



THE ASYLUM-SEEKING CHILD IN EUROPE

Editors:

**Hans E Andersson, Henry Ascher,
Ulla Björnberg, Marita Eastmond
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ISBN: 91-89608-15-1

Cover: Federal Republic of Yugoslavia:

“A girl in a blue coat smiles in the province of Kosovo”

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Printed in Sweden by Vasastadens Bokbinderi AB

Published by: Centre for European Research at Göteborg University (CERGU)

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Foreword

The Centre for European Research at Göteborg University (CERGU) was established in 1995. Its main aim is to stimulate multidisciplinary research and studies focusing on European issues. CERGU primarily fills the function as communication resource for researchers within different academic disciplines at Göteborg University and as support organisation for research networks with universities and institutes in Sweden and abroad. Conferences, seminars and workshops constitute some of the CERGU core activities, together with courses on the PhD, Graduate, and Undergraduate levels. CERGU also acts as host for multidisciplinary research projects. To promote contact between, on the one hand, researchers and students at Göteborg University and, on the other, interested parties in industry, business and the public sectors also constitutes a central task for CERGU.

The initiative to organise the conference, *The Asylum Seeking Child in Europe*, was taken by the Steering Committee for the Jean Monnet European Centre of Excellence at Göteborg University. The practical responsibilities were delegated to CERGU. The task to organise the conference was given to an organising committee with the following members: Ulla Björnberg, Professor, Department of Sociology, Hans Andersson, Lecturer PhD, Department of Political Science, Henry Ascher, Assoc. Professor, MD, Department of Paediatrics, Marita Eastmond, Professor, Department of Social Anthropology, Lotta Mellander, Professor in International Medicine, MD, Department of Paediatrics. The organising committee has been supported administratively by Ms. Birgitta Jännebring (CERGU).

It is our hope that this publication of the presentations at the conference will help promote future research in order to gain a deeper understanding of the situation that asylum seeking children encounter in contemporary Europe. Questions and comments are welcome and should be addressed to birgitta.jannebring@pol.gu.se, or to the authors.

The organisers would like to gratefully acknowledge economic support from The Jean Monnet European Centre of Excellence at Göteborg University, The Swedish Council for Working Life and Social Research, The Swedish Research Council and The Ministry of Foreign Affairs.

Göteborg, 5 June 2005

Per Cramér

Director of CERGU/Chairman of the Steering Committee for the Jean Monnet European Centre of Excellence at Göteborg University

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The Asylum-seeking Child in Europe – An Introduction

Migration to and from Europe is hardly a recent phenomenon. The millions of Europeans who migrated to the US during the 18th and in particular the 19th century are a well-known example. Less well-known may be that this migration from Europe continued after World War II. Between 1945 and 1960, for example, about seven million people left Europe. As the large streams of refugees from Eastern to Western Europe after World War II show, migration within Europe is not new. For instance, about eight million Germans from Eastern Europe fled to Western Germany. From the beginning of the 1960s, most European countries (except for Eastern Europe) became countries of immigration when people arrived to benefit from and contribute to the creation of the evolving welfare states. The end of the 20th century was, however, once more characterized by forced migration. Between 1991 and 1998 more than one million individuals fled from former Yugoslavia.

From the beginning of the 1980s, the number of refugees from third world countries has increased sharply along with other kinds of immigration¹. Because the increased migration to a large extent has taken place at the same time as a slowdown in economic growth, many European countries have responded with more restrictive policies. Concomitant with the economic problems, the world is experiencing many political crises, terrorism and wars which make life very uncertain and risky for citizens not only in terms of lack of economic opportunities but also due to fears of persecution. Many of the people who seek refugee status in Europe perceive themselves as refugees, whereas they in the receiving countries are not regarded as refugees with a recognized right to protection as asylum seekers. In many instances this situation blurs the line between asylum seekers and illegal immigrants. As a consequence, asylum seekers encounter problems of recognition, visibility and proper protection. In particular, the current situation makes it difficult for children to be recognized in their own right.

Children constitute an important part of asylum seekers whether they arrive with their families or alone. In 2003, there were more than 17 million refugees (43 per cent of refugees), asylum seekers and others who are of concern to the UNHCR. Of these millions of people, it is estimated that children under the age of five make up 11 per cent and 32 per cent are children aged six to seventeen.² Many of these children have experienced war, violence, acts of cruelty and similar traumas. Others have been exposed indirectly through their parents' traumatizing experiences. Such experiences are today increasingly recognized as being a similar burden to a child as if they are assaulted themselves. The adults often have very big problems and the children run the risk of having their problems concealed. Registration data and statistics are generally not produced in a way that makes the exposed situation of children visible. The children's reasons for asylum in their own right are rarely investigated.

The rights of asylum-seeking children are protected in international conventions and rules, like in the UN Convention on the Rights of the Child, The European

Convention on Human Rights and the Geneva Convention. The rules within these conventions have to be tested against the asylum policies that are practiced in different countries. The degree of the protection of children varies within and between different countries. Within the framework of the discussions about the future of the European Union, issues that are related to asylum rights are given a high priority. There are great differences between countries but the kinds of problems that have to be addressed are similar.

To highlight these problems, a conference ‘The Asylum-seeking Child in Europe’ was organized with the purpose of discussing international and interdisciplinary perspectives on the ways in which the situation of refugee children are understood and managed both during and after an application for asylum.

The conference was planned within the framework of the Jean Monnet Centre of Excellence within Göteborg University. It took place in September 24 – 25, 2004 in Göteborg, Sweden and 76 people with different academic and professional backgrounds gathered in the Museum of World Culture.

The purpose of the conference

The purpose of the conference was:

1. To exchange knowledge, research results and experiences on the specific situation of asylum-seeking children in Europe
2. To explore the implications of international conventions for the asylum policy within the EU.
3. To exchange knowledge between different scientific areas such as medicine, psychiatry, psychology, anthropology, sociology and pedagogy.
4. To collect competence from different European countries in order to expand the issue across geographical and cultural borders.
5. To prepare a plan for how to work on these issues.

Like the conference, the report is thematically organized into four different themes. The first theme *International Law and European Refugee Policy* gives a general overview over to what extent children are recognized as asylum seekers in their own right in international conventions and in the legislation of the EU. Within this theme the United Nations Convention on the Rights of the Child and its impact on the asylum-seeking child is also brought to attention. Is the convention an efficient instrument for improving and harmonizing the treatment of children in the asylum-seeking process? In a second theme, *The Asylum-seeking Child in the Legal Process*, we address the treatment of children as asylum seekers. To what extent, for example, do the authorities recognize the children as asylum seekers in their own right? In a third theme, *Traumatizing and Protective Factors During and After the Asylum-seeking Process*, we want to find out what is known about the experiences of child refugees and to what extent this knowledge is taken into account in different countries. In addition, within the fourth theme: *Exclusion or Integration? Social and Educational Aspects*, we addressed the theme of social and educational aspects on exclusion and integration. Under this theme we wanted to highlight some positive experiences of

how to work with children during and after the asylum-seeking process and what children themselves regard as important to them.

The intention behind the theme International Law and Refugee Policy is not only to explore to what extent international law pays attention to children, but also to what degree the countries are fulfilling these obligations. The initial four chapters address different aspects of international law and to what extent children as asylum seekers are taken into account in these laws. In chapter 1, Carl Söderberg points out that during the last decades there have been some positive developments. One is the general recognition of individual rights and another is the growing concern for children's particular needs. Despite this progress, Carl Söderberg also stresses that there are too many examples of countries trying to avoid their international obligations and fulfilling the most basic needs of asylum-seeking children.

In chapter 2, Christoph Bierwirth discusses the Convention on the Rights of the Child more in depth. The key principles codified in this convention are a) the best interest of the child, e.g. a thorough assessment of the child's background, particular vulnerabilities, and protection needs, b) the principle of non-discrimination, i.e. that a child is not to be discriminated against on the grounds that he or she is a refugee or has the status of an asylum seeker, c) the principle of participation, e.g. that a child is to have a role in the asylum procedure or when family reunion is considered. In his contribution Bierwirth also gives several examples of how the committee within UNHCR which is monitoring the rights of children has given recommendations to different countries on how they can improve the situation of the asylum-seeking children.

Since the conference concentrated on the situation in Europe, it was evident within the theme of international law that it was also necessary to survey the importance of EU-law. With regard to the area of asylum, the European Union has, during the last decade, mainly been important in its regulation of access to the member states' territory and thus the possibility to apply for asylum. During the last years, the member states in general have also started to harmonize more forcefully their policies in many other respects. In Chapter 3, Terry Smith concludes that even though all EU directives and regulations on asylum so far have contained some reference to children, these references are a relatively small part of each directive. There are therefore grounds to fear that the needs of children will be overlooked.

The first theme ends with an overview of the situation regarding the asylum-seeking children in Europe. In taking on this challenging task, Kirsti Floor in Chapter 4 clearly shows how differently children are treated in different countries. For example, in some countries 0-2 per cent of the asylum applications are recognized in the first instance, while in other countries the corresponding number is 40-45 per cent.

The second theme of the report calls attention to the issue of what happens to the asylum-seeking child during the legal process. In Chapter 5, Nadine Finch discusses the preliminary findings of a study carried out in the United Kingdom. She shows that a great many legal representatives, non-governmental organizations and separated children believe that asylum applications from children are not fully assessed when it comes to their right to protection under the Refugee Convention. The findings so far also indicate what can be described as a "culture of disbelief", e.g. that immigrations officers, for example, doubt that the children have been separated or that they would face persecution if they are returned to their countries of origin. The ten separated

children interviewed in depth also report that they have been treated with hostility and ridicule. Many of the conclusions reported by Nadine Finch are confirmed by Kate Halvorsen's investigation of asylum-seeking children in Austria, Germany, Norway and Sweden (Chapter 6). For example, both authors conclude that children, when compared with adults, are at a disadvantage when it comes to being recognized as refugees in need of protection. Kate Halvorsen's investigation also confirms that there often is a lack of sensitivity to the fact that the asylum-seeking person is a child and thus should not, for example, be interviewed in the same way as an adult. Kate Halvorsen does, however, also show that there are good examples from all four countries of child-sensitive treatment of children in the interviews, assessments and decisions on child asylum applicants.

Finally, in her well-documented study about the child perspective in the Swedish asylum process, Eva Nilsson provides a conclusive coverage of the rules in the Swedish Aliens Act about hearing children in the course of proceedings and she describes some important legal premises for these rules (Chapter 7). Her conclusion is that the law allows for an extensive scope for different child perspectives. However, Eva Nilsson goes on to analyze the status of the child in practical applications and she is here able to show that despite the legal framework, children often assume irrelevancy. She concludes that in the Swedish case it is thus not the law that sets the limit, but rather the application of it.

Within the section about traumatizing experiences and possible protective factors there are five presentations. Edith Montgomery and Anders Foldspang (Chapter 8), show that evidence on children's health is not integrated in the treatment of applications for asylum in spite of the documented correlation between exposure to violent events and mental health problems. The mental health problems that were found in the study were anxiety manifesting itself as increasingly dependent behavior, sleep disturbances and fear of being left alone. The presence of these symptoms and the traumatic experiences were equally present in children from refugee families regardless of whether they received asylum in Denmark.

Henry Ascher (Chapter 9) looks at severely traumatized asylum-seeking families where the traumatic assaults also have included rape. In these families exceptionally poor mother-child relations were noticed. Professionals in the asylum process are often unaware of the family secret. Carrying this secret is a heavy load for the children who have witnessed a break down of their parents and the result is often regression and a loss of trust in the adult. The asylum process itself is a mix of events that are both protecting and further traumatizing. Protective factors are reliable adults, going to school and a functioning social network. In order to be identified as having a special need the child's voice must be heard in the asylum process.

Loes H.M. van Willigen (Chapter 10) studies the medical reception of unaccompanied asylum-seeking children in the Netherlands. All the interviewed children were negative about their experience with the medical reception. Their main problems were psycho-somatic and related to the stressful situations in the past as well as in the present. They felt that nobody listened or took well care of them. They did not feel safe. At times of illness they had special needs as minors without family support, which however, were often not recognized. The study showed that the unaccompanied asylum-seeking children were very capable of expressing their needs and demands at the reception center. Van Willigen describes strategies to strengthen the protective

factors by showing respect, understanding, warmth and consolation as well as support with practical issues and better health information and giving adequate answers to the very adequate questions.

Anders Hjern (Chapter 11) presents data on long-term outcomes and prognostic factors from prospective follow-up studies of refugee children from Chile, the Middle East and Bosnia who have received residence permits in Sweden. Despite severe traumatic experiences and an initial high level of poor mental health (at least in the first two groups) only a few children had psychiatric disturbances or fulfilled the criteria of PTSD four to six years after their resettlement. Preliminary findings from data from the Swedish Hospital Register demonstrated that Iranians and Chileans who had come as refugee children to Sweden 10-15 years earlier were found to have about two-fold odds ratios of suicide attempts and psychotic disorders compared with the majority population. After adjusting for social factors, however, the differences disappeared. One important conclusion may thus be that interventions targeting the socio-economic disadvantage of refugee families in the host society with particular focus on the labor market probably have a better effect on the long-term outcome than trauma intervention strategies.

Göran Bodegård (Chapter 12) presents observations and data about asylum-seeking children in Sweden who have developed a syndrome of total apathy. The most severe cases are lying in fetal position; they do not communicate; they need enteral tube feeding and complete personal care. Hundreds of asylum-seeking children, often or always with a history of severe trauma, have developed this clinical picture which has led to a great concern and debate among the general public and in the media, not least over the Swedish asylum process. Bodegård describes 16 patients and discusses possible mechanisms behind this frightening syndrome.

The fourth theme gives examples of the relevance of exclusion and integration of asylum-seeking children. Implementation of the ideas in laws encounters different kinds of problems at the local level. Experiences developed in the projects that were presented provide evidence that much more could be achieved by cooperation between different local authorities and voluntary organizations in order to achieve more humanitarian practices which are also more efficient both for authorities and for the asylum-seeking children and their parents. Charles Watters in Chapter 13 has followed a project in the United Kingdom where the local authorities were actively engaged in reviewing the reception procedures for unaccompanied asylum-seeking children, in particular regarding the assessment of the age of unaccompanied children. With its focus on the lived experience of the children involved, the study shows that reception arrangements can be improved to be both more humane and efficient. In Chapter 14 Vasilina Antoniou and Rachel Reynolds report on research on the relationships between voluntary pre-schools, asylum-seeking children and their parents and other local agencies in promoting the children's well-being and integration. In fact, the study gives ample evidence that pre-school can have a strategic role in connecting institutions that work to support, or at least should provide support for children and parents during the entire asylum process. Education provided through the pre-schools can be crucial to enhancing the life chances of children, especially those who are the most disadvantaged. This concerns not only providing training and education but also information about needs as well as through help to find proper contact links in the local community.

Creative activities, including different forms of play, are commonly used techniques to enhance the well-being of children in the asylum process. David Ingleby in Chapter 15 raises the difficult issue of evaluating such programs and the need to go beyond the standard paradigm of measuring effects. Instead, in a broader approach that includes both the planning and the process qualitative methods can better capture the experience of the participants and do more justice to creative activities. Doing so, one might find that while creative activities may not be able to tackle external problems, such as lack of space, insecurity and discrimination, they may provide important social contact and an opportunity for the children to use their imagination and be able to put difficult experiences and feelings into words.

In Chapter 16, Oleg Pachenkov and Katerina Guearassimova report on the needs of asylum-seeking families in St. Petersburg. The long determination procedure, the health and economic situation of the families, over 90per cent of whom are Afghan, make life uncertain. However, the education policy provides every child under 15 with free education, irrespective of the parents' legal status and educational needs are largely met. Education is highly valued by families and students are rated positively by the schools. Problems of attendance relate to unresolved legal and financial problems, language difficulties and the age gap between refugee children and their class mates. Importantly, however, asylum seekers as an official category form only a minor part of a larger category of illegal migrants (including failed asylum seekers) in St. Petersburg today, whose children have no formal rights to education. The study also pointed to the fact that some 80per cent of the families that were interviewed went on to third countries in the 2-3 years following the study.

Moreover, the complex dynamics of change in family relations as part of the asylum-seeking process also deserves attention. In Chapter 17, Karin Norman points to the manifold ways in which the implementations of national and local refugee policy affect families and children. With examples of Kosovo-Albanian families in the Swedish asylum-seeking process, she shows how children of different ages respond to changing family circumstances. The legal process challenged many notions of family and relatedness (for instance, residence permits granted on the basis of a narrower definition excluded members from the extended family). While some changes were more easily accommodated and coped with, others placed great strain on parents (not least periods of hiding) making children particularly vulnerable.

Conclusion

In summary, a major experience from the conference was that, in the asylum-seeking process, very little attention addresses children in their own right, regardless of whether they arrive with or without family members. This fact brings problems for children, in particular regarding communication and information about their rights and their future conditions. In many instances children are neglected or made invisible and they are left in a stage of prolonged uncertainty. For unaccompanied children there was reference to a culture of disbelief about their reasons for arriving to the receiving country. Policies and practices are fragmented and there is little exchange of experiences of good practices between countries. In EU directives and regulations children are rarely highlighted. Many contributions also underline the need for more extensive qualitative research both within and beyond the points of entry to capture

better the lived experience of children in the asylum process and to assess better the impact of policy and practice. Another important problem that was raised is what reasons are regarded as legitimate for girls and boys, such as forced marriage, fear of circumcision, trafficking and being dragged into wars. During the discussions it became increasingly evident that the different themes were interconnected. Altogether the sharing of knowledge in the meeting brought important new insights into the needs for international and interdisciplinary research on children as refugees and not the least for the purpose of protecting the human rights of children as world citizens. It was decided that an international network was now established and that a new conference would take place within two years

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¹ Pfliegerl, Johannes (2003) "Family and Migration Research Developments in Europe: A general overview" in Pfliegerl, Johannes, Khoo Siew-Ean, Yeah, Brenda S.A., Koh, Verene Researching migration and the family

² UNHCR 2004 *2003 Global Refugee Trends*. Geneva: UNHCR, Population Data Unit /PGDS Division of Operational Support. Available at <http://www.unhcr.ch/statistics>

PART I

International Law and European Refugee Policy

Chapter 1

International Law and Children as Asylum-seekers

Carl Söderbergh

Early developments in modern human rights law

The situation of children in asylum goes to the very heart of key developments and debates within international law.

The first debate is a tension between two, at times opposing interests: the rights of the individual to be given asylum on the one hand, and the right of the state to grant (or withhold) asylum on the other.

Throughout the 1920s and 1930s, groups of refugees (1921 - Russians, 1924 - Armenians, 1929 - Assyrians, 1933 - Germans) were deemed to fall within the mandate of the then High Commissioner for Refugees. Prior to 1951, the definitions of a refugee that were used were, at the same time, very specific (they were limited to certain nationalities or targeted groups) and very broad (they simply applied to persons who belonged to these groups, outside their countries of origin and in need of protection). The terrible tragedy of not admitting many German Jews during World War II shows how grotesque this ad hoc approach could be.

We see this tension most clearly in article 14 of the Universal Declaration of Human Rights (1948): "Everyone has the right to seek and to enjoy in other countries asylum from persecution." At an early stage during the negotiations over the text, the operative words "be granted" were removed. This phrase was fiercely opposed by several representatives. The representative from the United Kingdom said that this would violate "one of the most jealously guarded rights of a State... the right to prevent foreigners from crossing its border."

The 1946 Constitution of the International Refugee Organization (the immediate predecessor to the UN High Commissioner for Refugees', which was created to assist in the repatriation of all the people who had been displaced as a result of World War II) specifically mentions children:

"The term 'refugee' also applies to unaccompanied children who are war orphans or whose parents have disappeared, and who are outside their countries of origin. Such children, 16 years of age or under, shall be given all possible priority assistance, including, normally, assistance in repatriation in the case of those whose nationality can be determined."

At this moment, it is interesting to pause and reflect. While the IRO Constitution may be seen as advancing child refugee rights by specifically mentioning them, it does so with a primary purpose of sending them back and not of assisting them with their asylum claims and eventual stay. In addition, the IRO Constitution reflects the old order by extending the mandate of the organization to very specific categories of individuals and not to refugees in general.

The 1951 Convention that related to the status of refugees was drafted in reaction to these earlier ad hoc solutions for refugee catastrophes. At least some of the people who gathered in Geneva to draft the refugee convention wanted to formulate a universal definition; one that would also try to capture what it feels like to be forced to flee.

While the resulting text had its limitations (in time and in place, given that it initially only covered persons in flight on account of the events in Europe prior to 1951), it was revolutionary in its formulation of "well-founded fear." In this language, there was at least, an implicit promise that the competent authorities of signatory states would try to understand the concerns of the individual claimant, including children. The Convention also established the non-refoulement principle, namely that refugees cannot be forced back to a country of origin where their lives are at risk.

The needs of specific groups, including children

The second main strand in the evolution of modern human rights doctrine is that it emphasizes and affirms the rights and needs of specific groups of people.

The "well-founded fear" language of 1951 goes some way toward this, as it states that signatory states should consider the needs that are specific to every individual, including, of course, children. In my opinion, article 14 of the Universal Declaration, the 1951 Convention and the statute of the UN High Commissioner for Refugees are, however, strikingly silent with regard to children who are seeking asylum.

One of the few times that the needs of children are mentioned in these key texts is the non-discrimination clause, which relates to education in the 1951 Convention. Article 22 mentions that refugees must receive the same treatment as nationals in primary education and treatment at least as favorable as that given to non-refugee aliens in secondary education. Curiously, the article does all this without actually using the word "child."

What does it mean to affirm the needs of specific groups, such as children? Do we need to specifically mention these groups?

Many people divide human rights into two categories, namely so called "negative rights" (i.e. civil and political rights where the state should abstain from torturing or limiting free speech) and so called "positive rights" (i.e. economic and social rights where the state must act affirmatively by investing in schools or hospitals). These categories and the prioritizing of civil and political rights were particularly prevalent in the West during the Cold War.

I would suggest that the view of individuals especially as victims of abuses of these "negative rights" was limited in many ways.

During the 1970s and 1980s, feminist critique pointed out that the catalogue of civil and political rights reflected the interests and needs of men who were active in the public sphere (again free speech is a very clear example).

Indeed, we may criticize the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) on the same grounds. It uses the following definition (article 1):

"the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

The vision that is produced by this definition is one of torture of an individual, possibly a political dissident, for the purpose of extracting information. This vision appears limited when we look at the world today, where entire civilian populations, including many children, are tortured for the simple purpose of spreading terror.

In contrast, the European Convention on Human Rights (1950) was an earlier document but because it lacked the ambition to define torture it may be a more easily adaptable text for us to use today. Its relevant article is:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment." (article 3)

The definition of torture has indeed expanded since the UN Convention against Torture was drafted to include for example Female Genital Mutilation (FGM), which because it is normally conducted by non-state actors, would have fallen outside the scope of the original definition.

The UN Convention against Torture is important in the context of asylum-seeking children since it includes the following provision in article 3:

"No state party shall expel, return ("refouler") or extradite a person to another state party where there are substantial grounds for believing that he would be in danger of being subjected to torture."

The European Court of Human Rights has interpreted article 3 of the European Convention to include a similar prohibition.

Leaving aside the UN Convention against Torture, the feminist critique was merited and the debate attracted attention to the needs of specific groups. This attention, in turn, led to the drafting of many other conventions including, at least indirectly, the Convention on the Rights of the Child (CRC).

But what do we mean when we say that we focus on the needs of specific groups?

First, it means that we emphasize these groups so that their suffering gets the attention of those who have the means and influence to help them. This answers one of my questions, namely that it is important to mention specific groups and categories. Lists of groups are useful pedagogically because they force state parties to pay attention to them.

UNHCR has attempted to fill in the gaps that are implicit in the 1951 Convention by drafting guidelines. Conclusions passed by its Executive Committee comprised of states, which have also raised the particular needs of children. In addition, UNHCR has used a "vulnerable groups" terminology in its training of staff and in its negotiations with states

over locations of resettlement. They are people who have a need for particular protection and who otherwise may not be noticed by UN personnel or the national authorities.

The following are examples of groups, which are often associated with the term:

- Single women
- Female heads of household
- Trauma survivors
- Unaccompanied minors
- Disabled
- Elderly

The term shows that the interests of the state and those of the individual need not always be in opposition, given that there are several states, which have generous resettlement programs that are designed to support persons who are found to be vulnerable.

There is, however, a tension within international law in this case. The attempt to create lists inevitably means that other groups may be forgotten, either deliberately or due to a current lack of awareness. For example, with regard to the list, we may easily think of other categories of persons at risk: adolescents (given the risk of forcible recruitment by armed groups), high-profile refugees, ethnic or religious minorities, and sexual minorities. To be fair, UNHCR has gone through this process. It has realized that list-making risks excluding others, and does, for example, now attempt to address the needs of adolescents.

Perhaps lists such as these are less important than their message that is to look behind the statistics, at the numbers and the crowds in a refugee camp setting.

The second step is to try to pay attention to the particular needs of groups such as children, which may otherwise go unattended.

Thirdly, and most importantly, it means that we do not merely see people as passive victims and objects of human rights violations, but rather take one step forward and view them as individual actors.

In this sense, the CRC is truly a modern international text, in a way that many other conventions are not. I here refer to two particular clauses that are relevant to asylum-seeking children:

Article 3 (1) "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."

Article 12 (1) "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Article 3 breaks down the old barrier between negative and positive rights by looking at children's total situation. Article 12 affirms children as individual actors. As of course the CRC also applies to asylum-seeking children (indeed, there is a non-discrimination provision) it was a huge step forward in terms of the protection of refugee children.

State action

All this was very promising of course, but the interests of the state have steered refugee protection in different directions after the refugee definition was formulated. There are three or four limitations attempted by states, which I want to mention:

States have been adept at using gaps in the 1951 Convention, namely limitations that may be called temporal and geographic (although not the same as the temporal, i.e. events before 1951, or geographic, i.e. in Europe, which were limitations that originally were written into the Convention).

The temporal limitation I speak of is that there is no specification of when an asylum claim should be heard. There is, as a matter of fact, very little in the 1951 Convention about the asylum process itself. In the EU Directive on Temporary Protection, we can see one positive step forward: groups may be granted protection as a result of mass exoduses. The major limitation of the directive, however, is that the EU member states can wait out the period of the temporary protection regime before considering the asylum claims (in the Swedish legislation "särskilda skäl" can lead to consideration being delayed).

More directly, here in Sweden, we have seen time and again that the Swedish authorities delay decisions on claims by groups, for example, cases filed by Palestinians during the first years of the current intifadah were kept pending. Groups, such as Somalis, are granted temporary visas, which have been extended for short intervals over long periods of time (this later led to temporary protection). Iraqis are currently being rejected although only voluntary return is being implemented. This means that those who do not want to go back end up in a state of legal limbo.

I would say that very little concern is given to children who are among these groups, as the uncertainty of their future can definitely cause harm.

The other limitation is that of geography. Non-admission is still a major problem as states find ways to evade their international obligations. Australia's policy of turning ships back and sending them to islands off-shore is a very clear example. The EU member states have generally been less physical in their approach (although high-seas interception has happened in the Mediterranean). The EU rather seeks to use more legislative means of keeping people from our shores and our borders. Given existing restrictive visa requirements, it is virtually impossible for an asylum seeker to arrive legally to the EU. If they were to do so, the fact that they hold a passport from their own country's authorities would undermine their asylum claim. Amnesty International fears that this regime forces people into the hands of smugglers. What would happen to the children who end up in a particularly vulnerable situation?

We are now facing the idea of placing asylum seekers outside the EU, with very little discussion of the consequences for asylum-seeking children. In February 2003, the UK government proposed to send asylum seekers to transit processing centers (TPCs) in states bordering the EU. The proposal also contained provisions for regional protection areas (RPAs) in refugee-producing regions. Spontaneous asylum applications in the EU member states would be substituted by discretionary quotas which constitutes a further development of the resettlement programs currently in place. Thankfully, the proposal did not receive sufficient support at the time, although, we see that other EU governments are currently revisiting this concept, again with very little thought to the effects on children.

Other limitations have to do with how the CRC is applied to asylum-seeking children. Amnesty International's experience is that much time and energy is expended considering

the age of the child. If being under 18 years old can be viewed as a "best interests" trigger, the migration authorities are then quick to question whether the applicant is a child or not.

In that case, there appears to be a clear lack of will to try to understand children's asylum claims. The migration authorities do not appreciate that children may have asylum claims of their own. Officials do not, for example, necessarily interview children without their parents being present.

There is also a lack of appreciation for the particular kinds of trauma that children may be suffering. This goes back to emphasizing the rights of specific groups, recognizing their needs and experiences and then finally, seeing them as individual actors in their own right. One clear example is the migration authorities' lack of respect for children's experiences of having had to see their own parents being tortured or killed, which Amnesty International would view as at least at the level of cruel, inhuman or degrading treatment as it is defined by international law. Another example is trafficking, where international initiatives have focused on the crime prevention aspect rather than necessarily paying attention to the victims of trafficking, both adults and children, and seeing them as victims of trauma and in need of protection.

Conclusions

While many positive steps have been taken within the sphere of asylum-seeking children, the area is still characterized by the tensions between state and individual on the one hand and the limitations in recognizing the particular needs of specific groups on the other hand.

Chapter 2

Europe and Beyond: The Convention on the Rights of the Child and its Impact on Refugee and Asylum-Seeking Child

Observations from a UNHCR Perspective

Christoph Bierwirth

UNHCR's mandate and the relevance of human rights

UNHCR is the UN agency that is mandated to provide international protection to refugees¹ and to supervise the application of the 1951 Convention relating to the Status of Refugees² and other international refugee instruments. UNHCR had always acknowledged the multi-faceted linkages between human rights and displacement³ and in recent years,⁴ it has particularly emphasized the complementary nature⁵ of international refugee and general human rights law. Furthermore, in its protection efforts, UNHCR draws on the work of the UN human rights treaty bodies,⁶ particularly on their conclusions that touch upon the legal status of non-nationals, which also affect refugees, stateless persons and others of concern to UNHCR.

UNHCR's mandate - to provide international protection - is not restricted to its supervisory functions under Article 35 of the 1951 Convention; indeed, it also involves international protection activities on the basis of other legal and policy means, including references to general human rights law and the use of the UN human rights machinery mechanisms. UNHCR's international protection mandate also encompasses efforts to contribute to the development of international law relating to or affecting refugees or other persons of concern to the organization. Such efforts not only include the drafting of new or revised international instruments, soft laws, and national laws, but also activities to promote more progressive interpretations of existing norms.

General human rights norms and standards may become particularly relevant for persons of concern to UNHCR with regard to issues⁷ and rights,⁸ countries⁹ and situations,¹⁰ and individuals who are not explicitly or not comprehensively covered by the 1951 Convention.¹¹ These norms are also important for refugees who have not yet found access to asylum procedures¹² or who have otherwise regularized their stay and therefore, do not (yet) meet the requirement to "lawfully staying in their territory," which is a precondition for many of the 1951 Convention rights.¹³

The importance of the Convention on the Rights of the Child for children of concern to UNHCR

Large number of children among refugees

Among the approximately 17 million persons of concern to UNHCR, about 10 million are refugees and about 5 million are IDPs (internally displaced persons) of which, approximately half are children.¹⁴ All refugees suffer from the loss of their homes and familiar environments but children are particularly vulnerable to the consequences of displacement.¹⁵ Many children are traumatized because they have been victims or have witnessed atrocities; others have lost or been separated from their families. As a result, adolescents may find themselves suddenly in the role of head of households, actually being and feeling responsible for their younger siblings. Refugee children may be further affected for the rest of their life from the disruption of education. These are just some of the multi-faceted protection challenges that are faced by refugee children.¹⁶

Few children specific provisions in the 1951 Convention related to the Status of Refugees

While all legal provisions of the 1951 Convention relating to the Status of Refugees, and in particular the principle of non-refoulement, do apply to refugees who are still children, there are no provisions that are specific for children included in this instrument. Only *Article 22* [para 1] of the 1951 Convention on public education is particularly relevant for refugee children as it requires contracting States to provide to refugees the same treatment as is accorded to nationals with respect to *elementary education*.¹⁷ Furthermore, *paragraph 2 of the Schedule to the 1951 Convention* foresees that “subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or on exceptional circumstances, of another adult refugee.” Beyond these specific provisions: “more generally, the Preamble to the Convention delineates the close linkage between human rights law and refugee law.”¹⁸

Applicability of detailed CRC provisions for refugee children

The very detailed provisions provided by the Convention on the Rights of the Child, however, offer much more elaborate legal guidance on the treatment of children, including refugee children.¹⁹ In other words: both legal regimes are complementary and refugee children benefit from international refugee law for being refugees and from the CRC for being children.

It must be recalled that the rights stipulated in the CRC apply to every child on the territory or under the jurisdiction of a State and are not contingent upon holding citizenship, specific resident, or other status.²⁰

Key principles of the CRC and their relevance for the treatment of refugee children

The key principles codified in the CRC are:

- the best interest of the child,
- the principle of non-discrimination,
- the principle of participation.

All these principles apply to and must guide the treatment of refugee and asylum-seeking children. Some *examples* may illustrate these ideas. The best interests of the child, which is the overriding principle of the Convention,²¹ must, for example, be the starting point for determining protection needs and should guide the chronology of measures to be taken in respect to unaccompanied and separated children. As a determination of what is in the best interest of the child requires a clear and comprehensive assessment of the child's background, particular vulnerabilities, and protection needs, it is critical that the child be allowed access to the territory²² to undertake this initial assessment process. Such a process necessarily²³ entails:

- Prompt **registration** by means of an initial interview conducted in an age-appropriate manner by professionally qualified persons²⁴ to collect biographical data and social history to ascertain the identity of the child, including, wherever possible, the identity of both parents, as well as citizenship of child and parents.²⁵
- Continuation of the registration process,²⁶ **documentation** of further information in order to meet the specific needs of the child.²⁷
- Commencement of **tracing** of family as early as possible.²⁸
- **Prioritization**: identifying children who are separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities.²⁹

Based on the 'best interest' principle, States should also refrain from referring unaccompanied and separated children into asylum procedures if their presence on the territory is unrelated to the need to be granted international protection.³⁰

The principle of participation is a decisive factor, for example, in determining the scope of a child's role in the asylum procedures³¹ or when considering a family reunion. Participation plays an even more profound role in emergency situations in which refugee or other displaced children become caregivers for other children [e.g. their siblings].³²

The principle of non-discrimination codified in Article 2 of the CRC, guides the treatment of refugees or asylum-seeking children in many ways. As a key right of the Convention, the principle of non-discrimination particularly prohibits any discrimination on the basis of the child being a refugee or having the status of an asylum seeker. The principle of non-discrimination prohibits, for example, different treatment of asylum-seeking children from different countries. All of them have to be subject to the same general rules and procedures and must enjoy the same social rights. The principle of non-discrimination, if properly understood, does not prevent, but may in fact call for a differentiation among refugee and asylum-seeking children on the basis of different protection needs, which derive, for example, from their health status, age, trauma and/or

persecution. Therefore, this principle does not hinder but requires that refugee status is only given to children who are in need of international protection. These include:

- a) asylum-seeking children who have a well founded fear of persecution of their own and should therefore be granted original refugee status based on their own merits;
- b) children who have at least one parent who have a well-founded fear of persecution and who should be granted derivative status under the principle of “family asylum” in order to secure the unity of the family.

Children without direct or derivative protection needs may and should not be granted refugee status, but should nevertheless benefit from the protection provided by general human rights law.

The appointment of a competent guardian serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child and therefore, such a child should only be referred into asylum or other procedures after having been appointed a guardian.

Selected provisions of the CRC of particular relevance for the protection of refugee, asylum-seeking and other children of concern to UNHCR

The following observations are far from comprehensive but shall illustrate, in greater detail and through some examples, the practical relevance of the Convention on the Rights of the Child for the protection of refugees, asylum-seeking and other children of concern to UNHCR.³³

*Article 22 CRC*³⁴ on refugee children is the *only explicit refugee related provision* in any of the *international human rights instruments*.³⁵ In view of the almost universal acceptance of the Convention on the Rights of the Child, States’ obligations under this provision offer an important legal argument. It also provides a starting point for UNHCR to engage in discussions with government counterparts of those States, which are not party to the 1951 Convention, to establish a national asylum system and to draft national asylum legislation. The Committee has been a strong ally in calling upon States to engage in such capacity building measures.³⁶

The existence of Article 22 does, however, entail the *potential risk of diverging standards* as it is for the Committee on the Rights of the Child to monitor States’ adherence to the obligations under this provision, while UNHCR retains its general genuine mandate to provide international protection for refugees.³⁷ Particular attention must be paid to this potential risk, as it may lead to a lack of clarity in applicable standards and may, thereby, undermine the legal status and situation of refugee children. This risk can, however, be avoided by close cooperation and information sharing between UNHCR and the Committee, which is a well established practice.³⁸

The limited time frame for this lecture does not allow me to present the full scope of issues related to refugee children which the Committee has addressed in its monitoring practice, but some selected issues shall be highlighted.

