated child. Several experts involved in this research highlighted that the concept of durable solution was to be regarded as a process and this involves a dynamic approach. Thus, the question is how to translate that into a formal, administrative procedure.

The aim is to have all aspects of the child's life considered in the decision regarding residence in Belgium or return, however the notion of 'durable solutions' goes beyond this decision and must incorporate the effective application of this durable solution through appropriate care. This care might involve aiding the child to integrate into Belgian society to allow them to become active citizens, or aiding the child to prepare for reintegration into their country of origin or in a third country.

Several elements emerged when analysing the two terms 'solution' and 'durable'. The term solution raised many questions as several interviewees understood by use of the term that there existed a problem. Moreover, for the majority of those involved in the study, the idea of finding a 'fixed' solution for young people who have whole lives yet to build is unrealistic. The term 'solution' implies an end but building a life is a process. The fact that guaranteeing a result was almost impossible was also mentioned. Thus, the term 'solution' is seen more as a response to a situation where a child is facing difficulties in the matter of residence and with regard to the future, rather than a true 'solution'. Some present it as the most appropriate solution possible at the time of considering the minor's situation.

The actors participating in the project considered the term 'durable' presented a challenge. Firstly, after how long can we consider something to be durable? After a year? After three years? Secondly, how can we ensure and verify the durability, especially where the solution might be found outside of Belgium? Despite the fact

65. Based on: Interview with an actor from a reception centre 17.02.2015, Interview with an expert on the rights of the child 12.02.2015, Interview with actors from institutions responsible in the matter of migration 02.2015, Interview with an actor from a reception centre 21.01.2015, Focus group with professionals 20.01.2015, Interview with an expert on the rights of the child du 07.01.2015, Interview with actors from the Guardianship service 2.10.2014, Interview with an expert on the rights of the child 20.08.2014, Interview with actors from reception centres 17.07.2014.

66. Article 61/14 of 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor

that this term raises many questions, this allows us to begin to reflect more long-term about the future of the child.

Many actors consider the term ‘life project’ because it integrates both the idea of a process and the idea of a future objective without fixing too limiting results. Nevertheless, it is also a concept which must be interpreted broadly as it is not necessarily one project but rather several projects. It is striking that in the legislation concerning the unaccompanied minor procedure, there is also a reference to the term ‘life project’ where the durable solution is determined to be in Belgium.⁶⁷ In contrast, when talking about return the terminology of ‘life project’ is not used.

The term ‘life project’ also refers to the concept of ‘life plan’ developed by the Council of Europe. It is referred to on the website of the Guardianship Service as a “methodological framework” for guardians.⁶⁸ According to 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 by 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.”⁶⁹

The life project must consider the following elements:⁷⁰

- 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;
- 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;
- the minor’s family environment and particularly the nature of his/her family ties;
- the minor’s expectations, wishes and perceptions;
- 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, sex discrimination and other potential dangers), the availability of appropriate care and support, including reception;
- the specific guarantees afforded to unaccompanied minors seeking asylum, in particular regarding non-refoulement and the identification of durable solutions;
- the situation in the host country: the political, legislative and socio-cultural context; availability of opportunities for the minor, including the level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country.

If the concept of ‘life project’ is considered a useful tool, it is not easy to put into operation and does not sufficiently take into account the dynamic element of a project, especially in the case of developing children.⁷¹

67. Article 61/21 de 12 SEPTEMBRE 2011. - Loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de l'octroi d'une autorisation de séjour temporaire au mineur étranger non accompagné

68. http://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/mineurs_etrangers_non_accompagne/tuteur/

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

70. Ibidem.

71. Reyngaert, J., Derluyn, I., & Vandenhole, W., “Van duurzame oplossing naar levenstraject voor niet-begeleide buitenlandse minderjarigen” dans Christiane Timmerman, I. Lodewyckx, E. Vanderwaeren, & D. Vanheule (Eds.), *Mintegratie, over nieuwe vormen van migratie en integratie* (pp. 247–281), Brussel: University Press Antwerp (UPA), 2011

The interpretation of the term ‘durable solution’ faces several difficulties. Firstly, the definition we give to ‘durable solution’ depends on our perception of unaccompanied minors: do we perceive them as migrants or children? This choice determines the definition, laws and therefore also the procedure to be adopted for determining this durable solution. The second point, but related to the first, regards the scope of the analysis that is required in order to determine a durable solution. On the one hand, there is a broad and inclusive interpretation of the durable solution as a holistic reflection on the process of the minor’s life, and on the other there is an interpretation that aims to determine a place to live in the framework of administrative procedures.

Despite these difficulties certain components are necessary. A durable solution considered in the widest sense, or considered as a life project should:

- generate the capacity to be and become oneself;
- allow one to develop;
- allow one to acquire autonomy;
- aim to build a future and establish a project that continues beyond the age of 18;
- take into account all aspects of the minor’s life;
- suggest a supported plan with stages, in collaboration with all stakeholders surrounding the unaccompanied minor, through a dynamic process that takes into account the different possibilities and the context in which the child evolves.

5. The durable solution options in Belgium defined in terms of residence procedures

5.1. International protection

The term ‘refugee’ applies to *“any person who, [...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence [...], is unable or, owing to such fear, is unwilling to return to it.”*⁷²

The status of ‘subsidiary protection’ is granted to a non-national who cannot be considered as a refugee and cannot be granted a right of residence for medical reasons (on the basis of Article 9ter (9c) of the law of 15 December 1980) and for whom there are substantial grounds for believing that, if returned to his/her country of origin, would face a real risk of suffering serious harm. It must also be clear that the person is unable or unwilling to avail of the protection of his/her country because of a risk of serious harm to themselves and that the serious harm is not within the exclusion criteria.⁷³

The following are considered examples of ‘serious harm’:

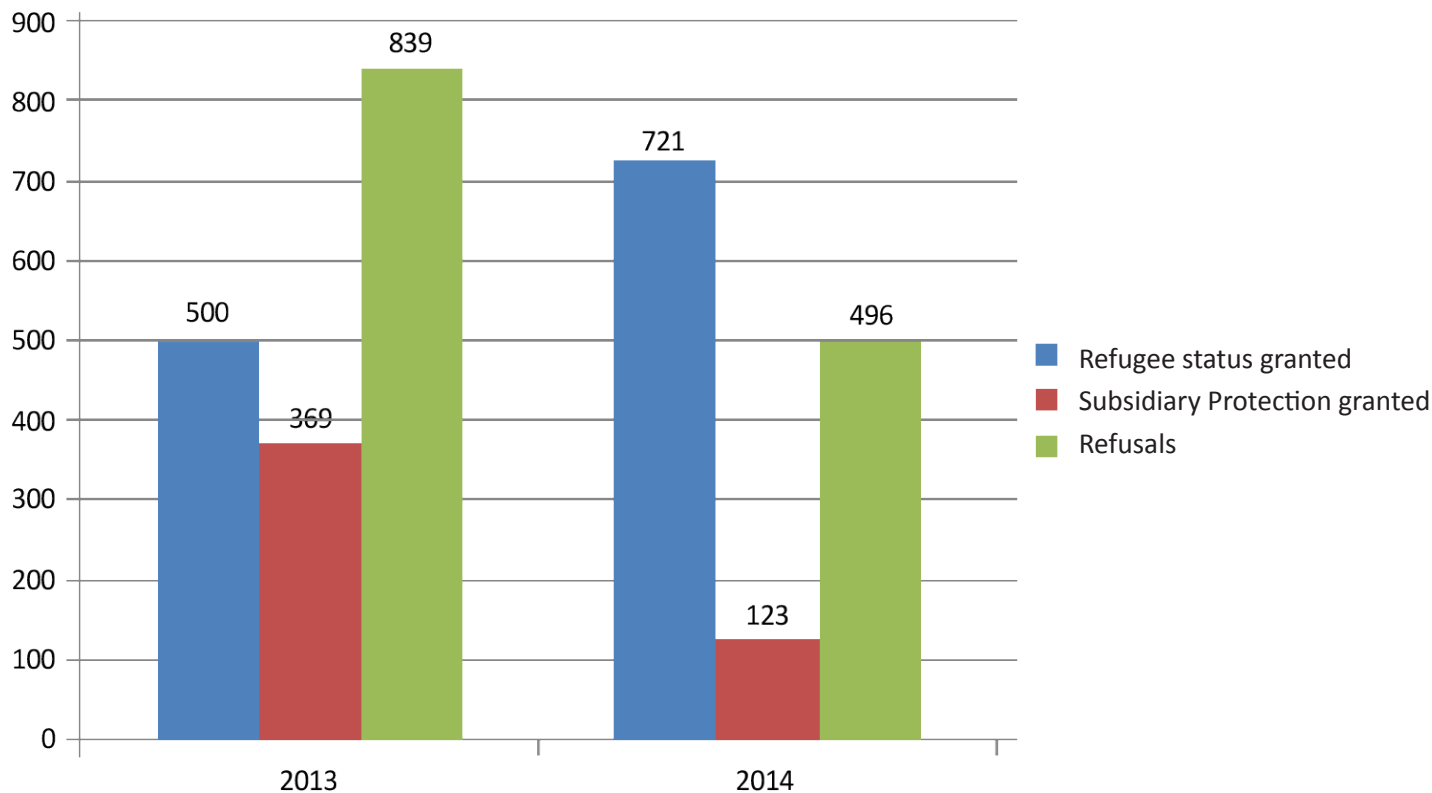
- a) The death penalty or execution; or
- b) Torture or inhuman or degrading treatment or punishment of the applicant in the country of origin; or
- c) Serious threats against the life or person of a civilian by reason of indiscriminate violence in situations of international or internal armed conflict.

72. Article 1 UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Geneva Convention

73. Article 1 F of the Geneva Convention includes certain exclusion clauses: “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

A person applies for refugee status or for subsidiary protection by applying for asylum. In this single procedure priority is given to examination of refugee status. If the Geneva Convention does not apply, the application will then be examined under subsidiary protection.

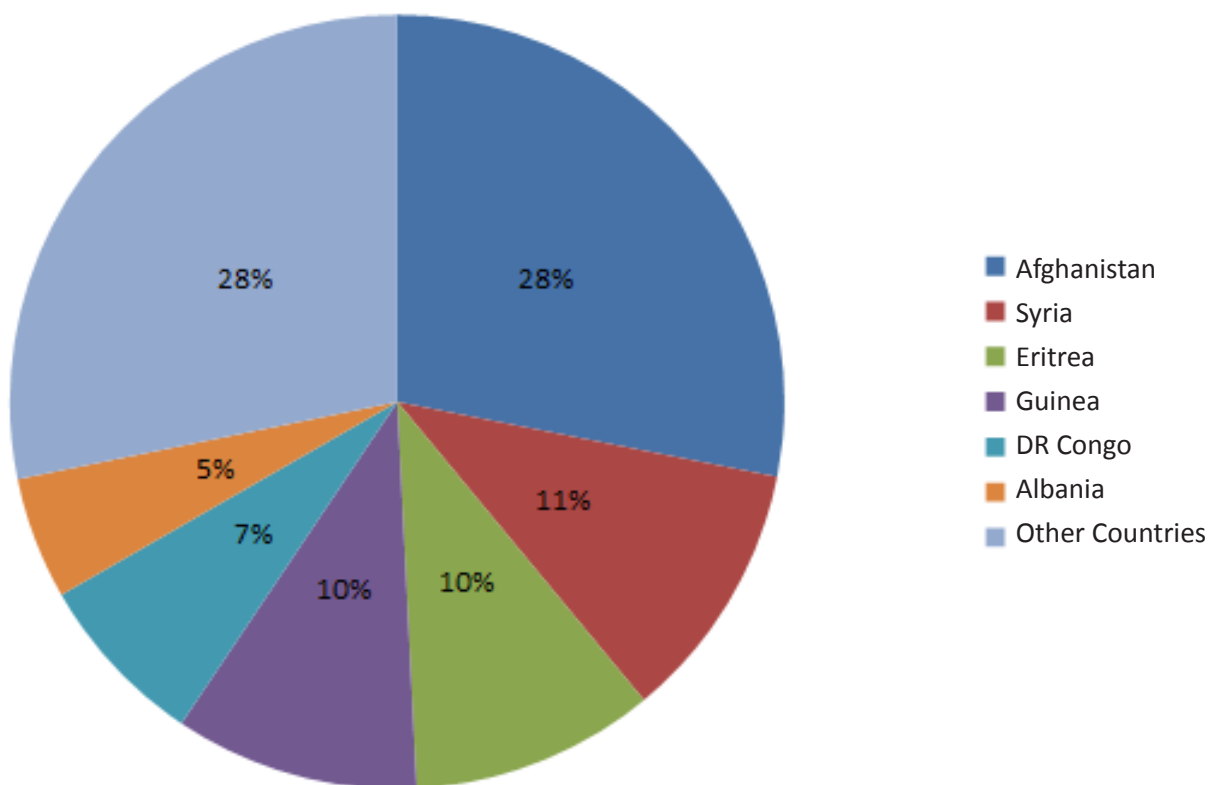
Table 2: the results of applications for international protection



Source: Office of the Commissioner General for Refugees and Stateless Persons, 2015

The top five nationalities that received recognition as a refugee in Belgium in 2013 are: the Guinea (134), Afghanistan (80), unknown nationality (39), DR Congo (35), and Iraq (28). There are 184 other nationalities in addition to this. The top five nationalities that received subsidiary protection in 2013 are: Afghanistan (340), Syria (13), Iraq (6), Guinea (4), DR Congo (2). There are four other countries in addition to this. In 2014, it is quite striking to see that the majority of applicants were recognised as refugees. There are a few possible reasons for this. In 2014, many arrived from countries experiencing very violent conflicts, for example Eritrea and Syria, and unaccompanied minors arrived from countries where the security situation had deteriorated, for example Afghanistan.