In relation to *detention*, the Committee expressed its serious concerns “about legislation which permits the detention of asylum-seeking children pending

deportation.”³⁹ In relation to Sweden it recommended “that consideration be given to providing alternatives to the incarceration of children under the Aliens Act.”⁴⁰

Strong wording has also been pronounced on the issue of *family reunification*. In relation to South Africa, for instance, the Committee noted that “the State Party develops a legislative and administrative framework to guarantee and facilitate family reunion.” More recently, in its concluding observations and recommendations on Germany, the Committee took up a number of rather specific issues. They included the application of the Youth Welfare Act to refugee children between 16 and 18 years of age, the treatment of and [deportation] policies regarding Roma children, recruitment of children as soldiers as a child specific form of persecution, family reunification requirements and the issuing of birth certificates to children of refugees and asylum seekers.⁴¹

On some occasions, the Committee has commented on *specific shortcomings in asylum procedures* because they affect children who seek asylum. With regard to Finland for example, it expressed concerns “...that unaccompanied minors applying for asylum are interviewed in the same way as adults.”⁴² This observation contributed to the development by the Finnish authorities, of specific guidelines for interviewing asylum-seeking children which are considered to be of model character by many experts. In relation to Denmark the Committee expressed concern “...about the application of the law and policy concerning children seeking asylum, particularly with regard to methods of interviewing children, including unaccompanied minors, and to ensure that applications for the purpose of family reunification are dealt with in a positive, humane and expeditious manner.”⁴³

*Article 7 CRC*⁴⁴ on birth registration, name, nationality and right to know and be cared for by parents is an essential protection tool in relation to UNHCR’s (well established but not so well known) mandate in relation to the *prevention and reduction of statelessness*. However, since the provision speaks about a “right to acquire nationality” without clarifying which nationality is to be acquired, this provision is not of a self executing character and does not entail a clear right to be granted a particular citizenship. The Committee, aware of this shortcoming, has nevertheless used its monitoring competence to address issues such as the existence of different categories of citizenship,⁴⁵ or *jus sanguinis* rules applied only from the patrimonial side.⁴⁶ It has further, in its concluding observations and recommendations, called upon State parties to take “measures to facilitate applications for citizenship, so as to resolve a situation of stateless children, especially those placed in institutions” or suggested to State parties to “consider acceding to the 1954 Convention related to the reduction of statelessness.”⁴⁷ Concerning India, it has also noted that there “exists the potential for children born of refugee parents to become stateless”⁴⁸ and with regard to refugees in Armenia it observed that housing registration requirements can be an obstacle to naturalization.⁴⁹

Even more relevant in practice, is the obligation entailed in Article 7, which stipulates that “a child shall be registered immediately after birth.” Birth registration of asylum-seeking and refugee children is a central concern for UNHCR as such registration is not only a “first official acknowledgment of the child’s existence” and “represents a recognition of each child’s individual importance to the state and of the child’s status under the law,”⁵⁰ but it is also essential for finding a durable solution for refugee children, whether through local reintegration or (ultimately) repatriation.

Problems related to *birth registration of children* of concern to UNHCR are among the main issues which UNHCR brings to the attention of the Committee. Such problems are not only observed for example in Central Asia⁵¹ or in Africa⁵², but occasionally, also in Western Europe. In Germany for example, UNHCR had observed that the authorities in one of the 16 federal States had denied the issuing of birth certificates to asylum-seeking children if the parents had not disclosed their precise travel route to Germany (in order to avoid application of the safe 3rd country rule). While asylum seekers indeed have an obligation to cooperate with the authorities and to present all facts relevant to the assessment of their claim, including information of their flight route, insufficient cooperation from the parents must not lead to the denial of the Convention right to a newborn child who is a right holder on his own.

To illustrate this point, reference may be made to the relevant paragraphs of the observations and recommendations on Germany in which the Committee expressed, that “...some children of asylum seekers in the Land Berlin were denied the right to a birth certificate because of incomplete documentation provided by the parents.”⁵³ Based on this observation, the Committee makes the following recommendation: “in light of article 7, 22 and other relevant provisions of the Convention, the Committee recommends that the State party take all necessary measures: ... (e) to ensure that birth certificates are issued for all children of refugees and asylum seekers born in the territory of the State party.”⁵⁴

Article 28 and other education related provisions

Article 28 CRC on a child’s right to education as well as other education related rights complement Article 22 of the Geneva 1951 Convention and provide important legal arguments to secure refugee and asylum-seeking children’s *access to education*.⁵⁵ This is particularly important as years of lost education can hardly be recovered.⁵⁶ Education is also a key to protection⁵⁷ and to durable solutions, including the success of peace and reconciliation efforts, which are essential ingredients for ultimate repatriation in safety and dignity.⁵⁸ This right to education is not qualified in any manner by the resident or other status of the child, and therefore, the State’s obligation under Article 28 a) to make primary education compulsory and free to all, applies to all refugee and asylum-seeking children, no matter whether they have been able to regularize their status in the country of asylum. The same applies to other education related rights codified in the Convention. Therefore, Article 28 and in particular, Article 28 para. 1 b)⁵⁹ paired with the principle of non-discrimination, prohibits any discrimination that hinders the access of refugee or asylum-seeking children to higher education. Differentiation is, however, permissible, based on talents, mental and physical abilities. Yet it is necessary that these abilities be developed to their fullest potential.⁶⁰

The Committee had repeatedly addressed the need to ensure refugees and asylum-seeking children’s right to indiscriminate access to education.⁶¹ With regard to refugee children in Finland the Committee, for instance, expressed concern about the fact that “...it...appears that education for refugee children in their language is available only in those municipalities which provide for sufficient resources” and encouraged the State party “...to consider measures through which asylum-seeking and refugee children can be granted equal access to the same standard of services, in particular education, irrespective of who they are and where they live.”⁶² In this context, the Committee also emphasized the need to seek international assistance to secure education needs.⁶³

Article 29 para 1 (c) and (d) give guidance on the *educational objectives* relating to refugee children as well as with regard to children of the host society. According to these provisions, State parties agree that education of the child shall *inter alia* be directed to:

“...(c) the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

Survival and Social rights

With regard to the applicability of social rights that are stipulated in the Convention it must first be emphasized that the CRC is *lex specialis*⁶⁴ with regard to the treatment of children. Therefore, the *limitation provided in Article 2 paragraph 3 CESC*, according to which “developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals,” does not apply to children who are non-nationals, including those who are refugees or asylum-seeking children. The Committee has frequently addressed issues relating to the survival of refugee children as well as the necessary provision of health and social services for them. With regard to Central African Republic for example, the Committee expressed its concern “at the situation of some refugee children who are obliged to beg for food and money on city streets.”⁶⁵ Some shortcomings relating to the enjoyment of special rights have also been addressed to Western countries.⁶⁶ Sometimes the Committee has addressed very specific issues in its observations and recommendations, such as provision of psycho-social assistance to refugees and asylum-seeking children,⁶⁷ or the treatment of unaccompanied or separated children.⁶⁸

In view of the fact that not all international protection needs are met by the granting of refugee status (under the 1951 Convention), it is important that the Committee also sets some parameters for the treatment of children who enjoy complementary forms of protection or *de facto* protection by being allowed to remain in or being tolerated in the country. In its concluding observations and recommendations on Denmark, the Committee pointed out that “... all children who have their asylum requests rejected but who remained in the country have their rights to health care or education provided *de facto* but not *de jure*. It is the view of the Committee that this situation is not fully compatible with the provisions and principles of articles 2 and 3 of the Convention...”⁶⁹

Impact of Convention Rights on the development and implementation of UNHCR's protection strategy and programs

Rights based programming

Although only States have ratified and are the direct addressees of CRC obligations, this instrument also sets key values and standards, which have an impact on and should guide the work of international organizations. A growing number of agencies have adopted human rights based approaches and strategies and human rights have been incorporated into the analysis and planning framework of UN country teams.⁷⁰ Contrary to the situations of other agencies, which received their underlying human rights instruments only long after the start of their operations and which accordingly had to adjust their programs; the broader international legal framework of refugee protection predated the establishment of UNHCR. Our organization received, close after the time of its creation, an updated international instrument in the form of the 1951 Convention, which was later modified by the 1967 Protocol. UNHCR's *activities were therefore rights based almost from the very beginning of its operations*. UNHCR also does not face the same challenges as how best to link its work effectively with the treaty monitoring bodies or how to translate their recommendations into its programs.⁷¹

The ultimate use of the term "assisting governments" in UNHCR's mandate clearly indicates that the responsibility for refugees, including for refugee children, has not been shifted to UNHCR.⁷² *The primary responsibility thus remains with States* and therefore, any assistance by UNHCR is of a subsidiary character. As a result, UNHCR only engages in assistance measures, where implementation of refugee rights, including the rights of refugee children, cannot be or are not fully met by the governments concerned.⁷³ Based on these premises, UNHCR programs that relate to refugee children may, and in practice do, address both: 1) the development of capacities (of the government as well as NGOs) to address the full needs of refugee children; and (2) immediate basic material needs of persons of concern,⁷⁴ addressing inter alia the sectors of food, shelter, health, education, protection, etc., whereby UNHCR is trying to directly meet shortcomings in the realization of rights. To put it clearly and to avoid misunderstanding: while UNHCR is obliged to exercise its mandate functions vis-à-vis refugees who fall under its mandate, it is at the discretion of the organization how – in the particular country or situational context - protection shall best be provided. An individual refugee does not have a subjective individual right vis-à-vis UNHCR to be granted protection in a particular manner or to receive a specific form of assistance.⁷⁵

Binding rights based parameters that govern program design and implementation

Human rights based protection considerations will not only determine the key objectives of assistance efforts,⁷⁶ they will also set some *binding parameters governing the basic structures and methodology of any assistance system and for the conduct of staff involved*.⁷⁷ Rights based arguments call for a clear prioritization based on the vulnerability of beneficiaries and for mechanisms to ensure that assistance also reaches women, elderly, and in particular children.⁷⁸

Experience reveals that translating rights into an effective (program) requires comprehensive training efforts that lead to more than sole familiarization of staff with key human rights norms.⁷⁹ Field guidelines,⁸⁰ collection of good practice,⁸¹ and other practical tools⁸² are needed to make informed choices and decisions.

The field of education as one example for rights informed programming

Concrete examples where UNHCR's efforts concerning refugee children are very much influenced by the Convention on the Right of the Child may be found in the *field of education*. In this sense, it is important to recall that *education is not only a human right in itself, but also an indispensable means of realizing other human rights*.⁸³ As an empowerment right⁸⁴ education plays a decisive role in addressing the immediate protection needs of refugees⁸⁵ and in particular refugee children as well as in contributing to finding a durable solution. For instance, mine awareness training is just one example of a very specific protection issue, where education contributes to the implementation of States' obligations to secure the survival of the child as enshrined in article 6 CRC.⁸⁶ Language training of refugee children is equally crucial for their successful integration in the host society and hence, the practical enjoyment of their fundamental rights. Education as a universal human right cannot be addressed in isolation, but has to be mainstreamed into any refugee protection strategy and must be integrated into any related assistance programs.

In *designing education programs* for refugee children and developing curricula, particular attention should be given to the Committee's comprehensive *General Comment 1* devoted to the aims of education.⁸⁷ The Committee is aware of the scope of the challenge and the potential dilemmas. Indeed, it highlights in its General Comment: "Article 29 (1) states that the States Parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse article values through dialogue and respect for differences. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another."⁸⁸

Cooperation between UNHCR and the Committee on the Rights of the Child

In view of the complementary nature and importance of the CRC for the protection of children of concern to UNHCR, as underlined above, UNHCR has developed very close

working relationships with the Committee on the Rights of the Child. This cooperation takes place in different areas. In the context of reviewing the country reports, UNHCR provides input into the Committee's work in the form of Confidential Comments, which more importantly, are also explained orally in the pre-sessional working group. This allows it to take up further preparatory questions asked by the Committee.

Of similar importance is cooperation with the Committee on the development of General Comment. UNHCR is particularly pleased that the Committee has found consensus to embark on the effort to develop a General Comment on the treatment of unaccompanied and separated children. This document shall not be confined to, but will include issues related to those unaccompanied or separated children who seek asylum or who are refugees.

The Committee on the Rights of the Child is one among the treaty bodies, which is most inclined to take up issues brought to its attention by UNHCR.⁸⁹ The potential for cooperation is not yet exhausted. Elaborate positions may be developed by the Committee in the future on the extra-territorial effects of the Convention and in particular on the question whether, and in the affirmative, under which precise conditions, non-refoulement obligations derive from specific Convention provisions.⁹⁰

Efforts to instrumentalize the Convention on the Rights of the Child in enhancing the protection of refugee children will benefit from the experience, observations, and views made by practitioners who work in the front lines of refugee and child protection.

¹ See Statute of the Office of the UNHCR (GA Res. 428(V)) of 14 December 1950.

² Convention relating to the Status of Refugees (United Nations Treaty Series No. 2545, vol. 189 p. 137), Article 35.

³ Please note also the Report of the Secretary-General, "Human Rights and Mass Exodus," A/58/186, General Assembly, 25 July 2003.

⁴ For information on the development of UNHCR's approach towards the use of human rights for refugee protection, please be referred to Brian Gorlick, "Human rights and refugees: enhancing protection through international human rights law," New Issues in Refugee research, Working Paper No. 30, Sweden, October 2000, <http://www.jha.ac/articles/u030.htm> and Amnesty International, "The UN and refugees' Human Rights," AI Index: IOR 30/02/97, 1 October 1997.

⁵ In 2003, Conclusion No. 95 the Executive Committee of the United Nations High Commissioner's Programme explicitly acknowledged "the multifaceted linkages between refugee issues and human rights" and recalled "that the refugee experience, in all its stages, is affected by the degree of respect by States for human rights and fundamental freedoms". It further noted "the complementary nature of international refugee and human rights law, as well as the possible role of the United Nations human rights mechanisms in this area".

⁶ For further references, see Saul Takahashi, "Recourse to Human Rights Treaty Bodies for Monitoring of refugee Convention," *Netherlands Quarterly of Human Rights*, Vol. 20/1, p. 53-74, 2004.

⁷ For example, in relation to detention.

⁸ It must be recalled that the 1951 Convention preceded the major international human rights instruments and that human rights law has developed further since then.

⁹ For instance, countries not party to the 1951 Convention.

¹⁰ Reference is made to the possibility for a geographical limitation offered by Article 1B(1).

¹¹ Such as those fleeing the indiscriminate effects of generalized violence and who therefore “only” fall under UNHCR’s extended mandate, internally displaced persons (who have not crossed an international border), stateless persons and returnees.

¹² In some countries it can take more than a year from the asylum seekers’ first approach to the authorities until her/his asylum request is properly registered and related documentation issued.

¹³ Such as Article 18 on Self-Employment, Article 21 on Housing, Article 23 on Public Relief, Article 26 on Freedom of movement and finally Article 28 on Travel Documents

¹⁴ The UN general assembly has repeatedly acknowledged this fact. See for example already PP4

of GA res 35/ 135 of 11dec 1980 which reads: Noting with great concern that women and children constitute the majority of refugees and displaced persons in most areas.

¹⁵ For further general reference please see (Christina Linner, Introduction, “Refugee Survey Quarterly”. Vol 23 Number 2, 2004); and statement by Ruud Lubbers, UNHCR. Refugee Survey Quarterly. Vol 23 Number 2, 2004, p. 253-255

¹⁶ In developing a follow-up strategy to the recommendations of the *United Nations Study on the Impact of Armed Conflict on Children* (the *Machel Study*), UNHCR had identified five concerns as particularly important for refugee children that have subsequently been further developed into the five global priority issues. Such are: 1) separation; 2) sexual exploitation, abuse and violence; 3) military recruitment; 4) education; and 5) the special needs of adolescents.

¹⁷ Para 2 adds: “The Contracting States shall accord to refugees treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, with respect to **education** other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

¹⁸ See also statement by Erika Feller, UNHCR “Refugee Survey Quarterly” Vol 23 Number 2, 2004, p.327

¹⁹ See also Erika Feller, *ibid*, who notes: “Article 22 of the Convention on the Rights of the Child is an important reference point in context, providing as it does for the applicability of articles in the CRC and in the other human rights or humanitarian instruments specifically to refugee children. The CRC requires perhaps the most exacting standards for protection and assistance to minors under any international instrument. With its near universal acceptance, it is a valuable frame, from UNHCR’s perspective, for any consideration of asylum issues as they affect children, not least separated children.” “Refugee Survey Quarterly” Vol 23 Number 2, 2004, p.327-228

²⁰ More generally as related to the scope human rights obligation, attention should be given to the view explicitly expressed by the Human Rights Committee in General Comment 15 and recently reaffirmed in General Comment 31 with regard to ICCPR that human rights are not limited “to citizens of States Parties but must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party”

²¹ CRC Art 3, See also ICCPR Art. 24; ICESCR Art 10(3); *UNHCR Guidelines* para 1.5; ECRE para 4; *Statement of Good Practice*, B.1. Best interests, p3

²² Refer to: 1951 Convention Relating to the Status of Refugee (1951 Convention) Refugee Convention, Art. 31, Art 33; CAT, Art. 3; CRC, Art. 6(1); ICCPR Art. 6(1); ECHR, Art. 2(1); Dublin Convention, Art. 9; *UNHCR Guidelines*, paras 4.1-4.2; ECRE, paras 14 & 15; EU Res. Art. 2(1 & 2); *Statement of Good Practice*, C.1 Access to Territory, p6 (note making the point that unaccompanied and separated children should not be subject to detailed interviews by immigration authorities at the point of entry)

²³ See General Assembly Resolution 58/150 *Assistance to unaccompanied refugee minors*, adopted 22 December 2003, Preambular Paragraph 5, OP 3

²⁴ CRC, Art. 12 and 13 and ICCPR, Art. 19 (re interpretation); *UNHCR Guidelines*, p2, p7-8; *Statement of Good Practice*, B5 Interpretation, p4

²⁵ *UNHCR Guidelines*, 6-7. Note also that the UNHCR Guidelines advise that upon arrival, a child should be provided with a legal representative.

²⁶ See *UNHCR Guidelines* (para 5.6) which pairs Registration and Documentation and *Inter-Agency Guiding Principles*, p32 - 33

²⁷ This information should include:

-the reasons for being separated or unaccompanied; assessment of particular vulnerabilities, including medical and psycho-social needs and other protection needs, including those deriving from domestic violence; as well as all available information to determine the potential existence of international protection needs, including those falling under Article 1 A (2) of the 1951 Convention, i.e. those due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”

²⁸ CRC, Art. 10(2), Art. 9(3), Art. 22(2); ICCPR, Art. 23(1); ECHR, Art. 8; *UNHCR Guidelines*, para 5.17; *Inter-Agency Guiding Principles*, p35 – 36; ECRE, para. 32; EU Res. Art. 3(3); *Statement of Good Practice*, C.3 Family Tracing and Contact, p7

²⁹ CRC, Art. 8; *UNHCR Guidelines* para 5.1 – 5.5; EU Res. Art 3(1); *Statement of Good Practice*, C2 Identification, p6

³⁰ In some countries such practice was observed and motivated mainly for budgetary reasons. If asylum-seeking children in need are covered by a central budget while other unaccompanied or separated children would fall under the (financial) responsibilities of authorities the latter may feel inclined to refer such children into asylum procedures.

³¹ With regards to Norway, “the Committee is concerned that the provisions and principles of the Convention are not entirely respected with regard to asylum-seeking children. Specifically, the Committee is concerned that child applicants for asylum are provided with insufficient opportunities to participate in their application process and that their views are insufficiently taken into consideration. The Committee considers that positive mechanisms, such as the appointment of individual guardians for each unaccompanied asylum-seeking child, are not implemented to their full extent.”

³² See David Tolfree, “Child Protection and Participation in Refugee Emergencies.” *Refugee Survey Quarterly*. Vol 23 Number 2, 2004, p.89

³³ More useful references can be found in the UNICEF, “Implementation Handbook, for the Convention and Rights of the Child, fully revised edition June 2002 (henceforth: UNICEF handbook), in particular on Chapter Article 22 p. 305. In the following UNICEF handbook

³⁴ Article 22: 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

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

any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

³⁵ While the Universal Declaration of human rights of 10 dec 1948 provided in Article 14 para 1 that “everyone has the right to seek and to enjoy in other countries asylum from persecution”, no similar provision was included in the International Covenant on Civil and Political Rights of 16 December 1966 and subsequent efforts to find states consensus on an international convention on asylum have failed.

³⁶ With regard to the Netherlands Antilles, “the Committee notes with concern the State party’s declaration concerning Article 22. The Committee is further concerned at the absence of legislation, policies and procedure in the Netherlands Antilles regarding the protection of the rights of refugee and unaccompanied children. Netherlands Antilles, CRC/C/15 Add. 186, 7 June 2002, para 56. In consequence, “the Committee recommends that the State party withdraw the declaration concerning article 22 and take effective legal and other measures to ensure adequate protection of refugees and unaccompanied children and implement programmes and policies to ensure their access to health, education and other social services.” Ibid, para. 57

³⁷ “The unique and important work of the United Nations High Commissioner for Refugees (UNHCR) was stressed at all stages of drafting the Convention.” see UNICEF handbook p.310

³⁸ See below chapter 5. The Committee has repeatedly explicitly acknowledged the role of UNHCR. For example, in its concluding observations and recommendations concerning Burundi, “the Committee urges the State Party to continue to work closely with UNHCR towards establishing conditions conducive to the return of refugees in safety and in the context of a durable solution. Burundi, CRC/C/15/Add.133, para 68, 16 October 2000 and also quoted in *UNICEF handbook* p.308. Furthermore, with regards to Panama it recommended that “procedures should be developed in cooperation with UNHCR in order to facilitate family reunification as well as to appoint legal representatives for unaccompanied children and to apply, when relevant, child friendly interview techniques.” Panama, CRC/C/15/Add.68, para. 34, 24 January 1997.

³⁹ Austria. CRC/C/15/Add.98, para 27, 7 May 1999. Consequently, “the Committee urges the State Party to reconsider the practice of detaining asylum-seeking children, and that such children be treated in accordance with the best interests of the child and the light of provisions of articles 20 and 22 of the Convention.”

⁴⁰ Sweden, CRC/C/15/Add.2, para. 12, also quoted in UNICEF Handbook, p. 309.

⁴¹ Germany, CRC/C/15/Add. 226, para 54 and 55, 26 February 2004. The precise text of the concluding observations and recommendations read as follows: 54. In addition to its concerns related to the declaration made by the State party on article 22 of the Convention, the Committee remains concerned that:

- (a) Refugee children between 16 and 18 years of age do not benefit from the rights contained in the Youth Welfare Act;
- (b) Roma children and other children belonging to ethnic minorities may be forcibly expelled to countries their families have been fleeing;
- (c) Recruitment of children as soldiers is not accepted as a child-specific persecution in the asylum procedure;
- (d) The national requirements and procedures for family reunification for refugee families, as defined under the Convention relating to the Status of Refugees of 1951, are complex and too long;
- (e) Some children of asylum-seekers in the Land Berlin were denied the right to a birth certificate because of incomplete documentation provided by the parents.

55. In light of article 7, 22 and other relevant provisions of the Convention, the Committee recommends that the State party take all necessary measures:

- (a) To fully apply the provisions of the Youth Welfare Act to all refugee children below the age of 18 years;
- (b) To review its legislation and policies regarding Roma children and other children belonging to ethnic minorities seeking asylum in the State party;
- (c) To consider the recruitment of children as soldiers as a child-specific persecution to be accepted in asylum procedure;
- (d) To ease refugee family reunification requirements and procedures, in particular for those covered by the refugee Convention of 1951;
- (e) To ensure that birth certificates are issued for all children of refugees and asylum-seekers born in the territory of the State party.

⁴² Finland, CRC/C/15/ Add. 132, para. 51, 16 October 2000. Furthermore, while noting with appreciation the establishment of a system of representation for unaccompanied minors applying for asylum, it expresses its concern that “not enough efforts have been undertaken to ensure adequate resources and training for the representatives of unaccompanied minors applying for asylum. Taking up the issue: “The Committee recommends that the State party ensure adequate resources for the training of the officials who receive refugee children, in particular in child-interviewing techniques, and of the representatives of unaccompanied minors applying for asylum. It also encourages the State party to consider measures through which asylum-seeking and refugee children can be granted equal access to the same standard of services, in particular education, irrespective of who they are and where they live.” In relation to Denmark the Committee expressed concern “... about the application of the law and policy concerning children seeking asylum, particularly with regard to methods of interviewing children, including unaccompanied minors, and to ensuring that applications for the purpose of family reunification are dealt with in a positive, humane and expeditious manner.” Denmark, CRC/C/15/Add.33, para. 13, 15 February 1995

⁴³ Denmark, CRC/C/15/Add.33, para. 13, 15 February 1995

⁴⁴ Article 7. 1) The child shall be registered immediately after birth and shall have the right from birth to name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in the field, in particular where the child would otherwise be stateless

⁴⁵ “...It is also seriously concerned by the fact that the Citizenship Act establishes three different categories of citizenship, and therefore some categories of children and their parents might be stigmatized and/or denied certain rights. In the field of the right to citizenship, the Committee is of the view that the State Party should, in the light of article 2 (non-discrimination) and 3 (best interests of the child), abolish the categorization of citizens...” Myanmar, CRC/C/15/Add.69, para. 14 and 43, 24 January 1997

⁴⁶ “The Committee is... concerned that in the light of the State Party’s legislation regarding citizenship, nationality may only be obtained by a child from his/her Kuwaiti father. The Committee recommends that domestic legislation be amended to guarantee that the acquisition of Kuwaiti nationality be determined in the light of the provisions and principles of the Convention, especially articles 2, 3 and 7.” Kuwait, CRC/C/15/Add.96, para. 20, 26 October 1998.

⁴⁷ Czech Republic, CRC/C/15/Add.31, para. 33, 15 January 1995

⁴⁸ India, CRC/C/15/Add.115, paras. 61 and 62, 23 February 2000

⁴⁹ Armenia, CRC/C/15/Add.119, para. 47, 24 February 2000

⁵⁰ See UNICEF Handbook, p. 108.

⁵¹ With regard to Tajikistan, for example: “27. In the light of article 7 of the Convention, the Committee recommends that the State party make greater efforts to ensure free and timely registration of all births, and take measures with regard to training and awareness-raising concerning registration in rural areas. The Committee encourages such steps as the establishment of mobile registration offices and of registration units in schools and health facilities.” More specifically, with regards to refugee children, the Committee added that:

“44. The Committee is concerned that the situation of Tajik returnees following the civil war, and of Afghan refugee and asylum-seeking children as a result of the conflict in Afghanistan. The Committee is also concerned that the **issue of documentation** is a serious problem for non-nationals, especially asylum-seekers.

45. The Committee recommends that the State party establish and implement a functional system of family reunification in order better to protect children from being separated from their parents. The Committee recommends that the State party: undertake effective public education campaigns to inform asylum-seekers, especially those who have recently arrived, about asylum procedures and the importance for children to have *documentation*; provide practical assistance in obtaining **birth certificates** for every child and adequate procedures for the replacement of lost identity and travel documents; and establish a system for refugee and asylum-seeking children to have their own documentation. The Committee encourages the State party to continue and expand its cooperation with international agencies such as, inter alia, UNHCR and UNICEF.” Tajikistan, CRC/C/15/Add.136, 23 October 2000, (*emphasis added*).

⁵² With regard to Djibouti for example the Committee expressed its concern “... in particular about the difficulties experienced in registering the birth of refugee children outside of the refugee camps and about the limited type of birth registration available in the camps.” See Djibouti CRC/C/15/Add.131, para 31.

⁵³ Germany CRC/C/15/Add.226, 26 February 2004, para 54, (e), to see the full quote in context please refer above to footnote 41

⁵⁴ Ibid, para 55 e)

⁵⁵ Furthermore, beyond treaty obligations and the work of the Committee on the Rights of the Child, reference should be made to the work of the Commission on human rights and in particular to its resolution 2004/48 on *Rights of the child, OP17*) which calls upon all States: “(a) To recognize the **right to education** on the basis of equal opportunity by making primary education free and compulsory for all, without discrimination and ensuring that all children, including girls, children in need of special protection, children with disabilities, indigenous children, children belonging to minorities and children from different ethnic origins, have access without discrimination to education of good quality, as well as making secondary education generally available and accessible for all, in particular by the progressive introduction of free education, bearing in mind that special measures to ensure equal access, including affirmative action, contribute to achieving equal opportunity and combating exclusion, and that the education of the child is carried out and that States parties develop and implement programs for the education of the child in accordance with articles 28 and 29 of the Convention on the Rights of the Child;” This is particularly important as years lost for education can hardly be recovered (in footnote : The Committee is only there for consequent when in its concluding observations related to Norway it expressed concern over “delays in the processing of asylum applications and the fact that some child applicants are not integrated into local education systems.” CRC/C/15/Add.126, 28 June 2000, end of para.48) and as education is a key to protection (see Pamela Baxter, UNHCR, and Carl Triplehorn. (“Refugee Survey Quarterly”. Vol 23 Number 2, 2004) and to durable solutions including to ultimate peace and reconciliation peace efforts in the country of origin(insert footnote: The United Nations High Commissioner for Refugee, Ruud Lubbers highlighted in his message for 2003’s world refugee day devoted to refugee youth : “if young refugees are not properly protected and denied opportunities to learn the skills they need

to live productive, independent lives, they are likely to contribute to the next round of conflict.” (“Refugee Survey Quarterly”. Vol 23 Number 2, 2004, p.ii)

⁵⁶ The Committee is only there for consequent when in its concluding observations related to Norway it expressed concern over “delays in the processing of asylum applications and the fact that some child applicants are not integrated into local education systems.” CRC/C/15/Add.126, 28 June 2000, end of para.48).

⁵⁷ See Pamela Baxter, UNHCR, and Carl Triplehorn. (“Refugee Survey Quarterly”. Vol 23 Number 2, 2004.

⁵⁸ The United Nations High Commissioner for Refugee, Ruud Lubbers highlighted in his message for 2003’s world refugee day devoted to refugee youth: “if young refugees are not properly protected and denied opportunities to learn the skills they need to live productive, independent lives, they are likely to contribute to the next round of conflict.” (“Refugee Survey Quarterly”. Vol 23 Number 2, 2004, p.ii.

⁵⁹ Article 28, para. 1 inter alia stipulates: “States Parties inter alia and recognize the right of the child to education, and with a view, to achieving this right progressively and on the basis of equal opportunity, they shall, in particular (a) make primary education compulsory and available free to all (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures, such as the introduction of free education and offering financial assistance in case of need; ...”

⁶⁰ See Article 29 para 1 (a) CRC

⁶¹ With regard to Djibouti for example: “the Committee recommends that the State party continue its efforts to promote and facilitate school attendance, particularly among girls and refugee children. In light of article 28 of the Convention, the Committee recommends that the State party take effective measures to ensure that primary education is available to all, to improve the quality of teaching and to reduce drop- out rates. The Committee encourages the State party to seek to strengthen its educational system, if necessary by seeking further international assistance, from UNICEF and UNESCO, among others.” Djibouti, CRC/C/15/Add.121, 28 June, 2000, para.48

⁶² Finland, CRC/C/SR. 132, paras. 51 and 52. Furthermore, with regards to Norway the Committee had recommended “...that the State Party make further efforts to ensure the rapid integration of children into the normal school system,” Norway, CRC/C/15/Add.126, paras. 50 and 52, 28 June 2000

⁶³ In relation to the Committee recommends that the State party continue its to promote and facilitate school attendance, particularly among girls and refugee children. In light of article 28 of the Convention, the Committee recommends that the State party take effective measures to ensure that primary education is available to all, to improve the quality of teaching and to reduce drop-out rates. The Committee encourages the State party to seek to strengthen its education system, if necessary by seeking further international assistance, from UNICEF and UNESCO, among others.” Burundi, CRC/C/15/Add.133, 16 October 2000.

⁶⁴ In many countries it will also be the *lex posterior*. Applying the *lex specialis* rule will avoid however to look at the dates of accession to the respective international rules.

⁶⁵ Central African Republic CRC/C/15/Add.138, para. 74

⁶⁶ For example on Norway: “with regard to the situation of refugee children and children seeking asylum, the Committee suggests that the State Party consider reviewing its Alien Act as regards its compatibility with the provisions and principles of the Convention ... with regard to the provision of health and education services to children in asylum-seeking situations, the Committee wishes to draw attention to the provisions of article 2 of the Convention which state, inter alia, that ‘States parties shall respect and ensure the rights set forth in the present

Convention to each child within their jurisdiction.” Norway, CRC/C/15/Add.126, paras. 48 and 49, 28 June 2000. Similarly, in relation to Denmark, it was noted: “with regard to the situation of refugee children and children seeking asylum, the Committee suggests that the State Party consider reviewing its Alien Act as regards its compatibility with the provisions and principles of the Convention... with regard to the provision of health and education services to children in asylum-seeking situations, the Committee wishes to draw attention to the provisions of article 2 of the Convention which states, *inter alia*, that ‘ States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction’” Denmark, CRC/C/15/Add.33, paras. 14 and 30.

⁶⁷ With regard to Norway: 51. “Noting the additional efforts of the State party to provide psycho-social assistance to refugee and asylum-seeking children, the Committee joins the State party in expressing concern that not all children in need of such help are given the opportunity to receive it. The Committee is also concerned at cases of malnutrition among refugee and asylum-seeking children upon their arrival in the State party. 52. The Committee recommends that the State party pursue its plans to extend the current available psychological assistance to a wider number of children and their parents, and to ensure that every effort is made to identify children who require such help, upon their arrival in the State party. The Committee encourages the State party to continue its efforts to address malnutrition concerns.” CRC/C/15/Add.126, 28 June 2000

⁶⁸ Addressing the treatment and ensuring the rights of separated and unaccompanied children the Committee expressed that “while noting the efforts to deal with unaccompanied asylum-seeking minors, the Committee is concerned that they may need to receive increased attention. The Committee recommends that the State Party strengthen counseling and prompt and full access to education and other services for refugee and asylum- seeking children. Further more, the Committee recommends that the State Party take effective measures for the integration of these children into its society.” Netherlands, CRC/C/15/Add.114, para.23.

⁶⁹ Denmark, CRC/C/15/Add.33, paras. 14 and 30.

⁷⁰ In this context, it should be noted that as late September 2004, the Secretary-General of the UN has launched the so-called “Action 2” program which aims to strengthen UN support for the promotion and protection of human rights worldwide. UNHCR, as well as other agencies, had contributed to the design of this programme (and implementation strategies) which is led by the Office of the High Commissioner for Human Rights (OHCHR), the United Nations development Group (UNDG), and the Executive Committee on Humanitarian Affairs (ECHA).

⁷¹ Given the explicit supervisory function of the organization as foreseen in article 35 of the 1951 Convention, which can be considered to be “quasi monitoring functions,” UNHCR was and is able to react promptly and in a direct operational manner to shortcomings identified in the framework of its supervisory functions.

⁷² or otherwise to the international community, by which the agency was created

⁷³ In highly developed countries UNHCR’s program activities therefore focus on legal activities or PI activities which have a catalytic effect. UNHCR may for example, finance and provide amicus curiae brief to precedent setting court cases related to the rights of refugee children but would rarely engage setting up or financing schools for refugee children. More generally, the ultimate aim of any UNHCR assistance programme is to reach self-reliance capacity within the refugee population and to enable the host government to fully take over remaining refugee related assistance needs on its own; increasingly attention is given to potential exit strategies from the very start of new operations.

⁷⁴ An adjusted understanding of the concept of protection did, however, allow to introduce new approaches such as community based efforts, which allow investments not only reaching refugees, but also communities hosting them.

⁷⁵ UNHCR’s decision, for example, to provide material assistance to families of refugee children in kind or to offer a modest cash subsistence payment or to introduce a mixed system,

will depend on a number of factors, such as size and profile of caseload and percentage in need of support, availability of partners (including other international agencies) on the ground, existence/possibility to create governmental and/or NGO distribution structures, location and dislocation in the country (camp vs. urban situation), urgency of need, efficiency of support options, conditions for import of humanitarian goods, and often the availability of resources and donor support.

⁷⁶ Such as food and health care provided in order to sustain life.

⁷⁷ “Following a joint UNHCR/Save the Children-UK study on *Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea and Sierra Leone* undertaken at the end of 2001, a number of measures were put in place to better address such child rights violations. UNHCR in

September 2002 issued a *Code of Conduct* which, among other things, addressed appropriate behavior by UNHCR staff towards children. At the inter-agency level, an *Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises* developed six core principles relating to standards of behavior by humanitarian workers. The *Task Force* contributed to a Bulletin of the Secretary-General on *Special Measures for Protection from Sexual Exploitation and Sexual Abuse* which entered into force on 15 October 2003 and is legally binding on all staff of United Nations agencies, specialized agencies and United Nations forces conducting operations under United Nations command and control.” Christina Linner, Introduction, *Refugee Survey Quarterly*. Vol 23 Number 2, 2004, p. 3

⁷⁸ However, human rights based arguments will not eliminate the operational discretion of the organization beyond these basic parameters. They remain an important factor in the decision-making, wherever several options for assistance may be available. Rights based considerations would rarely single out a clearly preferable option, but different options relate to different rights and a carefully balanced decision has to be made. Example: where possible refugees should be given the opportunity to cook their own food, rather than be provided with “ready to eat” supplies. However, as this first approach would leave some beneficiaries, such as unaccompanied or separated children unattended, more direct forms of assistance may have to be offered to meet specific needs.

⁷⁹ In this context attention should be drawn to *ARC*, a training program initiated by UNHCR and the International Save the Children Alliance in 1997 to which UNICEF and OHCHR joined in 1999. *ARC* “has developed into one of, if not the most, comprehensive inter-agency training and capacity building tools on the rights and protection needs of displaced children. Using a rights based approach, the resource material is built on the four core principles of the *CRC*: non-discrimination (article 2); the best interests of the child (article 3); the right to life, survival and development (article 6); and the right to participation (article 12). Fourteen resource packs focusing on international legal standards, situation analysis, community mobilization and a series of critical issues to child protection, as well as a facilitator’s toolkit, have been developed and made accessible through a CD-Rom and the *ARC* website.” Christina Linner, Introduction, “*Refugee Survey Quarterly*” Vol 23 Number 2, 2004, p.4

⁸⁰ Such as UNHCR’s Field Guidelines on education (February 2003), or UNHCR Guidelines on Protection and Care of Refugee Children (1994).

⁸¹ Such as Statement of Good Practice, Separated Children in Europe Programme, UNHCR and Save the Children, (October 2000).

⁸² Such as UNHCR, Training Kit on Refugee Protection and Resource Handbook, Gender, 2002

⁸³ Committee on Economic, Social, and Cultural Rights (CESCR), General Comment No. 13, para. 1

84 All the following principle considerations of the Committee on Economic, Social and Cultural Rights are relevant and deserve reflection in refugee context. “As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.”

⁸⁵ Reference should be made to Pamela Baxter and Carl Triplehorn. “Protecting to learn or teaching to protect?” *Refugee Survey Quarterly*. Vol 223 Number 2, 2004 p.38, and in particular to Table 1 (p. 45) which illustrates how emergency education protects children physically, psychosocially and cognitively and adheres to the Convention on the Right of the Child.

⁸⁶ Article 6 (1). States Parties recognize that every child has the inherent right to life. (2). States Parties shall ensure to the maximum extent possible the survival and development of the child.

⁸⁷ The Committee recommends that the State party continue its efforts to promote and facilitate school attendance, particularly among girls and refugee children. In light of article 28 of the Convention, the Committee recommends that the State party take effective measures to ensure that primary education is available to all, to improve the quality of teaching and to reduce drop-out rates. The Committee encourages the State party to seek to strengthen its educational system, if necessary by seeking further international assistance, from UNICEF and UNESCO, among others.”

⁸⁸ *Ibid*, para. 4

⁸⁹ In fact, a number of the Committee’s suggestions made to State parties in concluding observations and recommendations quoted above, where in fact [co-]initiated by UNHCR.

⁹⁰ Such future efforts may build on the wording of Article 6(2) CRC that “States parties shall ensure to the maximum extent possible the survival...of the child” and may further be informed by the approach taken by the Human Rights Committee in its General Comment 31, para. 12 in which it stated: “Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.” General Comment No. 31 [80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), Adopted on 29 March 2004 (2187th meeting).

Chapter 3

European Refugee Law and its Impact upon Children

Terry Smith

The Separated Children in Europe Programme (SCEP)

The Separated Children in Europe Programme (SCEP) is a joint initiative of some members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees (UNHCR). The Programme was initiated in 1997 and is based on the complementary mandates and areas of expertise of the two organisations; the International Save the Children Alliance is focused on the full realisation of children's rights; UNHCR's responsibility is to ensure the protection of refugee children and those seeking asylum. A commitment to the full implementation of the United Nations Convention on the Rights of the Child (CRC) is fundamental to the work of the Programme.

In order to reflect the true situation of many children the Programme has a broad definition of the term 'separated child', which recognises that some children may appear 'accompanied' when they arrive in Europe but in practice, the accompanying adult may be either unable or unsuitable to assume responsibility for their care.

*'Separated children are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation'*¹

In realising the rights of separated children who have come to or transit through Europe the Programme aims to establish a shared policy and commitment to best practice at both national and European levels. As part of this process, the Programme has developed and extended a partnership network of 28 Non-Governmental Organisations (NGOs) across Europe, which work with separated children.

The programme has also prepared and revised a Statement of Good Practice that outlines the policies and practices required to implement and protect the rights of separated children in Europe, and the principles that underpin good practice. The Statement is principally informed by three documents. The CRC (1989), the UNHCR

Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (February 1992), and the European Council on Refugees and Exiles position paper on Refugee Children (November 1996).

In addition, the Programme has produced a range of materials including a Lobbying Guide, a Training Pack and a varied range of national and comparative reports examining the situation of separated children within Europe. The Programme has developed a guidance pack to facilitate the involvement of separated children in the decisions that impact upon them, and it has recently revised the Statement of Good Practice and prepared an accessible analysis of the implications of the legislation, directives and resolutions emerging from the decision-making bodies of the European Union.

Background and context

Asylum and immigration is currently one of the major social issues across Europe and as such it has gained an extremely high profile. Politicians make regular interventions, usually outlining policies and practices that will act as a deterrent to reduce the numbers of claimants and the media scrutinize developments with vigour. At local or regional levels, service providers must constantly be able to defend challenges from the media and public alike regarding the level of support that is offered to asylum seekers and justify their priorities, particularly if there is a perception that 'local' people are receiving inferior services as a result of provision to asylum seekers.

It is not possible to present accurate statistics regarding the number of unaccompanied children in Europe. This is in no small part due to the way that figures are gathered. Some countries do not distinguish between unaccompanied children and those with families when gathering figures, and likewise, some countries tend to group all, or most, unaccompanied children as asylum seekers whilst others do not, thus making a careful distinction between those in the asylum system and those who are perceived as economic migrants. There are also those children who enter illegally and remain out of sight of the authorities and by definition it is hard to quantify the numbers involved. We do know, however, that the figures are high and also that in recent years the number of unaccompanied children entering Europe has been on the increase.

The 1997 Amsterdam Treaty called for core minimum standards in policy areas in relation to asylum and in 1999 the Tampere summit proposed a common European Asylum policy. The Tampere summit also reaffirmed the right of individuals to claim asylum but despite this, it is fair to comment that since then, legislation, regulations and guidelines have focused on deterrent and the tightening of controls rather than advancing individual rights. In general, there is little evidence of a strong rights based approach to children at the European Union level so it is probably not surprising to note that immigration control appears to take precedence over the 'best interest' of the child. The resolution on 'unaccompanied minors who are nationals of third countries' dating from June 1997, was relatively weak and failed to provide a framework for improved protection or care to this group.

Towards the end of 2003, SCEP undertook a comparative analysis of policies and practices within European Union member states. The analysis was based on the detailed national assessments of 14 EU countries. One of the report's conclusions was that policies across the Union were, in the main, inconsistent, reactionary and fragmented. It

may be that practices and models of care and support in relation to unaccompanied children that are appropriate in one country are simply irrelevant or unworkable in another country. However, there appears to date to have been minimal exchange of information and ideas for developing shared practice within European countries.

‘All wars are waged against children’²

UNHCR estimates a total figure of around 25 million refugees worldwide of which approximately fifty per cent would be children. Children are always victims in times of war or conflict. The collapse or pressures upon a society's infrastructure will directly affect children's access to health care and education and invariably leads to shortages in food, fuel and acceptable standards of accommodation that directly impact upon a child's ability to survive. Parents may be too stressed or traumatised to give good quality care to their children and their development may be affected as there will be little or no opportunities for play. Children may suffer long term effects from witnessing acts of violence and many children will have to deal with the grief and trauma following the death of a parent(s) or other close family members. Needless to say, children are often victims of indiscriminate fighting and many are killed or maimed either when civilian targets are attacked deliberately or offensives on military targets go wrong or involve danger to civilians as 'acceptable' aspects of military strategy. Children also face the danger of being conscripted into the military or of being abducted in order to become prostitutes or to act as slaves in other ways for the army. Children are also the victims of repressive regimes and in such instances are seen as 'legitimate' targets. For example, neither the genocide in Rwanda nor ethnic cleansing in former Yugoslavia spared children; the poison gas used by the Iraqi regime on the Kurds in the north of the country did not discriminate between children and adults and it is estimated that one and a half million children died in the Holocaust.

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

‘The impact on children has been catastrophic. Save the Children UK estimates that, in the last decade, more than 1.5 million children under 18 have been killed and more than 4 million children disabled or maimed, more than 5 million have been forced to live in camps, and more than 12 million have lost their homes.’³

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

‘The United Nations believes that the number of children trafficked annually, internally and externally is around 1.2 million’.⁴

Emerging European Union Policy

Consistent with the aim of developing a common European Union Asylum Policy a number of Directives and Regulations have emerged from the EU in recent years on the theme of asylum (and immigration). It is probably useful to look at each of these, considering their relevance for children.

Temporary protection directive

It is envisaged that this directive will provide a framework for short-term responses to large population movements into the European Union of displaced persons. Its origins stem from the conflicts in former Yugoslavia.

Main provision in relation to children:

- Access to education consistent as for national children.
- Allows possibilities for family reunification.
- Considers guardianship and appropriate placements.
- Refers to the views and wishes of the child.

The Directive, in line with article 28 of the CRC, provides for displaced children to access education under the same terms as national children. It allows for family reunion within the European Union, as outlined in article 10 of the CRC and within this section contains a reference to the principle of the ‘best interest’ of the child which is central to the implementation of the CRC and, in particular, article 12. These are welcome developments. In practice, however, they have had limited impact as guidelines allow for school placements to take up to 3 months to be implemented and any advances on the issue of family reunion are limited by a narrow definition of family. In practice, ‘family’ is restricted to parents and siblings. The directive also refers to assessing the views and wishes of children but once again there are no suggestions or framework for how this will be done in practice. Consideration is also given to Guardianship provision for unaccompanied children, though the term ‘or any other appropriate representation’ considerably weakens this reference and indicators to date show that the standards outlined in SCEP’s Statement of Good Practice are not being adhered to. Finally, there is mention of the need to find ‘appropriate placements’ for unaccompanied children. The Directive notes that, where possible, this should be with the adults looking after the child or with whom they fled their country though it does outline that accommodation in reception centres is also appropriate.

Regulation to aid the identification of asylum seekers and other irregular migrants. The ‘Eurodac’ system

Eurodac is a European Union wide information technology system for comparing the fingerprints of asylum seekers and other irregular migrants. It is envisaged that it will prevent the lodging of multiple applications.

Main provision in relation to children:

- All applicants over 14 years old will be fingerprinted.
- Data can be stored for up to 10 years.
- Also records gender.

- Also records the country where the application is first lodged.

The main development that arises from this regulation is that all applicants over 14 years old will be fingerprinted. Surely, there is a real danger here that taking fingerprints from children may make them feel criminalized and suspicious of the ensuing asylum procedure, particularly if they have fled countries with totalitarian regimes where the authorities cannot be trusted to act impartially. The case could be made that this provision breaches the child's right to privacy (article 16 CRC) and is inconsistent with the SCEP Statement of Good Practice, which refers to asylum procedures being child friendly.

Minimum standards for the reception of Asylum-seekers Directive

The Directive covers areas such as education, health care, accommodation and access to the labour market and vocational training etc. It requires member states to provide a dignified standard of living and in the light of 'Dublin II' (see below) seeks to ensure comparable standards of reception across the union. It is also hoped that consistency will reduce the number of asylum seekers who move between member states seeking better standards of care and support.

Main provision in relation to children:

- Calls for guardianship or other representation.
- Considers placements.
- 16 and 17-year-olds can be placed with adults.
- Suggests family tracing to be done promptly.
- Recommends training for those working with separated children.
- Access to education consistent as for national children.

Article 19 of the directive relates solely to unaccompanied children and again makes reference to the need for legal guardianship but compromises this positive step by referring to other representation. Placements are also considered and the directive outlines that 16 and 17-year-olds may be placed with adults. This is worrying, as it is difficult to see how their needs as children can be adequately met in such a setting and it is inconsistent with the Statement of Good Practice and potentially article 37 of the CRC. There is a call for prompt family tracing and a recommendation that those working with unaccompanied children should pursue training. These are welcome developments, though it is to be hoped that consistent with the Statement of Good Practice, family tracing will be done in a confidential manner that does not expose the family to danger. Consistent with the 'Temporary Protection' directive, education should be offered to unaccompanied children on the same basis as it is available to national children. This needs to be done promptly and it would surely be in the best interest of children to remove the clause that justifies delays in placements up to 3 months.

Regulation Allocating Responsibility for Examining Asylum Applications in the EU (Dublin II)

This regulation builds upon the original Dublin Convention and seeks to add clarification regarding the responsibility of states to process asylum applications.

Main provision in relation to children:

- Improved scope for family reunification.
- Responsibility for separated children is where a family member is legally present (if in the child's best interests).
- Unaccompanied children shall be reunited with family members in another member state if there are humanitarian grounds to do so.

Studying the text of this regulation it appears that there is improved scope for family reunification, including provision for the children of an applicant to join their family in Europe. The regulation also outlines that, if humanitarian grounds dictate and if possible, separated children may be reunited with family members in another member state. This is in line with the CRC (article's 3 and 10) and the Statement of Good Practice. Unfortunately, as already noted elsewhere in this chapter, a tight definition of family excludes 'extended' family members and as such, many unaccompanied children may be denied reunion with their principal care giver. The references to 'family' simply fail to appreciate the cultural importance within some communities of the extended family. There is a similar failure to appreciate the harsh realities of life for many unaccompanied children, some of whose parents may be dead, missing or imprisoned and hence children have been cared for by others than their immediate family.

The Directive also states that the responsibility for assessing asylum applications from unaccompanied children is where a family member is legally present (if in the child's best interests). In addition, where an unaccompanied child has travelled through more than one EU country, the state where the child claims asylum will be responsible for processing the claim. This Dublin II, Directive should thus provide safeguards to unaccompanied children both regarding adherence to 'best interests' and stability. Regrettably, there remains little evidence that this is the case in practice, as member states would appear to ignore much of the provisions of this Directive.

Directive on the Definition of a Refugee and other Forms of Protection

This Directive aims to provide greater consistency in how member states define a 'refugee' and how they interpret the 1951 Geneva Convention on the Status of Refugees. In particular, it seeks to address the differences in how states apply discretionary, temporary, subsidiary or complementary protection.

Main provision in relation to children:

- Refers to child specific forms of persecution.
- Access to rehabilitative services.
- Guardianship, but yet again weakened definition.
- 'Internal Protection' and 'protection from non state bodies'.

Yet again, this proposed directive recognises the need for separated children to have guardians but once again with the weakened reference to other representation. On a

positive note there is recognition of child specific forms of persecution and the need for children to have access to rehabilitative services. It would have been helpful to see consideration within this directive of the need to apply the ‘benefit of the doubt’ when children are attempting to prove their circumstances. The reference to child specific persecution is a useful development but limited if the burden of proof still rests with the child who may have difficulties in understanding, or explaining, why he or she claimed asylum. Similarly there is no reference to the age and maturity of the child and how this will impact upon his or her ability to comprehend accurately the circumstances of their departure from their country of origin and how to convey this to the investigating authorities.

The Directive states that asylum seekers may be able to return to their country of origin if they can return to an area of the country, perhaps not where they have previously lived, that is deemed to be safe. Similarly, they may be returned if the view is that non-state bodies that are active in the country, can offer protection. These do not seem to be appropriate responses for children who should only be returned to the care of a named individual who is both willing and able to care for them and where they will have opportunities for their further development. The Statement of Good Practice calls for detailed assessments of a child’s situation both in the country of reception and origin.

Directive for Minimum Standards in Asylum Procedures

Establishing minimum standards in procedures for assessing asylum applications is central to a ‘common asylum policy’. Member states hope this will further erode the need for applicants to want to move within the Union.

Main provision in relation to children:

- The best interests of the child are a primary consideration.
- Consent is required to undertake age examinations.
- Guardianship, but weakened definition referring to other representation.
- Allows interviews to be conducted without a representative being present.
- Some circumstances where a representative may not be appointed.
- Procedure to be undertaken in a language they can reasonably be supposed to understand.

It is surely a matter of concern that the directive allows for unaccompanied children to be interviewed as part of the asylum process without a representative being present. The Statement of Good Practice requires representation at all stages of the process. This development goes even further than the consistent weakening of the guardianship provision and the directive also outlines some circumstances where a representative may not be appointed to act on behalf of a separated child. Adult representation is a long-standing safeguard for unaccompanied children who may not fully understand the asylum determination procedure, or who may feel frightened and intimidated by it. In cases where an unaccompanied child is likely to turn 18 before a decision on their asylum claim is made, or if they can receive legal advice free of charge, or if they are married, this Directive paves the way for them to be denied any form of adult representation at all.

On a positive note this directive also refers to the ‘best interests’ principle (article 3 CRC) and outlines that the asylum procedure must be undertaken in a language that the

child can reasonably be supposed to understand. It also helpfully states that consent must be given prior to age examinations, which is consistent with the Statement of Good Practice, but it fails to explain how the applicant will be perceived if they decline consent and whether this will impact upon the asylum claim.

Directive on Family Reunification

Historically, member states have developed a range of procedures to reunite families who are resident in different states. An important part of common policies is thus the harmonisation of the rules that currently govern family reunification.

Main provision in relation to children:

- Narrow definition/concept of family unit.
- Restricted rights for children aged over 15 years.
- Integration interview for children over 12 years old.
- ‘Sponsor’ will need residence permit for one year.
- No reference to the views of the child.
- No reference to guardianship.

Although there was optimism around the first draft of the directive that it could have a real and meaningful impact upon the lives of unaccompanied children, this hope proved to be misguided and, in reality, the final directive is somewhat disappointing. There is a narrow definition, or concept, of the family unit as considered above which is simply irrelevant to many unaccompanied children and restricted rights for children over 15 years old who may have to demonstrate that they are dependent upon their parents and unable to live alone or support themselves. There is also the provision to submit children over 12 years old to an integration interview, though it is unclear what this entails. By definition, it is presumably possible to fail this test and in consequence be denied the right to reunification. This seems unreasonable and inappropriate for any child although particularly for 13 and 14-year-olds. It is alarming that this Directive effectively shifts from defining children as being under 18 (CRC article 1) and introduces a model to treat some children as *de facto* adults. In all cases, the child’s ‘sponsor’ will need a residence permit for one year. Unfortunately, there is no reference to the views of the child. In this directive there is no reference to guardianship at all and the need for a child to have a guardian to promote their rights to family reunion and to assist with the process is simply ignored.

Green Paper on the Development of Common Minimum Standards Concerning Returns

References have already been made to a hostile environment concerning services to asylum seekers with much effort focusing on deterring them from travelling to and entering Europe. Return to country of origin is at the forefront of policies that are aimed at deterrent so it is not surprising that return is currently exercising the minds of many EU ministers. Although no directive has been drafted to date, a Green Paper has been prepared, which introduces the subject.

Main provision in relation to children:

- Voluntary return as preferred outcome but tends to focus on forced returns.
- Refers to both country of origin and third countries.
- Receiving country must be willing to accept them.
- Preferably adequate reception must be available from parents or other adults.
- Government bodies or NGOs can provide care.

Current policy seems to consider forced return as the main response pursued by EU states, and there are initiatives emerging, which consider developing practices to facilitate the forced removal of unaccompanied children. Return will be more realistic, however, if it is voluntary as the child will assist in the necessary processes and this should facilitate better preparation and planning which in turn should serve to safeguard the immediate well-being of the child and ensure a long-term durable solution. Unaccompanied children should only be returned to the care of their immediate family, the extended family, or failing this, and if appropriate, a named individual. Where it is not possible to meet this criteria, for example if a child has been abandoned or the family cannot be traced, return would not be a suitable or durable option. It is also difficult to see how institutional placements are able to support adequately an unaccompanied child through the difficult process of transition and reintegration following return.

Conclusion

All of the EU Directives and Regulations on asylum have contained some reference to children. The danger is that these references are a relatively small part of each directive and there is a real likelihood that the needs of children will be overlooked. Although many themes are touched upon there are perhaps four that keep recurring, thus implying that policy makers recognise that there are gaps and wish to address them:

- Guardianship.
- Family reunification.
- The opinions of the child and his or her best interest.
- Return to country of origin.

Sadly, the gaps still remain. Attempts to provide unaccompanied children with effective guardians will fall short of the mark whilst states are allowed to weaken this down to 'appropriate' representative and we have noted that the restrictive definition of family denies many children opportunities to be reunited with their primary care givers. In practice, there appears to be very little commitment to allowing children to input into either the decisions or the construction of policies that impact upon them and as has frequently been mentioned decisions are seldom led by the best interests of children.

Most of the directives will fail to have a positive impact on children whilst the focus of policy remains on deterrent and the tightening of controls. In short immigration control continues to take precedence over the best interest of the child. Despite the aim of these many Directives being to harmonise policy there remains a lack of consistency across the EU. This is perhaps somewhat inevitable as there will be many inconsistencies when comparing practices across a range of countries. A number of factors may contribute to the lack of a consistent approach. These would include the scale of the issue, i.e. the numbers of separated children, whether the phenomenon is new or established, the range of available resources, whether a country is perceived as a

destination or a transit country, whether a country has a tradition of multi-culturalism or not etc.

The Way Forward

If we are to reverse the trend of policy and practice and look at how we may improve the responses to unaccompanied children we could do worse than to start by reaffirming that refugee children are children first and foremost. In addition, we should ask EU ministers to start by taking four steps,

- Ensure that all future legislation is directed by the child's best interests and contribute to a durable solution.
- The 1997 Council Resolution on Unaccompanied Minors who are Nationals of Third Countries should be updated, made stronger and given binding legal force.
- Apply the standards outlined in SCEP's Statement of Good Practice in full.
- Pursue policy harmonisation at the highest level of current practice.

If we fail to consider the needs of unaccompanied children within the context of long-term strategies and the requirements of working together with consistent policies and practices then ultimately we will fail in the task of responding to this particularly vulnerable group of children.

¹ Separated Children in Europe Programme, Statemnet of good practice 2nd Edition October 2000.

² Eglantyne Jebb, founder of Save the Children UK.

³ S. Ruxton Separated Children Seeking Asylum in Europe, A Programme for Action, 2000

⁴ UNICEF, End Child Exploitation, 'Stop the Traffic' July 2003.

Chapter 4

European States and the Asylum-seeking Child – An Overview

Kirsti Floor

Introduction

This chapter starts with a general overview of the situation for asylum-seeking children in European states and some of the concerns that are raised by this issue. I then proceed to take a closer look at the European protection and assistance situation through a more in depth discussion of two particular issues. First the issue regarding the reception of asylum-seeking children and secondly the issue that concerns the collection and comparability of data on the topic of separated children. Finally, I present some aspects of the policies that the United Nations High Commissioner for Refugees (UNHCR) have and is developing, regarding protection of and assistance to refugee children. The latter part of this chapter will show that different guidelines often are developed in cooperation with non-governmental organizations as well as with other agencies of the United Nations (UN).

An overview of the situation in the European states

The 42 countries covered by UNHCR's Europe Bureau constitute a diverse region with mixed population movements of asylum-seekers, refugees, internally displaced persons, repatriates, trafficked persons and illegal migrants. The situation in the different countries is almost as diverse as the people who move around in the area. To the European diversity contributes also the fact that some of the countries are refugee-producing, some countries are refugee-receiving, and some countries are both.

UNHCR is overall concerned with all asylum-seekers' access to the European territory and the quality of and their access to the refugee status determination procedures. From the perspective of the asylum-seeking children the latter includes the availability of procedures that are age-sensitive. Most European countries have an extremely low recognition rate of asylum applications ranging from 0-2 per cent at first instance (for example, Finland, the Netherlands and the Czech Republic) to about 40-45 per cent (Sweden and Switzerland fall into this category). UNHCR's main programming and protection issues in Europe also include search for durable solutions, family reunification and the return of rejected asylum-seekers.

Restrictive immigration and asylum systems of the countries in the European region make it evermore difficult to enter the territory. In the context of a mixed flow of

refugees, trafficked persons and illegal migrants, the governments have tightened the control of borders, enforced visa regimes and lowered the asylum standards in the hope of deterring arrivals. As a result, genuine asylum-seekers may encounter obstacles in accessing the territory and the procedures. Sometimes the only way to enter a country is to resort to smugglers or traffickers, i.e. entering illegally and/or undocumented or with false documentation. The widespread use of illegal means further blurs the distinction between asylum-seeking and illegal migration. Illegal migration and asylum issues are regularly confused in the media and immigration and asylum policies have become a number one issue on many national political agendas, making and breaking governments. After the September, 2001 attack, this tendency has been strengthened because the issues of asylum and migration are prevalently seen and approached from the perspective of national security. Asylum seekers are often exposed to a similar treatment as those suspected for illegal entry and the general public is provided with a message that asylum and crime are interlinked. The European region is perceived to experience an upsurge in illegal migration and that some migrants try to abuse the asylum system as a way of entry. These preconceived notions persist despite the fact that in all but a few countries, the number of people seeking and having been granted asylum or a right to stay, has gone drastically down.

Against the background of a decrease in the number of people seeking and being granted asylum, it is not surprising that the number of unaccompanied and separated children who are seeking asylum peaked in 2001 after which it declined. In 2001, a total of 20,000 children and adolescents applied for asylum in 21 European countries for which data are available. In 2003, the number of applications in all 28 industrialized countries had decreased by about 40 per cent (12,800). The major receiving countries were the United Kingdom (2,800), Austria (2,050), Switzerland (1,330), the Netherlands (1,220), Germany (980) and Norway (920). Together, these six asylum countries accounted for 73 per cent of all claims lodged by unaccompanied and separated children.¹

The best interest of the child as a fundamental principle should be guaranteed throughout the procedure. Special attention to proper protection and care of separated children, including guardianship arrangements, legal representation, child and gender sensitive reception of asylum-seeking children, and the exclusion of asylum-seeking children from accelerated procedures, are among the key points of UNHCR's protection advocacy. UNHCR is concerned about the reported increase in the trafficking of children for sexual and labor exploitation and for illegal adoption, and disappearances of unaccompanied and separated children from their first countries of asylum. It has been reported that at least half of all trafficked persons are children and adolescents.² UNHCR is concerned about disappearances of separated children from reception centers and other accommodation facilities either shortly after their arrival as is the case on the outskirts of the EU, or after the rejection of their asylum application as is the case within the EU area. A recent report by a Belgian NGO (Child Focus) concluded that 25 per cent of the cases of disappeared children were linked to trafficking.³ Addressing the disappearances requires child sensitive reception, access to guardianship, legal counselling and child- and age-sensitive refugee status determination.

Because it is impossible to cover all the various aspects and concerns related to asylum-seeking children in Europe, I will next take a more in depth discussion of the issues that concern the reception of asylum-seeking children and the problems that are

connected with compiling data and with comparing these data between different countries.

The reception of asylum-seeking children

One way of deterring arrivals of asylum seekers to Europe is to create inadequate and inappropriate reception conditions. In some countries this strategy is expressed in that the standard of the accommodation facilities often is reminiscent of early century workers' barracks or detention centers, and/or that the rights and material assistance to asylum seekers, especially during the pre-refugee status determination stage, is limited. As the refugee status determination procedure in some countries may take several years, this period puts asylum-seeking children at particular risk of separation, sexual exploitation and may negatively influence their access to legal and psychosocial counseling, education and appropriate care. In other words, asylum-seeking/refugee children are seen primarily as asylum seekers/refugees and are viewed only secondary as children. Other examples of how children are viewed as asylum seekers rather than as children are that the asylum claims of unaccompanied and separated children also are subject to accelerated procedures without the possibility to appeal the decision in court, or that children whose application for asylum has been rejected, are returned without best interest determination or tracing their family.

In Central Europe, in the new EU member states as well as in the neighboring countries, the reception facilities and their management require urgent attention and resources. Before these countries became members of the EU, most asylum seekers left before their refugee status determination had been completed. Now, as more asylum seekers are staying, the reception capacities in these countries have become over-stretched. For example, in the entire Central Europe, there is only one center, which is specifically equipped to receive separated children.

The lack of appropriate reception facilities is particularly serious when one considers the ratio between children and adults that are applying for asylum in those countries. Among the 22 European countries, which receive 1,000 or more asylum claims, the highest numbers of claims by unaccompanied and separated children were lodged in Bulgaria (10 per cent) and the Netherlands (9 per cent), followed by Hungary (8 per cent) and Slovakia (7 per cent).⁴ This must be viewed in the context of countries' extremely restrictive rules for granting asylum. In 2002, only 5 per cent of all asylum seekers were granted refugee status in Bulgaria, 1 per cent in the Netherlands, 4 per cent in Hungary and 6 per cent in Slovakia. Available data for the recognition rates of these European countries in 2003 and 2004 indicates a further significant decrease in both recognized refugees and those allowed to stay on humanitarian or other complementary protection grounds.⁵ The recognition rates of child and adolescent asylum applicants are presumed to be even lower.

In Eastern European countries, the asylum systems are still in a nascent stage of development. In Georgia and Azerbaijan, the procedures for determining refugee status were established recently, while in the Russian Federation, Belarus and Ukraine, the asylum seekers face many obstacles, including time limits for seeking asylum and problems that arise from a lack of documentation. In Russia, the access to the refugee status determination procedure for unaccompanied and separated children is hampered by the lack of a functioning guardianship system and legal representation. There is a

legislative gap in that no state authority views itself as responsible for identifying a guardian for a separated child. Most of the 47 separated children in Russia who are registered with our office in Moscow are undocumented adolescents and victims of smuggling or trafficking.

Perhaps the best developed reception systems with special facilities for separated children, single-parent families and disabled asylum seekers are found in Western Europe and the Nordic countries, although their capacity is often insufficient to meet existing needs. In Germany several federal states have established a two-step reception system for children up to 16. In the first instance, the children are accommodated in a clearing center that is equipped with specialized care capacity. After this first stage they are then as soon possible transferred to a more permanent placement in group homes, foster homes or other appropriate institutions. This is a system that also is common in Sweden and Norway and that is expected to be followed in Austria. In the new EU states and some of the Mediterranean countries, the usual practice is to create separate centers, or like in the Czech Republic, “protected zones” for the reception for separated children. These often accommodate other asylum-seeking groups with special needs, including elderly, disabled and single women. In some of the new EU states such as Poland, separated children over 13 are accommodated in orphanages and younger ones in emergency wards.

Collecting and comparing data on separated children

Identifying separated children among those seeking asylum is of critical importance due to this group’s special protection and assistance needs. Over the past few years, European governments have made substantial progress in establishing systems for such identification of separated children. In 1998, only 18 industrialized countries were included in UNHCR’s report on separated children, but by 2003 this number had risen to 28. Some important countries, such as USA, Canada, Australia, France and Italy, however, have only limited data available, or data that is incomplete or non-comparable. The data is difficult to compare due to variations in age limits, age assessment and unsystematic updating of the information through the different stages of the asylum process. In Germany and Spain, for example, the age limit 16 years of age, and children who are 17 or 18 years old are thus not included in the statistics of separated children.

In some cases it is difficult to estimate the age of a child and the different techniques used in different countries may thus influence the statistics. Some countries, even though it is not a totally conclusive technique, have introduced X-ray examinations of the applicants. Other countries use a combination of age assessment techniques. In Belgium, the Aliens Office performs wrist examinations and the Office of the General Commissioner for Refugees and Stateless Persons relies on a visual assessment. Little information is available on the results of the age assessments.

Another issue that makes it difficult to compare the data between different countries is that in some countries the authorities do not update the statistics after the child has arrived. In Spain, for example, once the authorities have decided on an asylum application lodged by a separated child, it is no longer possible to track the age segregated data and the statistics consequently show a low number of separated refugee children there. In some countries, the statistics are adjusted retroactively if the person is

found to be over 18 years old. In addition, the records are not updated in all countries in the event that the child is united with his or her parents or a custodian.

There is even fewer available data on the gender and age of separated children than the information on numbers and countries of origin. This is essential for programs and protection interventions and planning. Data that is broken down according to gender and age is only available from 20 European asylum countries. The available data suggests that the majority of the separated children are male (28 per cent female) with the exception of Ireland, Finland and Sweden. Very few girls seek asylum in Central Europe, in all countries their share is less than 10 per cent. Among the 11 countries with comparable data, about one third of the children are younger than 15 and one third is 16-17 years old.⁶

Recent international policy regarding refugee children

Refugee children, who make up 40 per cent of refugee populations worldwide, are a UNHCR policy priority. UNHCR bases its work towards the realization of the rights of refugee children as part of an integrated community and rights based approach that is enshrined in the principles of the Convention of the Rights of the Child, (best interest of the child, right to participation and non-discrimination). The overall protection and assistance framework for UNHCR's interventions on behalf of refugee children is provided by *UNHCR's Policy on Refugee Children* of 1993 and *Refugee Children: Guidelines on Protection and Care* of 1994.

The legal framework consists of the 1951 *UN Convention relating to the Status of Refugees*, the 1967 *Protocol relating to the Status of Refugees*, the 1989 *Convention on the Rights of the Child* (all three reflected in the policy and guidelines) and its *Optional Protocols on the Involvement of Children in Armed Conflict* and *on the Sale of Children, Child Prostitution and Child Pornography*. Both the policy and the guidelines for protection and care are currently in the process of being updated as recommended by an independent evaluation. The evaluation, which was undertaken in 2002, concluded that although refugee children are a stated UNHCR policy priority, in practice, the policy and guidelines are not adequately implemented and that the organization has difficulties in quantifying the impact of its activities on refugee children.⁷ As a response to this and two other evaluations on refugee women and community services and in addition to the ongoing policy review, UNHCR is developing an organizational strategy for gender and age mainstreaming with an emphasis on improved accountability, a multi-sectoral team approach and enhanced refugee participation.⁸

Another important work in process is the drafting of a guideline on child and age sensitive interpretation of the 1951 Convention. The work to provide guidance in assessing child and age specific asylum claims is the result of the Global Consultations process that took place 2000-2002. The consultations and the end product, the *Agenda for Protection*, also reconfirmed the five global concerns related to refugee children that were identified in the follow up to the 1997 *UN Study on the Impact of Armed Conflict on Children*,⁹ namely 1) separation, 2) sexual exploitation, abuse and violence, 3) military recruitment, 4) education and 5) the special needs of adolescents.¹⁰ In the *Agenda for Protection* the states, UNHCR and its partners, were requested to ensure greater participation of refugee children in decision-making and to ratify relevant international conventions on the rights of the child, adoption, children in armed conflict,

and to combat child exploitation and abuse. The *Agenda for Protection* also advocates access to education for all refugee children.

During the past decade, cooperation with partners in the areas of training and protection of unaccompanied and separated children has been institutionalized. For example, UNHCR has together with Save the Children implemented a comprehensive training and advocacy effort, called the *Action for the Rights of Children (ARC)*. This cooperation has also been joined by United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The principal topics addressed by ARC are separated children, child soldiers, disability, education, landmine awareness, sexual and reproductive health, as well as abuse and exploitation.

Together with the Save the Children Alliance, UNHCR initiated the *Separated Children in Europe Programme (SCEP)*. The programme initially covered 15 countries in Western Europe and has now been expanded to Central Europe and the Baltic States. Recent examples of this work and cooperation are the *Statement of Good Practice*, which covers issues such as guardianship, reception, family tracing, and the *Best Practice Models*, which include information on all aspects of refugee life.

In addition, the 2003 *UNHCR's Education Field Guidelines* have been introduced through many workshops and are supported by the United Nations Inter-Agency Network for Education in Emergencies. These guidelines, in conjunction with minimum standards and indicators in education, set the standard for basic education to which all children, including refugee children, have a fundamental right.

Another example of an area of cooperation between United Nations' agencies is the Working Group on Unaccompanied and Separated Children.¹¹ Inter-agency cooperation on children in armed conflict and forced military recruitment is reviewed annually at the UN Security Council. Another issue where inter-agency cooperation plays a significant role is combating sexual exploitation, abuse and violence. For example, UNHCR and the Save the Children-UK in 2001 completed a study on the *Sexual Violence and Exploitation of Refugee Children in Liberia, Guinea and Sierra Leone*.¹²

Conclusion

Refugee children are at a particular risk of not having their rights realized and their needs met. This includes their exposure to exploitation and abuse including sexual exploitation, trafficking and sale of children; being deprived of childhood, access to material and physical well-being, guardianship and education. To ensure that the specific protection and assistance needs of asylum-seeking and refugee children are realized and promoted, UNHCR collaborates and supports the national authorities and NGOs in law development and implementation, standard-setting and advice, monitoring and provision of services.