In 2013, 234 girls and 266 boys were granted refugee status. Subsidiary protection was granted to 10 girls and 359 boys. It is interesting to note that the vast majority of girls seeking international protection are granted refugee status rather than subsidiary protection. This could be explained by the fact that girls are more often victim of proven persecution to a particular social group (risk of female genital mutilation, forced marriage...).



In a few years we have seen a change in the nationalities of unaccompanied minors, particularly among asylum seekers. Those coming for example from Iraq (in the top 5 between 2007 and 2011) are fewer and fewer while unaccompanied minors from Syria or Eritrea were very few until the years 2013-2014.⁷⁴

5.2. Human Trafficking

Definition

Trafficking in persons⁷⁵ is defined as “the recruitment, transportation, harbouring or receipt of a person, to move or transfer the control over this person for the purposes of exploitation.” There is an exhaustive list of the areas of exploitation in the Penal Code.

These are:

- the exploitation of the prostitution of others or child pornography;
- the exploitation of begging;
- forced labour in conditions contrary to human dignity;
- the removal of organs;
- making a person commit a crime or an offence against his/her will.

In these cases, the victim can obtain protection from the Belgian authorities and can be issued with a residence permit, under certain strict conditions.

Conditions:

1. The foreigner does not possess a residence permit;

⁷⁴. Statistics from the CGRA : 2007,2008, 2009, 2010, 2011, 2012, 2013, 2014.

⁷⁵. Article 443d of the Penal Code.

2. The foreigner has severed ties with the alleged perpetrator or the trafficking network
3. The foreigner is cared for by a recognised specialised centre for victims. There are three such in Belgium: Pag-asa in Brussels, Payoke in Antwerp and Sürya in Liège. These organisations care for the victim throughout the procedure. They will submit applications for residence permits with the minors and trafficking in human beings section of the Foreigners' Office (Bureau MINTEH).
4. The foreigner is willing to cooperate with the competent authorities, that is to say, to make a statement or complaint.

The reception and accommodation of victims who are minors is done in Esperanto centres (French Community) or Minor Ndako and Juna (Flemish Community).

The residence procedure⁷⁶

For unaccompanied minors, the 'human trafficking' procedure is organised in three phases:

First phase

When the police suspect that a foreign minor is a victim, they classify him/her as such and inform the Foreigners' Office. The minor is informed of the possibility of obtaining a residence permit as a victim, provided they cooperate with the competent authorities responsible for the investigation. It is required that the minor accepts to be cared for by an authorised reception centre specialised in the reception of victims and if they do they receive a certificate of immatriculation valid for three months. This may be extended by three months if required by the investigation or if the Foreigners' Office deems it appropriate taking into account the facts of the case. While this residence document is valid the unaccompanied minor may, in consultation with his/her guardian, decide to lodge a complaint or testify against his/her traffickers.

At the end of this first phase of three months but before the expiration of the residence document, the Foreigners' Office asks the Public Prosecutor or the magistrate (l'auditeur du travail) if the minor can still be considered a victim.⁷⁷

Second phase

If the Public Prosecutor or the magistrate (l'auditeur du travail) issues a positive opinion and considers the minor not to be a threat to public order or national security, the Foreigners' Office permits the minor to stay for a six month period by granting a Certificate of Immatriculation in the Register of Foreigners (Certificat d'Inscription au Registre des étrangers) and includes him/her in the register of foreigners. This residence permit is renewed as long as the above conditions are fulfilled and until the Criminal Court delivers its judgment concerning the person accused of human trafficking.

Third phase

The law provides that the Foreigners' Office "may" allow a child victim to stay indefinitely if his/her testimony or complaint resulted in conviction of the traffickers involved or if the Public Prosecutor or the magistrate (l'auditeur du travail) stated in his/her closing argument that human trafficking or trafficking in aggravating circumstances as provided for in Article 77quater (77c) of the Criminal Code, was prevented.

In 2013, there were 201 report of trafficking in human beings for the purposes of child pornography, two (compared to 2011) to four times (compared to 2012) that in recent years.⁷⁸ These figures do not include

⁷⁶. This can be found in the law of 15th December 1980 on foreigners – articles 61/2 to 61/5 and in the Royal Decree of 8th October 1981 enforcing this law – articles 110a and 110b.

⁷⁷. The opinion will focus on three questions: Is the enquiry or the judicial process still in progress? Is it clear that the minor is willing to cooperate? Has the minor broken all links with the alleged actors of the crime?

⁷⁸. Source: General National Databank, Police cited in: Federal centre for analysing migratory flows, the protection of basic rights of foreigners and the fight against the treatment of human beings, 2013 annual report from Independent Reporter, p. 85.

other reports of sexual exploitation, which do not distinguish between adults and minors. The figures also do not distinguish between accompanied and unaccompanied minors. In 2013, only four minors received a residence permit on the basis of sexual exploitation.⁷⁹

Unaccompanied minors are a particularly vulnerable group due to their age, their isolation and their limited knowledge of the Belgian authorities' protection procedures. They are at an increased risk of being exploited by trafficking networks. To be recognised as victims of human trafficking, these children must collaborate with the judicial authorities in order to receive protection and possibly a residence permit. This is a significant obstacle for these children who often develop a fear of judicial and state authorities in their country of origin. Many unaccompanied minors do not dare to apply for recognition as victims of human trafficking, often for fear of reprisals or because of the uncertainty of obtaining a residence permit. This is reflected in statistics.⁸⁰

Recommendation 2: The recognition of being a victim of trafficking and the and residence rights that are linked to this status should not be systematically conditioned by the fact that the victim provides information to the judicial authorities or testifies against their exploiters. It is clear that this information is particularly useful to the judicial authorities in order to pursue trafficking networks and thus this should be encouraged. For unaccompanied minors who feel they are not able to cooperate with the judicial authorities, it is important to allow for granting of the status of a victim of trafficking based on the criterion of 'objective victimisation'. In this context, "the status of victim may be granted if it is proven by various bodies, with a multidisciplinary approach"⁸¹

5.3. The granting of a temporary residence permit, called 'unaccompanied minor procedure' on the basis of the Law of 12 September 2011

The 'unaccompanied minor procedure' aims to identify a durable solution for an unaccompanied minor who has not applied for asylum or whose application was rejected. The Act of 12 September 2011 defines durable solution as follows:

- *Family reunification, in accordance with Articles 9 and 10 of the UN Convention on the Rights of the Child of 20 November 1989, in the country where parents lawfully reside; or*
- *Return to the country of origin or to the country where the unaccompanied minor is permitted to stay with guarantees of a place to stay and adequate care, depending on age and degree of autonomy of the minor, either from the parents or other adults who will take care of the minor, or by public bodies or non-governmental organisations; or*
- *Permission to remain in Belgium, given the provisions of the law;*

It is the guardian who proposes the durable solution. The law favours maintaining the family unit and thus guardians are asked to prove that the first two durable solution options are not possible before considering remaining in Belgium. It is the minors and trafficking in human beings section of the Foreigners' Office (Bureau MINTEH) that makes the decision. Any decision by the Foreigners' Office is capable of being the subject of an action for annulment by the Conseil de Contentieux des Etrangers.

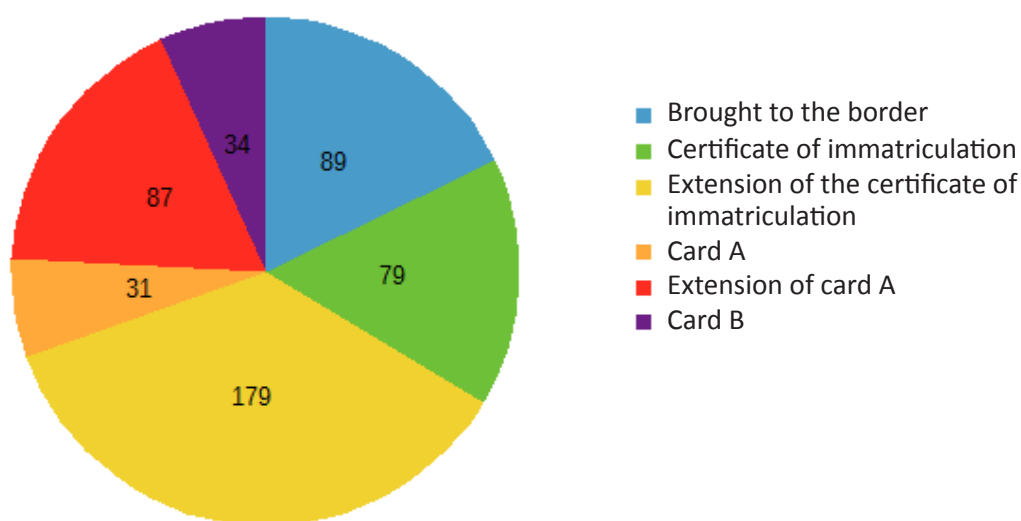
79. Source: OE, Adaptation Centre, cited in: Federal centre for analysing migratory flows, the protection of basic rights of foreigners and the fight against the treatment of human beings, 2013 annual report from Independent Reporter, p. 92-93.

80. See figures on the treatment of human beings, page 34 of the report.

81. Voy. Centre equal opportunities and the fight against racism, "Report on the treatment of human beings. Victims under the spotlight", July 2007, page 35 and VERMEULEN, G., "The Belgian policy regarding the treatment of human beings - Report, evaluation and future options", King Baudouin Foundation, December 2006 p.81 : "a disassociation with the granting of the cooperation status with the courts, or at least a softening of conditions is the only acceptable moral scenario concerning (unaccompanied) minor victims".

At the first proposal for a durable solution, it is possible to get an order to be brought to the border⁸² (Annex 38) or a certificate of immatriculation, valid for 6 months (corresponding to an undetermined durable solution). The guardian may also file a request for a temporary stay of one year (Card A) on the basis of Article 61/20 or request an extension of the certificate of immatriculation if a durable solution is still undetermined, based on the Article 61/19.⁸³

Residence permits in the context of the special procedure for unaccompanied minors



Source: Foreigners' Office, figures for 2013⁸⁴

According to the Foreigners' Office's report in the section relating to demographics⁸⁵ 911 unaccompanied minors who were not seeking asylum entered Belgium in 2013. However, only 165 applied under the 'unaccompanied minor procedure' in accordance with the Act of 12 September 2011.⁸⁶ This difference of 746 unaccompanied minors is striking. We can hypothesise that some arrived late in the year and thus submitted their application during the following year, however this cannot completely account for the difference. We can assume that a number of unaccompanied minors disappear, but it is then necessary to consider the reasons for their disappearance and consider where they might be. Some may continue their journey while we assume others did not find the help they needed in Belgium. Another hypothesis is that for some unaccompanied minors no procedures were initiated. Perhaps some guardians do not know the procedure for unaccompanied minors to remain in Belgium, or perhaps the minor, being close to majority, does not have much chance of getting a residence permit and does not wish to be known to the Foreigners' Office.

Recommendation 3: A thorough study must be conducted to determine why there is a difference between the number of unaccompanied minors arriving who do not seek asylum and those who submit an application for residence. Particular attention should be paid to the possible causes of unaccompanied minors' disappearances.

⁸². An annex is delivered to the guardian. It is not the same document as a removal or deportation order that is given to adults.
⁸³. 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor
⁸⁴. https://dofi.ibz.be/sites/dvzoe/FR/Documents/2013_FR.pdf, p.125. 499 decisions were taken in 2013.
⁸⁵. See point 3.1
⁸⁶. European Migration Network, Policies, Practices and Data on Unaccompanied Minors in Belgium (2014 update), October 2014, available at: http://www.emnbelgium.be/sites/default/files/publications/be_contribution_emn_study_on_unaccompanied_minors.pdf

5.4. Combining the procedures

On 3 October 2014, a bill was introduced to allow the cumulative introduction of the asylum procedure and the ‘unaccompanied minor procedure’.⁸⁷ This text was adopted on 22 January 2015 by the Parliament and received Royal Assent on 26 February 2015. The law, which was published in the Belgian Official Gazette (Moniteur belge) on 16 March 2015 was described as follows: *“This bill is a further step in the protection of unaccompanied minors.⁸⁸ An adult refugee can submit several procedures simultaneously, unlike the unaccompanied minor, who must chose between submitting an application for asylum or an application for subsidiary protection. Until now, the unaccompanied minor cannot combine the two procedures. The minor therefore risks having their asylum application refused after a long process and it will be too late to apply for other protection. On the other hand by combining the two procedures, this protection will be always guaranteed.”⁸⁹*

The guardian now has the opportunity to apply, on behalf of the child, for a number of procedures; if he/she considers that it is in the best interests of the child. There are a number of issues to be addressed in order to implement this law, in particular the question of how the procedures should be carried out (what is examined, when and by whom?); how the documents will be issued (which document is issued in accordance with which procedure and does the issuing of a document in the course of one procedure impact on the other procedures?); the issue of family tracing and family assessment. How can we ensure, as part of the two procedures, that, by the method and the actors involved (training, independence...), the family assessment will meet all the necessary guarantees so as not to endanger the minor and his family? These issues need to be resolved in practice or by the legislator.

Recommendation 4: The combination of the procedures must ensure that if the family in the country of origin is contacted the safety of the child and his/her family is guaranteed, as well as the consent of the minor. The stages of the procedure and the issuance of documents must be organised so that the merging of the procedures is effective.

5.5. Regularisations

Pursuant to Article 9bis of the Foreigners’ Act,⁹⁰ a foreigner - who has an identification document - can apply for a residence permit valid for more than three months in Belgium owing to humanitarian circumstances. This aim of this residence procedure is to regularise the foreigner’s situation. Authorisation of a residence permit under Article 9 is discretionary; it is not a right. In fact, the law does not specify under which conditions residence on humanitarian grounds is permitted in Belgium. The law gives the Foreigners’ Office discretion to grant this residence.

A foreigner who suffers from a serious illness for which there is no adequate treatment in his/her country of origin, can apply for a residence permit under Article 9ter of the law of 15 December 1980, which is valid for three months or more. To obtain a residence permit on these grounds the foreigner must have a sufficiently grave state of health or there is a real risk to the foreigner, such as:

- The life or the physical integrity of the foreigner is in danger; or

87. Parliamentary document 54K0377, Draft bill modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor.

88. Translator’s note: for clarity there is a change to the original quotation. The original quotation refers to the bill as the “third step” in the protection of unaccompanied minors. This refers to the two previous steps taken by the legislature in the matter of unaccompanied minors. See the report quoted below.

89. House of Representatives of Belgium, Report produced in the name of the Committee for the Interior, from general cases and the public function on the proposal of the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor, of 15th January 2015, DOC54 0377/003, p.4

90. 5 DECEMBRE 1980. - Loi sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers.

- The foreigner is at risk of inhuman or degrading treatment if returned to the country of origin.

There are no exact figures for the number of applications based on the regularisation procedure for unaccompanied minors and outcome of these. Given the existence of other procedures and the overall low rate of successful outcomes for these procedures, we can assume that very few unaccompanied minors enter these procedures or have their residence status regularised on this basis.⁹¹

5.6. Family reunification

Family reunification, as part of the ‘unaccompanied minor procedure’ in accordance with the law of 12/09/2011, is considered only in the case of return to the country of origin. Only unaccompanied minors who are recognised as refugees or granted subsidiary protection, including on medical grounds (article 9ter of the Law of 15 December 1980),⁹² can apply for family reunification in Belgium. Family reunification in this context applies only to parents and does not include the siblings of the unaccompanied minor. In practice humanitarian visas are easily obtained for siblings accompanying parents but some difficulties can be observed. One unaccompanied minor interviewed during the course of this study stated that his parents obtained visas but not his four-year-old brother or his six-year-old sister. He did not understand why his parents were being asked to “choose between their children.” However, there is no legal basis allowing an unaccompanied minor to be joined by his brothers and sisters if they are orphans. The right to family life is conceived in a very restrictive way, excluding any possibility of family life for a minor who has lost his/her parents. Furthermore an unaccompanied minor who has obtained permanent residence on the basis of the ‘unaccompanied minor procedure’ will not be able to apply for family reunification as an unaccompanied minor. It is surprising that the child’s right to family is considered differently depending on the basis on which he/she obtained a residence permit.

Recommendation 5: “In order to maintain family unity and in the best interests of the child, it would be desirable to broaden the notion of family members of the beneficiary of international protection in Belgium to include family members who are part of the family unit or who are dependent.”⁹³

5.7. Voluntary return

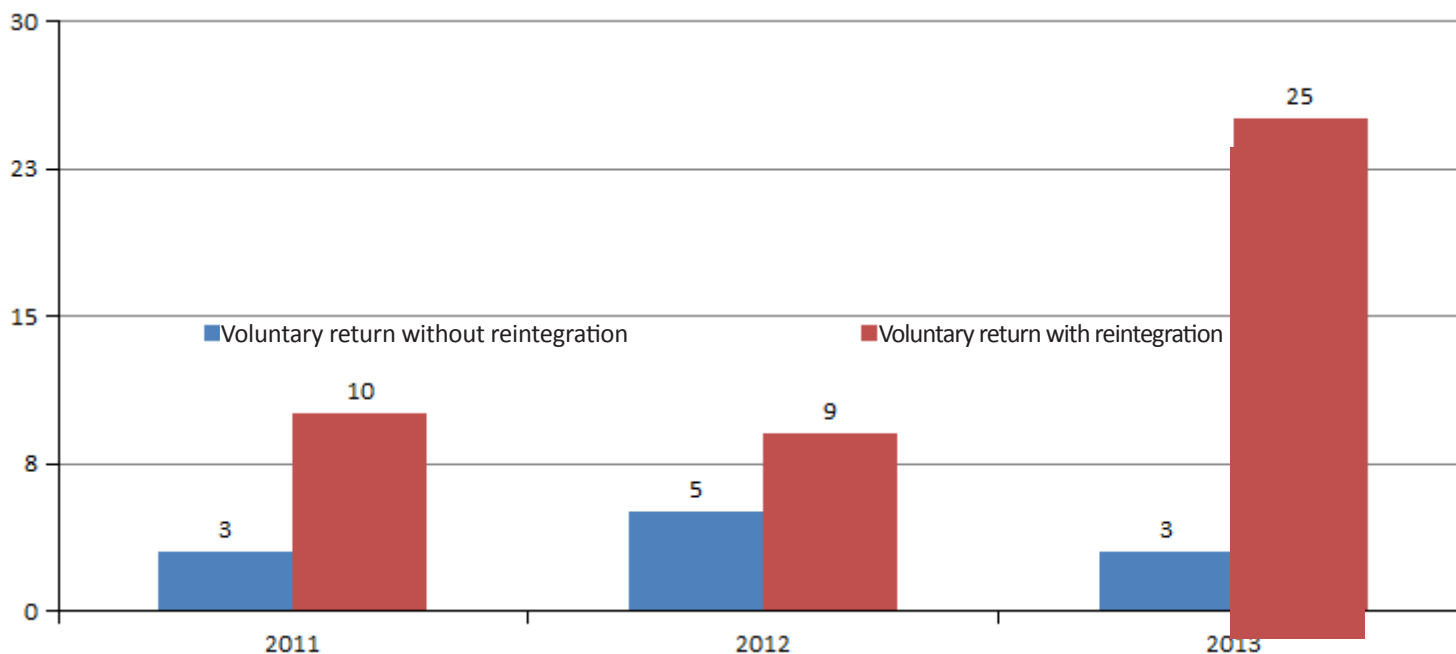
In certain cases, voluntary return to the country of origin may be the durable solution. Forced return is not applied in Belgium; while the minor is under 18 they can return voluntarily. A voluntary return involves the consent of: 1. the minor; 2. the guardian, and 3. the parent or person acting as guardian in the country of origin or third country. The International Organization for Migration (IOM) and Caritas are the organisations that offer voluntary return services and/or reintegration for the unaccompanied minor. Overall, the figures remain low.⁹⁴ In recent years, the *return journey* was included into the support offered by Fedasil in its centres. Information on voluntary return is offered to all asylum seekers upon arrival.

91. 5TH DECEMBER 1980 - Law on access to the territory, the stay, establishment and removal of foreigners.

92. (CC, 121/2013, 26 September 2013, B.25.2.). See :http://www.adde.be/J_15/index.php?option=com_content&view=article&id=212:maj-eu-sejour-illimite#regroupant

93. UNHCR & CBAR, « Le regroupement familial des bénéficiaires de protection internationale en Belgique – Constats et recommandations », juin 2013.

94. For 2013 and 2014 we have not succeeded in finding distribution by nationality.



Source: Fedasil⁹⁵

It is important to remember that:

“Before a separated child can return to their country of origin, or be resettled in, or transferred to, a third country a best interests determination must be undertaken. This must be multi-disciplinary in nature involving a range of relevant agencies. The outcome of this determination must, as a minimum, be informed by the following:

- *A careful determination of whether it is safe to return the child to their home country or to the proposed transfer or resettlement country, taking into consideration risks of persecution, of being involved in armed conflicts, of violence and abuse, and of being exploited;*
- *The child’s carer or guardian in the host country agree that return, transfer or resettlement is in the child’s best interests;*
- *A careful social assessment is made of the family situation in the home country or proposed country of resettlement or transfer. Parents or carers must prove their identity and it will be necessary to investigate the willingness and ability of the child’s family (parents or other family members) or other carers to provide appropriate care;*
- *A careful assessment is undertaken concerning access to food, housing, health care, education, vocational training and employment opportunities in the country of origin or proposed country of resettlement or transfer;*
- *The child’s parents, relatives or other adult carers agree to provide long-term care upon the child’s arrival in the country of origin or country of resettlement or transfer;*
- *The family’s views on the child’s return, resettlement or transfer, must be investigated and taken into consideration;*
- *The child is fully informed and consulted at all stages and is provided with appropriate counselling*

95. European Migration Network, Policies, Practices and Data on Unaccompanied Minors in Belgium (2014 update), October 2014, available at: http://www.emnbelgium.be/sites/default/files/publications/be_contribution_emn_study_on_unaccompanied_minors.pdf

and support. The child's views on return, resettlement and transfer must be taken into consideration, in accordance with their age and maturity;

- *Prior to the return, resettlement or transfer, regular contact between the child and their family is facilitated;*
- *A reintegration plan is drawn up in collaboration with child welfare services in the country of origin, resettlement or transfer.”⁹⁶*

In several previous studies, it was found that return to the country of origin was a very sensitive subject, which in some cases lead to a breakdown of trust between the unaccompanied minor and the guardian.⁹⁷ Some unaccompanied minors consider return to be a failure because they believe they have not succeeded, did not fulfil their family's or community's wishes. The importance of creating a durable project in the case of being returned cannot be understated and is a crucial aspect in the discussion on the voluntary return.

5.8. Dublin III Regulation⁹⁸

In essence, we cannot consider the transfer of an unaccompanied minor under the Dublin III regulation as a durable solution because it does not establish either a permanent place to live, nor status, nor a 'life project'. Nevertheless Dublin III was repeatedly mentioned in interviews. Unaccompanied minors did not understand the existence of the Dublin procedure and were frustrated that they could not join members of their family more easily. The migration authority also regrets not having more facilities for the sharing of information between European countries and the long delays the minor must face before they are able to rejoin their family in another country of the European Union.⁹⁹

Recommendation 6: Greater collaboration is needed between European countries to facilitate the sharing of information and contacts. A Dublin III transfer to family members in another European states, when this is in the best interests of the child, must be facilitated between European countries.

5.9. Conclusion

In Belgium there are several procedures aimed at regularising the minor's stay in Belgium. The two main procedures are applying for international protection and the 'unaccompanied minor procedure', which intends to seek a durable solution for minors who do not apply for international protection or who have been unsuccessful in the asylum procedure. Since 16 March 2015, it is possible to apply for these two procedures together. The possibility of these procedures to operate in parallel still raises a number of questions. The other residence procedures, such as regularisation or recognition as a victim of human trafficking are rarely used. Voluntary return of the unaccompanied minor may also, in individual cases, be a durable solution. The difficulty of talking about return and the thought of return as a failure (by the unaccompanied minor or the family and community) mean that this solution is rarely used by unaccompanied minors. Other procedures, such as family reunification or transfer via the Dublin III Regulation have an impact on the durable solution but are not in themselves durable solutions.

96. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html>

97. FOURNIER, K., « Implémentation des standards de qualité pour les tuteurs de mineurs non accompagnés en Europe. Evaluation pays : Belgique », 2014, p.39

98. Regulation (EU) No604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

99. Interview with actors from the institution responsible for matters of migration 13.02.2015

6. Who is responsible for determining the durable solution?

6.1. The guardian

The guardian is responsible for proposing a durable solution. Article 11. § 1. of the Guardianship Law states that¹⁰⁰“The guardian shall take all appropriate measures to search for family members of the minor. He/she makes proposals as he/she deems appropriate with regard to finding a durable solution in the interests of the latter.” It is the guardian who introduces the first application for a durable solution for the unaccompanied minor, as well as applications for extensions of documents or life project proposals.