The recent years have entailed significant steps in policy development and identification of global and regional priorities for refugee children. Cooperation with governments, other UN agencies and NGOs has resulted in concretizing the implementation of these priorities and increased accountability through regular reporting. Important future developments will include the revision of UNHCR's policy on refugee children, the guidelines on protection and care will be updated and guidelines on age and child sensitive interpretation of the 1951 Convention will be issued.

¹ *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001-2003*. UNHCR, July 2004 (available at www.unhcr.ch/statistics).

² The conference “Children’s rights and post-Tampere developments in the EU asylum and migration policies” that took place in Brussels, 3 November 2004, was organized by the Defence Children International and Save the Children Alliance.

³ “Freedom, Security and Justice for Separated Children?” European Conference, Brussels, 3 November 2004. Organized by the Defence for Children International, Save the Children, and the Separated Children in Europe Programme.

⁴ Internal statistics of UNHCR. The latest *UNHCR Statistical Yearbook of 2004* tracks the asylum information up till 2002. See www.unhcr.ch

⁵ Ibid.

⁶ *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001-2003*. UNHCR, July 2004 (available at www.unhcr.ch/statistics).

⁷ *Meeting the Rights and protection needs of refugee children: An Independent Evaluation of the Impact of UNHCR’s Activities*. UNHCR, May 2002.

⁸ *UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation*. UNHCR, May 2002. *The Community Services Function in UNHCR: An Independent Evaluation*. UNHCR, March 2003.

⁹ Conference Room Paper, EC/50/SC/CPR.7, 17th Meeting of the UNHCR Standing Committee on the Follow-up to the United Nations Study on the Impact of Armed Conflict on Children (Machel Study), 1997.

¹⁰ *Global Agenda for Protection*. UNHCR, March 2003.

¹¹ Which in 2004 published the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*.

¹² Other examples of work in fighting sexual exploitation, abuse and violence are that in 2002, UNHCR issued a Code of Conduct for its staff and implementing partner NGOs as part of its response to the sexual exploitation scandals in West Africa and in Asia. Furthermore, in 2003 the UNHCR published a guideline on preventing and responding to sexual and gender-based violence of which one chapter is devoted specifically to children.

PART II

The Asylum-seeking Child in the Legal Process

Chapter 5

Seeking Asylum Alone¹

Nadine Finch

The need for protection

The Immigration Rules², which are applied in the United Kingdom, confirm that a child has the same right to apply for protection under the Refugee Convention as an adult. He or she will be entitled to international protection if he or she has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and his or her country of origin or habitual residence is unable or unwilling to protect him or her³. There is a significant minority of asylum seekers who arrive in the United Kingdom having been separated from their parents or other adults who were caring for them.

Table 1: Numbers of applications from separated children⁴

1998	3,037
1999	3,349
2000	2,733
2001	3,470
2002	6,200
2003	3,180
2004 (Jan-June)	1,310

Many separated children will have faced very similar persecution on the grounds of race, religion, nationality or ethnic origin as older members of their community. Modern methods of war and civil war do not discriminate on the grounds of age. For example, in Uganda, Somalia and Afghanistan children are both recruited as soldiers and seen as legitimate targets by opposing groups, clans or tribes. In the countries, which produce the largest numbers of asylum seekers, the mere fact of being a child does not protect him or her from his or her persecutors or attract additional protection from those in position of authority. In many situations, children are even selected for particular persecution in order to punish their family, tribe or community or because they are easy targets.

In addition, due to the high level of state persecution in some countries and the heightened political awareness, many children will also have been involved in political activity at a young age or, at the very least, may have a political opinion imputed to him or her. This appears to be particularly the case in Ethiopia, Eritrea and Turkey. Others

will be socially constructed by the legal, cultural or economic conditions prevalent in their countries into particular social groups, which attract persecution. For example, girls in countries in which the law and/or social mores discriminates on the grounds of gender form a particular social group and may face persecution in the form of female genital mutilation or forced marriage. Girls and boys may also face other child specific forms of persecution such as recruitment as child soldiers or trafficking for the purpose of child prostitution and pornography.

Given the added vulnerability of children at time of conflict or in situations of persecution on account of their age and relative physical, economic and political weakness, it could be expected that children would be more successful in their applications for protection under the Refugee Convention than adults. At the very least it could be expected that they would receive the same level of protection. However, the preliminary results of this present research indicate that, on the contrary, they appear to receive less protection than comparable adults.

Forms of protection

The raw statistics of the number of asylum seekers who are granted protection indicates that children are slightly less likely than adults to be granted protection.

Table 2: Comparison of numbers of children and adults granted asylum⁵

2002	Adults	10 per cent	Separated children	9 per cent
2003	Adults	5 per cent	Separated children	4 per cent
2004 (Jan-June)	Adults	3 per cent	Separated children	2 per cent

However, this does not reveal the true extent of the inequality. This is because the vast majority of the children who are granted exceptional leave to remain or discretionary leave to remain⁶, as it is now called, only receive this temporary and time limited protection because they are children. Whilst adults will have been granted exceptional or discretionary leave to remain on the basis of an acceptance that they require protection for reasons other than those of a refugee under the Refugee Convention⁷.

Table 3: Numbers of adults granted exceptional or discretionary leave to remain

2002	21 per cent
2003	11 per cent
2004 (Jan-June)	8 per cent

At present, it is not the policy of the Secretary of State for the Home Department⁸ to return children who are refused asylum to their countries of origin unless there are adequate reception and care arrangements in place there⁹. In practice, no enquiries are usually made about the adequacy of such arrangements, a child is just granted discretionary leave until he or she is eighteen.

Therefore, the grant of such leave does not indicate an acceptance by the Secretary of State for the Home Department that the separated child in question was in need of

protection under any other human rights convention or treaty. (The position has very recently become clearer as the letter granting discretionary leave to children actually spells this out.)

Consequences of being granted limited leave

Unfortunately, the research has shown that far too many legal representatives and local authorities do not take into account the implications of the difference between being granted limited leave and being granted refugee status and assume that as a separated child has been given discretionary leave to remain, he or she has partially succeeded in his or her application. Therefore, they do not advise or encourage the child to appeal against a refusal to grant him or her asylum. The consequence is that the Immigration Appellate Authority¹⁰ does not have the opportunity to hear his or her appeal when he or she is still a minor and when the persecution is still fresh in his or her memory. It will only have to consider his or her case if he or she applies for his or her discretionary leave to be extended and this application is refused and he or she appeals. It also means that when the child becomes eighteen he or she may be removed to his or her country of origin even though he or she is still in need of protection under the Refugee Convention.

Neither the Immigration and Nationality Department of the Home Office nor the Immigration Appellate Authority collect statistics about the number of separated children who do appeal against a refusal to grant them asylum. The Immigration Appellate Authority will be alerted to the fact that an appeal relates to a separated child by the fact that the papers passed to it from the Immigration and Nationality Directorate will be labelled "UASC"¹¹ but it does not keep statistics on the number of appeals which it receives from children or the number of these appeals, which are successful.

Without these statistics it is difficult to assess whether children who may face persecution if returned to their country of origin are being given sufficient information and assistance in order to appeal. This is important as national statistics show that many asylum seekers who are initially refused asylum by case workers in the Immigration and Nationality Directorate are subsequently recognised as refugees after winning appeals before an Immigration Adjudicator or the Immigration Appeal Tribunal. At the moment, as the statistics do not distinguish appeals from adults from appeals by separated children, it is impossible to tell whether appeals made by children are as likely or less likely than appeals by adults to be allowed¹².

Table 4: Percentage of all appeals which succeeded¹³

2001	19 per cent
2002	22 per cent
2003	20 per cent

The United Kingdom *Seeking Asylum Alone* research project, however, has been given permission by the United Kingdom's Department of Constitutional Affairs¹⁴ to analyse a sample of all the written decisions relating to first instance asylum appeals¹⁵ made by separated children between November 2003 and November 2004. This will enable an assessment to be made of the relative numbers of children who do appeal and whether their appeals are successful.

The research will also look at the convention reasons that are relied upon by the children who have appealed. For example, are they asserting that they will be persecuted for political reasons if they are returned to their country of origin or do they fear persecution on the basis of religion or gender or another particular social group? The decisions will also be analysed to gain some insight into how the children were treated by the adjudicator and those representing the Home Office as well as by their own legal representatives. Consideration will also be given to the type of evidence adduced on their behalf and whether guidance¹⁶ in relation to the hearing of appeals involving children was adhered to.

Difficulties facing separated children from the outset

The research has also revealed that a great many legal representatives, non-governmental organisations and separated children do not believe that asylum applications from children are given adequate consideration but that they are just granted discretionary leave until they are eighteen without a full assessment of their right to protection under the Refugee Convention. This perception is partially borne out by the fact that the Immigration and Nationality Department's Country Information Reports¹⁷ do not deal with child specific forms of persecution in sufficient detail and individual letters of refusal do not address child specific forms of protection or the particular difficulties children may face in recounting the history of their persecution. The Asylum Policy Instructions given to caseworkers in the Immigration and Nationality Directorate also fail to address these areas. The Assistant Director of the Children and Family Asylum Policy Team at the Immigration and Nationality Directorate has confirmed that these are all areas, which need improvement.

A culture of disbelief

Preliminary research findings indicate that there is a wide spread belief amongst case workers in the Immigration and Nationality Directorate, and even among social services personnel who care for and advise separated children, that the majority of separated children do not really need protection under the Refugee Convention but have been sent here by their parents to obtain a better education and enhanced employment opportunities. Social services departments also appear to find it difficult to recognise that these children can both be in need of protection on account of their age and have the same genuine fear of persecution as an adult asylum seeker may have. This leads them to encourage children to accept a grant of discretionary leave to remain until they are eighteen and to ignore their right to appeal against any decision to refuse asylum.

Nine detailed interviews with separated children confirmed that most of them had encountered this culture of disbelief. They mentioned, in particular, that the immigration officers whom they had met when they first claimed asylum appeared to doubt that they were children or that they had been separated or that they would face persecution if returned to their countries of origin.

One local authority explicitly told one of the researchers that it had relatively few children who were here for any other reason than that their family had paid money for them to come here (to enjoy a better life). This view, however, was also expressed

openly in various meetings involving employees of local authority social services departments and the Immigration and Nationality Directorate, which were attended by the research co-ordinator. This often seemed to stem from a lack of cultural and political awareness on the part of those coming into contact with separated children and indicated a possible failure by their managers to provide adequate training about the political situations in the countries from which separated children had arrived and the societies and communities in which they had previously been living.

Child specific protection needs

The fact that the essential credibility of asylum applications from separated children is generally doubted is compounded by the failure to develop an adequate legal framework within which to assess their applications. A snapshot view of the top ten countries of origin of adult asylum seekers compared to those of separated child asylum seekers between April and June this year shows that separated children are fleeing in greater numbers than adults from certain countries.

Table 5: Comparison of countries of origin¹⁸

Adults	Separated children
Iran (685)	Afghanistan (55)
China (595)	Somalia (55)
Somalia (540)	Vietnam (55)
Zimbabwe (505)	Iran (50)
Pakistan (475)	DRC (35)
Iraq (410)	Iraq (50)
Afghanistan (355)	China (30)
India (310)	Eritrea (25)
DRC (300)	Uganda (20)
Sudan (300)	Ethiopia (20)

This suggests that child specific persecution may be more prevalent in some countries as opposed to others. Asylum applications from separated children, therefore, cannot necessarily be adequately assessed by using a legal and factual framework developed to assess claims from adults in those countries. For example, one of the causes of the discrepancy in numbers of applications from children as opposed to adults may be the spiralling number of children being trafficked for prostitution and domestic slavery. (Children can form a particular social group for the purposes of the Refugee Convention when for political, legal, social or cultural reasons the authorities in their country of origin do not offer them adequate protection from their traffickers.) Certainly, when one looks at the top refugee producing countries for female children as opposed to male children or even adults there is some correlation with countries, which are known to be countries of origin for trafficked children.¹⁹

Table 6: Top countries of origin for female separated children

2002	2003
Burundi	Angola
Congo	Burundi
DRC	Cameroon
Eritrea	DRC
Ethiopia	Eritrea
Nigeria	Ethiopia
Rwanda	Kenya
Uganda	Rwanda
Vietnam	Uganda
Zimbabwe	Vietnam

To date, the research has revealed that whereas there is a good level of awareness amongst non-governmental organisations of the fact that child trafficking is a growing trade, only a minority of legal representatives and local authorities are sufficiently aware of this. The United Kingdom's Home Office has produced a very good Trafficking Toolkit as part of one of its Crime Reduction initiatives but practical measures to tackle the importation of children for prostitution and domestic slavery are still at a pilot stage.

Those who were aware of the issue and officials agree that, at present, it is likely that only a minority of the children being trafficked are coming to the attention of the police or immigration service. Many others are thought to be brought in as the "children" of traffickers and to disappear into homes as domestic slaves or into massage parlours as prostitutes.

The adequacy of the procedures used to assess applications from separated children

At present, asylum assessment procedures mirror those used for adults with a few minor adjustments. For example, children are given 28 days as opposed to 14 to return their full asylum application form (the "SEF" or Statement of Evidence Form). The format of the Children's SEF, however, does not help children to understand the concepts behind the Refugee Convention. Nor does it explain what information and evidence is required from him or her. (The confusion shared by most separated children about the nature of the information they should be providing when applying for asylum has been a constant theme in interviews conducted by the researchers for this project.)

To date, it has not been the general policy of the Immigration and Nationality Directorate to interview separated children about their applications for asylum. The Directorate has relied instead, on written applications made on their behalf and often supported by evidence from any relevant adult and background documents about their country of origin. However, the Immigration and Nationality Department has recently conducted a pilot project in which it did interview children about their applications. The results of this pilot study are still with the Secretary of State for the Home Department for him to decide whether the Directorate should now interview all children about their

applications. Solicitors and non-governmental organisations interviewed for the purposes of the present research have expressed concerns about possible adverse implications for separated children of introducing interviews for them. The basis of their concern is their belief, based on their own experience of interviewing clients that, generally, children find it more difficult to give a cogent and coherent account of their past persecution and future fears than an adult would. Their experience is that the Immigration and Nationality Directorate invariably uses the interview process to test credibility and not merely to gather further information and they do not believe that interviews with children will be conducted any differently.

These fears may well be well founded as to date immigration officers and Immigration and Nationality Department case workers have received no training in child psychology or about the countries and cultures from which separated children have arrived. Separated children who have been interviewed have reported that their interviewers did not appear to accept that their parents may have been concealing the true extent of the dangers they faced in their country of origin in order to protect them or that they had great difficulty in identifying which parts of their often traumatised experiences are relevant to their applications for asylum.

All of the ten separated children who were interviewed in depth reported that the immigration officers and Immigration and Nationality Directorate case workers with whom they came into contact, treated them with hostility and ridicule. They also stated that this further traumatised them as they had expected to be protected in the United Kingdom and not be subjected to further abuse. This hostility and ridicule often manifested itself in a refusal to acknowledge that the child was a minor or that he or she had been separated from his or her parents in traumatic circumstances.

If a separated child does not return his or her SEF in time or fails to attend his or her interview, his or her application for asylum can be refused on non-compliance grounds alone. In January to June 2004, 160 or 9 per cent of refusals to grant asylum were on this ground alone. This means that the Immigration and Nationality Directorate will not give any consideration to the substance of the child's application. It also means that an appeal must be brought in relation to the non-compliance. Some legal representatives fail to understand this and try and deal with the refusal by writing letters of protest to the Immigration and Nationality Directorate. In doing so, they deprive the child of any opportunity to have his or her application determined or any appeal heard. If the decision is appealed, the adjudicator hearing the appeal will also have to consider the substance of the separated child's application but will be hindered by the fact that there has been no first tier decision. In such a situation, the adjudicator will have to act as both an initial decision maker and an appeal tribunal.

Between January and June 2004, seventy-five children also had their applications for asylum refused without any substantive consideration because they had passed through another European country on their way to the United Kingdom. Often this was after they had been provided with a foster family or home by a social services department and had started to derive some benefit from having escaped to a safe country. The prospect of being sent alone to another strange country was often very traumatising.

It was also clear from interviews with separated children, their legal representatives and local authorities that the quality of social support offered to a separated child has an impact on his or her ability to pursue successfully his or her claim for asylum. Local authorities and not the National Asylum Support Service²⁰ are responsible for

accommodating and maintaining separated children. However, many 16 and 17-year-olds are placed in what amounts to little more than bed and breakfast accommodation and left to fend for themselves. They often experience difficulty with accessing adequate legal representation, obtaining any necessary medical or expert evidence and sometimes even attending interviews or court appearances.

Local authority social services departments should “accommodate”²¹ separated children under Section 20 of the Children Act 1989 and provide them with an adviser and additional assistance not just housing and financial assistance. Some local authorities try and avoid doing so as if a child is “accommodated” under Section 20 he or she may become entitled to additional assistance in the form of accommodation and financial support after they become eighteen in order to complete their education and enter employment under Sections 24 and 24 A – C of the Children Act 1989.

The Refugee Council also has a Children’s Panel, which provides Advisers for separated children but it is presently under-funded and in 2003, it could only provide an adviser to 977 of the 4652 separated children who were referred to it. Even when a child is allocated an adviser he or she can usually do no more than refer him or her on to a local authority and solicitor. They are not able to support the child throughout the long asylum process. The Panel was established when there were far fewer separated children applying for asylum and originally the advisers could devote more time to each individual child. Even then the Refugee Council felt that the Panel could have operated more effectively if it had been given statutory powers. The Refugee Council and many other non-governmental organisations now believe that the Panel should be replaced by a statutory body which can provide a legal guardian for every separated child.

Possible recommendations

The research has yet to be completed but a number of possible conclusions and recommendations are emerging. These include:

1. The provision of a legal guardian, who will ensure that each separated child’s asylum application is properly prepared, lodged and monitored and that meanwhile, he or she is provided with good quality social and financial support. (This would be in conformity with guidelines produced by the UNHCR, the recommendations of the UN Committee on the Rights of the Child and Article 19(1) of the EU Directive on Reception Conditions for Asylum Seekers.)
2. Giving the benefit of the doubt to age disputed children until a full age assessment can be carried out by a local social services department and/or a suitably qualified medical or other expert. (At present, minors are being put at risk by being dispersed around the United Kingdom as if they were adults by the National Asylum-seekers Support Service or by being detained with adults at Oakington Reception Centre²² and removal centres elsewhere. In the twelve months up to September 2003, there were 192 referrals to the Refugee Council’s Children’s Panel in relation to age disputed children who were being detained with adults. 174 of these were in Oakington.)
3. The incorporations of child specific information into the Immigration and Nationality Directorate’s Country Information Reports²³ and the institution of

comprehensive and better quality training for immigration staff responsible for assessing applications from separated children.

4. The provision of child protection officers at all ports, enforcement offices and asylum screening units in order to provide for the specific needs of the victims of child trafficking.

How the research is being carried out

Data is being collected in face to face interviews which are based on questionnaires that are customised to address the issues relevant to the different interest groups involved in the asylum determination process. Interviews have been conducted with separated children, legal representatives, members of the Immigration Appellate Authority²⁴ and representatives of local authority social services departments throughout the United Kingdom. Telephone interviews have also been conducted with around thirty firms of solicitors who represent separated children.

Interviews have also been conducted with governmental and non-governmental organisations including the Immigration and Nationality Directorate, the Immigration Advisory Service in Glasgow and at Oakington Detention Centre, the Refugee Legal Centre, Save the Children in London, Newcastle and Scotland, the Refugee Council's Children's Panel, the Scottish Refugee Council, the Children's Legal Centre, the Children's Society, Anti Slavery International, ECPAT UK, Bail for Immigration Detainees and the UNHCR. Further interviews are planned with the Northern Ireland Law Centre, other officials in the Immigration and Nationality Directorate, the Department of Constitutional Affairs, the Department for Education and Skills, the Immigration Appellate Authority, the Immigration Appeal Tribunal, the Association of Directors of Social Services, the London Asylum Seekers Consortium and other local authorities.

A representative sample of decisions by adjudicators on appeals by separated children are also being analysed.

¹ This paper relies on data being collected as part of research into The Treatment of Separated and Trafficked Children in Need of Refugee Protection in Australia, the United Kingdom and the United States, which has been funded by the John D. and Catherine T. MacArthur Foundation. The research is being co-ordinated by Jacqueline Bhabha at Harvard University and Mary Crock at Sydney University. I am contributing the section on the United Kingdom.

² Immigration Rules HC 395 laid before the United Kingdom Parliament on 23rd May 1994 under Section 3(2) of the Immigration Act 1971.

³ Article 1 A (2) of the Refugee Convention.

⁴ 1998 – 2000 figures are based on figures reported to UNHCR by the United Kingdom and the figures for 2001 to 2004 were produced by the United Kingdom's Research Development and Statistics Directorate of the Home Office. Figures for 1998 – 2001 are known to be an underestimate as the Immigration and Nationality Department was only recording the number of

separated children who applied for asylum at the Home Office or at a port of entry and not at local enforcement offices or by post. In addition, figures for 2004 may be subject to adjustment

⁵ Research Development and Statistics Directorate of the Home Office.

⁶ Exceptional leave was or discretionary leave is time limited usually to two or three years.

⁷ For example, an attempt to return them to their country of origin may lead to a breach of the European Convention on Human Rights.

⁸ The Government Minister with responsibility for making decisions on the removal of individuals from the United Kingdom.

⁹ Home Office Immigration and Nationality Directorate *Unaccompanied Asylum-seeking Children Information Note*, paragraph 8.7. (The United Kingdom now proposes to return children whose applications for asylum have been refused to certain selected countries at the point at which their application is finally refused and not at 18. No children have as yet been removed in this way.)

¹⁰ An independent tribunal which hears appeals against decisions to refuse asylum or other applications for leave to enter or remain in the United Kingdom.

¹¹ Unaccompanied Asylum-seeking Child.

¹² ie the Appellant succeeds in his or her appeal.

¹³ Research Development and Statistics Directorate of the Home Office.

¹⁴ United Kingdom government department responsible for courts and tribunals.

¹⁵ At present a separated child (or an adult) whose application for asylum is refused can appeal firstly to an Immigration Adjudicator and then if there is sufficient legal merit to a three person Immigration Appeal Tribunal and then possibly to the Court of Appeal and on very rare occasions to the House of Lords (the United Kingdom's highest appeal court).

¹⁶ Adjudicator Guidance Note No. 8 *Unaccompanied Children* issued by the Chief Adjudicator in April 2004.

¹⁷ Reports produced by the Immigration and Nationality Department drawing on documents produced by international human rights organisations or governmental authorities such as the United States State Department.

¹⁸ Research Development and Statistics Directorate of Home Office.

¹⁹ When compared to the country reports on trafficking produced by the US State Department for example.

²⁰ Which is part of the Home Office

²¹ Accommodation has a special meaning in Section 20 and can be compared to the provision of the quality of support provided by a responsible parent

²² Oakington is used to house asylum seekers from certain specified countries where it is not believed that persecution in breach of the Refugee Convention generally occurs whilst their applications are determined in around a week.

²³ Otherwise known as CIPU reports.

²⁴ With adjudicators who have experience of hearing appeals from separated children.

Chapter 6

Decisions on Separated Children who Apply for Asylum¹

Kate Halvorsen

Background

The past few years have seen an increase in the attention given to the rights and needs of separated children who are applying for asylum. Some positive developments have also taken place when it comes to reception, care and some procedural aspects. One area which has been largely neglected, however, is the process of refugee status determination and to what extent it is recognized that children, in some respects, are not to be treated as adults and that they, in other respects, are to be treated exactly as adults. This neglect is not only obvious from the fact that just a few countries regularly produce official statistics and information on this particular group of asylum seekers, but also from the fact that so far, only very few studies have been carried out. There is thus not much knowledge regarding to what extent the authorities take the fact that they are dealing with children into account and consequently give them the special consideration that is required.

In order to learn more about to what extent the authorities take the child into consideration, an international research project, “Seeking Asylum Alone – The Treatment of Separated Children in Need of Refugee Protection” was initiated in 2002 at Harvard University. The results presented in this chapter come from a study that was designed as a pilot project within this larger research project. It was funded by United Nations High Commissioner for Refugees (UNHCR) and the Norwegian Ministry of Local Government and Regional Development. In the following, I will briefly discuss some of this pilot project’s results regarding issues which require extra attention when authorities investigate a separated child’s application for asylum. It concerns, for example, the way in which the child may present his or her story, e.g. to what extent the authorities recognize that interviewing a child is different from interviewing an adult. In addition, the authorities must recognize that children actually can have the “usual” reasons for being granted asylum, as well as the fact that children, because they are children, may have reasons to be granted asylum that adults do not.

Material

As it was a small-scale project, the collection of data had to be limited and consequently it was decided to do document analyses of the written asylum decisions from four countries. The four countries selected were Norway, Sweden, Austria and Germany. A

total of around 300-400 cases were collected of which 150 were analyzed. The majority were 1st instance decisions, while a very few 2nd instance decisions were included. The cases are from the years 2000 to 2003.

The Norwegian, Swedish and German cases often contain explanations and reasoning behind refugee recognitions, which thus makes it easier to investigate the reasoning behind the decision. When it comes to Austria, however, it is difficult to study the positive first instance decisions because the decision itself contains no individual background information. To reach more certain conclusions, the few positive Austrian cases thus need to be supplemented with interview information.

Child sensitivity during the interviews

According to international standards, interviews with children should be carried out by professionally qualified and specially trained individuals with the appropriate knowledge of children's psychological, emotional and physical development and behavior.² Questions need to be simple, open-ended, straightforward and understood clearly by the child. Furthermore, they should be direct and relate to children's lives and be appropriate to their level of development and maturity.

The study showed that in all four countries, the authorities, when interviewing children, used a standard format, a question-guide or a questionnaire which was more or less the same as for adults. In addition, it was found that the children often were asked questions to which even adults may have difficulty responding. Most often closed questions were posed, although there were examples of open-ended questions and the application of the method of "telling the story". There were very few examples of child-oriented questions, which relate to their lives. There was no evidence that other methods, such as play, drawing, role-play, were used in the interviews.

In general it was found that the type of questions and line of questioning were not specially geared towards children. International guidelines on how to treat children is thus not sufficiently integrated in the interviews. Sweden, however, has recently made a significant policy change with its new interviewing technique and method for children. That is, they put emphasis on open, few and easy questions and on the method of narration, telling the story, which is more child-friendly and conducive to eliciting the relevant information from children.

Separated children as refugees

The available statistics and information show that in all four countries, separated children are recognized as refugees at a (significantly) lower rate than the general asylum-seeking population. The statistical information, together with the study's findings on how children are assessed, suggests that children, when compared to adults, are at a disadvantage when it comes to refugee recognition. Likely explanations could be that child-specific persecution, imputed opinion, torture of children, among other things is not sufficiently taken into account. It is, however, also a possibility that there is a real difference between children and adults and this issue therefore needs to be studied more in depth.

Although children are not as often recognized as refugees, they are to a much larger extent than adults, granted protection and residence on humanitarian grounds, particularly in Norway and Sweden. Norway rejects very few cases, and thus has a significantly higher rate of recognition on humanitarian grounds than the other countries. The data from all countries, however, indicate that there are some cases in which refugee status ought to have been granted, but where the authorities chose to grant residence permits for humanitarian reasons instead. Further study is needed of the reasons for why this might be and what kinds of conclusions that might be drawn.

Child sensitivity when establishing credibility

Assessing the credibility of an asylum claim is always crucial, but even more so in the case of children. In the cases of children, it is not only essential to establish credibility for the sake of the refugee status determination, but also to make a long-term decision regarding what is in the “best interest of the child”, regardless of whether they have a refugee claim. It is therefore essential to get as close as possible to the child’s “true story”. Establishing credibility in the cases of children might be very difficult. The child might, for example, have been instructed by his or her parents and/or smugglers (or traffickers) to tell a certain story. Children may, depending on their age and stage of development, neither be fully aware of the circumstances nor of what constitutes important information. They most likely have multiple reasons for leaving their countries and they do not necessarily tell the reasons that are most relevant for their asylum application. For the child the wish to go to school or find work might be the most important and most present in his or her mind. This does not necessarily mean that he or she does not need protection as a refugee. In addition, children do not necessarily tell consistent and straightforward stories. They might make statements which they have been told to say; they might tell things which are not in accordance with the reality, but which are not necessarily lies to them. The behavior and demeanor of a child is often a reflection of culture, trauma and circumstance rather than credibility. In general, the burden of proof should be exercised flexibly and liberally, and this is particularly important in the case of children as is the principle of giving them the benefit of the doubt.

In the study, it was found that both behavior and demeanor are often used against children and that, contradictions, inconsistencies and “lies” are often used against them. Children are expected to give as detailed descriptions of their flight and their reasons for fleeing, as adults are. The case material shows that child-appropriate treatment with regard to these credibility aspects seem to be applied only on an exceptional basis. In general, it was found that children are not treated in a more flexible manner than adults. There were, however, some variations between the countries. Norway has recently adopted a flexible approach where credibility is not to be equally significant in the cases of children. When it comes to children, there seems to be a tendency now from the authorities to give allowances for contradictions, inconsistencies, “lies”, lack of detail, lack of knowledge, and so on.

Child-specific forms of persecution

Under the Convention on the Rights of the Child, children are recognized certain specific human rights and the manner in which these rights may be violated and the nature of such violations may be different from those of adults. In cases where such human rights violations amount to persecution, these may be termed child-specific forms of persecution. Examples may be the recruitment of children into armies, their subjection to forced labor, the trafficking of children and harmful traditional practices, such as female genital mutilation (FGM), domestic violence, sexual violence and exploitation, violence and abuse of street children.

In general, there are few examples in the material where child-specific persecution was taken sufficiently into consideration, i.e. leading to refugee or other protection status. There are several cases where child soldiers were recognized as refugees (in Germany especially), there are some cases of forced marriage being recognized (in Norway especially), and there are also some cases in all four countries where victims of FGM were recognized as refugees or granted protection on humanitarian grounds. There are very few cases of victims of the worst forms of child labor, trafficking, sexual violence/exploitation and street children. There are no cases of victims of domestic violence in the case material.

When it comes to grant permission to stay on other grounds than on refugee status, the files often have long and thorough explanations including some excellent country-specific information on the history, political situation, economic conditions, religion, conflicts, and so on. There is, however, very little or no child-specific information taken into consideration from countries of origin on the situation of children, such as the prevalence of child soldiers, the situation of street children in the big cities, whether FGM and/or arranged marriages take place, the situation of slave or forced labor among children, and so on.

In sum, there are no indications in any of the four countries that case-workers and decision makers have enough knowledge and awareness of child-specific persecution, children's lives, psychology and development. However, there are a number of cases which do demonstrate child-sensitivity and awareness and as such serve as good examples. In addition, it should be recognized that it is difficult to get information about some of these types of persecution and circumstances as they are either treated as taboos linked to feelings of shame, blame, anxiety, anger and so on and/or they are linked to crime. Child-specific persecution does not seem to be sufficiently considered, either due to little knowledge or because a policy and practice is lacking in this area.

Imputed political opinion

Children may be persecuted or fear persecution as a result of the political actions and opinions of their parents/relatives, that is, imputed political opinion. Therefore, it is important to take into account the circumstances of the family members as this may be central to a child's refugee claim.

There are many examples of imputed political opinion from all four countries and the outcomes of the decisions vary. In some cases, it is accepted and is the reason for granting refugee or humanitarian protection. There are, however, a number of cases where imputedness is not recognized; i.e. it is not recognized that children may have a

well-founded fear of persecution based on family members' or parents' (well-founded fear of) persecution. It might be that the authorities do not believe that children are persecuted due to parents' actions and/or beliefs or it could be that they are just not aware of this aspect.

Political opinion and activity

Like adults, children might be persecuted for reasons of political opinion and activity. However, the study shows that some case-workers, judges or other decision-makers do not believe that children could have their own political opinion or partake in political activity independently. The cases in this study also show that even if children are acknowledged as victims of persecution due to their own political opinion, they are most often treated like adults and not like children. That is, the heightened risk and vulnerability of children compared to adults does not seem to be taken into account.

Torture, cruel, degrading and inhuman treatment of children

Article 37 of the United Nations' Convention on the Rights of the Child states that "No children shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment," and Article 39 that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child." Information about torture, cruel, inhuman and degrading treatment of children as well as the possibility for their physical and psychological recovery and social reintegration should thus be an important and integral part of a refugee status determination.

In the investigated cases there are only a few cases in which it is discussed that the child has been a victim of torture, cruel, inhuman and degrading treatment. There might be a number of hidden cases, as children do not always disclose this kind of information easily and such information needs to be elicited in a particularly sensitive manner from children. It seems that in all four countries neither the particularly vulnerable situation of children who are subjected to torture or other cruel, degrading and inhuman treatment nor their right to recovery and social reintegration is taken sufficiently into consideration.

Caregivers and family reunification

Under normal circumstances it is in the best interests of children to be with their parents and their families. Therefore, in cases where it is found that the child does **not** qualify for asylum, an assessment of a solution that is in the best interests of the child should follow as soon as possible. In this assessment, it is crucial that parents and families are traced and that contact with them is established, if possible. In addition, a child should never be returned to the country of origin if there is no suitable caregiver willing and

able to care for him or her. However, in the case of child applicants it is often difficult to trace parents and establish contact with them to assess the best interests of the child in the long-term perspective including the possibility of return. One reason might be that the children for various reasons do not wish to disclose information about their parents/family and their whereabouts.

The material shows that there is no systematic approach to the issue of family tracing and reunification in any of the four countries. Criteria for 'best interest' decisions on family reunification have not been established and the idea of "best interests" in itself has not been well integrated into the refugee status determination in any of the countries. In Norway and Sweden, a large number of separated children are granted residence on humanitarian grounds only because caregivers are not known and cannot be found. Even though this solution, in some cases, is obviously the best option, it is not an unproblematic practice and it carries a number of potential risks. One risk is that it may be chosen as an easy way out of a very difficult dilemma and also that the case as a result may be handled less thoroughly and less vigilantly. Another risk is that it may be a way to avoid the difficulty of family tracing and reunification. A potential basis for the granting of residence to children on humanitarian grounds may be ethnocentric prejudices that the child is better off in Norway and Sweden rather than at home with their parents or relatives.

Conclusion

There are some good examples from all four countries of child-sensitive treatment of children in the interviews, assessments and decisions on child asylum applicants. However, the main impression is that international human rights standards related to children are not taken sufficiently into account, are ignored or repudiated in the process of determining separated children's applications for asylum.

¹ This chapter is based on my report: "Asylum Decisions on Child Applicants", Norwegian Ministry of Local Government and Regional Development, Oslo 2004.

² Overall, among the international instruments and guidelines that has formed the legal framework for this study the following ought to be mentioned:

The 1989 Convention on the Rights of the Child (CRC) and its two Optional Protocols from 2000 on Sale of Children, Child Prostitution and Child Pornography and Involvement of Children in Armed Conflict.

The 1951 Convention and its 1967 Optional Protocol on the Status relating to Refugees

The European Convention on Human Rights

Different Directives within the European Union

Guidelines from UNHCR: Refugee Children – Guidelines on Protection and Care (1994), Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997), Draft Guidelines on Age-Sensitive Interpretation of the Refugee Definition as Contained in Article 1A(2) of the 1951 Convention and/or 1967 Protocol on the Status relating to Refugees.