This application must contain the following elements:¹⁰¹

- the surname, first name, telephone or mobile number, fax number, email address and the guardian’s address;
- the surname, first name, place and date of birth, nationality, the reference number given by the Foreigners’ Office and the chosen address of the unaccompanied minor;
- a copy of the passport or equivalent travel document. If the minor has no passport, the guardian agrees to take steps to get one;
- any documentary evidence attesting to the truth of the points made in the claim;
- an address to send the notice of the hearing
- the request to have the assistance of an interpreter and indicating the language;
- the steps taken in the country of origin or country of residence by the guardian to search for family members and the results obtained.

This implies that the guardian has collected the necessary information and may provide information (or evidence as to) the situation of the minor or demonstrate that steps have been taken to find the required information.

The guardian is present at all hearings with the Foreigners’ Office (FO). Upon delivery of the report of the hearing by the agent of the FO, the guardian may make additions or corrections and must obtain a copy of the report. The actors involved consider that being able to obtain a copy of the report is progress in comparison with existing practices in the time of the circular of 15 September 2005.¹⁰²

The surprising difference in the guardian’s role in the asylum application and in the ‘unaccompanied minor procedure’ was emphasised. In the first case, the guardian’s role of one of giving information and support, but the guardian has a passive role regarding finding evidence. He/she has no role in determining the status. In the ‘unaccompanied minor procedure’, on the other hand, the guardian is expected to take an active role both in the search for evidence but also the proposal and determination of a durable solution.

Searching for and identifying a durable solution for the unaccompanied minor is the cornerstone of the care offered by the guardian. It is therefore regrettable that the guardian has few tools and support for this particularly complex mission.¹⁰³ Training for guardians addresses this issue in a few hours; there are no methodology tools

100. 24 DECEMBRE 2002 - Loi-programme, Tutelle des mineurs non accompagnés

101. Article 110e of 7TH NOVEMBER 2011 - Royal Decree modifying the Royal Decree of 8th October 1981 on access to territory, the stay, establishment and removal of foreigners.

102. 15TH SEPTEMBER 2005 - Memorandum relating to the stay of unaccompanied foreign minors. This text was amended on 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor.

103. Interview with an actor from a reception centre 17.02.2015; Interview with an expert on the rights of the child 12.02.2015; Interview with actors from the institution responsible in matters of migration 13.02.2015; Interview with an actor from a reception centre 21.01.2015; Focus group with professionals 20.01.2015; Interview with an expert on the rights of the child 20.08.2014; Interview with actors from reception centres 17.07.2014.

available to guardians and necessary information (e.g. the family situation, the regional situation, etc.) are hard to find. Finding the information is dependent on the guardian's ability to find the necessary contacts, to build a network, to gain the confidence of the young person and/or his family.

6.2. Foreigners' Office

The Foreigners' Office (FO) has the power to determine the durable solution and delivers documents based on the durable solution adopted.

The FO is obliged to listen to the minor in the context of the 'unaccompanied minor procedure'. Indeed, article 61/16 states that, "[t]he Minister or his delegate listens to the unaccompanied minor, who is accompanied by his/her guardian."¹⁰⁴ The FO may request a second hearing.¹⁰⁵ Before the hearing, the officer of the FO should explain how the hearing will unfold and clarify what is its purpose. The officer will also compile a report of the hearing which reflects the questions asked and the answers obtained.

In cooperation with diplomatic missions,¹⁰⁶ the FO has also, for some countries, the opportunity to request that the family members of the unaccompanied minor are sought to determine the durable solution.

6.3. The lawyer

A lawyer can be consulted at the time of choosing the procedure. The lawyer can be present at the unaccompanied minor's asylum application hearing. When the guardian submits a request for a durable solution, the lawyer may also be present at the FO's hearing, but this is optional. The choice of having a lawyer present at the FO's hearing was a new element of the Act of 12 September 2011,¹⁰⁷ which replaced the circular of 15 September 2005.¹⁰⁸ The lawyer also has an important role to play during the appeal at the Raad Voor Vreemdelingenbetwistingen/Conseil du contentieux des étrangers, particularly when the guardian and/or the lawyer believe that the durable solution agreed by the FO is not in the child's interests. Given the importance of the lawyer in the procedure it is important that lawyers are familiar with the procedure, the possibilities of appeal and are familiar with the particularities of unaccompanied minors. Outside the Unaccompanied minor section of the Legal Aid Office (LAO) in Brussels there are no specialized sections in other Bars.

6.4. The Guardianship Service

The role of the Guardianship Service is, inter alia, allow a space for dialogue between the decision-making bodies. Indeed Article 3§3 of the Royal Decree of 22 December 2003¹⁰⁹ on guardianship for unaccompanied minors indicates that the role of the service is to "[c]oordinate contact with the competent authorities for asylum, entry, residence and deportation, with the competent authorities in terms of reception and accommodation, as well as the authorities of the countries origin of minors, particularly in order to seek their families or other host structure."

There is broad agreement among the stakeholders interviewed that the Guardianship Service should take a greater role in determining durable solutions, including in giving information, training and support for guardians and

104. 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor.

105. Article 61/19 § 2. En fonction des éléments et documents probants qui lui sont transmis, le ministre ou son délégué peut décider de procéder à une nouvelle audition du MENA, qui est accompagné de son tuteur. 12 SEPTEMBRE 2011. - Loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de l'octroi d'une autorisation de séjour temporaire au mineur étranger non accompagné. Translation: "On the basis of certain elements or documents, the minister or his/her delegate can decide to schedule another hearing for the minor, who is accompanied by their guardian."

106. There is no legal basis or formal framework regarding the search from family members within the 'unaccompanied minor procedure'.

107. 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor.

108. 15TH SEPTEMBER 2005 - Memorandum relating to the stay of unaccompanied foreign minors.

109. 22ND DECEMBER 2003 – Royal Decree enforcing Title XIII, Chapter 6, "Protection of unaccompanied minors" of the Programme act of 24th December 2002.

also in contacting the countries of origin. Currently, according to most people interviewed, this role is not yet sufficiently exercised by the Guardianship Service mainly because of a lack of human and financial resources.¹¹⁰

6.5. Other actors:

Through interviews and focus groups, it appeared that it would be interesting to include other actors in the debate on durable solutions. Currently, there is no formal role for actors such as social workers and educators of reception centres, psychologists, the extended family or the unaccompanied minor's host family. Of course, if the guardian consults these people they can share the information they have. According to some actors interviewed, staff of the reception centres could give input on psycho-educational issues.¹¹¹ They are the ones that have the most extensive knowledge of the unaccompanied minor's personality and perhaps also his/her experiences. Contacting the extended family may reveal more information on the family situation (in the country of origin), while a host family may have the most comprehensive view of all the aspects of the minor's life. The important role of mental health professionals was stressed consistently, both to ensure care for the minor, to possibly reveal parts of the minor's story, and to ensure that the hearings do not further traumatise the child. Moreover we should not forget the fundamental importance of access to specialised, free and neutral interpreters, allowing the young person to receive all necessary information, to share his/her story and participate in the process of determining the durable solution.

6.6. The unaccompanied minor

The unaccompanied minor is of course a key player in determining the durable solution. The minor's participation is discussed in more detail in section 7.1 and chapter 8.

6.7. Conclusion

With respect of determining a durable solution for unaccompanied minors it is the guardian who proposes the durable solution and it is the Foreigners' Office that makes the decision. Through interviews and focus groups an important consensus emerged regarding the need for more interdisciplinary professionals in the determination of the durable solution and in order to enhance the effective role of the Guardianship Service. An interdisciplinary approach is needed to effectively take into account all the aspects of the unaccompanied minor's life and ensure both a comprehensive and individual approach. These actors need to be trained, available, specialised and free so as to ensure that every unaccompanied minor can benefit from quality support and proper implementation of his/her durable solution.

7. Durable solutions in practice

7.1. When is a durable solution applied and how can it be revised?

When the durable solution to be applied is a central issue when talking about durable solutions. On the one hand, it takes time for the minor to tell his/her story, to understand the proceedings, make a choice and gather evidence. On the other hand, the duration of proceedings must be limited in order to reduce uncertainty and clarify the real possibilities of remaining in Belgium that are available to minor so they can try to integrate in Belgium or work on reintegration (in the home country or a third country). Moreover, there is always the deadline of the age of 18 for the unaccompanied minor. The issue of when the durable solution is to be applied will also be evaluated differently depending on the age of the child and the length of stay in Belgium.

Actors in the migration authority state that the question of when the durable solution is to be applied is determined case by case, based on the available information (and therefore also the cooperation with the

110. Interview with an actor from a reception centre 17.02.2015, Interview with an expert on the rights of the child 12.02.2015, Interview with an actor from a reception centre 21.01.2015; Focus group with professionals 20.01.2015, Interview with an expert on the rights of the child 07.01.2015; Interview with an expert on the rights of the child 20.08.2014; Interview with actors from reception centres 17.07.2014.

111. Interview with an expert on the rights of the child 20.08.2014.

guardian), which will determine a durable solution in the current procedure. The law does not explicitly state when the durable solution must be determined. In addition, the existing legislation does not require that a durable solution must be determined before the majority of unaccompanied minors. This leaves some with an uncertain future and without the possibility of review of their situation because it is not possible to appeal the lack of decision-making by the Foreigners' Office concerning the durable solution.

However, in some cases, an examination of all possible durable solutions is not guaranteed. On the basis of Article 61/18 of the Act of 12 September 2011¹¹² (first application), only two types of documents may be issued: an immatriculation certificate of six months (indicating that the durable solution is yet undetermined) and an order to be brought back to the border (Annex 38).¹¹³ This implies that for any 17 and a half year olds, the durable solution will rarely be to remain in Belgium, regardless of their situation. Moreover, in practice an unaccompanied minor must have had a immatriculation certificate before they can apply for a residence permit lasting for one year (Card A).¹¹⁴ This raises the question of whether it was the legislative power's intention to exclude certain unaccompanied minors from an overall assessment of the determination of the durable solution, simply based on their age at the time of arrival.

Where new elements emerge, the FO may review the durable solution, if unaccompanied minor has an immatriculation certificate (residence permit valid for six months indicating that the durable solution is yet undetermined).¹¹⁵ If the minor has a one-year residence permit (A), it is stated that "the durable solution is in Belgium. Under the law, this is called life project. Once the card A is issued the issue is not revisited."¹¹⁶ This review is done case by case. Experts in children's rights who were interviewed emphasised that it was necessary that any new element could be addressed and that an indicative but not exhaustive list could be interesting.¹¹⁷

Another question that remains is that of the enforcement of the durable solution if it concerns family reunification or return. With unaccompanied minors a order to be brought back to the border is given to the guardian and not a deportation order. The guardian is supposed to bring the unaccompanied minor to the border. This does not happen in practice, except where the unaccompanied minor and guardian opt for voluntary return. An unaccompanied minor can therefore sometimes remain for years in the territory, and then, at the age of 18, they lose the right to home, schooling and risk detention and forced return. It must be recalled that under section 74/16 of the Act of 15 December 1980 cited above, there must be a guarantee of a home for the minor when they return before they can be subject to an order to be brought back to the border. At 18, the order to be brought back to the border becomes a deportation order and allows for detention and forced return.

112. 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor.

113. It is only possible to submit a new application one month before the minor's valid document expires. For an unaccompanied minor who arrives at the age of 17 and 6 months and who obtains a certificate of immatriculation, they cannot apply for a Card A until they are 17 and 11 months. This does not leave enough time for a decision and the minor will be able to obtain another document.

114. Questioning of the French-speaking lawyers section of the Legal Aid Office in Brussels, lawyers who specialise in defending unaccompanied foreign minors in a letter of 26.10.2012. A Card A allows the person to remain in Belgium for one year. As a minor, it is possible to obtain a Card B (which allows the person to remain for an unlimited duration) after three years of living with a Card A.

115. Interview (13.02.2015) of actors from the institutions responsible for migration

116. Ibidem

117. Interview (20.08.2014) of a children's rights expert, Interview (07.01.2015) of children's rights expert and Interview (12.02.2015) of a children's rights expert.

Recommendation 7: The obligation to determine a durable solution before the minor reaches the age of 18 should be inserted into the law of 12 September 2011 amending the law of 15 December 1980 on the access to territory, stay, establishment and deportation of foreigners, with a view to obtaining temporary residence for the unaccompanied minor.

Recommendation 8: From the first application for determination of the durable solution by the guardian, the three possible durable solutions must be examined (family reunification, return and stay) and the possibility of obtaining a residence permit for a period of one year (Card A corresponding to the fact that the determined durable solution is to stay in Belgium) must be explicitly mentioned in the law 12 September 2011 amending the Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, with a view to granting a temporary residence permit to unaccompanied minors.

7.2. What factors are taken into account and to what extent are children heard in this process?

The child's participation

In the context of a durable solution, the child's participation contains several elements: information on residence procedures, the inclusion of the minor on the choice of procedure, listening to the minor as part of the procedure, informing the minor about the decision and its consequences, demonstrating how the minor's opinion has been taken into account (or justifying why it was not) and asking for the consent of the minor before any information is shared. Several stakeholders stated that it was an insufficient and too restrictive interpretation to consider that the minor was able to participate simply because they were listened to in the proceedings. The practices regarding participation seem to vary and this leads to unequal treatment of unaccompanied minors. A common question is how to assess the maturity of the child in order to determine to what extent the minor's opinion will influence decision-making. It should be recalled that the Committee on the Rights of the Child and the Council of Europe have established a framework and recommendations to which states need to abide regarding the participation of the child.¹¹⁸ The child's participation must be ensured by all actors involved and most especially by the guardian and Foreigners' Office.