Chapter 7

A Child Perspective in the Swedish Asylum Process: Rhetoric and Practice¹

Eva Nilsson

Introduction

In the mid-1990s, there was an intense debate in Sweden, which questioned whether Sweden was fulfilling its obligations under the United Nations Convention on the Rights of the Child (CRC). The Aliens Act² and its application were subjected to particularly severe criticism. In a number of cases, which attracted much attention, adverse remarks were made about the applied practice, as it was considered to conflict with children's rights. Representatives of occupational groups with experience in aliens matters such as lawyers, medical experts, psychologists and others, objected to the application of the law. Particularly important from a legal standpoint were statements that expert opinions about children had not been given adequate consideration and that children's own grounds for being granted residence permits had not been heeded.³

On account of the criticism, a parliamentary committee (the Committee on the Convention of the Rights of the Child and Swedish Legislation, henceforth the Child's Committee) was set up in February 1996, to make a broad survey of the standing of Swedish legislation and practice in relation to the provisions contained in the CRC. The Committee was instructed to give priority to the situation of children in matters involving the Aliens Act.⁴ The object when dealing with the various dilemmas and conflicts that had emerged was to seek to find ways and means that would allow Sweden to live up to the spirit and intentions of the Convention in the best way.⁵

The Committee found, in its review, that the Swedish aliens legislation was mainly consistent with the Convention. Due to the criticism of the application of the law, however, the Child's Committee delivered a number of proposals and views concerning the application and also certain changes to the law.⁶ In the bill, the Government declared that it was of the opinion that in various respects it was possible to move beyond current applications, and "several concrete improvements of the child's position within aliens law [my translation]" were therefore proposed: changes that, in the Government's view, were in the spirit of the CRC.⁷ These proposals resulted in some amendments of principal importance in the Aliens Act *inter alia*, a rule concerning the child's best interests in the introductory provisions of the Act and a rule about hearing children in the course of proceedings.⁸ The amendments came into force in January 1997.⁹

The Aliens Act has been criticized as being difficult to apply, not the least after the revision mentioned above. A number of legal clashes may occur and different interests

conflict in the application. As regards the rule about the child's best interests, the Swedish Council on Legislation also remarked, in its expert opinion on the government bill, that the proposed formulation of the rule would provide little guidance to the authorities in the difficult task of balancing interests, which quite frequently occurs in these matters. The Council concluded that it was not possible, at that moment, to give a definite answer about whether the rule would have a real tangible impact on the application of the law.¹⁰ It may therefore, not come as a surprise that applications have continued to be the subject of harsh criticism, especially in matters concerning children.¹¹ Studies made so far, suggest that these rules have had limited, if any, impact on practical applications.¹²

In this chapter, I aim to describe some important legal premises for these rules and the main results from a completed study of personal files. The strategies that shape the legislation, procedurally as well as materially, are important premises for effective implementation. I will, therefore, start with a description of the general provisions of the proceedings and of the child's legal status. After that, I will continue with a description of the technical formulation (legal construction) of the Aliens Act and the rules in question, as well as the material content (constructions in law) of these rules. In connection with this, I will also touch upon problems that are related to different legal strategies. Finally, I will analyze the principal results of a study of personal files concerning the status of the child in practical applications. The conclusion is that the law allows an extensive scope for different child perspectives. In practical applications, children nevertheless often assume irrelevancy. It is, however, not the law that sets this limit but rather our conception of it, our frame of thought.

General provisions of the proceedings

An application for a residence permit in Sweden is examined by the Migration Board, which is the administrative authority of first instance. Decisions by the Migration Board may be appealed to the Aliens Appeals Board, which is also an administrative authority but with assignments similar to those of a court.¹³ The Aliens Appeals Board consists of a chairman and a number of other members. The chairman is required to be a qualified lawyer with judicial or equivalent experience, while the Government appoints the other members on the basis of proposals from the political parties.¹⁴ In most cases, the Aliens Appeals Board is the final instance of appeal. The main responsibility for establishing practice, therefore, lies with the Aliens Appeals Board. The Migration Board and the Aliens Appeals Board, however, in certain circumstances, *inter alia* if the case is judged to be of particular importance as providing guidance in the implementation, may refer a case to the Government for a decision.¹⁵ In these cases, the Government also has the function of establishing praxis. In addition, the Government has the possibility of directing the application of the law by issuing regulations, for instance in mass flux situations.¹⁶

The Aliens Act does not make clear the child's legal status in the process. It is nevertheless, clear that the child is a party and has a right to plead but no right to take proceedings.¹⁷ The child is normally represented in the matter by a parent or another legal guardian. Sometimes a joint public counsel is appointed for the child and the parent.¹⁸ If the child is unaccompanied, a custodian is appointed for the child.¹⁹ When a public counsel is appointed for an unaccompanied child, the counsel is the child's representative in the matter to which the appointment refers, without being specially appointed.²⁰

While a child has no right to take proceedings, the child has a right to be heard. As mentioned initially, the rule concerning the child's best interests and this rule about hearing children in the course of proceedings are fundamental for my study. The rules are based on articles 3 and 12 respectively, in the CRC;²¹ but these articles should not be seen in isolation, as "the Convention is indivisible and its articles interdependent".²² The articles in the Convention should also be considered in connection with other international obligations.

As the CRC is neither incorporated nor self-executing in Swedish law, the Swedish legislation and preparatory work are the primary basis for its interpretation. It is, however, considered as a general principle, that Swedish legislation should be interpreted in conformity with international obligations. When there is a conflict between a rule in the Convention and an explicit regulation in law, the regulation shall nevertheless take precedence.²³

In the government bill concerning the rules in question, it was stated that the formulation of the act concerning children emanates, in the first place, from the basic respect for human rights.²⁴ As regards consideration of the CRC, it was pointed out that children's specific vulnerability and needs in many ways motivate special treatment in relation to adults. It was also noted that there are good reasons for giving particular consideration to children in the asylum process, as they have not themselves chosen to leave their country and cannot survey the consequences in the same way as an adult.²⁵ Furthermore, the Government referred to a statement by the Child's Committee that the basic outlook in the CRC; non-discrimination, the child's best interests, the right to be heard and the right to life and development, determines a conduct towards children at the international level and that "this attitude, this child perspective, shall permeate all decisions that concern children [my translation]".²⁶

Legal construction and constructions in law

The Swedish Aliens Act is constructed as 'framework legislation' [*ramlag*], which allows an extensive scope for assessing the circumstances in each case.²⁷ The first section in the first chapter of the Act contains a declarative regulation with the introductory provisions of the law. The rule concerning the best interests of the child is placed in this section. The second paragraph in the section prescribes that "[t]he Act shall be applied in such a way that the liberty of aliens is not restricted more than necessary in each individual case. In cases where a child is involved, special attention shall be given to what is required bearing in mind the child's health and development and the best interests of the child otherwise." The positioning of the rule in the introductory provisions signifies that it will perform the function as a general rule for interpreting the law.²⁸ The Government also was of the opinion that *all* kinds of matters should be covered by the regulation. Without generally bowing to the public interest in regulating immigration, such a rule would have a strong and meaningful significance. It would, it was declared, have a real significance, "[b]oth when assessing whether humanitarian grounds for granting a residence permit are present as well as in the whole asylum process [my translation]".²⁹

Deciding about residence permits comprises both assessing the best interests of the child and balancing interests. Regarding the assessment of the child's best interests, it was noted in the government bill that what is best for a child in a given situation is not usually unequivocal. However, the ethnocentric view, which is sometimes expressed in the

political migration debate, that it is almost always considered best for children to stay in Sweden, irrespective of linguistic, cultural and national background and belonging, was repudiated.³⁰ Regarding the balancing of interests, it was pointed out that the basic balancing between different interests takes place in the legislative procedures. It was, however, at the same time remarked that interests must be balanced in each case for each child who is affected by the decision and that it is necessary to be able to consider the specific circumstances that may occur in the individual case. Furthermore, it was concluded that the child's best interests could be provided for by, *for example*, the possibility of granting a residence permit on humanitarian grounds, where the reasons may be somewhat less serious and weighty when children are concerned.³¹

As mentioned earlier, the Government was of the opinion that the rule would have a real significance, not only when assessing humanitarian grounds, but in the whole asylum process. It was, however, not expounded in the government bill exactly how the rule could have a strong and meaningful significance in the asylum determination process.³² It was observed, nevertheless, that the principle of the best interests of the child indicates that a permit for granting a stay in Sweden may be granted in a considerable number of cases. It was pointed out, however, that it cannot be said that it would generally harm the psychosocial development of a child to accompany her/his parents to another country, particularly if it is the child's home country. This is, according to the Government, also true for children who have been in Sweden throughout the considerable, but limited, time that a final decision about granting a residence permit may take under normal circumstances. It was also remarked that it is inevitable that the deciding authorities have to strike a balance between the best interests of the child and other interests, even in those cases where a return may entail serious strains on the child. The necessity of upholding the requirements for settlement in Sweden constitutes such an interest. It should be decisive as, *"to what degree the child's psychosocial development can be presumed to be permanently harmed by moving back to the home country, to be distinguished from the, in most cases, temporary strains that a migration to other environments often involves for a child [my translation]."*³³

Concerning applications by parents for family reunification in Sweden, if there is no 'need of protection'³⁴, the starting point regarding unaccompanied children is that all actions possible are to be taken, so that the children shall be able to reunify with their parents in their home country as soon as possible. Nevertheless, if after a careful investigation, the child turns out to be abandoned in the real sense, a permanent residence permit is to be granted.³⁵ It may also be noted that article 8 (the right to respect for private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, was specifically mentioned in the outline of international obligations in the government bill.³⁶

The need for a representative for unaccompanied children was also discussed in the government bill, where the situation concerning the granting of a residence permit was compared with the one in cases where the Care of Young Persons Act³⁷ is applied. It was then concluded that in these cases, a conflict of interest can be presumed between the custodian and the child and that the situation differs from that in an application for a residence permit. The Government, however, was of the opinion that a similar order should be introduced in the aliens province for other reasons and it referred to the fact that sometimes it may take some time before a custodian is appointed as well as to the 'regular' character and aim of such an appointment. It was also emphasized that the task

of an appointed custodian is to look after the child's best interests as a whole,³⁸ while the task of the public counsel merely is to represent the child in the proceedings about the residence permit. In connection with this, it was also pointed out that in many situations it is not the best solution for the child to reside in Sweden instead of being with her or his family in the country of origin and that in these cases it is the important task of the custodian to protect the child's overall interest.³⁹

The rule about hearing children in the course of proceedings prescribes that "[w]hen assessing permit cases under this Act, the viewpoints of any children affected by a decision in the matter shall be ascertained, unless this is unsuitable, and consideration shall be given to what a child has said if this is justified bearing in mind the child's age and level of maturity." The rule thus contains both a procedural and a material part. In the government bill, it was stated that, as a rule, the child should be heard in connection with an inquiry when applying for residence permit. It was also noted that the rule should be formulated in such a way that it, in principle, obliges the authorities to elucidate what the child has to state in the matter and not be limited to the child's opinion. It was, however, at the same time pointed out that the child should not be heard when it is unsuitable, which, for instance, may be the case if the child is young or if the child's mental health precludes the child being heard.⁴⁰

It is not, the Government pointed out, sufficient to allow a parent to express the child's view when there may be conflicting interests or if there are reasons to believe that the parent will not be able to deliver the child's opinion. It was, however, at the same time remarked that it could not always, at least not without hesitation, be said to be in the best interests of the child to be heard. The child would in such a case be placed in an exposed situation, with pressure from her or his parents and the child herself/himself to support unambiguously the parents' story. In a case where their story is false this would be too hard for the child. It should, the Government declared, be up to the Migration Board to determine from the individual child's age and maturity if and how the child should be allowed to express her or his views. Furthermore, the Government shared the opinion of the Child's Committee that the right to be heard should be directed to elucidating the child's situation. It was, however, noted that it is inevitable that the child's statements may have an influence on the asylum inquiry of the whole family. The inquiry, it was pointed out, should not only ensure that the reasons for asylum are elucidated, but also elicit any circumstances that may reveal the existence of other reasons for granting a residence permit. It was thus concluded that there is also a basis for assessing what is in the best interests of the child.⁴¹

In summary, the normative content of the rules is not clear, as the preparatory work provides little guidance on how the rules are to be interpreted or applied in the individual case.⁴² This is due to the legal construction, which *aims* to make it possible to take individual considerations into account in each case. In addition, case law has primarily considered children in connection with humanitarian grounds. The precedent value of these cases is, in most cases, limited because of their individual character.⁴³ Moreover, the doctrine in this legal field is very limited.⁴⁴

Some legal scholars are of the opinion that aliens law is influenced by politics in a way that makes it uninteresting for people who seek legal doctrine,⁴⁵ and indeed the order of instance and process has a decidedly political character. Furthermore, as argued, the normative content of the rules studied, is obscure. The legislator intended it to be so. In this 'normative emptiness' lie the limitations—but also the possibilities. In my opinion,

the normative uncertainty and the absence of guiding practice from the highest courts make it an important task for legal scholarship, especially since many decisions in aliens matters may have even more far-reaching consequences for the individual than those made in the criminal process.⁴⁶

These legal strategies are, however, central to the aims and methods, in the study. They imply, in particular in a legal field where the risk of conflicting interests is apparent, that the rules and their application must be analyzed contextually.⁴⁷ A study of personal files has therefore been carried out within the project, in order to supply information about the impact and practical function of the legislation. These files are reviewed in the following section.

The practical application

The study of personal files consists of a simple random sampling of 200 files from *all child cases* regarding residence permit, where a decision was made during the years 1999/2000.⁴⁸ The sample was made from all child cases regarding residence permit, in order to include *all kinds of matters* as well as *all kinds of decisions* regarding residence permits, as it had been observed in a pilot study that was made within the project that children often were attended to in connection with ‘new applications’, i.e. applications based on circumstances that had not previously been examined,⁴⁹ or applications after a temporary residence permit had expired. Furthermore, in those matters where a permanent residence permit was not granted during the years in question, the handling of the matter was studied for a time (until August 2002).

A dropping of 16 files meant that 184 files were included in the study, 45 of which were asylum matters. In five of the asylum matters, the child was seeking asylum alone. In four of these cases, the child turned out to be unaccompanied, while in one case the child was reunified with her or his parents in Sweden, who had filed an application for asylum on an earlier occasion.

During the analysis of the children’s files it emerged that documentation about children existed primarily when the child was unaccompanied. When the child was applying together with one or both parents the file normally only contained the application and the decision, while other documentation about the child could be found in her/his parents’ file. An analysis of all the accompanying parents’ files was therefore also made (96 files).

It may be concluded from the documentation in the files that a more thorough inquiry about children was primarily made in asylum matters and especially in matters where the child was unaccompanied.⁵⁰ It is clear notwithstanding that these inquiries have had little impact when determining refugee status or a ‘need of protection otherwise’. Even if important facts for the determination of the child’s ‘need of protection’ appeared in the investigation, these facts were not considered in the decision.

What may seem surprising is that residence permits were granted in all but one asylum matter. In a minority of cases, permanent residence permits were granted due to a ‘need of protection’. In two of these cases, the applicants were granted refugee status, while five of the applicants were granted protection on grounds of ‘need of protection otherwise’. In the great majority of cases, residence permits were granted for humanitarian reasons, which often pertained to children. In five of the matters, however, where the applicants were

granted permanent residence permits on humanitarian grounds, a temporary residence permit had been granted for a period of time, on grounds of 'need of protection'.

In one of the cases where asylum was granted, the decision was founded on the father's political activity. In the other case where asylum was granted and in the cases where residence permits were granted due to a 'need of protection otherwise', the decisions were motivated by 'country practice' or the general situation in the country of origin. It may also be noted that in cases where residence permits were granted due to a 'need of protection', the permit was often granted by the first instance, while residence permits on humanitarian grounds in most cases were granted after a rejection by the Migration Board and Aliens Appeals Board and after one or many 'new applications'.

In my opinion, it appears that 'country practice' and general assessments of the situation in the country of origin are so crucial to the determination that they are unlikely to be refuted.⁵¹ Instead, it seems like these general assessments act as very strong presumptions, with the consequence that the reasons that are invoked, as a rule, are not investigated more thoroughly. The few cases where it did emerge that an individual examination of the reasons for asylum was made, concerned matters where the applicant referred to political activity, desertion or the like. The docility of the lower instances regarding 'country practice', thus involved an essential limitation of the right to an examination in two instances in asylum matters.⁵² What is more, when the reasons invoked were expounded in the appeal, it was often considered that the applicants' story had been escalating and that it delimited the credibility of the applicant.⁵³ It was also apparent that the determination was primarily aiming at risks in the future.⁵⁴ Accordingly, people who may have experienced severe persecution ended up staying for humanitarian reasons.

In cases where asylum or protection otherwise was rejected, the applicant's lack of credibility often played an important role in the determination, without the decision specifying how these assessments were made. In most cases it was just briefly noted that the applicant 'had not made it likely' or that 'there are reasons to question the statements'.⁵⁵ It nevertheless, seems as if the assessments in many cases were founded on presumptions. By way of example, in cases where applicants did not apply for a residence permit in immediate connection with the arrival, it was presumed that they did not regard their 'need of protection' as particularly strong. Furthermore, in cases where applicants had a passport and had been able to leave their home country without any problems, it was presumed that they were not subject to the authorities' interest and that the application was therefore unfounded. At the same time, if applicants lacked documents it was presumed that they were withholding information of importance for the determination and that their credibility should thus be questioned.⁵⁶ It did not emerge from the documentation in these matters whether the applicant had been given an opportunity to provide a satisfactory explanation to these circumstances. In theory (and possibly in practice), these presumptions involve a catch 22: if the applicants have documents, they are presumed to have no 'need of protection' and if their documents are missing, they lack credibility.

With regard to unaccompanied children, it may be noted that all children were granted a residence permit, even in cases where the child expressed a will to return home if a family reunification could not be accomplished in Sweden. The children were, in all of these cases, granted residence permits on humanitarian grounds, either because of the general situation in the country of origin or because their parents or guardians could not be located, or for other reasons.⁵⁷ It was notable in these cases that a public counsel was not

assigned in any case. It appears that it was assumed that a legal representative was not needed, presumably because there was no risk for a refusal of entry or an expulsion.⁵⁸ A public counsel might, however, have made a difference, with regard to the grounds for residence permit and, in turn, for the possibilities to accomplish a quick family reunification in Sweden.

Conclusion

As shown, children have mainly been considered when determining whether a residence permit should be granted on humanitarian grounds.⁵⁹ The rule about the child's best interests thus has been applied in accordance with the government bill, i.e. with the only explicit example in the bill—but in principle only so. It appears that the authorities employ the statements in the government bill as definitive and exhaustive norms, even though they are simply examples. The example becomes 'the norm', and thus an expansion of examples, or other forms of clarifications, runs the risk of being excluding in the same way. This absolute constraint to statements in the motives of the legislation may support a foreseeable application, but it also makes it rigid, which erodes the credence of, and the intended flexibility in the legislation.⁶⁰

Yet, it may be argued that this constraint of the preparatory work does *not necessarily* support a foreseeable application or equality before the law, since the assessments that are presupposed by the preparatory work allow extensive scope for interpretation.⁶¹ Irrespective of these ideals, it is clear that such a limitation is contrary to the aims of the legal construction (flexibility); the criteria for the traditional rule of law are simply not adapted to the 'specific characteristics' of this legislation.⁶² Abandoning these legal strategies and delimiting the scope for interpretation may, however, be just as problematic even though it supports the concept of the traditional rule of law, because defining implies excluding.⁶³

In conclusion, children have primarily been taken into consideration within the scope of humanitarian reasons. Children were thus considered, however, even before the amendments.⁶⁴ Therefore, in my opinion, one must question whether the rules about hearing children in the course of proceedings and the child's best interests have had any substantial impact on the asylum determination process. The overall problem seems to be that the asylum determination process, to a very limited degree, takes individual circumstances into account, with the exception of political activity,⁶⁵ desertion or the like. As it happens, these are 'activities' that seem easy to associate with adult males, but not as easily with children (or women, for that matter).⁶⁶ Consequently, children are not the real focus of the process. This can be gleaned by our understanding of children and children's rights as well as our understanding of persecution and the grounds for it. With the best intentions and legislation, which allows an extensive scope for assessing the circumstances in each case, the main problem thus seems to be our frame of thought: we simply do not move beyond the 'add and stir' approach.⁶⁷ In other words, this is a child perspective on adult (and male) premises. Hence, even if children are subjects of an investigation, when it comes to the decision, they are quite beside the point.

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¹ This chapter comprises in certain parts a summary of a forthcoming article about theoretical and methodological approaches to the subject (Nilsson, Eva, "Children Crossing Borders. On Child Perspectives in the Swedish Aliens Act and the Limits of Law", in Davies, M., Gunnarsson, Å. and Svensson, E-M (eds), *Exploiting the Limits of Law. A Swedish Feminist Challenge to Pessimism*). For comments of drafts on this chapter, I wish to thank Monica Burman, Doctoral Candidate of Laws at the Department of Law, Umeå University, Catharina Calleman, Doctor of Laws at the Department of Law, Umeå University and Rick Sarre, Visiting Research Professor at the Department of Law, Umeå University.

² Utlänningslagen [Util], SFS 1989:529.

³ See SOU 1996:115, p. 24, with further references.

⁴ Dir. 1996:15, p. 76.

⁵ SOU 1996:115, p. 24.

⁶ SOU 1996:115, p. 12 f.

⁷ Prop. 1996/97:25, p. 248.

⁸ Chapter 1, Section 1, second paragraph of the Aliens Act and Chapter 11, Section 1 a of the Aliens Act respectively.

⁹ SFS 1996:1379, prop. 1996/97:25, 1996/97:SfU5, rskr 1996/97:80.

¹⁰ Prop. 1996/97:25, p. 363.

¹¹ The criticism has principally concerned the asylum process. See for instance Barnombudsmannen (2000), Halvorsen (2004) and Juhlén (2003).

¹² In the above-mentioned study by Karin Juhlén, 32 percent of the children who were seeking asylum together with their family, and claiming their own reasons for asylum, had their claims thoroughly assessed, in the decision. See Juhlén (2003), p. 5. In an earlier study made by Johanna Schiratzki it was concluded that the best interests of the child was primarily considered when determining whether a residence permit should be granted on humanitarian grounds. See Schiratzki (2000), p. 90. See also Barnombudsmannen (2000), p. 11, Dagerås Wittboldt (1998), p. 14 and Juhlén (2003), p. 44. Children were considered, however, in such way, even before the amendments. See SOU 1996:115, p. 66 f., where the Child's Committee refers to a survey of practice made by Barbro Thorblad, on behalf of the Committee on Refugee Politics. The Child's Committee concluded in its own survey of practice, which was made shortly after the alterations came into force, that it was difficult to form an opinion as to whether the legislators' intentions about the child's best interests had had any impact on the application. See SOU 1997:116, p. 164. In 2003, a committee was set up to overhaul the material rules in the Aliens Act. See dir. 2003:28. An integral part of their assignment was to direct particular attention to how the rule about the child's best interests is applied in matters where children are concerned. The Committee has in its report, SOU 2004:74, *inter alia* proposed a new rule about the granting of residence permits on humanitarian grounds for children.

¹³ The proceeding is, both in the Migration Board and the Aliens Appeals Board, mainly in writing. Oral hearings are in normal circumstances only exercised in the inquiry executed by the administrative official at the Migration Board. For this reason and because of the inquisitorial character of the proceeding, the order of instance and process has attracted much criticism. See for instance Diesen (1998), p. 229 and Nilsson (1998), pp. 19 ff. On account of the criticism, an overhaul of the order of instance and process in alien matters is proceeding at present. See SOU 1999:16, Ds 2000:45 and UD 2002/907/MAP.

¹⁴ Chapter 7, Section 3, second paragraph of the Aliens Act.

¹⁵ Chapter 7, Section 11, third paragraph of the Aliens Act.

¹⁶ See for instance Chapter 2 a, Section 3 of the Aliens Act.

¹⁷ See also Migrationsverket (2001), p. 7. In practical applications, it has, however, been accepted that unaccompanied children submit their own application. See also the internal handbook of the Migration Board, for the handling of asylum matters, Section 37.1, about children without legal guardians in Sweden.

¹⁸ In the internal handbook of the Migration Board, for the handling of asylum matters, in Section 37.2, about children in families, it is stated that, as a rule, there is no need for a public counsel for the child, as the counsel that may have been appointed for the family also shall protect the child's interest.

¹⁹ Chapter 4, Section 3, second paragraph of the Act on Certain International Judicial Circumstances Concerning Marriage and Guardianship (Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap [IÄL], SFS 1904:26 s. 1) compared to Chapter 11, Section 1, first paragraph of the Parental Code (Föräldrabalken [FB], SFS 1949:381). See also description of current order in prop. 1996/97:25, p. 233.

It has emerged that there is a need to strengthen the protection for the unaccompanied children in Sweden. The major problem is considered to be that the present custodians for unaccompanied children only can take the place of the child's guardian, i.e. their authority mainly concerns economic affairs. The possibilities the custodian has to decide in matters concerning the personal relations of the child are thus strictly limited. See proposed changes in the interim report SOU 2003:51.

²⁰ Chapter 11, Section 1 b of the Aliens Act.

²¹ Provisions for protection of children have been expressed in most instruments dealing with human rights. At a European level, there are for instance references to the principles about the best interests of the child and respect for the views of the child in the Charter of Fundamental Rights of the European Union, article 24.

²² Implementation Handbook for the Convention on the Rights of the Child, XVII. The Committee on the Rights of the Child has highlighted articles 3 (1) (best interests of the child) and 12 (respect for the views of the child) alongside articles 2 (non-discrimination) and 6 (child's right to life and maximum survival and development) as general principles of relevance for the implementation of the whole Convention. The articles must, of course, also be viewed with regard to the general provision on parental guidance laid down in article 5 (general provisions of the CRC are laid down in articles 1–5 and 41).

²³ Prop. 1996/97:25, p. 245.

²⁴ Prop. 1996/97:25, p. 244.

²⁵ Prop. 1996/97:25, p. 246.

²⁶ Prop. 1996/97:25, p. 245.

²⁷ Prop. 1988/89:86, p. 51, in reference to SOU 1983:29, p. 71. Generally on framework legislation, see introduction in Davies, Gunnarsson & Svensson (eds.), (forthcoming).

²⁸ Wikrén & Sandesjö (2002), p. 40.

²⁹ Prop. 1996/97:25, p. 248.

³⁰ Prop. 1996/97:25, p. 249.

³¹ Prop. 1996/97:25, p. 284. See also p. 248 f. and description of current order, p. 228.

³² It may in connection with this, however, be noted that it in the government bill were referred to other international documents concerning children seeking asylum, *inter alia*, the UNHCR guidelines on refugee children (1994).

³³ Prop. 1996/97:25, p. 249 f.

³⁴ The term 'aliens in need of protection' [skyddsbehövande] comprises refugees as defined in the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees, as well as 'aliens in need of protection otherwise' [skyddsbehövande i övrigt], i.e. reasons due to a need for international protection. Humanitarian reasons are, however, not included in the definition and also fall outside the scope of the asylum process in Sweden.

³⁵ Prop. 1996/97:25, p. 250 f. See also description of current order, p. 229, where it was noted that the obligation to respect the right to family life primarily rests with the home country. In certain circumstances, a Swedish residence permit may nonetheless be granted. The Government also pointed out that in many cases parents have been granted residence permits for family reunification in Sweden.

³⁶ See description of current order in prop. 1996/97:25, p. 225 (see also references in the section about grounds for migration policy, p. 48). Provisions for the protection of the family have been expressed in the CRC and in most instruments dealing with human rights, beginning with the Universal Declaration of Human Rights. The 1951 Convention and the 1967 Protocol relating to the Status of Refugees does not, however, refer to the principle. The only reference occurs in the final act of the conference that adopted the Convention. See Final Act of the United Nations

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³⁷ Lag med särskilda bestämmelser om vård av unga [LVU], SFS 1990:52.

³⁸ Compare with note 19, above.

³⁹ Prop. 1996/97:25, p. 258.

⁴⁰ Prop. 1996/97:25, p. 262 and 297 f.

⁴¹ Prop. 1996/97:25, p. 262 f.

⁴² See also Schiratzki (2000), p. 83.

⁴³ About the individual character in these cases, see description of current order in prop. 1996/97:25, p. 229. See also Diesen (1998), pp. 234–266 and Nilsson (1998), p. 22.

⁴⁴ See for instance Norström (2004), pp. 31 f., 181, 257 and 281, with further references.

⁴⁵ See also Lagerqvist Veloz Roca (2000), p. 5 f. According to Aleksander Peczenic, an increased politicization decreases the influence of legal science. See Peczenic (1998–99), p. 484. About the status of aliens law in Sweden, see also Norström, (2004), p. 257.

⁴⁶ Compare with the systemic conception of criminal law, described by Monica Burman, in Davies, Gunnarsson & Svensson (eds.), (forthcoming).

⁴⁷ As argued, the ‘specific characteristics’ that have been described motivate a wider approach to the subject, but there is, in my opinion, reason enough for such an approach in the fact that “the key to openness lies already in the voluminous and sophisticated network of means for legal interpretation and application in the doctrine of legal sources [my translation]”. See Westberg (1992), p. 433, but compare the same author on p. 434. For a more thorough discussion about methodological and theoretical approaches to the subject, see Nilsson in Davies, Gunnarsson & Svensson (eds.), (forthcoming). See also the discussion by Burman about ways to approach the ‘specific characteristics’ (the systemic conception) of criminal law and the discussion by Åsa Persson, about the seeming boundaries between law and politics, in the same anthology.

⁴⁸ In 1999, 7695 decisions about residence permit were taken concerning children and in the year 2000, 8459 decisions. It was not, at the time for the study, possible to make a stratified sample, with regard to the ground for the application.

⁴⁹ Chapter 2, Section 5 b of the Aliens Act.

⁵⁰ See also Barnombudsmannen (2000), p. 2 and 10 f. and also Juhlén (2003), p. 19.

⁵¹ About the impact of ‘country practice’ in Sweden, see also Halvorsen (2004), p. 35.

⁵² For an overview of the right to a determination in two instances, see Wikrén & Sandesjö (2002), p. 157, with further references.

⁵³ See also Diesen (1998), p. 209 and Norström (2004), p. 305.

⁵⁴ See also SOU 2004: 31, p. 31. Compare also with Wikrén & Sandesjö (2002), p. 162, with further references.

⁵⁵ See also Diesen (1998), p. 207, Halvorsen (2004), p. 20 ff., particularly p. 23, Nilsson (1998), pp. 17 and 22 and also Norström (2004), pp. 84 and 298.

⁵⁶ See also Diesen (1998), p. 206 and 228. Compare also Norström (2004), p. 72.

⁵⁷ See also Ayotte (2000), p. 37 and Halvorsen (2004), p. 38 f.

⁵⁸ See provisions for appointing a public counsel in Chapter 11, Section 8 of the Aliens Act. It is stated in the government bill to the rule that a public counsel should always be appointed in cases where the asylum seeker is under age and, although having an interpreter, cannot be expected to be able to exercise its legal rights. See prop. 1988/89: 86, p. 135. According to the manager of the child group in Region West at the Migration Board, today, as a rule, a public counsel is appointed in matters concerning unaccompanied children. In the internal handbook of the Migration Board, for the handling of asylum matters, it is, in Section 37.1, about children without legal guardians in Sweden, stated that a public counsel with special competence always

is to be appointed for unaccompanied children, if it is not apparently unnecessary. See also description of current order in prop. 1996/97:25, p. 233 f. It may also be noted here, that in 2003, new routines for talking with children were introduced, which has the object to increase the use of open-ended questions and avoid leading questions and comments. See Halvorsen (2004), p. 19 f., for a more thorough description of these changes.

⁵⁹ See also Schiratzki (2000), p. 180. According to her the rule about the child's best interests is used "as a synonym of humanitarian reasons as defined in preparatory work and case law [my translation]."

⁶⁰ See also Nilsson (1998), p. 18.

⁶¹ Compare with Schiratzki (2000), p. 92.

⁶² See also discussion about the rule of law concept, by Gustafsson (2002), p. 405.

⁶³ See also Tuitt (2000), p. 151. Compare with Schiratzki (2000), p. 182.

⁶⁴ See survey of practice made by Barbro Thorblad, on behalf of the Committee on Refugee Politics, before the amendments, commented in note 12 above. See also description of current order in prop. 1996/97:25, p. 228, also remarked in note 31.

⁶⁵ See also statements by Wikrén & Sandesjö (2002), p. 166 f.

⁶⁶ Instead, it seems as if children are likely to be associated with 'passivity'. For a discussion about dominating perceptions of children, see Nilsson in Davies, Gunnarsson & Svensson (eds.), (forthcoming). See also analysis by Ayotte (2000), p. 21 and Tuitt (2000), pp. 151–154. However, as a result of the growing recognition of the phenomenon of the child soldier, Tuitt notes, the 'passive' role given to children in refugee-like situations have been seriously disputed. According to her "[t]he involvement of children in wars not only provides states or agents of the State with a clear motive to target children as individuals, on the basis of a political opinion expressed by or attributed to the child; it also attributes to children a level of consciousness and autonomy which belies the passive role traditionally ascribed them." Nonetheless, as observed by Tuitt, factors that have been identified in exploring the reasons why children take up arms are those that "would supposedly be common to adults (males) whose status under refugee law is not uncertain or disputed." See also Juhlén (2003), p. 19. According to her, the handling of and inquiry in asylum matters where children in families are concerned is principally aiming at the parents', in particular the fathers', grounds for asylum.

⁶⁷ The expression 'add women and stir' is being used by Charlesworth & Chinkin concerning the development of international criminal law in the 1990s. See Charlesworth & Chinkin (2000), p. 335.

PART III

Traumatizing and Protective Factors During and After the Asylum-seeking Process

Chapter 8

Seeking Asylum in Denmark: Refugee Children's Mental Health and Exposure to Violence¹

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This research was first published in The European Journal of Public Health Advance Access on May, 2005; doi: 10.1093/eurpub/cki059. It is reprinted with kind permission from Oxford University Press.

Introduction

In Denmark, like in many other countries, asylum is granted to applicants who fulfil the criteria in the UN Convention of 1951 relating to the Status of Refugees (the Geneva Convention)¹. Asylum is also granted to persons who would risk death penalty, torture or other inhuman or degrading treatment or punishment, if they return to their home country², or, if the asylum claim has been made before July 2002, to persons who of similar reasons as mentioned in the Geneva Refugee Convention or other weighty reasons should not be returned to their home countries. Moreover, Danish law also yields the option of applying for permission to stay on 'humanitarian grounds', but this is rarely given – during 2002 in about 1 per cent of applications³. Overall, the legislation concerning criteria for granting asylum to asylum-seekers and furthermore the concrete procedures for applications for asylum, like in other European countries, e.g., Great Britain, Germany and France⁴, seem to be similar also with respect to their lack of special provision for or consideration of children, with the exception of unaccompanied minors. Accordingly, an application for asylum is treated solely based on information concerning the adult applicant, usually the father of the family, and the situation of a child member of a refugee family is not specifically considered except in rare cases.

Children and adolescents under the age of 18 make up about 1/4 of Europe's refugee population⁵ so that in terms of numbers the lack of specific legislative and procedural attention does not constitute a marginal phenomenon. This might be well in balance with general human rights, if childhood and adult realities were distinct, which they however do not seem to be. Research considering newly arrived adult refugees and asylum-seekers has documented frequent experience of exposure to organised violence, e.g. torture, and frequent accompanying mental health problems⁶⁻¹². Studies focussing on children of refugees and asylum-seekers have presented comparable evidence¹³⁻¹⁸ with

an emotional symptom prevalence of 20-47 per cent dependent on the population studied^{13;15;16}. From the shared fate does however not follow that if e.g. the father of the family is not considered a refugee according to national legislation, then a child has not itself been exposed to extreme risks, or that it is not burdened by heavy mental consequences of such experience.

It seems relevant to ask, whether focussing solely on the background of the adult asylum-seeker actually will result, to a substantial extent, in overlooking the case of the child. We have however not been able to identify published studies considering refugee children's previous violent exposure and mental health profiles at arrival in a host country, stratified by the family being granted or not being granted residence permit and asylum later on. It thus remains an open question, whether the decision process underlying the granting of residence permit will result in a contrast between children whose families did and did not get residence permit, i.e. much more outspoken violent experiences and poorer mental health in children allowed to stay.

Material and methods

The study group comprised 311 refugee children of 149 families from the Middle East (age range 3-15 years at arrival in Denmark), who during February 1, 1992 - April 30, 1993 were consecutively registered in Denmark as childhood asylum-seekers accompanied by at least one parent¹⁷. A total of 344 children from 168 families arrived during the inclusion period, so that 90.4 per cent of these actually participated in the study. As part of an ongoing research project on the subsequent integration of these refugee children they were followed also as concerns their asylum and residence status in Denmark. For this part of the project a follow-up of 5 years (till July 1997; mean follow-up duration 4.7 years) was considered sufficient based on information from the Danish asylum authorities. Since very few families were granted permission to stay of other reasons than asylum, no distinction is made in the present context between families receiving asylum (according to the Geneva Convention or of similar reasons) and families granted permission to stay based on humanitarian reasons, family reunion or permission to stay and work.

At arrival, the parents answered a structured interview dealing with, among other things, the child's previous exposure to war and other organised violence, including e.g. separation from parents and being subject to or witnessing torture and other human rights violation, and the child's present mental health as indicated by emotional symptoms and behavioural reactions¹⁷. All interviews were conducted by a Danish nurse or by one of the authors (EM) assisted by a professional interpreter. Interviewing the children themselves was considered impossible or inappropriate because of the age span in question (3-15 years of age), because of the children's situation as newly arrived asylum-seekers often coming from violent conflict areas, and because of expected problems of communication.

In the present context, five major types of violent experience are considered: living under conditions of war; residing in a refugee camp; torture of parents; witnessing events of violence (house search; arrest of family members; intimidation; torture; killing); and death or other disappearance of a parent¹⁷. The parents' account of own exposure to torture was expert validated¹¹.

Childhood mental health is represented by three frequent symptoms: anxiety, the assessment of which was based on regression-based empirical scoring of interview questions criterion validated by in-depth psychological interviews¹⁹; disturbance of sleep (at least one of three frequent problems: nightmares; difficulty falling asleep; difficulty staying asleep)¹⁸; and the frequent and/or intense occurrence of the depressive symptom 'sad or miserable appearance' which has previously appeared a significant discriminator between referred and non-referred children²⁰.

In the analysis, children of families who did and who did not get permission to stay were compared as concerns their previous exposure to violence and their mental health at arrival and, furthermore, as regards the anxiety determination pattern in either group. The analysis included χ^2 tests for 2 x 2 tables and multiple logistic regression. A general significance level of $P=0.05$ was applied. Regression models were reduced by use of forwards selection of variables, the χ^2 -distributed $-2 \ln (\text{likelihood ratio})$ and the Wald test being applied as significance test. Regression model fit was estimated by use of the Hosmer-Lemeshow statistic²¹. - The study was approved by the Regional Committee for Ethics in Medical Science and by the Danish Data Protection Agency.

Results

Family background

Among the 311 participating children, 187 (60.1 per cent) arrived in Denmark with both parents and 115 (37.0 per cent) solely accompanied by their mother. Six children arrived with their father, two with their mother and stepfather and one child with his/her maternal grandmother. More than half of the children were from Iraq; about ¼ were Stateless Palestinians and/or of Palestinian ethnicity, and 1/3 were Kurds.

Residence permit

At follow-up, 90 families (60.4 per cent of the families) with 190 children (61.1 per cent) had been granted residence permit, so that 183 (58.8 per cent) belonged to families granted political asylum, 2 (0.6 per cent) had humanitarian residence permit, 3 (1.0 per cent) permission to stay based on family reunion, and 2 (0.6 per cent) permit based on parents' permission to stay and work. The families of the remaining 121 children (38.9 per cent) did not receive permission to stay, and the fate of these children is not known.

Previous exposure to violence in children with and without residence permit

Nine out of ten were reported to have lived under conditions of war (89.4 per cent) or in refugee camps (92.6 per cent). Seven out of ten (69.8 per cent) had witnessed violence. Two third of the children (66.9 per cent) were members of a family where at least one parent had been detained, half of the children (51.1 per cent) lived in a family with at least one tortured parent, and 20.3 per cent had lost a parent through death or other disappearance. Eighteen children (5.8 per cent) had themselves been detained.

The prevalence of previous exposure to violence was generally similar in children of families who were and who were not granted asylum (Table 1). A moderately larger proportion (93.7 per cent *versus* 82.6 per cent, $p<0.005$) of children with residence permit had lived under conditions of war than children whose families did not get residence permit. Contrastingly, more children without a residence permit had lost a parent than had children with residence permit (30.6 per cent *versus* 13.7 per cent, $p<0.0005$).

Also patterns combining different types of violent exposure were similar in the two groups with only two significant differences based on small numbers of children (Table 1). Among children with residence permit, 78.9 per cent had experienced at least two different violent exposure types as contrasted to 74.1 per cent in children without permit ($P>0.05$; three exposures or more, 40.5 per cent and 30.6 per cent, $P>0.05$).

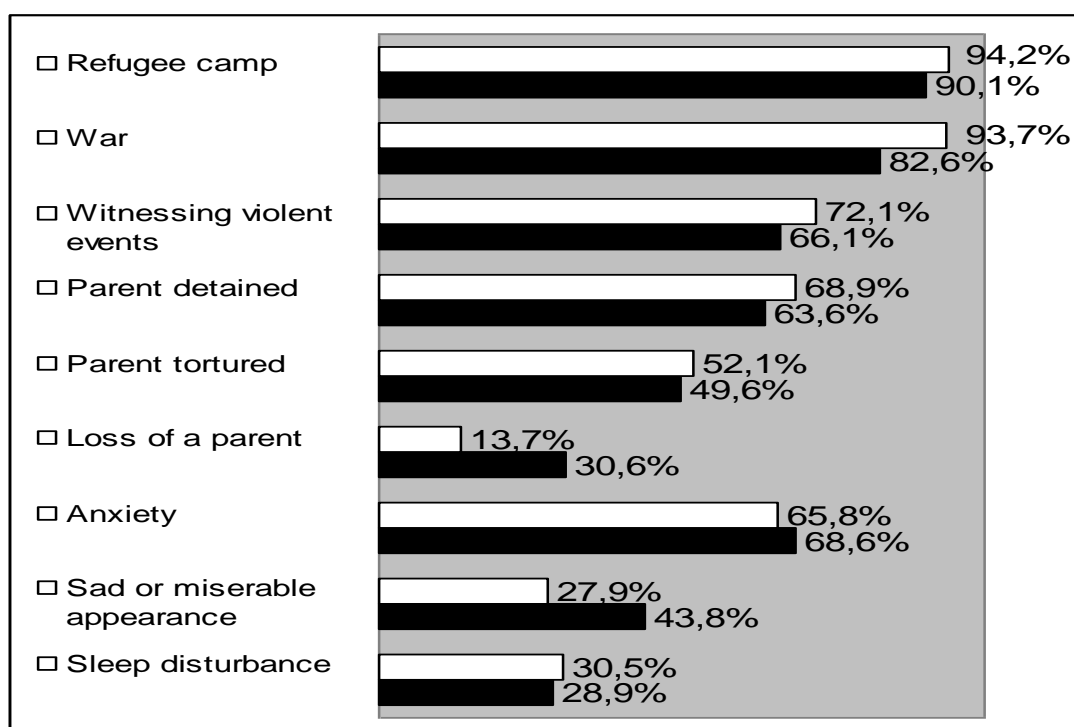
Table 1 Receipt of residence permit by pattern of previous exposure to violence among 311 Middle Eastern refugee children aged 3-15. Denmark 1992-97.

War	Witnessing Parent		No residence permit [£]		Residence permit ^{\$}		P
	Violent events	Tortured	No.	%	No.	%	
0	0	0	8	6.6	3	1.6	0.026
+	0	0	12	9.9	29	15.3	0.174
0	+	0	6	5.0	1	0.5	0.015
0	0	+	5	4.1	7	3.7	0.841
+	0	+	16	13.2	14	7.4	0.088
0	+	+	2	1.7	1	0.5	0.562
+	+	0	35	28.9	58	30.5	0.764
+	+	+	37	30.6	77	40.5	0.076

[£] 121 children. ^{\$} 190 children.

Present mental health problems in children with and without residence permit

Two thirds of the children were assessed anxious. Anxiety manifested itself most frequently by increasingly dependent behaviour, e.g. clinging to the parents and expressing fear of being left alone and fear of sleeping in darkness. Sleep disturbance as such and sadness was experienced by about 1/3. Anxiety and sleep disturbance was equally prevalent in children irrespective of residence permit, whereas a sad or miserable appearance was significantly more prevalent in children whose families were not later on granted permission to stay (43.8 per cent *versus* 27.9 per cent, $p<0.005$).



□ = Residence permit

■ = No residence permit

Figure 1: Receipt of residence permit by previous exposure to violence and present mental health problems among 311 Middle Eastern refugee children aged 3-15. Denmark 1992-97.

Exposure to violence as predictor of anxiety among children with and without residence permits

In stepwise regressions among children without residence permit, anxiety was significantly predicted by previous refugee camp residence and by having witnessed violent events (Table 2, Model I, coefficients in italics). Transferring the found predictor model, i.e. the two significant predictors, to the group of children, whose families later on received a residence permit, these variables also determined anxiety in this group but to a lesser and not significant extent (Table 2, coefficients not in italics). Conversely, based on stepwise regression among children with residence permit, anxiety could be predicted by exposure to war and by having a tortured parent (Table 2, Model II, coefficients in italics). Transfer of this model led to comparable but less outspoken coefficients among children without residence permit. All models were well fitted and, irrespective of the basis of the source model, there was considerable overlap of confidence limits between the two groups, so that also this relatively complicated aspect of the data structure was comparable if not similar in the two groups.

Table 2: Predicting[#] present anxiety by previous exposure to violence among 190 children whose families did get residence permits and 121 children whose families did not get residence permits. Denmark 1992-97.

Model; significant predictors	No residence permit [£]			Residence permit [§]		
	OR	95%CI	P	OR	95% CI	P
<i>Model I, based on analysis including children without residence permit[£]</i>						
Refugee camp	6.1	1.6-23.2	0.007	1.1	0.3-3.8	0.926
Witnessing violent events	3.6	1.6-8.4	0.003	1.5	0.8-3.0	0.191
<i>Model II, based on analysis including children with residence permit[§]</i>						
War	3.0	1.1-7.9	0.029	5.0	1.4-17.7	0.013
Parent tortured	1.0	0.5-2.2	0.992	2.1	1.1-3.9	0.021

[#]Italics indicate coefficients estimated by stepwise regression; coefficients not in italics are estimated by implementation of the same predictor model in the opposite group of children. Total predictor set: war, refugee camp, witnessing violent events, death or other separation from of parent, torture of parent. [£]121 children. [§]190 children.

[£]Model fit: children without residence permit, $p > 0.77$; children with residence permit, $p > 0.93$. [§]Model fit: children with residence permit, $p > 0.98$; children without residence permit: $p > 0.23$.

Discussion

Based on the fact that evidence on children's health is not systematically integrated in the treatment of applications for asylum, we hypothesized mental health indicators to be evenly distributed between groups of children from refugee families, who did and who did not get asylum in Denmark. Accordingly, we found outspoken similarities between the two groups of children, as violent exposure patterns and mental health and behavioral reactions appeared overall comparable. For most of the information studied the nil hypothesis thus could not be rejected and, from the child's perspective and - one may add - from a statistical point of view, the residence permit case work thus may resemble a random process rather than a considerate professional selection.

Focusing on dissimilarities between the two groups, it is true that about 10 per cent more children in the group granted permission to stay had been exposed to conditions of war. This however does not account for the more than 80 per cent of children not allowed to stay who also had been subject to such condition. Contrastingly, much more children without permission had lost a parent, and more had signs of childhood depression.

We have not been in possession of the means relevant for the concrete verification of the information delivered by the adult asylum-seekers, and the present analysis thus has to rely solely on this source and the internal logical cohesion of the information. Available means for verification thus has included expert assessment of the individual case, as was performed in relation to adult exposure to torture¹¹ and childhood anxiety¹⁹. Moreover, a construct validity perspective was introduced in the present analysis by use

of comparative multivariate prediction of anxiety. This perspective reflects more complicated structures of information than the mere pair-wise comparison of proportions and will thus be much more demanding for an eventual deliberate invention of reports on the side of the refugee. Despite some variation, also the construct validity perspective may be concluded to be confirmatory in respect to the absence of substantial contrasts between the two groups.

Furthermore, the general exposure and mental health pattern found is in agreement with previous documentation. Several studies have documented associations between exposure to violent events and mental health problems. Abdalla et al¹⁵ in a health screening of 1.224 newly arrived refugee children in Denmark from Kosovo (0-17 years, mean age 8.2) found that 40 per cent had witnessed violence, 9 per cent had been victims of violence themselves and 14 per cent lived in a torture surviving family. Twenty per cent of the children suffered from emotional symptoms (anxiety, depression, aggression or nervousness), 24 per cent from psychosomatic disturbances and 3 per cent from PTSD (Post-traumatic stress disorder). Extreme poverty, exposure to torture and displacement time explained 16 per cent of the variation in the number of symptoms. Using teachers' assessment of 101 refugee/asylum-seeking children and comparing them with 101 ethnic minority children and 101 British children (5-18 years) from five schools in Britain, Fazel & Stein¹³ found that about 25 per cent of the refugee children had significant psychological disturbance, which was more frequent than in the two control groups and three times the national average. Accordingly, Montgomery¹⁷ in a previous analysis of the present dataset of 311 asylum-seeking children from the Middle East found that refugee camp experience and living in a torture surviving family were the most important predictors of anxiety. In a further analysis of this data material, Montgomery & Foldspang¹⁸ found that a family history of violence and a stressful present family situation were the strongest predictors of sleep disturbance in the children.

In the present context, the children's mental health was assessed based on a structured interview with their parents. Parents and children will differ in their assessment of a child's mental health symptoms²², and parents often overlook or underestimate symptoms, especially intrusive symptoms. Since the assessment instrument used and, furthermore, the reported mental health profiles were similar in the two groups, it is however not likely that interviewing the children themselves would change the conclusions concerning inter-group contrasts significantly.

Although the application is made by a grown-up, the humanitarian aim of granting permission to stay also involves the nearest family members. The present study focuses on the situation of children, while asylum applications are dealt with according to laws without special provision for children's situation. Asylum laws are based on the Geneva Convention, but other conventions are equally important regarding the treatment of refugee families. The Convention on the Rights of the Child²³, adopted in 1989 established affirmatively that the child has the rights of 'individual personality'. Article 22 accords special protection to refugee children. Paragraph 1 proclaims that "a child who is a refugee or seeking refugee status, whether accompanied or unaccompanied, must receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or other humanitarian instruments to which said States are parties"²⁴. Furthermore, article 12 states that children have the right to participate in decision-making processes

that may be relevant in their lives and to influence decisions taken in their regard. The results of the present study may indicate that these rights are not properly respected. Further studies are necessary to establish, how the right of the child to participate in the asylum-seeking process should be operationalized to serve the best interest of the child and to avoid children from being caught in potentially traumatising family conflicts. This dilemma is however not specific for asylum-seeking children, but is inherent also in other cases involving children e.g. cases concerning custody or abuse.

The present study enrolls families, whose applications for asylum were processed 10 years ago, during 1992-97. Since then, Danish legislation and practice has been further restricted, and this has been the case especially since 2002 when the 'de-facto' status was abolished^{2;3}. The 'de facto' status could be applied, if an asylum seeker for reasons similar to those mentioned in the Refugee Convention or for other weighty reason should not be returned to the home country. The consequences of this change in legislation, for children of asylum-seeking families, are unknown, and the asylum granting process remains largely un-transparent.

In conclusion, children of families, who were not permitted to stay, had about the same violent experience as children of families, who were permitted to stay and, consequently, they showed comparable mental health profiles. Based on principles of human rights as well as empirical evidence there thus seems to be good reason to systematically integrate evidence on the children of refugee families in the treatment of their application for permission to stay.

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¹ Acknowledgements

This study was supported by the BG-Fund, the Egmont Foundation, the Henrik Henriksens Fund and the Research Fund of The Danish Medical Association/The Hojmosegaard Grant. Structured interviews were collected by Visiting Nurse Berit Haahr Rindorf.

Chapter 9

Rapes in War: Effects on Mother-child Relations

Henry Ascher

Background

In the 20th century, the character of wars and violent conflicts changed. From mainly being a matter between soldiers on the battlefield, they have increasingly come to affect civilians, especially women and children. This development has contributed to a rising number of refugees, asylum seekers, internally displaced persons, stateless persons etc. The number of such persons under the concern of UNHCR in the world was 17.1 million by the end of 2003. 43 per cent of them are children under the age of 18 (1).

In the EU, 375,000 persons on average have been applying for asylum annually between 1992 and 2001. A peak was seen in the early 1990s during the war in Bosnia.

Since the end of World War II, Sweden has a tradition of a generous and humanitarian policy of giving asylum and residence permits. Holocaust survivors, refugees from the Greek junta, from Chile, Argentina and other Latin American countries under military dictatorship, from the Middle East and US deserters from the Vietnam War have been granted refugee status. In 1992 during the war in Bosnia, more than 80,000 refugees sought asylum in Sweden (Figure 1) (2). Since then, a number of restrictive changes in laws, legislations and practice have contributed to a decrease in the number of asylum seekers as well as in the number of granted residence permits. In 2004, approximately 23,000 persons applied for asylum in Sweden, 28 per cent less than the year before, which could be compared to a medium reduction of 19 per cent in all EU countries (3). One out of four, were children under the age of 18. The proportion of asylum seekers who received permanent residence permits was less than 10 per cent and most of them were decided on humanitarian grounds. Only approximately 2 per cent were accepted as refugees according to the 1951 Geneva Convention.

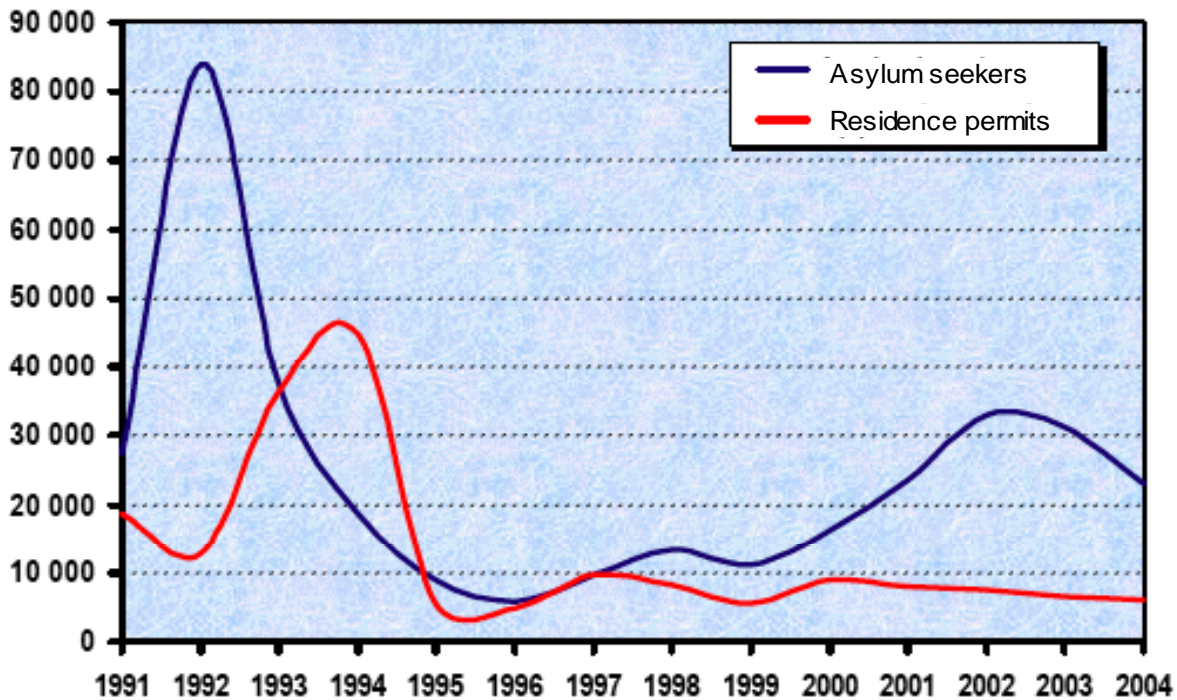


Figure 1 – Annual changes in the numbers of asylum seekers and residence permits in Sweden (from The Swedish Migration Board, http://www.migrationsverket.se/infomaterial/om_verket/oh/ohstatistik_en.pdf).

The importance of rape in war

Many asylum seekers from areas of war and violence have personally been exposed to brutal assaults. Preliminary data from the screening of recently arrived asylum seekers in Sweden indicates that approximately 80 per cent suffer from posttraumatic stress syndrome (PTSD) (Lyshöj-Landiech T, personal communication). Many of them have experienced rape or gang rape.

Rape is an experience related to social shame everywhere, and this is especially marked in societies where family honor is closely related to the control of female sexuality. Rape and the violation of such codes also tend to disrupt relations within the family, sometimes resulting in divorce between the spouses, or the alienation of the woman. It usually falls upon the male members of the family to restore the family's honor. In areas of the former Soviet Union and the Balkans, which have more traditional family structures, it seems as if rape can have a severe social impact, even placing the obligation on the woman herself to restore the family's honor, by disappearing into isolation, leaving her children and in some cases even committing suicide.

The effects of rape are therefore not just the break-down of the self-confidence of the victimized women but they reach far beyond that. When rape is commonly used in a society where it has such effects, it leads to the disintegration of social structures. That is probably an important reason for the systematic use of rape as a weapon in war and political conflicts.

It should also be underlined that rape is prohibited under the Geneva Convention.

Effects on mothers

The disastrous secondary effects of the rape, sometimes in combination with threats of worse assaults if they do not leave, are for many victimized women a reason to flee and seek asylum. At the same time, the threat of social degradation and isolation if the knowledge of the rape is spread is extremely menacing. That is a reason why the rape usually is a well-hidden secret. The husbands are often unaware, either because they were away from home (in some cases as soldiers, in other because they were hiding) or because they were beaten until unconsciousness by the perpetrators before the rape took place. Furthermore, to keep the assaults secret it is common that women do not tell the immigration authorities about them. Some women have bad experiences of reporting to authorities and for many it is just too painful to recall the most traumatic events and talk about them. They hope that other reasons are enough to receive a residence permit and that they never will need to think about the rape again.

Another common effect of rape is fear of permanent physical injuries and doubts about body functions. Testing the ability to become pregnant is probably a reason why it is common for the women to have new babies. In some cultures, new babies may also have the function of cleaning the woman after the desecration.

Other consequences of the rape may be pregnancy and/or sexually transmitted diseases. These aspects will not be further discussed in this chapter.

Patients

We report observations of 25-30 families, mainly from former Yugoslavia or the former Soviet Union. Most of them were hidden refugees, who lived secretly underground in Sweden since their application for residence permits had been rejected. In most cases, some of the parents, relatives or helpers brought one or more of the children for examination due to concerns for their mental health status. We used different routes for establishing contact: many families came via the Swedish Red Cross and some came via churches or other networks of support for hidden refugees. Some contacted The Rosengren Clinic for Hidden Refugees, which is a local voluntary network of health workers with different professions and competences who work to provide health service for underground refugees because Swedish legislation only grants health care for children.

Results

Mothers

Most mothers we met were in an extremely bad state, especially after their applications for asylum had been rejected and they were faced with deportation. They were terrified of the horror of new acts of cruelty if they would have to return to the country from which they had fled, and they were terrified of the possibility that their secret would become exposed. All mothers were more or less emaciated and had a remarkably aged appearance.

All mothers had post-traumatic stress syndrome (PTSD) as defined in DSM IV (4) including severe sleeping difficulties and intrusive nightmares. Most of them were treated for long periods of time in psychiatric clinics, often with severe depression or psychotic depression, after severe suicide attempts or risk of expanded suicide.

The mothers showed different attitudes towards the experienced rape or rapes. The trauma was usually a hidden secret. After some contacts it could be referred to vaguely, often indirectly. In some cases the mothers could talk more openly about it after receiving assurance of confidence.

Children

The observed effects on children of their mother's rape were dependent on the children's age, maturity and personality. When meeting the child we found it important to avoid simplification and generalization and instead try to see the individual conditions of each child.

The type of trauma the child had experienced was also important. It could differ from indirect experiences - e.g. in children who, while they were born in Sweden, were also affected by the mother's reduced maternal capacity - to having witnessed assault, rape and mass rape, killing or kidnapping of relatives or family members. Some children were probably assaulted or raped themselves, sometimes after having tried to defend their mother.

Alija (changed name like all names in this chapter) was a 2 ½-year-old boy who was born in Sweden, and who was the first child we met where we were aware that his mother had been raped. The mother was in a bad psychiatric state: she had spent several months in a psychiatric hospital and was on heavy medication. When we meet Alija, he was sitting on the floor in the room playing quietly by his father's feet while we were talking. The mother was sitting far away in the other end of the room. An invisible wall divided the room. The mother did not react to her child, she did not see him, she was not capable of caring. And Alija did not even attempt to approach his mother. He did not show any sign of seeing her or taking notice of her. He had given up...

Mohammed was six years old and of Roma ethnicity. He was born in former Yugoslavia. He experienced the NATO bombings, ethnic persecutions, acts of cruelty and how close relatives disappeared. His mother was most likely raped. Due to these events and confronted with the threat of being sent back to the place of these events his mother became severely mentally ill. Most of the time in Sweden, she had been in psychiatric in-patient care. She constantly heard threatening voices talking to her and she had been treated with many electric convulsions on vital indications, i.e. her psychiatrist evaluated her state as life threatening. She was not capable of caring for her children at all. Most of the time Mohammed's mind was occupied with the loss and yearning for his mother. He disliked playing with other children and did not play much by himself either. He spent most of his time just sitting pondering. While talking to the parents during our session, Mohammed makes a series of paintings expressing his world view and his thoughts (Figures 2-5).



Figure 2 – Mohammed's painting about how he would like his life to be. The little Mohammed is lying in the bed beside the big and happy mother who is holding his hand. To the left is mummy's big heart and Mohammed's small one.



Figure 3 – Mohammed's portrait of his sick mother. She has no features at all...



Figure 4 – Mohammed's nightmare, a burning house. A few months ago he was playing outdoors when the fire department responded to a call. His older sister had set the apartment on fire in an attempt to commit suicide.



Figure 5 – Mohammed's last drawing: a tree with Mohammed hanging in a snare...

Binding and clinging behavior, particularly to the mother, was regularly seen in the youngest children. They literally did not let their mother out of sight. They did not enter a room without an adult and stayed in a range of a few meters around them. School children often stayed close to their teachers and followed them closely during the school breaks. A few children had, like Alija, given up the contact with their mother and tried to substitute the relationship with her for someone else, like the father or some other relative.

In many of these children the magic thinking that is normal in children around 3-5 years old evidently lead to a strong feeling of guilt of being responsible for the bad psychological state of their parents. This tendency could also be seen in many older children.

Older children and adolescents were sometimes aggressive and acted out. Teachers could regard them as “difficult children”. As time passed and their application for a residence permit was continuously rejected, it was common, especially for the older children, later to become passive, resigned and to develop depressions. This could falsely be taken as a sign of healthy adaptation, but was rather a serious sign indicating that the child was giving up and moving into a more depressive phase.

If the family chose to hide in order to prevent the immigration authorities from sending them back to the country from which they had fled, the pressure on the family increased immensely. This commonly led to aggravation of the post-traumatic symptoms, both of the parents and the children. If the parents were not able to fulfill their parental duties, if the situation became too much for them, the children, commonly the oldest, usually tried to fill their place. They became young adults taking over parental responsibilities.

Symptoms

Five-year-old Antonio lived with his parents in a Swedish refugee camp. He was very afraid that the police would come to send his parents back without him. He never went to the nursery school or played with other children. One day a helicopter hovered around the area for a long time. Antonio was in a total panic, extremely afraid.

Nine-year-old Mustafa was not quite six years old when four militia men broke into their home at midnight. He woke up and witnessed how they raped his mother. His father, who had refused to join the militia, tried to defend his wife and the men cut off two of his fingers. Mustafa tried to flee the house but was beaten unconscious by the barrel of a rifle. When we examined him he lived underground, since the family's application for a residence permit had been rejected. In the house in which the family was hiding, one of the neighbors was an alcoholic. The police were often there and Mustafa was always extremely horror-struck. As soon as anyone knocked at the door he hid under the sofa. He had nightmares almost every night where the acts of cruelty were reiterated in detail. He woke up in a panic, he had wet his pants and it took a long time for him to realize that the assault was, in fact, not taking place again. When he was asked about his dreams or thinking about them, he had enuresis even when he was awake. His nightmares had made him afraid of going to sleep and when he finally did; his sleep was so disturbed that he was always tired during daytime.

Re-experience of traumatic events were common, both as flashbacks and nightmares. These children were, contrary to normal Swedish children, extremely afraid of sirens, airplanes,

helicopters etc. Techniques of avoidance were commonly developed. For instance, many children avoided watching TV because they were afraid of seeing scenes of war and violence. An obsession with violence seemed more uncommon.

The nightmares were evidently intrusive. Night after night the most horrible experience in the child's life was re-experienced, not as a dream but as a reality. Some children avoided talking about their dreams but just asking about them usually triggered strong emotions and commonly made the child weep.

In a few children, we saw anorectic-bulimic symptoms. One of them went into the kitchen after waking up from horrifying nightmares where he ate a lot in the middle of the night and he had gained weight considerably.

Many children showed signs of severe depression. They had no hope, no wishes that would make them happy if they were fulfilled. Some could not remember the last time they were happy or any time that they had been happy.

Suicide attempts were not uncommon. In some cases they would more correctly be categorized as failed suicides.

Ali was 14 years old and had made three severe attempts to commit suicide. In one of them he hanged himself in the bathroom. His 12-year-old brother heard strange sounds and found him at the last moment and took him down unconscious. Ali's history contained several traumatic events. He had witnessed when a young man was hit and killed by a bomb close to his school. Ali said that since that day nothing was the same. During the NATO bombings, when Ali was 12 years old, the family lived for three months in a basement under primitive conditions without water and electricity. Shortly after they returned home, a group of masked men broke into their house, hit their father unconscious and raped their mother in front of the children. When they left, they took his 14-year-old sister with them and said that they would never see her again and that they would burn down the house if they did not flee. Since then, they had not heard anything from her. Ali always thought about her. His mother was mentally very ill and had been treated in a psychiatric clinic for many months. Their application for residence permit had been rejected as well as several appeals.

In some cases we met children who had tried to commit extended suicide including their siblings. The big brother has been the one who has taken a great responsibility for his younger siblings and who has been horror-struck by the threat of being sent back to where he is convinced that the acts of cruelty will be repeated or that even worse things will happen.

We have also met children who have developed a syndrome of total resignation. They do not speak and make no contact. They are just lying with closed eyes; they do not take care of their personal hygiene and they have stopped eating and drinking. Some could be forced to drink a little but many need enteral tube feeding. This clinical syndrome was recently described by Bodegård (5, 6) who also depicts it in chapter 12 in this book (7).

Discussion

There are few reports of the effects on children and the mother-child relationships of rapes of the mothers during war. This could be due to several reasons. The rapes themselves are commonly not known by anybody except for the affected women and perhaps the children

or a few of her closest relatives. This is important for the affected women because there is a risk that the rape, if the knowledge about it is spread, will lead to severe social consequences.

The husbands/fathers were often unaware of the rape. Sometimes they gave the impression of not wanting to know. They would sometimes leave the consultation room in order to give an opportunity for their wife to talk privately. Sometimes they knew what had happened or had even been forced to witness the rape. In those cases the husbands/fathers often carried a strong feeling of failure since they had not been able to fulfill their duty to protect their wife and family.

In some families where the rape was unknown to the father and the child had witnessed the event, the burden of the unexpressed promise of secrecy was obviously a heavy load to carry for the child.

Professionals who meet these families are therefore often unaware of the assaults. Furthermore, if the rapes are known to the professionals, it is still possible that they are unaware about how it affected the child / children. If the rape is a shame for the women, it is still more shameful if the children witnessed it. One aspect is the feeling of failure to protect the children. For professionals who know about the trauma, it may be so overwhelming that it conceals their ability to see the problems of the children.

However, when you notice the possibility of rape in refugee families from areas of war and persecution, who are affected by a severe psychological and psychiatric burden, it is obvious that this is probably a common problem, not just in our setting.

The effects on the child of the assaults are individual and are influenced by the interaction between traumatizing and protecting factors in the past as well as in the present. Protective factors are, for example, a background of stable living conditions, maybe in an extended family in contrast to children from persecuted minorities who may have a long history of forced moving, no school, unstable family situation etc. Belonging to a socially and politically active family is protective for the child since it more easily can put traumatizing events in a comprehensive context. In the flight situation, a planned flight with the whole family intact before any severe events have taken place is protective, compared to a hasty unplanned flight after severe assaults, maybe in a situation where the family is separated, and where perhaps some family members have been killed, jailed or disappeared. Some children have experienced traumatic flights by night in a small, overcrowded rubber boat in heavy sea.

Children, especially younger ones, carry a notion of their parents as invulnerable protectors. The children we observed had, however, witnessed the breakdown of their parents who had been reduced to helpless infants in front of them and they had been treated in a way which the children have no concepts for understanding. Such an experience risks leading to a breakdown of their view of their parents: their power to protect, to be models as well as their authority.

In this situation, children often react with regression as a way to restore earlier confidence, to "get back the old mummy". Almqvist and Broberg (2003) reported three young Kosovar children who had been exposed to brutal violence together with their mothers. The assault had severe effects on the normal attachment between mother and child. According to Bowlby's theory of attachment (8) the normal mother-child relation is developed through a very intricate interaction. The child's behavior towards the mother stimulates her mothering, which in turn stimulates the child and his or her development. Building internal models of the other are important instruments for the attachment. What

Almqvist and Broberg demonstrated that the brutal violence that the mother and children had experienced affected the mother's internal representation of their children and themselves as mothers. They could no longer see themselves as protecting and loving parents and the traumatized children's symptoms and increased attachment efforts even worked as a trigger for posttraumatic symptoms in the mothers (9).

The risk for the affected children is that witnessing the breakdown of their parents will severely affect their overall basic trust in adults. Whether that will be a long-lasting effect depends on what happens later, after the assaults. This again constitutes a balance between protecting and traumatizing factors. Being surrounded by reliable adults, going to school, a "deputy" social network and a supportive environment in the new society are examples of such protecting factors. In addition, of course, the rehabilitation of the parents is essential for the child.

With this knowledge in mind, it is inevitable to ask whether the asylum process itself constitutes a risk factor for traumatized children. The Swedish legislation identifies the children in refugee families and acknowledges that they may have reasons of their own for asylum. It stipulates that the reasons for asylum should be investigated for each child and that the principle of the best interest of the child should be guiding decisions concerning children. It also stipulates that when the psychosocial development will be seriously threatened if the child is sent back he or she is entitled to residence permit for humanitarian reasons.

In spite of this, 80 per cent of the applications concerning children do not investigate their reasons for asylum according to the Swedish Child Ombudsman and Save The Children (10). A culture of mistrust has spread and permeates the asylum process. For the children, the adults whom they meet are not securely reliable. The fear of being sent back to the place of the traumatic experiences, where the child is convinced that the same or worse things will happen or where the perpetrators threatened the family with what would happen if they did not leave, becomes more and more intruding.

The fear of being sent back increases PTSD symptoms such as nightmares and becomes a continuously ongoing trauma (11). The child is increasingly occupied by the past. He or she becomes less interested in the present and his or her hope for the future fades away (12).

When investigating the question of the asylum process in relation to the needs of traumatized children, it is useful to go back to the UN Convention of the Rights of the Child, which is ratified by almost all the countries in the world. In addition to the four supporting pillars, Article 22 about the rights of refugee children and Article 39 about the right to rehabilitation ought to be guiding the asylum process for these children.

In conclusion, traumatized refugee children constitute a heterogeneous group of children who often are severely suffering, hidden, invisible and inaudible. Professionals and volunteers, like health personnel, social workers, teachers, youth leaders etc., often meet these children. It is also necessary to see them, identify their situation, listen to them, treat them and support them. Unconventional types of support may be necessary. When poor mother-child relations are seen as well as when severely deteriorated psychological status are present in parents and/or children, the possibility of rape and violence of parents and / or children should be considered.

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Chapter 10

“Why is This All Happening to Us?”

The Importance of Early Interventions as Protective Factors in Unaccompanied Asylum-seeking Children

Loes H.M. van Willigen

Introduction

During the late 1990s the number of unaccompanied minors seeking asylum in the Netherlands annually, increased considerably, not only in absolute numbers, but also per centage wise compared with the total number of asylum seekers per year (see graph 1).¹ With unaccompanied asylum-seeking children, I refer to those children and youngsters who are minors and outside their country of origin, separated from both of their parents or their legal and or customary primary caregiver, and who are seeking asylum.² Among the unaccompanied asylum-seeking minors (henceforth abbreviated as UAMs) there also was an increase in the number of child families: families consisting of a teenage mother with a child or children, and families consisting of brothers, sisters, nephews and or cousins.³

Between 2000 and 2002 most UAMs originated from Angola, Sierra Leone, Guinea, China, Togo, Afghanistan, Congo, Somalia, Nigeria and Mongolia.¹

In 2001, I was asked to study the question of whether the medical reception services were meeting the needs for care and demands of unaccompanied asylum-seeking children in the reception centers for asylum seekers in the Netherlands. The study took place in 2001 – 2002.³ In the same period of time, because of the increase in the numbers of UAMs, the Dutch government decided on a policy of restriction and deterrence regarding their influx. This new policy came into effect in 2003. The changes in policy regarding the admission and reception of UAMs did, however, not directly affect the health care provisions for them and thus not my arguments based on the results of the study. For that reason I will not go into the details of the policy changes, but describe the reception and health care of UAMs in the Netherlands as they were before and during the study.