The Guardianship Act stipulates in Article 11 that the guardian *"acts in consultation with the minor"* and has *"regular contact with the minor. He/she must speak with the child in order to develop a trusting relationship and to know his/her views on the decisions he/she intends to take."* The guidelines for guardians even specify their role regarding the participation of the child: *"35) A guardian shall ensure that his/her actions and decisions reflect the child's thoughts and views as well as his/her individual situation. [...] 37) The guardian ensures the child's participation in any decision related to them. He/she informs the minor in a language they understand and that is age-appropriate, regarding the steps that the child will take and/or the result of these steps, and makes sure that the minor understands the information."*¹¹⁹ The FO is obliged to listen to the child as part of the procedure and explain the purpose and how the hearing will be conducted.¹²⁰ Other aspects related to participation of the minor are not mentioned.

A recurring dilemma concerns whether the durable solution is what is wanted by the child. What the child wants is not always in his/her interest. Furthermore, the will expressed by the child is perhaps not always the real will of the child (but rather of the family or the community).

118. Council of Europe, Recommendation CM/Rec(2012)2 of the Committee of Ministers on participation of children and young people under the age of 18, 2012, available at: [http://www.coe.int/t/dg3/children/participation/newdefault_EN.asp?UN Committee on the Rights of the Child \(CRC\), General comment No. 12 \(2009\): The right of the child to be heard, 20 July 2009, available at: http://www.coe.int/t/dg3/children/participation/CRC-C-GC-12.pdf](http://www.coe.int/t/dg3/children/participation/newdefault_EN.asp?UN+Committee+on+the+Rights+of+the+Child+(CRC),+General+comment+No.+12+(2009):+The+right+of+the+child+to+be+heard,+20+July+2009,+available+at:+http://www.coe.int/t/dg3/children/participation/CRC-C-GC-12.pdf)

119. General directives for guardians of unaccompanied foreign minors – 2nd December 2013, viewable at: http://www.atf-mena.be/images/documents_divers/loi/Directives%20generales%20pour%20tuteurs.pdf

120. Article 61/16 in 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor

Recommendation 9: The recommendations of the Council of Europe and the Committee on the Rights of the Child on participation must be integrated into the trainings for guardians and those who interview children. A mechanism for evaluation should be put in place to verify whether these principles are actually applied. The tools collected in ‘The right to be heard and participation of unaccompanied children’ can be a good source of inspiration for the practical implementation of the right to participation.¹²¹

Factors to be considered during the determination of the durable solution, as stated in the Law of 12 September 2011.

In the initial review of durable solution the following elements should be provided by the guardian:¹²²

- 1° the durable solution proposal;
- 2° the unaccompanied minor’s family situation;
- 3° any specific evidence relating to the specific situation of the unaccompanied minor;
- 4° evidence of regular schooling.

With respect to a life project in Belgium (when the unaccompanied minor has already obtained a residence permit for one year - Card A), the guardian has to bring the following items:¹²³

- 1° any specific element related to the specific situation of the unaccompanied minor;
- 2° the unaccompanied minors’ family situation;
- 3° evidence of regular schooling;
- 4° proof of knowledge of one of the three national languages.

Moreover the unaccompanied minor must provide proof of identity in the form of a passport or equivalent travel document. This is problematic for many young people because there are a lot of obstacles in the countries of origin (they may no longer have any family, there may be a great distance between where they live and the administrative centre, etc.) and certain embassies in Belgium are reluctant or refuse to issue documents. In some cases the law provides that other documents may be considered if the guardian proves that the minor is unable to obtain a passport but this decision is discretionary.¹²⁴ Thus, the lack of a passport can result in the unaccompanied minor being unable to remain in Belgium despite the conclusion that durable solution should be to remain in Belgium. In the asylum procedure, there is no obligation to present a passport and the identity of the person can be established at the hearing. After determining the need for protection “the Commissariat Général aux Réfugiés et aux Apatrides (Commissioner General for Refugees and Stateless People) is the competent authority for issuing documents to the refugee when he/she cannot obtain them from his/her country of origin’s.”¹²⁵ Given that the legislature considers the ‘unaccompanied minor procedure’ as a ‘procedure of protection’¹²⁶ it is surprising that the same rule is not applied in the context of determining the durable solution.

121. CONNECT Project, The right to be heard and participation of unaccompanied children A Tool to Support the Collection of Children’s Views on Protection and Reception Services , http://www.connectproject.eu/PDF/CONNECT-NLD_Tool1.pdf

122. Article 61/19 of the law of 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor

123. Article 61/21 of the law of 12TH SEPTEMBER 2011 - Law modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor

124. 7TH NOVEMBER 2011 - Royal Decree modifying the Royal Decree of 8th October 1981 on access to the territory, the stay, establishment and removal of foreigners

125. http://www.cgvs.be/fr/Apres_la_procedure/Refugiés_reconnus/

126. House of Representatives of Belgium, Report produced in the name of the Committee for the Interior, from general cases and the public function on the proposal of the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor, of 15th January 2015, DOC54 0377/003, p.4

Recommendation 10: When the durable solution is determined to be in Belgium, the lack of a passport cannot prevent the issuing of a residence permit of one year (Card A) or an unlimited residence permit (Card B). Similarly to the asylum procedure, one should be able to simply state one's identity. Instructions should be issued by the Foreigners' Office so that the local authorities issue residence permits (Cards A and B) in the context of the 'unaccompanied procedure' without requiring the presentation of a passport.

The family situation of the unaccompanied minor

Article 61/17 of the Act of 12 September 2011 states that “[i]n the search for a durable solution, the Minister or his/her delegate (FO) aims primarily to safeguard the family unit, in accordance with Articles 9 and 10 of the UN Convention of 20 November 1989 on the Rights of the Child and in the best interests of the child (CRC).”

While it is indisputable that the right to family life is a fundamental right, it should be noted that this is “a right to family life and not a duty.”¹²⁷ Article 9 § 1 of the CRC states that “States Parties shall ensure that a child shall not be separated from their parents against their will,” and that (Article 9§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.” Family reunification would be contrary to the best interest of the child where there was mistreatment or neglect by parents, according to the CRC.

Several actors highlighted this paradox: the procedure's focus on the family has the effect, for some unaccompanied minors, of making the subject taboo. It is known that some smugglers say to unaccompanied minors: “when you arrive, you need to forget about your parents”.¹²⁸ This taboo can also be found in other countries: “this taboo is essentially based on three elements: trans-generational loyalty, an idealised view of the parents and the weight of secrecy. Indeed, unaccompanied minors have first of all a very strong bond of loyalty vis-à-vis their families in their countries of origin. Having been instructed not to talk about it in order to stay in Switzerland, the minors cannot consider betraying their loved ones by mentioning them to those who ask them questions about this subject. The separation of minors from their families then creates an idealised view of the parents. The parents have entrusted a mission to their child who wishes to show above all that they are up to it and can carry out the tasks assigned to them. Therefore, they do not trust the adults around them, they only trust their parents and other close family members. Finally, unaccompanied minors live under the weight of secrecy. They were exhorted not to mention their family, which in some way ‘imprisons’ the minor and they cannot easily get out of the situation.”¹²⁹ A number of professionals also believe that all information given, including on the family, can turn against the minor.¹³⁰

Research on the family is necessary as part of the determination of the durable solution. Based on the Royal Decree of 7 November 2011 it is stated “as soon as an application for a residence permit is made, the guardian is asked to specify the steps taken in the country of origin or the country of residence to search for family members and the results obtained. It is essential for the Minister or his representative to be informed of the minor's family situation in order to safeguard the family unit, in accordance with Articles 9 and 10 of the UN Convention of 20 November 1989 on the Rights of the Child and the best interests of the child.”¹³¹

127. ROSSI, E., «Rapatrier ou garder dans le pays d'accueil. Evaluation de l'intérêt supérieur de l'enfant dans le choix entre rester dans le pays d'accueil ou le rapatriement : une réflexion basée sur la Convention des droits de l'enfant », dans JDJ n°219 – novembre 2002, p.29.

128. BUSSIEN, N., «Les mineurs non accompagnés et le main/rétablissement des liens avec leur famille dans leur pays d'origine : la situation en Suisse », 2010, consultable sur : <http://www.enfants-migrants.ch/fr/sites/default/files/adem/721/>, p.53

129. Ibid

130. Focus group with professionals 20.01.2015

131. King's Report, 7TH NOVEMBER 2011 — Royal Decree modifying the Royal Decree of 8th October 1981 on access to the territory, the stay, establishment and removal of foreigners

This raises the question of family tracing and enquiries into the family known under the term of family assessment. At present, we see that the term family tracing is used both in the searches carried out by the Red Cross and the searches carried out by Belgian diplomatic missions at the request of the FO. In the first case, the Red Cross has established family tracing with the aim of restoring family links. In this context, the consent of both the minor and the family that is being sought is required. The people involved are specially trained and the information is not passed on or used in the residence procedure or return (unless the minor wishes otherwise). The investigations carried out by diplomatic missions, however, do not require consent and there is neither training nor a specific framework designed for those conducting investigations. The purpose of the search for family members is to aid the determination of the durable solution. There are no indications that this investigation is intended to verify that a home is guaranteed under Article 74/16 of the law of 15 December 1980.¹³²

The *family assessment* is a comprehensive assessment/investigative tool of the family situation in the country of origin with the aim of allowing a comparative analysis between the situation in the country of origin and the situation in the host country, in order to determine the durable solution.¹³³ This terminology is transnational and comes from reflections and tools on youth protection. This tool has already been applied to unaccompanied minors, including the International Social Service in Switzerland¹³⁴ and by the IOM as part of their project: *'Enhancing capacities in EU Member States and third countries to promote durable solutions for unaccompanied minors - through identification of good practices in family tracing and assessments as well as the provision of enhanced reintegration approach'*.¹³⁵

Currently the terms of family tracing and family assessment are used in a non-standardised way. However, it is important to clarify the purpose, scope, approach, and the impact of domestic searches (on decision-making).

Recommendation 11: Social enquiries shall, with the consent of the minor, be implemented in the country of origin. These enquiries should at least take into account the environmental conditions (security, political, economic and social situation) and family (living conditions, circumstances of family separation, family history, social network, capacity family to educate, accommodate and protect the child). The result of these social enquiries should serve as a tool to determine the durable solution for each minor. The consequences of a lack of consent must be explained clearly, and in accordance with the age and maturity of the child. The lack of the minor's consent does not relieve the authorities of their burden of proof as to the existence or otherwise of guarantees of a home and cannot automatically be regarded as a lack of cooperation on the part of minor. The necessary financial means must be made available for this.

132. « A cet effet, le ministre ou son délégué s'assure que les conditions suivantes sont remplies: 1° qu'il n'existe pas de risque de trafic des êtres humains ou de traite des êtres humains et; 2° que la situation familiale est de nature à permettre d'accueillir à nouveau le mineur et qu'un retour chez un parent ou un membre de la famille est souhaitable et opportun en fonction de la capacité de la famille à assister, à éduquer et à protéger l'enfant ou; 3° que la structure d'accueil est adaptée et qu'il est dans l'intérêt supérieur de l'enfant de le placer dans cette structure d'accueil lors de son retour dans son pays d'origine ou dans le pays où il est autorisé à séjourner. » Translation: "The minister or his/her representative make sure that the following conditions are respected: 1. that there is no risk of human trafficking; 2. that the family situation allows for the reception of the minor and that a return to a parent or another family member is desirable and appropriate with respect to the family's ability to help, educate and protect the child; or, 3. that the reception centre is appropriate and it is in the best interests of the child to be placed in this structure when he/she returns to their country of origin or another country in which they are authorised to stay.

133. Centre international de référence pour les droits de l'enfant privé de famille, Mineurs non accompagnés: conditions pour un retour, une réintégration et une prise en charge appropriés des enfants dans leur pays d'origine, Bulletin Mensuel n° 10/2007, Octobre 2007, 6-8. Others also talk of a 'home assessment'.

134. They conduct a social evaluation of the situation in Switzerland and one in the country of origin. For further information see: <http://www.ssiss.ch/node/89>

135. http://belgium.iom.int/images/Project_Summary_pdf.pdf

Other factors

Some of the interviewed stakeholders were sceptical about how education and knowledge of one of the national languages could actually be checked and taken into account to determine a durable solution, as these elements, particularly schooling and literacy, depend on the minor's journey before arriving.