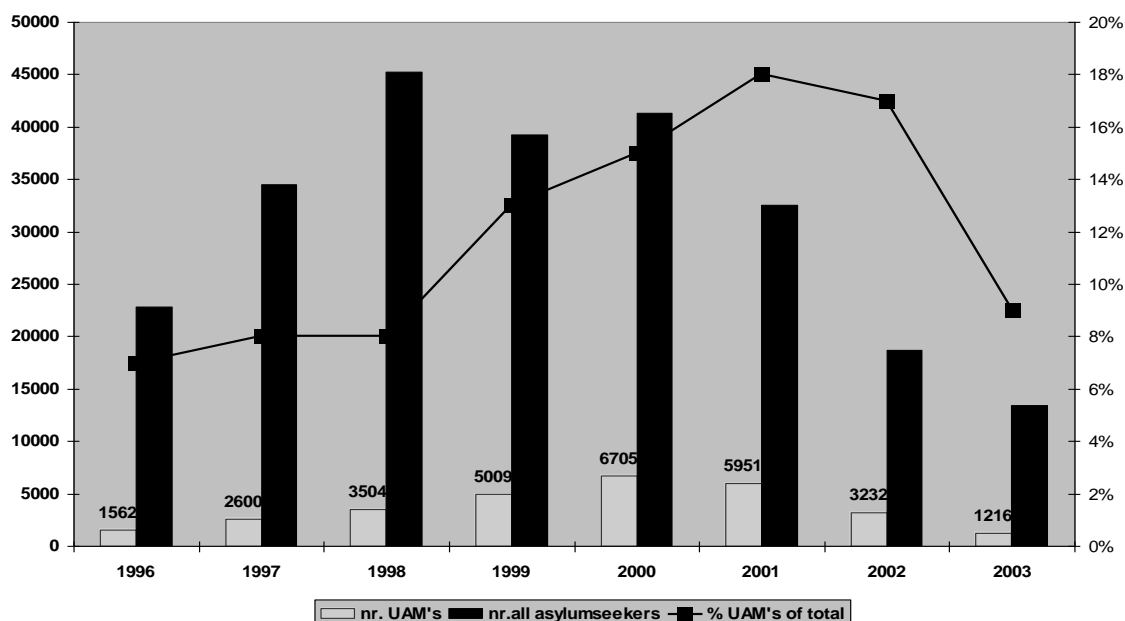


Figure 1: Numbers of unaccompanied asylum-seeking minors and total number of asylum seekers arriving in the Netherlands per year, and the per centage of the minors of the total number

The reception of UAM's

Unaccompanied asylum-seeking children under 12 were and still are directly placed with foster parents, mostly of the same nationality as that of the child. UAMs who were older than around 12 were initially housed in special youth centers, called the Valentijn. The Valentijn used a special pedagogical program for the guidance of the UAMs. Because of the increase in the numbers at the end of the 1990s, however, unaccompanied youngsters also had to be housed in the regular reception centers for asylum seekers. Special units for UAMs were created hastily in a number of those reception centers, with youth workers, or mentors, providing more or less the same pedagogical guidance to the UAMs as in the Valentijn houses. Youngsters, who were considered to be functioning well and independently, mostly the 17-year-olds, were placed in reception centers for asylum seekers without any special guidance. All UAMs in the centers went to school either on the centers' premises or outside.

The UAMs stayed in the Valentijn houses and UAM units for around 6 months to 1 year. Then they were re-housed in special small housing units or on their own in municipalities. The guardian organization Nidos was responsible for the UAMs' legal representation.

The units for the UAMs and the Valentijn houses fell under the responsibility of the Central Reception Organization, an agency of the Ministry of Justice.

Health care

When asylum seekers are admitted to the asylum determination process in the Netherlands, they are insured for general health care. Besides, since the 1980s, in the

reception centers as well as in the Valentijn houses, medical reception teams consisting of social nurses and medical doctors are responsible for taking preventive measures regarding imported and other acute diseases and the consequences of violence and uprooting on health. These medical reception teams, which will henceforth be referred to as the MOA (the Dutch abbreviation of medical reception asylum seekers), also form a bridge towards regular health care, e.g. the general practitioner and mental health care institutes.

For the timely identification of health problems, asylum seekers receive on arrival a questionnaire and are directly referred for a TB test. After some time, the nurse of the MOA asks the asylum seeker to attend an examination, which is based on the completed questionnaire. If necessary, the nurse refers the asylum seeker to the doctor of the MOA or to the general practitioner for further medical examination or treatment. The nurses also have consultation hours for ‘regular health questions’ and answer those with clarifying the problem, individual health information or guidance to regular health care. Health education mostly concerns the structure of Dutch regular health care and, for the UAMs, the prevention of sexual transmitted diseases and pregnancy.

In the 1990s, the MOA was part of the Central Reception Organization, but in 2000 the MOA was turned over to the Dutch public health services. The goals of the medical reception stayed the same, although the various tasks were better described and put down in protocols. The functions, however, were adapted to the disciplines within regular public health (see table 1).

Table 1: Disciplines and functions of the medical reception for asylum seekers before and after the transfer to the Dutch public health services

Before January 1, 2000	After January 1, 2000
Medical doctors (with or without specialization) Social nurses	Doctor and nurse for social or community health care Doctor and nurse for youth health care Specialized nurse for health information and education Practitioner nurse for guidance to regular care

The differentiation in functions was gradually implemented in all reception centers. The Valentijn houses, however, expressed their opposition to this change in their houses. They feared that it would not be clear to the UAMs to which discipline they should turn for what complaint. Although they did not say so, I suspect that they also were afraid of having to deal with too many different medical personnel in their relatively small houses. Their opposition to the differentiation in functions formed the motive for the MOA to order a study on the question whether the medical reception services were meeting the needs and demands of UAMs.

Methodology of the study

To fulfill the purpose of the study the following questions were distinguished:

- What are the needs for care and demands of unaccompanied asylum-seeking minors in the various reception centers?

- What medical reception services are offered to them?
- How are those services assessed by the minors, their mentors and guardians, and the medical personnel?
- Is there a difference in assessments between the UAMs who live in the Valentijn houses and the UAMs who live in regular reception centers?

The questions were answered by interviewing focus groups consisting of UAMs, their mentors and guardians, MOA nurses and doctors and general practitioners. A review of literature preceded the interviews. The study was approved of and guided by representatives of the guardian organization Nidos and other organizations involved.

Interviews with the UAM Focus Groups

Six focus groups were composed of UAMs of different genders, nationality and age, living either in one of the houses of the Valentijn, in an UAM unit, or independently in a regular reception center. The composition of the focus groups and the total number of UAMs living in the centers are shown in table 2.

Table 2: Composition of the UAM focus groups by number, age, nationality and representation of total number by centre

Type of centre	Number, gender and nationality of respondents	Age	Total number of UAMs in centre
Valentijn house 1	13 teenage mothers from Angola	15 -16	92
Valentijn house 2	6 boys from Angola	10 – 12	168
Valentijn house 3	8 girls: 2 China, 2 Guinea, 1 Sierra Leone, 3 Angola	12 – 14	84
UAM unit location 4	6 boys from Angola	13 – 15	75
UAM unit location 5	7 boys: 5 Angola, 1 Sierra Leone, 1 Guinea	15 – 17	80
AZC, location 6	2 girls from Angola, including 1 teenage mother	16 – 17	35

The selection and invitation of the participants in the focus groups were done by the UAMs' mentors, except in location 6, where the UAMs were living independently.

Criteria for selecting the UAMs were mainly that they should have lived in the reception center for a certain period of time in order to be able speak in Dutch about their experiences with the medical reception, and that they should belong to the gender and age as determined before. All UAMs received an invitation letter in Portuguese, English or French through their mentor, in which we explained that the aim of the interview was to improve the medical reception services. We guaranteed the confidentiality of the interview, and also explained in the letter that they did not have to speak about their backgrounds nor their personal experiences, but of health, illnesses and experiences with the medical reception in general. In location 6, which is a regular reception center without a UAM unit, invitation letters were distributed among UAMs who were selected by a guardian of Nidos, by regular reception personnel. The lack of personal information probably explained the limited participation in the group interview in this location.

The interviews were done by me and a social nurse, who had worked with me before, and who had long experience with both the medical reception and counseling of the UAMs. Since communication with the first interviewed group, the group of teenage mothers, did not go very well - the group was too big in combination with the fact that quite a few of the girls were unable to speak Dutch- we decided to interview one group in location 4 in their own language, with the help of an interpreter.

Boys in the age group of 10–12, in the Valentijn house 2, were relatively underrepresented. The mentors could hardly find any boys who were willing to be interviewed, and those who participated had problems concentrating on the questions, as they were more eager to use their free time for playing outside.

Before we started the interviews, their confidentiality was emphasized again. Following the questions of an earlier qualitative study among refugees regarding the accessibility of Dutch health-care⁴, we started with questions about their views of health and illness and about the most common diseases and illnesses among them. Then we asked how to promote health, what they did in their country of origin when they were ill, and how they cope with health problems in the reception center. Finally, we asked what their experiences were with the medical reception and other care providers, and whether and how these services could be improved. All groups except in location 2 gave their permission for us to record the interviews on tape.

Interviews with the Professional Care Providers

Since the second best people to know about the UAMs' experiences with the medical reception were their mentors and guardians, we also interviewed 11 mentors, in groups of two and three; four guardians, individually, and in location 2 also one teacher, who all worked for the interviewed UAMs. Regarding the medical reception personnel in the six locations we interviewed: the youth health care nurses and doctors; in the three reception centers also the nurse practitioners; and in location 5, the nurse who was responsible for health education. Finally, we also interviewed three general practitioners to whom the UAMs were referred, when necessary.

Results

In the following, we describe the results of the interviews with the UAMs in the focus groups. The results of the interviews with the professional care providers are elaborated upon in the discussion.

The concept of health and illness

Each time we begun with the question about their concept of health, it seemed that they had never given it much thought. Mostly, they started with describing health as the opposite of illness and pain. Many older UAMs, however, also gave a more holistic, multidimensional significance to the concept of health, like being well and feeling well. For example a 16-year-old boy said: [Health is] *“Well being, feeling well in your body, no pain, feeling normal”*. Some of the interviewees also mentioned eating, sleeping and playing well.

Illness means, in the view of most, having bodily pains, not eating well and thinking too much. The older youngsters also mentioned, having sorrow, nightmares, sleeping badly and suffering, as illnesses. For example, a 14-year-old boy answered: [Illness is] *“Suffering; e.g. when you don’t do anything anymore, when you don’t have good appetite anymore; nightmares also”*.

The most common illnesses and their causes

The most common illnesses among UAMs are, according to them: headache, stomach and belly ache, eye problems, problems with sleeping, the common cold and the flu. The teenage mothers also mentioned menstruation problems and back aches as special for girls.

They attributed having a cold or the flu to our wet climate, and some attributed a stomach or belly ache to bad or too much food. Some related illness to Allah ‘s will or fate. Most of the older UAMs saw a relationship between headaches and insomnia and their experiences in their country of origin and their present situation. A 16-year-old girl said: *“Headache because of always thinking. Because of much crying. Crying because of thinking, sorrow. We do not know what is happening with us in the Netherlands, we do not know about our future, and because we are thinking about that. No family, no nothing. Very difficult.”*

They did, however, not always understand the relationship between their complaints and their backgrounds, as a 14-year-old boy expressed: *“Sometimes I wake up with a headache. Someone else also says having a lot of headache. I can’t explain. Especially after having nightmares. [...] About what has happened to us, in Angola.”*

Some of the UAMs mentioned that their complaints already existed in the country of origin, but that they were aggravated or had altered since their arrival in the Netherlands.

Health promotion

According to the UAMs, health may be promoted by good and healthy food and good sleep. Several respondents also mentioned as health promoting recreational activities, like sports and holidays, social activities like maintaining friendships, feeling safe and preserving their own culture, e.g. by cooking one’s own meals.

Coping with illness

All UAMs saw a big difference in coping with illness in their country of origin and in the Netherlands. The Chinese girls mentioned that in China they went to good doctors, who performed an examination followed by explanations, instructions and medicines. The African UAMs said that they had had no experience with medical doctors or hospitals. According to them, a visit to a clinic or hospital in their country of origin was too expensive for them and their family. When they had health problems their mothers gave them folk remedies, like boiled milk with onion for cough, or they went to traditional healers, or to the market to find traditional medicines, like herbs, potions, etc. The teenage mothers could describe quite a few folk remedies including how they are prepared.

When they had a health complaint in the reception center, some said that they first consulted their mentor. The girls said that sometimes they would turn to each other for help. The boys mostly did not, as a 16-year-old boy expressed: *“You cannot help when the other is sad. You do not speak so easily with someone else about it. When you are alone it is difficult. In the company of others it is better. Then you do not think that much.”*

All of the UAMs were acquainted with the MOA and had had their first examination. This examination hardly seemed to have had any relevance to them. They saw the MOA as the person you go to when you are ill and with the exception of the oldest interviewed girls they did not know the difference between the various disciplines of the medical reception teams or the general practitioner. Most of them thought that they did not have a general practitioner.

The assessment of the medical services

With exception of the group of young boys in the Valentijn house 2 all respondents were very negative about their experiences with the medical reception. All voiced the complaint that the MOAs' main advice is to drink a lot of water. In one group the emotions about this advice became so excited that a 15-year-old boy exclaimed: *“Why is this all happening to us? Why do we need to suffer, why don't we have a quiet life like the Dutch? It is unfair. We do not have any family; others have a father, a mother, a brother, a sister. Why do we have to experience this all? How can we defend ourselves against this suffering?”*

Other complaints about the MOA were that they prescribe paracetamol too easily, that the MOA does not listen and that they are told that their complaint is normal, because of the difference in food and climate, because of the too much thinking and the war in the country of origin. A 15-year-old teenage mother said: *“We come to the Netherlands, always pain: we have to drink a lot of water. Always the same what the MOA says. MOA says it is normal that we have to think a lot. In the Netherlands they always say ‘it is normal’. It is not normal. But if she says ‘it is normal’, then it is normal. Mrs. MOA says, you come from Angola, you think a lot, it is normal.”*

None of the UAMs could remember having received any explanation about the advice and prescriptions given by the MOA.

There was no difference between the experiences of the medical reception in the Valentijn houses and the regular reception centers. About the experiences with other care providers, e.g. specialists in hospitals, the UAMs were neutral or satisfied.

They hardly had any experience of health education, neither in the country of origin or in the Netherlands. The oldest boys would like to be informed about how *“to stay healthy as a man.”* Others would like to be informed about Dutch diseases, especially about the cold and the flu, and how to prevent them. The teenage mothers would like to receive education about baby care. With regard to the improvement in the medical reception services, they expressed their wish for a good examination, good information and medication. The MOA should stop advising their patients to drink a lot of water, be nicer, listen better and take better care of the asylum seekers.

Discussion

The advantage of interviewing focus groups of UAMs was that in a short period of time we could collect a lot of data, the participants stimulated each other in broadening their scope during group conversations, and youngsters in general feel better at ease in the company of others. On the other hand, there was a risk that the youngsters would influence each other and that they would only express socially accepted views. The findings, however, were, to a large extent, confirmed by the interviewed care providers as well as by other studies among UAMs and asylum seekers in the Netherlands, as will be described in the following discussion.

In conclusion, the results of the interviews with the focus groups of UAMs show that, generally speaking, they recognize that health is more than the mere absence of disease. Their most common health problems are psychosomatic in nature, and they relate these to pre and post migration stressors. They are unfamiliar with the specifics of the health care system in and around the reception centers, and they are highly dissatisfied with the care that is offered to them.

The mentors and guardians who were interviewed shared the impression that many UAMs returned frustrated from the MOA consultation hours. All interviewed professionals, mentors, guardians and health care providers alike, showed their sincere concern for the welfare of the UAMs. But although they are aware of the UAMs' backgrounds and their consequences on health, they seemed not to be able to pay sufficient attention to the youngsters, partly because of a lack of time. Besides, most of them had less than two years experience with the reception and care of UAMs, and in their own view, they hardly had received any specific training or supervision. As one of the interviewed nurses sighed, it was as if they had to 'invent the wheel', while she knew that the wheel had been invented a long time ago.

The complaints about the health services in the Dutch reception centers for asylum seekers, as expressed by the UAMs, are recognizable. As various studies have pointed out, adult asylum seekers have the same complaints.^{4 5} In public health terms, however, and compared with adults, the UAMs form an ever bigger risk group, not only because of their pre and post migration experiences, but also because of their age and development and the absence of parents and extended family.

As most of the interviewed care providers signaled, UAMs might import diseases, like tuberculosis, hepatitis B, parasitic infections, enzyme deficiencies, etc. Unfortunately, there is no epidemiological data available about the UAMs' health problems in the Netherlands, but based on studies elsewhere, one may conclude that the incidence of imported diseases depends on factors as their socio-economic backgrounds and the level of health care in their country of origin.^{6 7 8} Early detection of imported and other acute diseases, e.g. sexual transmitted diseases, is of importance for the UAMs individual health, as well as for public health.

In addition, studies have shown that many UAMs present mental health problems, which may be related to their experiences before, during and or after their migration.^{6 9 10}

¹¹Apart from the problems mentioned by the UAMs, the mentors in the Valentijn houses and the health care providers also described behavioral and other mental health problems. The health care professionals identified the same relationships between the mental health problems and their forced migration backgrounds as some of the UAMs did. Of course, it could be that the UAMs who related their health problems to their past and present

situation had already adapted their explanations to those of the professionals. No professional mentioned Allah’s will or fate, as an explanation for their health problems.

A few Dutch studies of youngsters in reception centers for asylum seekers and UAMs showed that 50-75 per cent of the interviewed youngsters assessed their health as poor.^{12 13} Quite a few of them complained about ‘feeling bored’ and ‘feeling lonesome’ in addition to the health problems they described in this study.¹³

The incidence of posttraumatic stress disorder (PTSD) among UAMs ranges, according to some studies, between 10 – 20 per cent, with a high co-morbidity with a depressive disorder.^{13 14 15 16} Besides, a study of students at a college in the Netherlands, which consisted of UAMs and refugee, migrant and Dutch children, has shown that UAMs displayed more psychological problems and suicidal thoughts than their peers.¹⁷

A timely identification of mental health problems among UAMs as the MOA tries to do, followed by health promoting activities and or therapy may reduce the UAMs’ distress. However, because of a lack of sufficient interpreters, the first medical examination of the UAMs generally took place long after most of them had visited the consultation hours for their health complaints. For that reason there was no relationship between the first examination of the MOAs and the UAMs’ direct needs for care.

As the results show, the interviewed UAMs were full of implicit and explicit questions, of practical and existential nature, ranging from ‘why do I have a headache after having a nightmare?’, and ‘how can we protect our health as a man?’ to ‘why is this all happening to us?’ As unaccompanied minors, they do not have their parents or family around who can respond to their questions. Therefore, while preventative health measures are important, it is as important to promote health through information and education and other activities, which strengthen their protective attributes that are helpful for the UAMs’ coping, adaptation and development.¹⁸ The protective factors may be divided into three levels: the level of the child, the family and the community.¹⁹ Some of the most important are:

- Internal protective factors, on the level of the child, (e.g.):
 - Self esteem;
 - Internal locus of control;
 - The ability to reflect and give meaning to his / her experiences;
 - Imagination and creativity;
 - The capacity to adapt, to make friends and mobilize help.
- Protective factors on the level of the family:

The presence of at least one parent (or in the absence of parents a substitute parent), who (e.g.):

 - Provides stability, guidance, protection and support, and forms a positive role model;
 - Shows empathy and nourishes the child’s sense of belonging;
 - Gives opportunities for expressing of grief and other feelings and emotions, as well as for talking about his / her personal, familial and cultural history.
- Protective factors on the level of community and society (e.g.):
 - The experience of support, understanding and recognition;
 - Information about the new surroundings;

- The possibility for a person to perform meaningful activities within his or her own social-cultural context.

In fact, in the interviews, the UAMs mentioned several protective factors identified by professionals, e.g. recreational activities, sports, social activities, friendships, feeling safe, and the preservation of their own culture, as health promoting activities.

Because of the UAMs' age, development and present situation, they are most likely to be highly susceptible to information about the causes and prevention of illness and diseases.^{20 21} Although it was unlikely that they were not familiar with having a cold or the flu, according to the care providers, they did not seem to cope with them in their present situation. In this and in another studies, asylum-seeking children also mentioned various other themes related to their health and welfare about which they would like to be informed.²² Their internal locus of control may be enhanced with timely health information and education on the individual level and on the group level, focused on the most common health problems among UAMs and on the health services system in the reception center. Of course, the information and education should concur with their interests, development and cultural backgrounds. We were under the impression, for example, that the health education about sexuality that was given by the interviewed health education nurse was too technical for the UAMs, which could be an explanation for their high absence rate at the meetings, which the same nurse had complained about. For that matter, in Europe we may learn from the various forms of health education developed in developing countries, for example using music, theatre and the involvement of peer educators.^{23 24 25 26}

In addition to enhance the protective factors on an internal level, the UAMs should be provided with the opportunity to express their emotions, verbally and or by way of recreational and creative activities.¹⁹ The form in which UAMs are enabled to express their emotions should, again, be age, developmentally and culturally sensitive. The positive effect of talking about one's experiences often is not recognized; as one UAM expressed: *"When I heard about that [the regional mental health care institute] I got confused. How can talking solve your problems? How can that help? At home if you are ill you go to a hospital."*

A few MOA teams were studying the possibility to involve a creative therapist in the care provision. Because of financial cuts there are hardly any recreational activities in the reception centers anymore, which some of the interviewed professionals frustratedly mentioned.

In general, the biggest bottleneck in Dutch health care for migrants and refugees, is the lack of intercultural skills and communication.²⁷ In our study the influence of culture on the expression of distress was only seen by the care providers in terms of: Chinese are more introverted and support each other, while African UAMs are more expressive and more inclined to complain. The fact that many UAMs knew about cultural folk remedies for common diseases like having a cold, was an eye opener for the mentors and care providers: they acknowledged that it could form an entrance for communication. Besides that, speaking with the UAMs about how they coped with illness in their country of origin also strengthens their self esteem and forms an acknowledgement of their backgrounds. In contrast, advice followed by the remark that Dutch children also do that, as one of the interviewed nurses had the habit of doing, may be perceived by an UAM as a rejection of his or her identity.

In all communication in health care, intercultural or not, it should be standard to check whether the given advises are understood.

A sad observation in our study was that only one mentor of all the interviewed professionals recognized the fact that UAMs at times of illness or when they have nightmares, miss having somebody around who consoles them, tucks them into bed and gives them a common remedy. Regardless of the adult behavior that unaccompanied youngsters show – which they did most of the time during the group interviews - when they feel ill they are still minors and in need of special attention. However, our recommendation to pay attention to substitute parenthood was unfortunately the only recommendation that was not understood or adopted by the MOAs’ managers. One explanation for the rejection of this particular recommendation could be that the Dutch government policy aims at enhancing the UAMs’ self-reliance.

In our study, we also had to conclude that there was hardly any cooperation between the various interviewed professionals. Most of them showed an institutional introversion, as a symptom of institutional counter transference, which was probably due to their feelings of powerlessness in confrontation with the UAMs’ situation.^{28 29} This lack of cooperation came most strikingly to the forefront in the observation of all professionals that one of the common health problems among the teenage girls was their involuntary pregnancies. But when they were asked how the safety of the girls was guarded, no one had an answer.

All disciplines in the reception centers are responsible for only a part of the guidance and support of the UAMs and nobody is responsible for their overall care. To strengthen the protective factors in UAMs, a holistic, multi-sectoral approach is needed, which means cooperation between all people involved. Many of the health promoting activities, such as the daily routines, education and the provision of social and legal support do not belong to the health sector but falls under the responsibility of other sectors involved. Mentors and teachers can, however, identify mental health and other problems among the UAMs and can refer them to the health sector. On the other hand it is the MOA’s responsibility to identify and point out health risk factors. To avoid institutional counter transference and burn-out among involved professionals, they should pay attention to managing their emotions.^{28 29}

Concluding remarks

Most of the UAMs who arrive in EU countries will, in my opinion, already benefit sufficiently from early interventions, which are aimed at enhancing their protective factors: by showing respect, understanding, warmth and consolation; by offering support with practical issues; by giving them information about health and other issues; by responding adequately to health questions; by facilitating recreational and creative activities and the making of friendships; and by guarding their safety. This study and others showed that the UAMs are most capable of expressing their own needs and demands in the reception centers. Involving them in the policies of the provision of support and care strengthens not only their self confidence, self esteem and their decision making skills, but it also gains insight into their notions and needs. All disciplines involved in the reception and care of UAMs should be sufficiently trained in the developmental stages and needs of children and youngsters, as well as in intercultural communication tuned to age, development and social and cultural backgrounds. A holistic, multi-sectoral approach, with adequate cooperation, developed in consultation with the UAMs and, which is oriented toward their needs and demands will enhance their health and development.

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Chapter 11

Refugee Children's Long-term Adaptation in Sweden; General Outcomes and Prognostic Factors

Anders Hjern

Several Scandinavian researchers investigated the mental health of children in asylum-seeking families from Latin America and the Middle East in the latter part of the 1980s. As many as 40-50 per cent of the children were consistently reported to have a significant load of child psychiatric and psychosomatic symptoms in these studies (Almquist & Brandell, 1997; Ekblad, 1993; Hjern, Angel & Jeppsson, 1998; Montgomery, 1998). In this presentation, I want to discuss the long-term outcomes for these cohorts of refugee children in Sweden and the implications of these outcomes for preventive strategies.

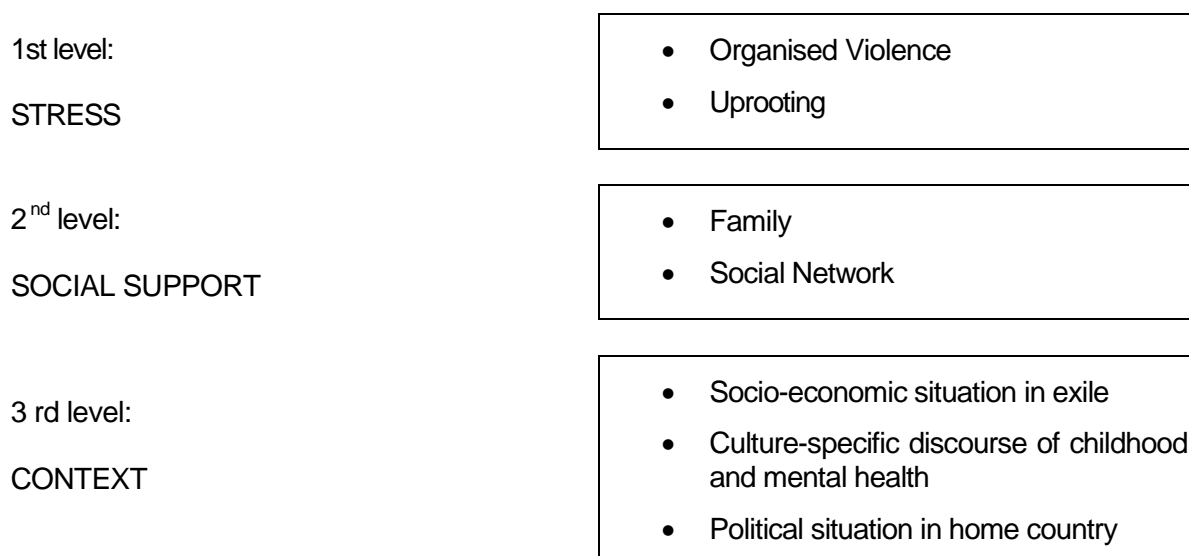
In a prospective study of refugee children from Chile and the Middle East in Stockholm, we had the opportunity to follow their mental health situation in relation to their time in exile. The study included 63 refugee children who were 2–15 years old when they first set foot on Swedish soil in 1986-1987. High levels of poor mental health were recorded during the children's first 18 months in Sweden: 46 per cent of the children were rated as having poor mental health after 5 months and 44 per cent after 18 months in Sweden, based on information from their parents (Hjern, Angel & B, 1991; Hjern, Angel & Jeppsson, 1998). In 1993-1994, 49 of these children were investigated again. The rate of poor mental health had fallen significantly to 24 per cent in interviews with parents and to 18 per cent in interviews with teachers.

In 2004, a register study was made at the Swedish National Board of Health and Welfare. This study is not yet published but some preliminary results will be presented here. The population of this study consisted of 6523 Swedish residents who were born in Chile and 6813 Swedish residents born in Iran who had come to Sweden during the 1980s when they were between 2 and 17 years old and who remained in Sweden in 2002 (age 15-39) and a comparison population of almost two million Swedish residents with Swedish-born parents. Because very few immigrants from these countries were granted residency in Sweden during the 1980s for other reasons than being granted asylum, it seemed reasonable to consider this population as one of refugees. These two populations were followed-up in the Swedish Hospital Discharge Register 1998-2002 with regard to hospital admissions and they were compared with the entire population of the same age with two Swedish-born parents ("majority population") in a multivariate logistic regression. Iranians and Chileans were found to have about two-fold odds ratios of suicide attempts and psychotic disorders in comparison with the majority population after adjustment for age and sex.

Our data thus indicates that the very high rate of mental health problems that was found in the refugee children during their first years after settling in Sweden in the 1980s improved over time, but even after 10-15 years, it remained at a level that was

considerably higher than in the majority population. It seems reasonable to consider refugee children and youth to be at particular risk of developing long-term mental health problems, and that they should be given priority in prevention. Prevention needs to be guided by research, which describes the mechanisms that create this vulnerable situation in refugee children and youth. Figure 1 presents an ecological model that identifies some of the major factors that should be taken into account in the prevention of mental health problems in refugee children in exile. This model has been described in detail elsewhere (Hjern & Jeppsson, 2004). In the following, this model will be used to interpret some Swedish studies of mental health in refugee children.

Figure 1: An ecological model of the psychosocial situation of refugee children in exile



Traumatic stress

Many children have been exposed to single or multiple isolated events of political violence. In recent years, the literature on post-traumatic stress disorder (PTSD) in children has grown rapidly and has been given a key role in the discourse on refugee children in Western child psychiatry (Summerfield, 1999). PTSD includes symptoms of re-experiencing (nightmares etc), avoidance (fears, phobias and social isolation) and hyper-alertness (sleep disturbances and irritability etc). For some children the threat of violence has been an important part of their environment for long periods of time, thus forcing adaptations of a more "chronic" nature. In the prospective study of refugee children from Chile and the Middle East in Stockholm that was mentioned previously, we had the opportunity to describe their mental health in relation to traumatic stress in the home country. Two-thirds of the children had personally experienced political violence during war and/or persecution in the home country and during their first 18 months in Sweden, these children had considerably higher rates of fears, anxiety, sleep disturbances and being easily startled (Hjern, Angel & Jeppsson, 1998). Several other Scandinavian researchers have demonstrated similar results: experiences of war and political persecution in the home country constitute important risk factors to mental health problems shortly after their arrival in the resettlement country (Almqvist & Brandell-Forsberg, 1995; Hjern et al, 1998; Montgomery, 1998).

In the follow-up study six to seven years after their resettlement, however, these symptoms were rare. Of the 49 children only one neurologically damaged child fulfilled the criteria of PTSD and only an additional three children reported symptoms, which indicated that they might be re-experiencing or trying to avoid remembering traumatic events. Instead, the most worrying signs among the refugee children in this follow-up research were many incidents of low moods and loneliness (Hjern & Angel, 2000).

In 1994 Angel et al (Angel, Hjern & Ingleby, 2001) described the mental health situation of 99 school-aged refugee children from Bosnia 12-24 months after their resettlement in Växjö, Sweden. The general level of poor mental health was surprisingly low, no more than 11 per cent of the children were described as having poor mental health, despite fairly high levels of sleep disturbances, separation anxiety and depressed moods. Children from the area of Prijedor in northern Bosnia, who had experienced very severe "ethnic cleansing" which often included experiences from the concentration camps of Omarska and Trnoplje, were more often reported to be in distress with symptoms of PTSD as well as depression and anxiety. Four years later, 11 of the Prijedor children were interviewed again and compared with age and gender-matched controls from the rest of the study population. Most of the children from Prijedor (8) still had symptoms of re-experience and/or avoidance of memories of these events but only one person fulfilled the full criteria of the PTSD-syndrome. Apart from the specific PTSD-symptoms, however, these children showed few signs of child psychiatric disturbances, neither in their own reports nor in the reports of their parents. In the first study in 1994, the children from Prijedor had significantly higher scores of poor mental health than the "controls" but these differences had disappeared in the follow-up.

These studies, which are supported by many others, demonstrated that certain symptoms related to the PTSD concept are common among refugee children during their first years in exile. It seems difficult, however, to make a clear distinction between cases with PTSD and children with no post-traumatic suffering. The situation is better described as a continuum of children who have similar symptoms of varying intensity. Five to seven years after settlement in Sweden, child psychiatric symptoms seem to be much less common despite few psychotherapeutic interventions. This suggests that most children have the capability to recover from these symptoms without professional help. Specific symptoms related to distressful memories may remain but they rarely seem to interfere with the activities of daily life. Subsequent studies in adulthood of children who had been exposed to Nazi persecution (Keilson, 1979; Moskowitz, 1983), the Greek civil war in 1948-1949 (Dalianis-Karamatzikis, 1994) and Kampuchea (Sack, Clarke, Ham, *et al*, 1993) have demonstrated a similar capability of children to recover from, or at least live with, symptoms of traumatic stress.

Is it okay not to talk about trauma?

The basic assumption underlining most PTSD-centered mental healthcare is that child victims of war cannot recover properly without emotionally ventilating, or 'working through' their war time experiences (Summerfield, 1999). In mental health programs with this perspective, working through is facilitated by offering the children the possibility of expressing their experiences in drawings, drama, group discussions and so on. This principle is familiar to most members of societies with a strong Christian influence, where the importance of confession and sharing distress has been preached in

Christian communities since 200-300 AD (Pennebaker, 1997). Though quite a few non-Western cultures have similar beliefs, many others discourage disclosure (Wellenkamp, 1997). Mozambicans, for example, talk about forgetting as their normative means of coping. Ethiopians call this 'active forgetting' (Summerfield, 1999).

In the study of Bosnian school children shortly after their arrival in Sweden, parents were asked about how they handled the traumatic events in the family (Angel, Hjern & Ingleby, 2001). 69 per cent of the parents said that they actively tried not to talk to their children about the war. The most common reason given for this was that they thought that their children were better off not being reminded of their suffering in the home country. When the data was analyzed for the effects of parental attitudes towards discussing the war, it was found that for children who had experienced many war stresses, talking about these experiences seemed not to ameliorate but to exacerbate their negative effects. This contrasts greatly with the positive effects of sharing distress, which was found among British school children who survived a ferry disaster (Dalglish, Joseph, Thrasher, *et al*, 1996). These divergent effects of working through seem to indicate that the effect of a working through program in one context cannot automatically be translated to a different population with a different cultural discourse for dealing with painful memories.

Social support

A large body of research supports the importance of social support systems for maintaining mental health. Most refugee families in exile leave important parts, or perhaps all, of their social support system in their home country. This makes refugees particularly dependent on the support of their nuclear family and the refugee community in the host country. Migration and exposure to organized violence may affect family interaction in a negative way, with significant effects on the children's mental health.

One possible explanation for the comparatively favorable outcomes of the Bosnian children in the previously mentioned study was the social support that was generated by good prerequisites for social networking and the strong family cohesion within the Bosnian community in Växjö. The majority of the families in the study were active members in the local Bosnian community organization in Växjö and there were few divorced couples.

Socio-economic context

The wider contextual factors of the psychosocial situation of refugees include social factors such as employment, availability of schools and day care services and housing. In the register study of children in refugee families from Chile and the Middle East, which was mentioned earlier, the social and educational outcomes were studied in 2001 in the cohorts born 1963-1975 at a mean age of 29. Iranians had a very good educational outcome: almost 50 per cent of them had completed a university education compared to 28 per cent of the Swedish majority population and 15 per cent among the Chileans. Having a good educational outcome, however, was not a big help for the Iranians in the labor market: no more than 45 per cent were employed in November 2001, compared to

63 per cent of the Chileans and 81 per cent of the Swedish majority population. This seems to indicate that Swedish employers quite readily employ refugee youth in less qualified jobs, while discrimination is a most significant obstacle for refugee youth with a university education.