In the same vein several interviewees regretted that the distance travelled or the improvements made by the minor are not considered as much as it should. For example, a minor may have only ever known street life, may have problems of addictions, may have never set foot in school, etc. Psychosocial teams work with minors to manage addictions, learn basic social behaviour and help the unaccompanied minor to integrate in school. The minor has had an important journey, but this will have no impact on his/her residence status. Irregular residence may send the minor back to the street and will oblige the minor to be confronted with survival strategies.¹³⁶

Another issue regards to what extent legislative intent is actually reflected in the legislation, as it is often mentioned that this law and the combination of the procedures will mean that well integrated unaccompanied minors will not be sent home after they reach the age of 18, although the law itself refers only to the possibility of simultaneous introduction of two residence procedures for unaccompanied minors.¹³⁷ However, integration or the length of stay in Belgium are not criteria taken formally into account.

What information (ideally) to seek about the child?

Through the interviews,¹³⁸ we found that having a list of fixed criteria with a certain weighting attached to each element was not possible and not recommended, as this would eliminate the possibility to analyse each situation case by case. However, it appeared necessary to have a list of elements that should ideally be known before determining a durable solution.

136. Interview with an actor from a reception centre 17.02.2015

137. Developments: DOC 54 0377/001 modifying the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor, p.3

138. Interview with an expert on the rights of the child 12.02.2015; Interview with actors from the institution responsible for matters of migration 13.02.2015; Interview with an actor from a reception centre 21.01.2015; Focus group with professionals 20.01.2015; Interview with an expert on the rights of the child 07.01.2015; Interview with actors from the Guardianship Service 2.10.2014; Interview with an expert on the rights of the child 20.08.2014.

Recommendation 12: The following information should ideally be gathered before determining the durable solution:

The child:

- Identity, opinions, personality, expectations, mandate, migration plans, needs, resources, origins, journey and background of the child;
- Effect of the migratory path on the child, his/her state of (mental) health, the child's culture.

The family/community:

- Opinion of the family in third countries;
- Opinion of the extended family;
- Family situation before, during and after arrival in Belgium;
- The potential existence of an emotional connection and its importance for the child;
- Risk analysis: risk of physical, psychological, socio-economic, sexual violence and human trafficking.

The situation in the host country, country of origin or third countries:

- General and regional security and the security situation specific to children;
- The state of access to children's rights in the country of origin or in a third country;
- The opinions of professionals around the child (social workers, educators, school, foster family, ...);
- Information on the options in Belgium and in the country of origin or in a third country.

Verification of guarantees of reception in the situation of return: a non-exhaustive analysis of jurisprudence

The case of Tabitha¹³⁹ highlighted the importance of verifying guarantees of reception. The European Court of Human Rights ruled that the fact that a "return executed without prior and thorough checks of the family situation that the child would find upon return and the family's ability to take satisfactory and effective care, without guarantees of appropriate care, without preparation and supervision and a framework", violates Articles 1 and 3 of the European Convention of Human Rights.¹⁴⁰

The transposition of the EU directive on return inserted Article 74/16 into the law of 15 December 1980 which states that the following must be verified before the return of an unaccompanied minor:

- 1° that there is no risk of human trafficking and;
- 2° that the family situation is able to receive the minor and that return to a parent or family member is desirable and appropriate depending on the family's ability to assist, educate and protect the child or;
- 3° that the accommodation is appropriate and it is in the best interests of the child to be placed in this reception structure upon return to the country of origin or the country where the child is allowed to stay."

These conditions must also be checked as part of the determination of the durable solution. This is confirmed by several judgments of the Conseil du Contentieux des Etrangers/Raad voor Vreemdelingenbetwistingen.¹⁴¹ They also confirm that even when the guardian has not fulfilled its duty, the FO must effectively check the conditions and guarantees of reception in the case of return.¹⁴² Moreover guarantees of reception cannot be deduced simply from statements of unaccompanied minors and must be effectively investigated by the FO.¹⁴³

139. This young girl from the Congo arrived unaccompanied at the age of 5. She was detained in a closed centre for two months and deported to the Congo without accompaniment and without any guarantees of reception while the mother of the child was waiting for her in Canada. There was no-one to legally represent her.

140. Case n° 13178/03 of 12 October 2006, Case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgique

141. CCE, 23rd February 2012, no. 175 677, RvV 22nd October 2013, no. 112.459

142. RvV 10th June 2014, no. 125.366; RvV 21st February 2014, no. 119.321

143. CCE 23rd February 2012, no. 75 677, CCE 21st March 2013, no. 99 394

Recommendation 13: The decision-making authorities and guardians must obtain the financial and human resources necessary in order to gather all possible information required to determine the durable solution. Safeguards must be put in place and followed to ensure the safety of the minor and his/her family.

Recommendation 14: A meeting must be organised with the guardians to determine how to address the issue of the family and how to contact the family. When contact is made with the family, in the best interests of the child, the issue of durable solution should be addressed, including informing the family about the situation and living conditions the host country and seeking information on the family situation in the country of origin or a third country.

7.3. The determination of the durable solution: a distribution of roles leading to judicial tension?

The mandate: durable solution relating to stay and children's rights

Based on interviews and focus groups, it is clear that the fact that the Foreigners' Office is the only competent authority under the law of 15 December 1980 to determine the durable solution in relation to residence is seen by the great majority of actors as a conflict of interest.¹⁴⁴ According to some stakeholders, this conflict of interest results from tension between, on the one hand, the application of the law of 15 December 1980 and on the other, the application of the rights and protection of children. The main question is how to ensure that the decision taken is only influenced by the child's best interests. In this context, some alternatives for determining the durable solution have been suggested.¹⁴⁵

Verifying the information and (sharing) the burden of proof

Many actors also raised the issue of the objectivity of the information gathered on the unaccompanied minor.¹⁴⁶ Guardians expressed the concern that they did not have the means to check the information they received and thus could not carry this burden of proof. The migration authorities also believe that it is the guardian's role to gather information and agree that they cannot ensure that the information is verified.

An important element that was raised was the importance of having identifiable sources of information for all actors involved in determining durable solution.¹⁴⁷ This facilitates the work of verifying the information and avoids the possibility that guardians may use certain information without knowing the primary source. It is important to maintain a distance between the facts and the interpretation or presentation of the facts by the unaccompanied minor or other family members. Under Article 61/22 of the Act of 12 September 2011, clarifying and identifying the sources of information allows the guardian to avoid being held responsible for any false or fraudulent information transmitted.

The Raad voor Vreemdelingenbetwistingen makes it clear in its judgment of No. 62 224 of 27 May 2011 that the search for a durable solution rests not only on the applicant's shoulders and that the burden of proof regarding the guarantees of reception must also be verified by the FO.¹⁴⁸

144. Interview with an expert on the rights of the child 12.02.2015; Interview with an actor from a reception centre 21.01.2015; Focus group with professionals 20.01.2015; Interview with an expert on the rights of the child 07.01.2015; Interview with an expert on the rights of the child 20.08.2014; Interview with actors from reception centres 17.07.2014

145. See section 7.6 of this report.

146. Interview with actors from the institution responsible for matters of migration 13.02.2015; Focus group with professionals 20.01.2015; Interview with an expert on the rights of the child 07.01.2015; Interview with an expert on the rights of the child 20.08.2014; Interview with actors from reception centres 17.07.2014.

147. Interview with actors from the institution responsible for matters of migration 13.02.2015.

148. "Bovendien brengt de bestreden beslissing tot uiting dat de bewijslast betreffende het zoeken naar een duurzame oplossing eenzijdig op de schouders van verzoeker ligt. Ook deze redenering kan niet gevolgd worden. Uit het administratief dossier en de voormelde omzendbrief blijkt dat de Dienst Vreemdelingenzaken toezegde de ouders te contacteren. Verder wordt niet betwist dat de ouders ook contacteerbaar blijken te zijn. Het motief dat verzoeker niet aannemelijk maakt dat de pupil niet meer door diens ouders kan opgevangen worden, volstaat niet om de bestreden beslissing te onderbouwen nu het ook de verwerende partij toekomt na te gaan wat de duurzame oplossing is en de voogd steeds dient te ageren in het belang van zijn pupil. Uit de bestreden beslissing blijkt dat de verwerende partij geen poging ondernam om de toestand in het land van herkomst te onderzoeken en er van uitgaat dat een gezinshereniging steeds en altijd de oplossing is in het belang van het kind".

The need for an effective, full remedy action

To resolve the differences of opinion in terms of determining the durable solution, it is essential to have an effective and efficient appeal. The lack of full judicial appeal within the current framework is a recurring obstacle that was mentioned by all actors involved in the study. Indeed, the decision of the Foreigners' Office can only be annulled by the Conseil du Contentieux des Etrangers (CCE)/Raad voor Vreemdelingenbetwistingen (RVV). Even if the CCE/RVV indicates for example that the guarantees of reception have not been sufficiently verified, this does not guarantee that the guarantees will be effectively verified on-site by the Foreigners' Office before new decision is taken. Those guarantees should, however, be verified according to section 74/16 of the Act of 15 December 1980.

Furthermore, there is the question of how to ensure an effective remedy concerning decisions taken just before the minor turns 18, where the appeal will be processed after they reach majority. In such cases the CCE will consider that there is no cause of action (as the applicant is considered an adult thus the 'unaccompanied minor procedure' will no longer apply) and the appeal will serve no purpose.

In an analysis conducted by lawyers specialising in the defence of unaccompanied minors it is emphasized that "[i]ndeed, ordinary appeals before the Conseil were considered inadmissible due to lack of locus standi as they came before the Conseil when the child had reached majority (the Conseil, in the context of an ordinary appeal, being unable to hear the case and give judgment in a short period of time). And emergency applications to avoid this situation were declared inadmissible for lack of extreme urgency and serious harm (the unaccompanied minor, at the time of examination of the case, was still a minor and thus residing legally without the threat of expulsion)."¹⁴⁹

Currently, appeals against negative decisions taken just before the minor reaches majority are not effective and leave the minor without the possibility of reviewing the durable solution.

Throughout this study we see this tension between an administrative procedure as part of a migration policy and a call for a holistic analysis of the needs and abilities of the child as part of a construction of a 'life project'. The question of the mandate of decision-making (the Foreigners' Office), the question of burden of proof and responsibility of evidence imputed to a child and the issue of the need for a full and effective remedy are central to the debate.

Recommendation 15: The sharing of the burden of proof between the guardian and the decision-making authority needs to be clarified, as is done in the context of an asylum application.

Recommendation 16: A full appeal, ensuring effective remedy should be implemented. This appeal shall have a freeze effect in order to avoid forced return for an unaccompanied minor having attained majority during the exercise of his/her appeal.

Recommendation 17: Insert the following section in Chapter VII, entitled Unaccompanied Minors of Title II of the Law of 15/12/80 in order to ensure an effective remedy: "To ensure the effectiveness of appeals to the Conseil du Contentieux des Etrangers against decisions taken pursuant to articles 61/14 and following the law of 15/12/1980, they must be considered through an accelerated procedure, even in extreme emergency in the event of impending majority so that a decision is made before the unaccompanied minor reaches 18."¹⁵⁰ All necessary means must be made available to the Conseil du Contentieux des Etrangers in order to fulfil this mission.

149. Questioning of the French-speaking lawyers section of the Legal Aid Office in Brussels, lawyers who specialise in defending unaccompanied foreign minors in a letter of 26.10.2012

150. Ibid.

7.4. What are the barriers and limitations for guardians, the Foreigners' Office and others responsible for determining the durable solution?

Access to the necessary information

Both guardians and the Foreigners' Office encounter many difficulties to collect the most complete information possible. The main problem is the lack of human and financial resources. Other obstacles included the following:

Child

- The age and maturity of the child
- The child's cooperation
- The child's trust or lack of vis-à-vis the guardian, lawyer, authorities and adults in general
- The obligation for the child to repeat his/her story often and to different actors. This carries the risk of a change in the narrative
- Linguistic and cultural barriers
- Trauma

Family

- The lack of results obtained through family tracing
- The lack of means to verify the information and to verify the objectivity of the information provided by the family (extended)
- The lack of recognition by embassies of the role of the guardian
- The lack of direct and/or reliable contact in the country of origin

Country

- The lack of studies examining the specific situation of children
- The lack of child rights-related examination of the situation in the country/family by the FO
- The lack of staff and contact points in certain countries of origin
- The lack of systematic contact with the family by FO through embassies

Support, training and resources for guardians

An issue that was raised in interviews and focus groups was the inequality of knowledge, practices and levels of collaboration with guardians. Three main gaps have emerged: a lack of training on procedures, lack of support for the guardian when they seek the necessary information to propose a durable solution and a lack of resources and tools available to guardian to exercise their mission.

Recommendation 18: The existing instruments to (help) determine the best interests of the child must be integrated into the training of guardians organised by the Guardianship Service.

Collaboration versus confidentiality

The European Network of Guardianship Institutions's study¹⁵¹ indicates that there is a high level of independence amongst guardians but obstacles remain. Their attention is focused on the position of the guardian as an advocate for the best interests of the child. On the one hand the *"guardian must defend the best interests of the child, on the other hand the Belgian legislation states that the guardian is supposed to transmit all relevant information to the authorities, which may be contrary to the idea of the best interests of the child and the relationship of trust with the minor."*

151. ENGI, Towards a European Network of Guardianship Institutions, Utrecht, Février 2010, pp. 15-16.

One of the common difficulties guardians face is to know what information to put in the proposal of a durable solution. The ideal situation is where the unaccompanied minor consents to the transmission of all information and that the information is true. For the decision-making authorities, it is essential to have as much information and that it is the most reliable and coherent as possible. The methods of collaboration, information transmission and distribution of tasks needs to be clarified.

“But at the same time they must be aware that if all is not shared we cannot expect to have a decision that is consistent with the true situation, since we do not know everything.”¹⁵²

It was found as part of the interviews that there was a wide variation of the levels of collaboration between guardians and the Foreigners’ Office.¹⁵³ During one interview, it appeared that organising a meeting between guardians and the FO and possibly with the minor, in order to take stock of the situation and make space for everyone to expose the difficulties and expectations vis-à-vis the other actor is a good practice. This seems to give positive results in practice and improves or frames the collaboration.¹⁵⁴

7.5. The transition to majority and reaching 18

The transition to majority is a very frightening period, especially if there is no certainty about the durable solution or if the durable solution determined (often in case of return) does not correspond to minor’s desires or ambitions. In previous studies, it appeared that the period before the minor turns 18 is also a difficult time for the guardian.¹⁵⁵

Many actors stated that in this context, it is fundamental that guardianship is exercised up to 18 years for all unaccompanied minors and in some cases, depending on the minor’s vulnerabilities, guardianship should be extended after the age of 18. It came across in various interviews that it was important when the minor reached around 17.5 years, to make an overall assessment and to see what there remained to do, discuss or re-discuss and prepare the minor for a return or a situation of irregularity. Several stakeholders interviewed for this study raised the need to be able to openly discuss the reality of life in a situation of irregularity in Belgium. There are still many questions regarding how to discuss this issue, i.e. the approach to be taken, the scope and what is to be said, with the unaccompanied minor.

Even when the durable solution is determined to be in Belgium the minor may still have many questions and worries. It is fundamental to ensure that the durable solution determined before the minor turns 18 remains durable after this time.

Recommendation 19: It is necessary to amend Article 2 of the Guardianship Act¹⁵⁶ to include minors who obtained a residence permit in the under the unaccompanied minor definition to give them the right to a guardian until the age of 18. If specific vulnerabilities are identified, the supervision must continue until the age 21, as is possible in the youth welfare sector.

7.6. Alternative model(s)?

In the analysis of scientific literature and in the interviews conducted as part of this study, several alternative models to determine the durable solution have been suggested. Four models were mentioned frequently:

152. Interview with actors from the institution responsible for matters of migration 13.02.2015.

153. Interview with actors from the institution responsible for matters of migration 13.02.2015; Focus group with professionals 20.01.2015; Interview with an expert on the rights of the child 07.01.2015 ; Interview with actors from the Guardianship Service 2.10.2014.

154. Interview with actors from the institution responsible for matters of migration 13.02.2015.

155. FOURNIER, K., « Implémentation des standards de qualité pour les tuteurs de mineurs non accompagnés en Europe. Evaluation pays : Belgique », 2014, p.40

156. 24 DECEMBRE 2002 - Loi-programme, Tutelle des mineurs non accompagnés

a best interest assessment team, the decision made by a multi-disciplinary panel, the decision made by the courts (children/family) and a single procedure model.

A *best interest assessment*¹⁵⁷ team is the first alternative that was mentioned. A multidisciplinary committee would be established to advise on the child's best interests. This committee would meet the minor in order to hear his/her opinions, the members would debate and then would go back to the minor to check if all the information considered in the decision is correct according to the minor. Their opinion would be forwarded to the Foreigners' Office (FO) and they would decide on the durable solution. The committee would be able to appeal the FO's decision if it was considered not to be in the best interests of the child. The need for a full judicial appeal was also raised in this context. This model is strongly anchored on the Committee on the Rights of the Child's General Comment No. 14.¹⁵⁸

Others¹⁵⁹ are in favour of a multidisciplinary panel which would decide, by a qualified majority, on the durable solution.¹⁶⁰ The idea would be to have at least three permanent experts who can ask other experts for advice depending on each unaccompanied minor's individual situation.¹⁶¹ Some propose that the Foreigners' Office is part of the panel of experts. Others would prefer a panel of experts that would only deal with children's rights issues. This option would require profound legislative reform.

Others believe it would be better to leave the determination of the durable solution to a judge of the Children's and Family Court, based on their experience relating to children who are outside the family context. A reservation regarding this model would be that judges are not trained in the area of migration and have little or no contact or information on the countries of origin. Some also fear that as judges are often in contact with unaccompanied minors who have committed offences, this results in prejudice against unaccompanied minors. Legislative reform and training would be needed to ensure that judges dealing with children have the necessary mandate and expertise.

Another issue raised is whether instead of speaking of a durable solution it would be better to include the issue of the child's best interests and socio-economic rights in the asylum application. This idea is currently being examined in various institutions. This has been especially seen in the context of the proposal to combine the procedures,¹⁶² where it was mentioned that "it would be logical to move towards a single procedure."¹⁶³ In this context, it could be argued that the Office of the Commissioner General for Refugees and Stateless People has already techniques for interviewing children, it has a research service (CEDOCA), there is a full judicial appeal and its agents already have a protection perspective that could be extended to the issues of child protection. In this context some suggest to having two interviewers: one specialised in international protection issues, the other in child protection issues. Legislative reform and training in child protection would be needed in order to apply this system. Many actors consider that this would be the least expensive model.

157. UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, February 2013.

158. Ibid.

159. No reference is made to specific people in order to guarantee anonymity and because the opinion of an actor may be at variance with the institution in which they work.

160. Kinderrechtencommissariaat, "Heen en retour. Rechtspositie van kinderen op de vlucht", décembre 2013, p. 42, VONKEMAN, A., "La détermination de l'intérêt supérieur de l'enfant", Journal Droit des Jeunes, janvier 2013, n°321

161. See annexe 2.

162. See point 5.4.

163. Chambre des Représentants de Belgique, Rapport fait au nom de la Commission de l'intérieur, des affaires générales et de la fonction publique sur la proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers en ce qui concerne l'octroi d'une autorisation de séjour temporaire au mineur étranger non accompagné, du 15 janvier 2015, DOC54 0377/003, p.4 - House of Representatives of Belgium, Report produced in the name of the Committee for the Interior, from general cases and the public function on the proposal of the law of 15th December 1980 on access to the territory, the stay, establishment and removal of foreigners, in view of granting authorisation to stay temporarily to the unaccompanied foreign minor, of 15th January 2015, DOC54 0377/003, p.4

For the actors involved two major trends seem nevertheless to emerge: that of a multidisciplinary panel and that of the single procedure.

Recommendation 20: A parliamentary debate should begin to discuss the advantages and disadvantages of the current system and the four alternative models mentioned (best interest assessment team, multi-disciplinary panel, juvenile court and the single procedure under the Office of the Commissioner General for Refugees and Stateless People). Any partial or full reform of the process of determining the durable solution should ensure that safeguards and resources, both human and financial, are put in place. Training of all stakeholders and the establishment of a network of neutral and reliable contacts in the countries of origin must be made at national and European level.

7.7. Conclusion

The determination of the durable solution is at the centre of a tension between the migration perspective and children's rights perspective. Several obstacles have emerged. A first challenge for all actors is to find the necessary information. The lack of a family assessment in this context is problematic. The sharing of evidence between the guardian and the FO is subject to debates that have to be resolved. In this context, the degree and means of collaboration should be clarified in respect of the duties and confidentiality frameworks of each. The lack of a full effective remedy that can guarantee an effective appeal before the minor turns 18 is proving to be a significant. Several proposals of alternative models have also emerged in interviews and focus groups: a best interest assessment team, the model of a multi-disciplinary panel decision, a decision by the Children's and Family Courts, and a single procedure model.

8. Durable Solutions: the voice of unaccompanied minors¹⁶⁴

For the focus groups, we chose not to ask the unaccompanied minors any personal questions in order to keep a broad perspective on durable solutions. As stated previously, it was surprising to see the young people having such a desire and perhaps the need to talk about their life goals, their experiences, mental health issues, lies, mistakes made, of the future, etc...

"I am B. I will read a text that I wrote myself. I was 14 when I landed in your country. I learned the language. I made friends. And now you want me to leave because your country is too full. But I have many dreams here and I want to attain them. Give me a chance and I'll show you what I can do. Sometimes I doubt too and I forget the Bible, but here all I see is doubt. God will perhaps forgive me. I am a human being and the human beings makes mistakes. It is human to make mistakes. I wonder why everything in my life seems so impossible ? I know you do not care about me but I just want a chance and I will not be silent until I have my chance. And that is my life." ¹⁶⁵

8.1. What does 'durable solution' mean for you? What do you know about the procedures?

According to the unaccompanied minors interviewed, a durable solution is the solution that allows you to "live well, as long as possible." The idea of solution also evoked idea that "this is something that actually works."

Overall the term 'durable solution' was little known amongst the unaccompanied minors we met. For the unaccompanied minor many questions remain unanswered about the procedures. In each focus group, the minors

164. Focus group with unaccompanied minors 18.02.2015, Focus group with unaccompanied minors 17.02.2015, Focus group with unaccompanied minors 21.01.2015.

165. Original version: "Ik ben B. Ik ga een tekst voorlezen die ik zelf geschreven heb. Vanaf mijn 14 jaar ben ik in uw land beland. Ik heb de taal geleerd. Ik heb vrienden gemaakt. En nu wil u mij weg omdat uw land vol is. Maar ik heb veel dromen hier en ik wil ze bereiken. Geef mij gewoon een kans en dan zal ik laten zien wat ik kan. Soms twijfel ik te veel en vergeet de bijbel maar ik zie alleen maar de twijfel hier. God wil mij misschien vergeven. Ik ben gewoon een mens en een mens maakt fouten. Want fouten maken is menselijk. Ik vraag me af: waarom lijkt alles in mijn leven zo onmogelijk? Ik weet dat het jullie niks kan schelen maar ik wil gewoon een kans krijgen. En ik ga niet zwijgen totdat ik een kans krijg. En dat is mijn eigen leven".

asked to have the procedures, administrative rules and the consequences of each status (re)-explained. It is important to note that several minors who had questions arrived in Belgium more than 18 months ago. The explanations received seemed to vary during the interviews. During the focus groups, it was decided to leave one minor explain the procedure to others and to correct if necessary. We found it interesting to ensure that the unaccompanied minors could be properly informed amongst themselves, and this allowed us at the same time to correct and inform the minors.

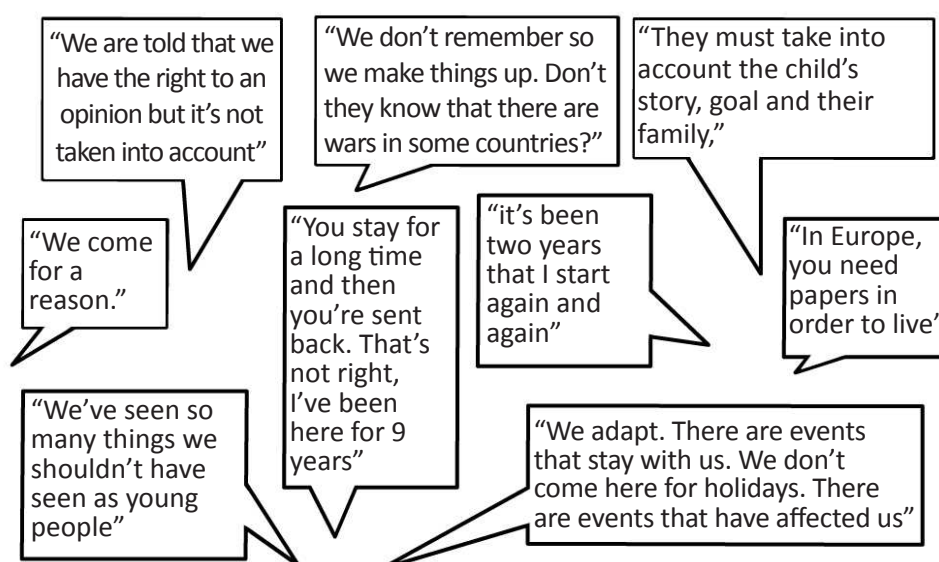
The interview

In the three focus groups UM addressed the question of the interview. Overall, the purpose of an interview was understood and perceived. The fact that the minor had to tell his/her story, that there was a check to see if the minor came from the country they said they did, was accepted. However, some unaccompanied minors reported that they were told they did not look like people of their country, for example: “you do not look Syrian.” This was not well received and the minors would prefer that verification of the country of origin be done in a different way. What made it even harder was the fact that some questions were related to details, for example, the distance between their home and the church in their hometown, the flag design (when the minor may have had little schooling or none at all), the list of candidates for elections (when the minor was 11), etc. Generally they could not remember or could not remember exactly. Some preferred to invent a story rather than answer that they did not know.

8.2. Why do you think it is important to identify a durable solution? If you had to identify a durable solution for another young person: how would you do so?

Their own story; their own journey

The unaccompanied minors’ first recommendation was that their story really needed to be listened to, find out why the minor left and take into account their journey and their efforts to build a future.



For the unaccompanied minors a question that remained was to what extent their story was really taken into account. One group was unanimous on the fact that the most important right was that of freedom of expression. For them it meant the right to have an opinion and be heard. But more than this, it was also about freedom of expression in a broader sense, often in reference to the situation in their country of origin. They are also unanimous on the fact that this is the least respected right in Belgium. The second right, which the minors also considered very important, was the right to be protected: not just protection in times of war but also protection, in some cases, against their families. Some felt that the authorities were not aware that they

perceived their families as a danger to themselves.

All young people surveyed reported having felt the same: their story in its entirety and especially the efforts they made were not taken into account. A young person states:

“For me, it’s always the same thing: we adapt, we improve, we learn the language, sometimes even forget our own language, we get to know people, we learn the culture, learn to do as others, we adapt to be like white people, but do not forget all we saw when we were little, all we lost when we were little. We arrive here with a single desire, a single idea. Sometimes people come here to help their family who remained behind, others come here precisely because they have no family. Or others come here, not for holidays, but for their own health, safety and welfare. And for me it annoys me every time because they do not take account all of this.”

Furthermore, some unaccompanied minors regretted that their life goals, what they wanted to achieve, was not taken into account, or at least they had the impression that it was not taken into account. It is interesting to see that in the three focus groups, the debate between protection and integration arose repeatedly. At times the unaccompanied minors seeking international protection asked why minors who did not come from war zones should be protected. While unaccompanied minors who had not applied for international protection but who considered that they had made a great (or greater) effort to integrate asked about the reason for a decision on return.

In the future and after turning 18

A recurring theme for the minors was the uncertainty of not knowing where they will live. All wanted to be able to stay, but they also wanted to know as quickly as possible if they were going to get their papers or not. In the event that at 18 they did not have a residence permit, the unaccompanied minors indicated that undocumented life was an option they would consider, even if it worried them greatly. The minors we encountered asked many questions about living in an irregular situation. How to survive? Can we be arrested? How can we continue education or work?

A young person asked this question: *“If I have no degree, if I have no papers, who I am then?”* Many were worried about losing their mother tongue or not being able to recognise their country if they had to return. Always present was the concern for the future, similarly for unaccompanied minors who had a residence permit for one year (Card A).

The right to feel at home was also something that was very important for the young people. The desire to be accepted was a recurring theme as well as being accepted as a person without racism (which the majority of unaccompanied minors had explicitly been confronted).

8.3. Conclusion

What the children asked for regularly returned to the need to be properly heard and for all aspects of their life to be taken into account. They also asked that their journey be taken into account, including their efforts to adapt, the things they have learned and the differences between the situation on arrival in Belgium and their current situation. Some regret that those receiving international protection and who can stay do not have to do much to integrate, while those who make a great effort to integrate generally “cannot stay.”

9. General Conclusion

Belgium is one of the few countries in the world that, since 2002, mentions the concept of a durable solution for unaccompanied minors in its legislation. Many bodies and international reports highlight the need to find a durable solution for all unaccompanied minors that is consistent with their best interests. Despite the great number of references to this term, we have no precise or unanimous definition. Throughout this research we were faced with several tensions and paradoxes. Indeed, the term ‘durable solution’ has several meanings: a residence permit, an administrative status, a life project and a place to live. We see that the search for a durable solution is the central mission of the guardian’s care but at the same time it is the least well-defined mission.

There is consensus on the fact that the determination of the durable solution must take into account all the elements that affect the child and that the definition of the durable solution should be seen as a broad and dynamic concept that takes into account all aspects of the minor’s life. At the same time, we note that, to some extent, the uncertainty about the being able to remain means that the question of ‘remaining or returning’ plays a very important part in the minor’s life, sometimes to the detriment of other areas of their life (education, mental health, ability to develop social relationships, etc.). Minors find themselves stuck between the search for durability and a sense of insecurity.

Before detailing ‘how’ to determine a durable solution, it is clear that a number of procedural guarantees must exist. It is necessary to have trained, accessible and supported guardians. The lawyer must be trained and specialised in the specifics of the procedure. The unaccompanied minor must have access to information and be able to share his/her opinion. Access to specialised, neutral and free interpreters must be guaranteed to make the minor’s participation possible. In this context it is essential that in all proceedings the minor’s hearing is appropriate to the age and maturity of the young person. Any delays in the decision-making must allow the minor to prepare for the procedure but at the same time, we must try to reduce the minor’s uncertainty about the future.

Many reports, actors and minor’s themselves highlight the need for a holistic analysis, taking into account all the aspects of the minor’s life. The majority of actors interviewed for this report made a clear call to introduce a multidisciplinary approach in the decision-making and therefore also in the decision as to choosing the authority responsible.

As part of this comprehensive analysis, it appears clear that the context, mandate and family relationships are vital in the search for a durable solution. However, it has been noted that in the current procedure, the family is often a taboo subject. All the actors involved in the search for and the determination of the durable solution have raised the lack of means available to obtain the necessary information to make the most appropriate decision possible. The lack of reliable, neutral points of contact in the countries of origin, that guarantee the security of the unaccompanied minor and his/her family is a real problem. The lack of a child-focused verification by trained persons whose only mandate is to ensure the best interests of the child, of guarantees of reception in the case of a return negatively impacts decision-making.

The legislature regularly notes that the ‘unaccompanied minor procedure’ is another protection procedure. The newly combined procedures emphasises this. However, this procedure does not benefit from the necessary financial, human and procedural means. This procedure has not clarified the methods of collaboration between the actors involved, has not clarified how the burden of proof is to be shared, the procedure does not have a specific research centre (like Cedoca) and does not provide a full and effective appeal.

Moreover, this procedure is at the crossroads of the minor's identity: it concerns both the child and the migrant. This tension also affects the question of what is the most appropriate body to decide on the future of these children. Several alternative models have emerged during this study. We urgently need a parliamentary debate to determine the most appropriate authority, the most appropriate procedure and conditions to be met in order to make effective durable solution for UM.

10. Bibliography

Legislation (not exhaustive)

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7 NOVEMBRE 2011. - Arrêté royal modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers

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22 DECEMBRE 2003 – A.R. portant exécution du Titre XIII, Chapitre 6 « Tutelle des mineurs non accompagnés » de la Loi-programme du 24 décembre 2002

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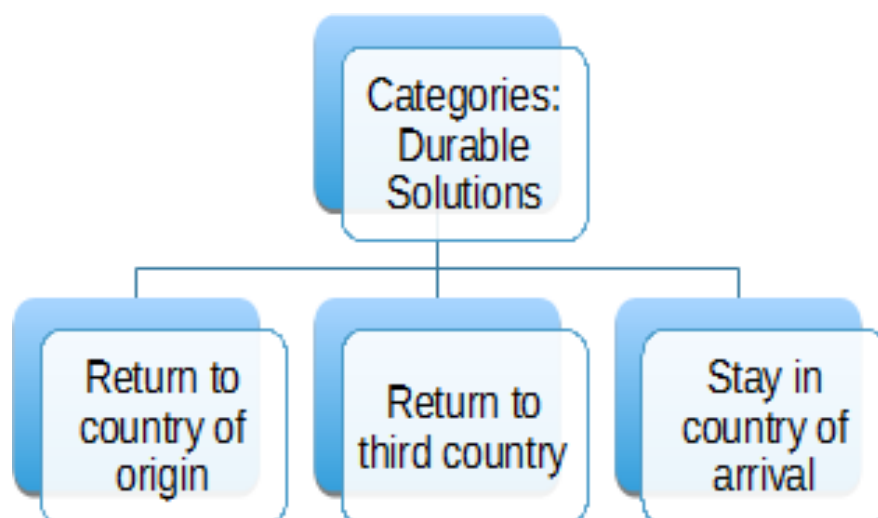
Interviews et focus groups

Focus group with unaccompanied minors on 18.02.2015
 Focus group with unaccompanied minors on 17.02.2015
 Interview with an actor from a reception centre on 17.02.2015
 Interview with an expert on the rights of the child on 12.02.2015
 Interview with the actors from the institution responsible for migration 13.02.2015
 Interview with an actor from a reception centre on 21.01.2015
 Focus group with unaccompanied minors on 21.01.2015
 Focus group with professionals on 20.01.2015
 Interview with an expert on the rights of the child on 07.01.2015
 Interview with actors from the Guardianship service on 02.10.2014
 Interview with an expert on the rights of the child on 20.08.2014
 Interview with actors from a reception centre on 17.07.2014

11. Annexes

Annexe 1 : The Questionnaire

1. Have you heard of the term 'durable solution' [before this project]? If yes, what does the term mean to you? If no, what do you think it means? [If not answered: what is the time-span of the durable solution? Eg 1 year, 5 years..]
2. How have you heard of it? (through information provided as part of your work or your own personal interests)
3. Do you have a role/What is your role in determining and assessing durable solutions, or determining and assessing future plans for separated children? If so: In making decisions about durable solutions or future plans for separated children, what things do you take into account? Is this a formal procedure or is this up to the individual and their way of working?
4. For the purposes of this project, the three main categories under which examples of durable solutions fall are:



Would you agree with these three umbrella categories?

5. Do you consider each of these three 'solutions'/plans in our work with separated children? [Why/Why

not?]) What would you take into account when planning for each of these three 'solutions'/plans? Who would you talk to/consult with/link with? [If the participant has not already mentioned the child's role in this, ask: what about the child?/how is the child consulted?]

Are you describing the current procedure? Is this different from what you think should be done. Is this a formal procedure or is it up to the individual?

6. What do you feel you need to determine a durable solution for an individual child? How do you establish a relationship based on trust with the child and do you think that relationship has an effect on your ability to determine the durable solution?

What else might you need? (eg information about the child's journey, access to reliable information regarding durable solutions options)

7. How is the best interest of the child determined in this process (the process of determining durable solutions/future plans for the separated child)?

Is this a formal procedure or is it up to the individual?

8. How are other actors involved in the process of making decisions regarding durable solutions? Do you ever encounter differences in views? If so, how do you manage these conflicts/resolve them?

9. How does family tracing and /or family assessment feed into the determination of a durable solution? How is this done, by who and how does it impact the decision (eg, how is this information used – to support the child in determining his best interests and the durable solutions that reflect them or to 'find a place to return them')?

Is this a formal procedure or is it up to the individual?

10. Who is involved/who is consulted with in the process of determining the best interests of the child when determining durable solutions/future plans for the separated child? And how are they involved/consulted?

Is this a formal procedure or is it up to the individual?

11. At what point do you seek to make decisions regarding the durable solutions/future plans for the child?/ When is the durable solution implemented?

Is this a formal procedure or is it up to the individual?

12. Do you [or have you ever] encounter any limitations/barriers/challenges in implementing durable solutions/future plans?

13. Are durable solution/future plans decisions reviewed? If so, how often? And why might they be reviewed? By who can a review be asked?

Is this a formal procedure or is it up to the individual?

Annexe 2 : A multidisciplinary panel model?

INFORMATION TO COLLECT:

About the child:

Identity, opinion, personality, expectations, mandate, migration project, needs, resources, origins, life project(s), journey and child's background;

Effect of the migration journey, their (mental) health conditions, their culture, about the child.

About the family/community:

Opinion of the family in the foreign country;

Opinion of the extended family; Family situation before, during and after the arrival in Belgium; The existence or not of an emotional connection and its significance for the child.

Risk analysis: risks of physical, psychological, socio-economic, sexual abuse and treatment of human beings.

About the situation in the countries (host, origin or third country):

General, regional security and security situation, specific to children;

The condition of access to children's rights in the country of origin or in a foreign country; Opinions of professionals surrounding the child (social workers, teachers, school, foster family...);

Information about the possibilities in Belgium and in the country of origin or in a foreign country.

Collection of information by the guardian.

Choosing the procedure with lawyer and minor.

Proposition of durable solution before the hearing

Hearing of the minor before a **Multidisciplinary Panel** (as a minimum.)

Three experts on:

Children's rights/child psychology

Country of origin or foreign country

Foreigner's Office

Additional experts according to the child's

Specific situation (opinions)

Analysis compared with different durable solutions. Decision with qualified majority.

Decision on the durable solution or possibility to request additional inquiries before they are 17.5 years old. Decision compulsory before 18 years old.

Review possible if:

Change in the situation of the country, the family, the child's wishes. The family's wishes and any other element having an impact on the child's rights

Appeals of full jurisdiction:

Suspensive

Effective

Shared burden of proof

PROCEDURE GUARANTEES:

Guardian: accessible, trained

Lawyer: accessible, trained and free

Interpreter, accessible, trained and free.

Information about the unaccompanied minor

Hearing suitable for age and maturity

Determined and reasonable timeframes

enabling preparation and reducing uncertainty

Multidisciplinary analysis

Collegial decision

Neutral decision-making body

Obligation of motivation

Appeals of full jurisdiction