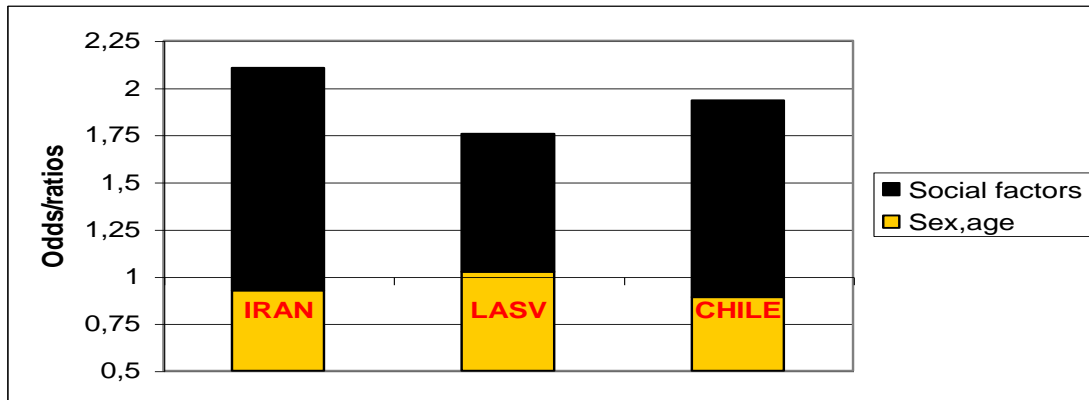


Figure 2. Odds ratios of suicide attempts in youth in refugee families compared to the majority population in a logistic regression analysis of hospital admissions in cohorts born 1963-1983 during 1998-2002. Model 1 (high staples) is adjusted for age and sex only, Model 2 (lower staples) is adjusted also for broken homes, social welfare recieved and urban/rural residency. (Iran=born in Iran. LASV=Born in Sweden with two parents born in Latin America. Chile=Born in Chile)

When social factors related to family situation (broken homes), neighborhoods (housing) and income (social welfare received) were added to the multivariate analysis of hospital admissions for suicide attempts and psychotic illnesses most or all of the higher risk compared to the majority population disappeared (Figure 2 & 3). The importance of the socio-economic disadvantage was further underlined by the similar odds ratios obtained in Swedish-born youth in families with parents born in Latin America compared to Chilean-born youth. This finding has been further investigated with regards to psychotic disorders in a recent publication (Hjern, Wicks, Dalman, *et al*, 2004).

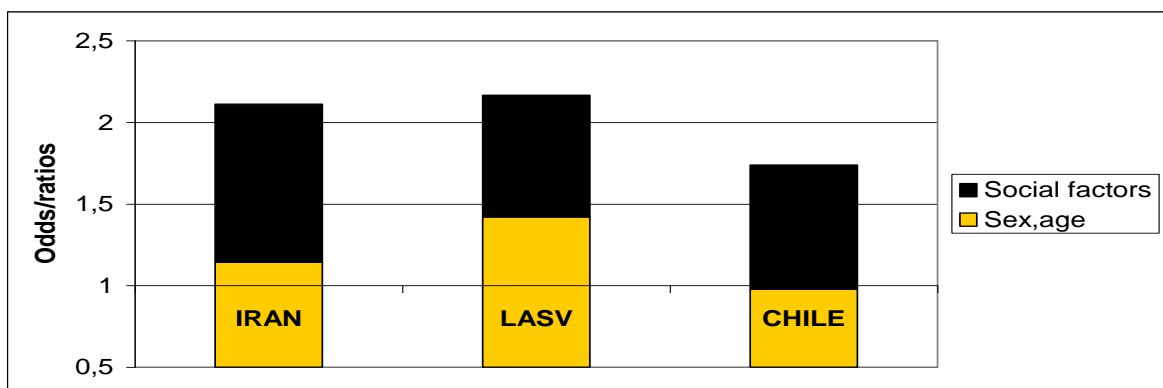


Figure 3: Odds ratios of hospital admission because of psychotic disorder in refugee children compared to the majority population in a logistic regression analysis of hospital admissions in cohorts born 1963-1983 during 1998-2002. Model 1 (high staples) is adjusted for age and sex only, Model 2 (lower staples) is adjusted also for broken homes, social welfare recieved and urban/rural residency. (Iran=born in Iran. LASV=Born in Sweden with two parents born in Latin America. Chile=Born in Chile)

Many preventive strategies for refugee children are based on the discourse of traumatic stress and the assumption that working through trauma has long lasting effects on mental health (Hjern & Jeppsson, 2004). The research presented in this study does not give much support to this type of a strategy. It rather seems to favor interventions, which target the socio-economic disadvantage of refugee families in the host society with particular focus on the labor market. There is also some tentative support for a social support approach. In a recent article we have presented an alternative preventive strategy to the 'working through' discourse (Hjern & Jeppsson, 2004). This strategy is built on social support within the existing educational and child health care system and advocacy on behalf of these children on the local as well as the societal level.

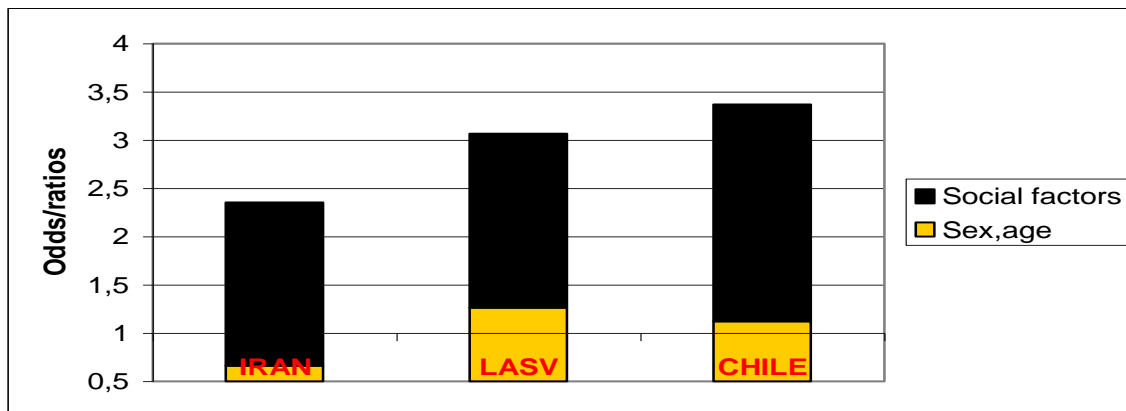


Figure 4. Odds ratios of hospital admission because of psychotic disorder in refugee children compared to the majority population in a logistic regression analysis of hospital admissions in cohorts born 1963-1983 during 1998-2002. Model 1 (high staples) is adjusted for age and sex only, Model 2 (lower staples) is adjusted also for broken homes, social welfare recieved and urban/rural residency. (Iran=born in Iran. LASV=Born in Sweden with two parents born in Latin America. Chile=Born in Chile)

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Chapter 12

Pervasive Loss of Function Progressing to Devitalization. An Earlier Unknown Life Threatening Stress Reaction Seen in Asylum-Seeking Children in Sweden

Göran Bodegård

Children in general, who are informed about life's total hopelessness and their own helplessness by the reality of life and by their parents, react with severe disturbance. Stress reactions of various sorts may develop. Fight and flight reactions are considered the most understandable ways of showing the world that the stress is intolerable. If the child does not get any adequate and helpful response the only way left is to give up completely. Depression withdrawal reactions (4) are thus as understandable as other reactions but point strongly to the seriousness of the situation. In asylum-seeking children in Sweden, we have recently described a very special picture: pervasive loss of function progressing to devitalization (1, 2, and 3).

Is this syndrome a new clinical entity or is it rather:

- a state that occurs frequently but is neglected by the scientific society and thus not reported?
- observed in Sweden due to a good overview of the situation of asylum-seeking children?
- a “product” of the life conditions for asylum-seeking families in Sweden?
- a result of parental / child manipulation with the intention to get a permanent residence permit in Sweden?

The state itself is hardly to be regarded as something previously unknown or mysterious. Overpowering stress of life is known to result in apathetic states in adults as well as children. There is a well described syndrome, pervasive refusal syndrome (PRS), which has a similar or identical clinical picture (5, 6, 8). This is found in traumatized children of highly psychologically dysfunctional families where hopelessness, helplessness and unpredictability of time, is prevailing.

We have used the following diagnostic criteria: extended passivity, total withdrawal, mutism, total inability to eat and drink, walk or move, incontinence, loss of tonus and reaction to physical stimuli and pain, a picture resembling an advanced neurological pervasive disorder. The state is, when it is fully developed, obviously life threatening unless life sustaining treatment is given. In many cases, abortive states occur; although it has not been possible to break the progress of the disorder.

Patients

Sixteen cases were diagnosed at the child psychiatric ward at the Karolinska University Hospital in Stockholm since 2002, fourteen of which were treated there. All children came from former Soviet republics. Ten families were of Asian ethnic background. Parents in ten of the families had university education and all families earlier had a stable socio-economic situation.

Six of the children were girls and ten were boys. They were between seven and twelve years old.

Thirteen of the children were the oldest sibling. Ten had a history of child psychiatric disturbances prior to the event that caused the family to flee the homeland. Four had previously had serious neonatal physical disorders and two were adopted.

Information regarding the parents' previous mental health was inconsistent.

All the children had witnessed different forms of violence (physical and/or sexual, as well as cruelty, killing of pets and family members), persecution and threat of kidnapping.

During their asylum time in Sweden, all the children had developed severe symptoms of disturbance and were treated at child psychiatric outpatient clinics; all had suicidal thoughts and ten had attempted suicide.

Ten of the mothers had received psychiatric help and had been hospitalized (depression, suicide attempts and PTSD). During the admission to the child psychiatric clinic, ten of the mothers and three of the fathers needed acute psychiatric interventions.

None of the families had remained in refugee camps offered by the Migration board and their living conditions lacked stability and security.

Nine of the families were still under the primary process of evaluation at the Migration board and had not experienced refusals of their application during the asylum period (which varied from 2 to 22 months).

Seven of the families had received repeated refusals and several deportation decisions during 20-54 months.

Course and treatment

All the families were admitted to the same child psychiatric in-patient ward in Stockholm due to the condition of the child and the family's lack of caring capacity. The treatment focused on pediatric investigation and nutritional support (nasal-gastric tube feeding) together with psychiatric interventions for the seriously traumatized mothers. The general attitude that is recommended for treatment of PRS was applied, meaning supportive psychiatric treatment with a continuous consideration of the risk of crossing the border between activation and stress. One factor of crucial importance was that the general atmosphere of threat could be erased, which means that the psychiatric treatment was not really active and successful until the families had been guaranteed a safe future without further threats of deportation back to the situation from which they had fled. A permit for permanent residence in Sweden thus turned out to be a basic requisite for a successful treatment.

Neither the mother nor the child experienced any abrupt, dramatic or fast improvements when the permit arrived. Considerable treatment was needed to make

the positive change of life conditions psychologically true. The child “returned to life” only when the mother, by her attitude, illustrated that living was possible. The mothers, who at the admission had been in a very special symbiotic relation with the sick child as if keeping watch over a dying child, a “Madonna Dolorosa” state, did not give up this attitude just by being informed that the child did not suffer from any disorder explaining the devitalization. This very notable situation indicates that a very serious mothering disorder as could be a link between the hopelessness of the family’s life conditions and the devitalizing development in the child.

Outcome

Of the fourteen children, ten have regained their basic functions. Eight are fully recovered, two almost and four are improving at present (treatment period at hospital is up to 5 months). All except one family have received permanent residence permits in Sweden for humanitarian reasons related to the serious condition of the child.

Conclusion

Depressive devitalization is best understood as a specific maximal reaction to stress in a dynamic family situation that is permeated by hopelessness, helplessness and an unpredictable time perspective. There is an evident dysfunction in the mother child relationship (“lethal mothering” – Madonna dolorosa) and the situation is understandable as the end result of a parental collapse due to a life situation that makes it impossible to work through major traumatic experiences during the asylum time. This leads the mother and (the chosen) child to establish a pathological depressive symbiosis. It is likely that the children (and the mothers) have experienced earlier psychic vulnerability. The fact that children develop serious psychiatric disturbances during terrible life conditions is in itself not exceptional. This very special expression, progressive loss of function and devitalization, is exceptional though, as well as the fact that there seems, at present, in Sweden to be an epidemic of apathetic children with the same background in asylum-seeking families from the same part of the world (7). Some risk factors might be identified and may be important to consider in preventive strategies: being the first born sibling, early disturbances of somatic and or psychiatric kind, serious traumatic experiences inducing the flight, very severe child psychiatric symptoms including suicidal thoughts and suicide attempts during the time in Sweden, the mother’s adjustment to trauma and the situation in Sweden, unsatisfactory living conditions in Sweden, inadequate level of care and treatment after the child fell ill. However, the time factor concerning the asylum period appears not to be important.

The debate in Sweden has turned away from the medical and psychiatric aspects and is moving toward a political way of trying to understand this “epidemic” and suggesting various explanations including factors of intentional symptom producing to get permanent residence permits. This disordered state could then be understood more as a behavior than a disease and such a theory can motivate a totally different way of caring for these children than is motivated by the assessments of the state of the child and his or her family. The basis would thus be the Swedish asylum policy of granting

permits for humanitarian reasons. This malingering hypothesis, however, seems totally absurd to a person who has close and long-term experience with these seriously ill children in whom there are never any abrupt or dramatic changes when a permit arrives. In these children the permit rather seems to correspond to preoperative blood transfusion, which makes treatment possible.

With substantial and close experience of these families it is very obvious how an exploration of their history, told little by little by the seriously traumatized mothers, in combination with the threat of being sent back to the places for the traumatic events, give a full explanation to the serious state observed in the child. The similarity with PRS, both regarding its origin in the invasive hopelessness of the families (regardless of whether real dramatic events have caused it or not) and its responsiveness to a certain attitude in the supportive treatment, speaks in favor of the conclusion that these children are showing us the effect of a terrible past and the non-confirming non-supportive life of families in an asylum-seeking process.

My conclusion is that depressive devitalization (i.e. PRS in children in asylum-seeking families) is curable if the underlying conditions are corrected, the experienced threats are withdrawn and the “mothering disorder” is focused.

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PART IV

Exclusion or Integration? Social and Educational Aspects

Chapter 13

Avenues of Access and the Parameters of Care: Reflections on Reception Procedures for Unaccompanied Asylum-seeking Children at a Port of Entry¹

Charles Watters

The appropriate reception of asylum seekers and refugees into host societies is a matter of substantial ongoing debate among academics and policy makers. Efforts have been made to improve services by issuing policy recommendations and guidelines by a wide range of national and international bodies including UNHCR and the Red Cross. Academic contributions have included Foucauldian studies into the rationalities and technologies of immigration control and social support for refugees (Morris, 1998, Ong, 2003) and clinically oriented studies into the impact of policies of deterrence on the health and mental health of refugees (Silove et al, 2000, Pourgourides, 1996). While the reception and social support of unaccompanied asylum-seeking children is widely recognised as an urgent and highly important issue, and has been the subject of a range of specific guidelines and recommendations, it has received relatively limited academic investigation. Work that has been undertaken has focused primarily on legal and policy frameworks and has rarely included empirical investigation of reception arrangements.

The present paper takes a small step towards remedying this imbalance. It consists of an examination of reception and age determination procedures for young unaccompanied asylum-seeking children at a major port of entry into the United Kingdom, with particular attention given to the issue of age determination. Internationally, the issue of age determination has been recognised as important, as it has a critical role in determining the nature and extent of the social support given to asylum seekers and may impact on the potential for asylum seekers to be recognised as refugees or being allowed to remain in a country under other humanitarian considerations. Within the UK, the issue of age determination is an important one for immigration authorities and local authorities, in that asylum seekers who are classified as over 18 and adults are subject to a range of distinctive policies and practices to those deemed under 18 and children. In this context, children are the responsibility of local authorities and are subject to more elaborate programmes of social care, supervision and support than their adult counterparts.

The fieldwork on which this chapter draws was undertaken over a period of six months in 2003, during which time the local authority was actively engaged in reviewing reception procedures for UASC and testing a pilot scheme. The chapter

examines both the established system for receiving UASC and the arrangements under the new scheme, as both were in existence at the time of the research.

Reception and Age Determination

The importance of age determination is apparent at a number of levels. Most immediately, it has considerable practical consequences for the various agencies involved in the care of asylum seekers. If an asylum seeker is assessed as being under 18, he or she is placed in local authority control and the local authority is responsible for undertaking a comprehensive assessment of the child's needs and providing a range of support including supported accommodation, a care plan and placement in a school or college. The local authority provides the funding for this care initially although it can claim a reimbursement for these expenses from central government. Age determination is important for the asylum seekers themselves, as it will crucially determine their experience in the UK. Those who are judged to be under the age of 18 are normally placed in local residential centres or, in some cases, foster care while adult asylum seekers are placed under the care of the Home Office National Asylum Support Service (NASS). The latter may be placed in detention or in emergency accommodation before being 'dispersed' to areas of the UK away from the economically affluent and densely populated South East. Unaccompanied children are not normally the subjects of detention although between 1994 and 2001, a small proportion of children were reported to be in detention (Ayotte and Williamson, 2001).

Age determination is both a complex and a controversial process. According to guidelines issued by the Royal College of Paediatrics and Child Health in 1999, 'Age determination is an inexact science and the margin of error can sometimes be as much as 5 years on either side'. This inexactitude is of critical importance in a context in which the assessed age of a high proportion of UASC entering the UK is between 15 and 18 years old. In a recent judicial review, the unreliability of anthropomorphic measurement was highlighted and the potential for accurate age determination was noted to be further eroded in instances where the individual is from a different ethnic and cultural background (*B v London Borough of Merton*, July 2003). In the absence of reliable anthropomorphic methods, local authorities have been recommended to adopt a range of methods for assessing age including physical appearance and demeanour, manner of interaction with the assessing worker, social history and developmental considerations. It has also been noted that 'life experience and trauma may impact on the aging process' (London Boroughs of Hillingdon and Croydon). Recent practice guidelines also draw attention to the contexts in which young asylum seekers are interviewed and the potential impact of the environment on age assessment.

It is very important to ensure that the young person understands the role of the assessing worker, and comprehends the interpreter. Attention should also be paid to the level of tiredness, trauma, bewilderment and anxiety that may be present for the young person. The ethnicity, culture, and customs of the person being assessed must be a key focus throughout the assessment (London Borough of Hillingdon and Croydon)

Against this background, the formal position of the Home Office, the UK government body whose responsibilities include immigration and asylum, is that in instances where the individual's appearance strongly suggests an age of over 18 years, they should be

treated as such. In borderline cases, however, the Immigration Service will continue to 'give the applicant the benefit of the doubt and deal with the applicant as a minor'. The Immigration Service will then refer the applicant to the local authority for support under the Children Act 1989. The local authority will then conduct an assessment and, on the basis of this, it may refer the individual back to the Immigration Service and, on the basis of the assessment, the Immigration Service will treat the individual as an adult unless they can prove otherwise.

These policies introduce a complex interrelationship between two principal agencies involved in the management and care of asylum seekers, who sit at the intersection of distinctive administrative processes. An initial assessment of age is typically undertaken by immigration officials at a port of entry and is based on the documentary and verbal evidence given by asylum seekers and a visual inspection by an immigration officer. Where there is an element of doubt, the matter is referred to a chief immigration officer who determines whether the asylum seeker is clearly over 18. In these instances, the individual is referred to the National Asylum Support Service to undertake an assessment of social care needs and arrange for the asylum seeker to be placed in emergency accommodation or detention.

As noted above, borderline cases were given the 'benefit of the doubt' by immigration officials and were sent to the local authority social service department for care under the Children Act. Immigration officials are not required to be specialists in any of the areas relating to age assessment and their approach is largely informed by 'common sense' and their collective experience in the job. This is not to disparage their role in the process, but to highlight the potential discrepancies that exist in terms of 'expert knowledge' between these agencies. Social service departments are the principal statutory agency responsible for child welfare and, as such, have a correspondingly large resource of professional knowledge and expertise in the field. Once the 'borderline' asylum seeker is referred to social services, this expertise could be mobilised in undertaking a more wide-ranging assessment drawing on the range of contextual, social and developmental factors referred to above. This professional expertise would be deferred to even if it contradicted the initial assessment of the immigration service.

Given the components of age assessments outlined above, an early assessment following arrival at a port of entry would appear to be inappropriate. The young person is likely to have arrived feeling very tired and disoriented. He or she may have had a physically and emotionally arduous journey huddled in the back of a container lorry, cargo ship or other form of transport. He or she is likely to feel very anxious about the reception he or she may receive in the host country and have a minimal knowledge of the language and country. These feelings may be compounded by the impact of highly stressful events in the country of origin and in flight (Silove et al, 2000). The local authority that was the subject of this study took these factors into account in proposing a new system for receiving unaccompanied asylum-seeking children. This system is examined below and the implications of this new approach are assessed. Before doing so, it is appropriate to provide some broader contextual information about the port of entry and young unaccompanied asylum seekers arriving in the UK.

Port of Entry

The study was undertaken in the port of Dover, located in the extreme South East of England close to the coastline with France. Historically, the port has been a major point of entry and exit to and from England since the Middle Ages and a site of considerable strategic military importance. It was the port through which Richard the Lionheart departed on the Third Crusade in 1191 to quell the armies of Saladin and it was a major site in the defence of Britain in the 2nd World War. At the time of writing, Dover has annually some 15 million passengers passing through the port and 1.7 million lorries, thus making it the busiest sea port of entry in the UK. It is a 'borderland' in the sense put forward by Clifford in that it is distinct in presupposing a territory defined by a geo-political line: two sides arbitrarily separated and policed, but also joined by legal and illegal practices of crossing and communication (Clifford, 1994). In the case of Dover, the line is far from arbitrary and consists of just less than 42 kilometres (26 miles) of seawater.

As numbers of asylum seekers entering the UK increased dramatically during the 1990s and early 2000s, the Port of Dover became a major site for the reception and initial processing of asylum applicants. To cope with increasing numbers, the numbers of immigration officers and police at the port increased and a range of voluntary and private sector organisations were contracted to support statutory services. A small voluntary organisation, Migrant Helpline, based at the port received a contract from the Home Office to expand its activities to include assessment of the social care needs of adult asylum seekers. Following assessment, Migrant Helpline would find the applicant temporary accommodation while the asylum application was being considered. Besides the agencies dealing with the arrival of asylum seekers, the Home Office introduced an Immigration Removal Centre in 2002 run by the Prisons Service. The building was originally a fort built in Napoleonic times, complete with a moat and it contains residential space for 316 detainees. Following an inspection of the Centre undertaken in 2004 by Her Majesty's Chief Inspector of Prisons, the Chief Inspector commented in her report on the 'forbidding appearance' of the Centre, mitigated to some degree by the attempts of staff to offer a regime that differentiated detainees from prisoners (Chief Inspector of Prisons, 2004). Between 2000 and 2003, the Port of Dover police estimate that 5,181 illegal entrants were arrested and detained while trying to enter the UK from continental Europe (Port of Dover Police Annual Report 2003, www.doverport.co.uk/portofdover/portoperations) Besides those seeking to enter clandestinely, there were those who claimed asylum at the port of entry.

The numbers of unaccompanied asylum-seeking children (UASC) entering the UK increased sharply between 2001 and 2002 from 3,470 to 6,200. Of the 2002 figures, 1,240 applications were made at ports of entry and 4,955 in country. In line with national statistics, Kent County Council statistics that incorporate the Port of Dover show approximately 80 to 100 UASC being referred to social services each month between 2002 and 2003. At the end of 2003, Kent County Council was supporting 1,200 UASC, the majority of whom were male and aged between 16 and 17. In 2003, when the research was undertaken, a further salient consideration was whether the person was under or over 16. If deemed under the age of 16, the child was usually supported under section 20 of the Children Act 1989. This support included a regularly reviewed care plan, placement in foster or residential care and placement within a school or college

within 20 days of being taken into care by social services. By contrast, those deemed over 16 were subject to a less intensive, and less expensive, regime of care under section 17 of the Act that included placement in independent or semi-independent accommodation and some financial support. The salience of this distinction was reinforced by policy decisions taken by the Home Office, which allowed for a significant higher rate of reimbursement for the expenses incurred by local authorities for children under 16 (Liddicott, 2003).

The economic rationality underpinning these measures manifested in concrete terms in the trajectories followed by UASC after arrival. Following arrival, the UASC are subjected to a range of mechanisms of surveillance including, where possible, examination of documents, photographing of the UASC, and fingerprinting. They have a 'screening interview' with immigration officers, which includes eliciting biographical data and evidence of the route taken to enter the country. This is a critical juncture for the UASC, as it will be the context in which a judgement is made about his or her age. If the person is judged to be over 18 he or she will be treated as an adult and normally directed either towards an assessment by Migrant Helpline or, if the claim is deemed manifestly unfounded, they may be detained. Those judged to be between 16 and 17 were referred to Finding Your Feet, a project commissioned by the local authority. This agency undertook an assessment of needs and placed the UASC in a residential home where they experienced a degree of independent living. As noted above, those deemed to be under the age of 16 were placed in residential care. It should be added that this option was not available in the case of the relatively small number of unaccompanied asylum-seeking girls who were routinely placed in foster care.

Thus unaccompanied asylum-seeking children were categorised and placed in distinctive regimes of care and control depending on age assessment and gender. It is interesting to consider the development and operation of these regimes from a Foucauldian governmentality perspective. Such an approach has been fruitfully adopted by Morris in her detailed analysis of the development of immigration controls in the UK by Conservative administrations in the 1980s and 1990s. Morris has noted, within the UK a gradual convergence between mechanisms of immigration control and social welfare provisions (Morris, 1998). She concludes her analysis by commenting that, while a governmentality approach can be enlightening in the examination of the rationality and techniques for managing immigration, it has limitations as it does not account for processes through which individuals may fall outside of government control. She comments that:

While resource constraints and the policy of deterrence mean strict eligibility, this creates a population of people present of the territory but outside of all provision. Ironically, this denial of rights also means there is no mechanism for policing this group; destitute and inadequately documented, they are not readily traceable (Morris, L., 1998 p969).

It is notable that some of the gaps that she documents as giving rise to this phenomenon have been addressed by an extension of the mechanisms of control through the development of the National Asylum Support Service, an agency of the Home Office, that combines surveillance and control of asylum seekers with the administration of social provisions. NASS may effectively fill previous gaps between central and local government by removing the obligation of local authorities to provide directly housing for adult asylum seekers. It is arguable, however, that, in seeking to provide a tough and

seamless system of immigration control and social provision, many would be asylum seekers are excluding themselves from the process by entering the country clandestinely and seeking to survive without making an asylum application. As noted above, issues concerning the interface between local and national government remain salient with respect to asylum-seeking children and the fissures relating to service provision highlighted by Morris remain problematic for this group. The issue of age determination is a case in point and one that represents acutely the complexities of the interface between the Immigration Authority and local government within a specific geographical locality.

The introduction of a pilot scheme to improve reception arrangements for UASC can be examined within the context of an expansion of the rationality and techniques of governmentality to this group. It sought to address real and potential fissures in the operation of reception arrangements and age determination. The pilot scheme operated for four months between February and May 2003. Under the scheme, the responsibility for establishing the UASC's date of birth was transferred from the Immigration Authorities to the local authority Social Services Department (SSD). To achieve this, the interview to be conducted by the Immigration Authority (IA) was split into two stages. The first was to be viewed as a basic interview conducted by the IA shortly after the UASC's arrival in the UK. This was aimed at obtaining information about his or her route of entry into the UK, his/her family and biographical details. The UASC would be fingerprinted and photographed and those judged by the Chief Immigration Officer to be manifestly over 18 would be transferred to adult services as before. Those who remained were issued with temporary papers and released into the care of SSD for seven days. Social Services would, during this period, attempt to build trust and a rapport with the UASC and use their expertise to arrive at an appropriate age assessment. An outcome of this assessment would be the production of a date of birth agreed between the two agencies.

A central objective of the pilot scheme was, therefore, to develop an agreed approach towards age assessment that drew on the expertise of social service and which would minimise the potential for subsequent age disputes. Besides administrative and operational considerations, it was also hoped that the pilot scheme would result in more generally cohesive working arrangements between the IA and SSD. It also had an explicitly humanitarian aspect in that emphasis was placed on giving the UASC time to rest and calm down after an arduous journey in the hope that these more favourable circumstances would lead to a more accurate understanding of the UASC's needs and circumstances.

For practical operational reasons, the pilot study was only applied to those asylum seekers presenting themselves as seeking asylum at the port of entry. Those who entered the country clandestinely and were typically found in the back of lorries in the port were subject to the established system. Over the period of four months, 39 UASC were included in the pilot study and 150 who entered clandestinely were processed in the usual way. Besides their mode of entry, there were some further distinguishing features of the two groups. Of the pilot group, 72 per cent were male and 28 per cent female while all of the 150 people who entered clandestinely were male. The overwhelming majority of both groups were in the 16 to 18 age range but, interestingly, a few who entered clandestinely were very young children between 7 and 11 years old. It is inappropriate of course to draw conclusions from such small samples, but the higher numbers of girls

applying for asylum at the port of entry and the presence of relatively young children arriving clandestinely, suggests topics for further investigation.

A comparative analysis of the process undergone by the two groups indicates that much more rigorous measures were taken with respect to the pilot group. For the entire pilot group, a date of birth was established by social services and this formed a basis for their asylum application. Ten of those assessed under the pilot scheme were given an age different from the one they gave to the immigration authorities. Nine were assessed as being older and only one assessed as being younger. In general, service providers from both social services and immigration expressed satisfaction with the operation of the pilot scheme as it improved interagency cooperation and brought practice more into line with international conventions and guidelines.

However, three significant problem areas remained. Although the researchers were only able to interview a small number of UASC included in the sample, they gave an impression of participating in a process that they did not understand, some aspects of which they experienced as hostile. The process often involved multiple moves to different forms of accommodation, and meetings with personnel from a variety of agencies. Secondly, the role of social services in the final screening interview was unclear. One UASC said he was accompanied by two social workers to his final screening interview, neither said a word and their presence was not found by him to be helpful in any way. A third significant feature was the high level of absconding amongst both groups but this was significantly higher among the pilot group. Nearly a fifth of the pilot group absconded while in the care of social services while, of those following the established route, 8 per cent absconded. Absconding has potentially dire consequences for the pilot group as they have removed themselves from services prior to receiving the forms available at the screening interview necessary to process their asylum application. They thus form a similar group to those identified by Morris albeit from a later decade and from within differing administrative and policy contexts.

Conclusion

In conclusion, the study of age assessment procedures has implications for the development of policies and practices towards UASC at ports of entry and for the development of further academic research. In terms of policy and practice, the outcome of age assessment has been shown not only to be of critical importance to the regime of care experienced by the asylum seekers, it also determines the agencies that will deliver the care and the legal context in which it is provided. Once the asylum seeker falls, at the age of 18, outside of the regime of child care under the Children Act, he or she then becomes the responsibility of the Home Office and may, in circumstances where an asylum claim has been unsuccessful, be subject to deportation. While the pilot scheme described here was too limited in scope to have a dramatic impact on the process of reception and age determination, it nevertheless provided evidence of a potentially more efficient and humane mechanism. It improved interagency understanding and cooperation, and provided a welcome breathing space for UASC before their main screening interview. It also served to bring the process closer in line with national and international conventions and guidelines.

While the pilot procedures represented a tentative improvement in terms of policy and practice, it did also suggest further areas for academic research. A governmentality

perspective was fruitful in examining the closer linkages between central and local government in this area. It does also, arguably, prove useful in bringing into relief the circumstances of individuals who fall outside the mechanisms of government. Within the present context, this includes those who circumvent the entire asylum process by entering countries clandestinely and illegally and not presenting at ports of entry, and those who, after making a claim, choose to opt out of the system by absconding. The present study also indicates the need for far more extensive qualitative research into the lived experiences of UASC both within and beyond ports of entry. Their direct experiences of asylum procedures can provide a fruitful resource for reflection of the impact of policy and practice and suggest areas in which change could be introduced. The experiences of the asylum seekers themselves may also, if employed in a more systematic way, provide a useful and essential component in the ongoing evaluation of initiatives.

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¹ Acknowledgement: This paper draws on a study of age determination procedures at the Port of Dover. The study was undertaken in 2003 with the support of two research assistants Sally Waples and Heather Ormiston.

Chapter 14

Asylum-seeking Children in English Pre-schools: Inclusion and Support in the New Policy Climate¹

Vasilia Lilian Antoniou & Rachel Reynolds

Education and access to quality education has increasingly become a recognized and fundamental human right. Since 1989 the rights of children have been enshrined in the UN Convention on the Rights of the Child. Article 28 of the Convention confirms that every child has the right to education and that this right should progressively be achieved through, among other means, compulsory and free primary schooling. In 2002, this right was safeguarded further in the document that was produced by the United Nations General Assembly Special Session on Children, titled 'A World Fit for Children'. Paragraph 7(5) of the Declaration states: "All boys and girls must have access to and complete primary education that is free, compulsory and of a good quality as a cornerstone of an inclusive basic education" (cited in Doek, 2004: 19). The convention and the subsequent declaration have been crucial in elevating and protecting the rights of children. For those of us whose work involves children, either directly or indirectly, these are essential documents, which we welcome and support. One anomaly quickly becomes apparent, however, namely that the right to a quality education, that is, a right which attempts to ensure that children have the means to escape poverty and to gain a viable livelihood later on in life, as well as one that promotes inclusion for the most vulnerable and disadvantaged people of society, is defined as beginning when children are at statutory primary school age and not earlier.

Access to early years education has numerous benefits for children. Research suggests that it enhances the life chances of children in the immediate and longer terms. A study on the British cohort of 1970 identified divergent developmental paths that were predictive of later attainment in children as young as 22 months and, more clearly, at 42 months (Feinstein, 1998). Feinstein attributed these differences in a child's development to the family's socio-economic status, suggesting a strong correlation between the two. He concluded that attainment paths, while not fixed at 22 or 42 months, are substantial signals of the educational progress of children, which indicates that differences in the early years are not entirely off-set by the compulsory education system. This work has been instrumental in raising awareness of the early years in academic as well as policy circles and it has produced findings that make a strong case for targeted provision of early years education directed at disadvantaged children. Recent research from the Effective Provision of Pre-school Education (EPPE) project has further reinforced Feinstein's findings. This latest research demonstrates that having pre-school experience, compared to none, enhances all-round development in children and that

disadvantaged children benefit significantly from good quality pre-school experiences (Sylva *et al.*, 2004).

In Europe, pre-schools have become a recognized and valuable addition to the educational, developmental, cognitive, social and cultural experiences of children. Not **all** children in many European societies have access to pre-schools (both childcare and education). The non-universal nature of pre-school education in England limits opportunities to include all children, thus children from families that have sufficient funds access pre-schools significantly more than children whose families are low-income, unemployed, belong to minority ethnic groups, etc. This uneven access becomes even more apparent when considering the children who are classified as asylum seekers. Given the growing research evidence, which indicates that access to pre-schools results in better educational and social/behavioral outcomes, children who are classified as asylum seekers appear to suffer a significant disadvantage: asylum-seeking parents lack the knowledge of and access to these services although they are theoretically able to access them, and hence asylum-seeking children risk experiencing increased disadvantages in the immediate term and later in life.

The project

The findings that are presented in this chapter are drawn from an on-going Pre-school Learning Alliance research project which considers social exclusion as experienced by asylum-seeking children under the age of five and by their families. The findings in this chapter represent the completion of the first strand of this project. It hopes to add empirically to the current body of knowledge through new evidence. Before embarking on this research, we were acutely aware that information was scarce regarding asylum-seeking children who access pre-schools and their families. Indeed, while there are numerous research studies considering asylum-seeking children at statutory school age, there are very few that consider asylum-seeking children under the age of five. As a result, we acknowledge that the information that we are eliciting is fundamental to expanding our knowledge of asylum-seeking children under five. It is for this reason that the scope of the project was devised to be quite broad. It was of paramount importance to acquire information for this particular age group of asylum-seeking children on issues where previously no data or evidence specific to England existed. This project is as much a fact-finding exercise as one where we address the aims detailed below.

The project has four aims, which hope to shed light on a number of inter-related issues: (1) the particular needs of these children; (2) the level and types of support offered to asylum-seeking children under the age of five and their families at the pre-school level; (3) the perceptions of locals (both staff and other parents and children using the pre-schools) of asylum-seeking children and their families; and (4) the effectiveness of the multi-agency approach to include successfully asylum seekers in the wider society and give them access to social and educational goods and services.

This chapter and its findings are timely. It hopes to shed light on the needs of asylum seekers and the support that is offered to them in pre-schools. The pre-school often represents the social center of community interactions and activities for families, especially for mothers, as well as an educational and social space for children under five. Evaluating the needs of this group, the types and extent of support that are offered, the effectiveness of the multi-agency approach and the perceptions of locals of the presence

of asylum seekers in communities, contributes to our knowledge of the subject. It also has the potential to provide recommendations as to how organizations like our own and public agencies can best support asylum-seeking families and children as they undergo the difficult experience of seeking asylum and building new lives.

Methodology

In order to elicit data on the needs of asylum seekers and the support that is offered to them in pre-schools, we conducted research with the individuals who have a direct experience of identifying needs and supporting asylum-seeking children and their families at the pre-school level, namely pre-school practitioners. Some pre-school practitioners who were interviewed for the project have been asylum seekers in the past and, as a result, their input adds to the findings. The findings in this chapter are based on seven interviews that we conducted with practitioners at six voluntary pre-schools in six areas of England where there are relatively high concentrations of asylum-seeking families.² (More than one practitioner typically participated in the interviews.) The vast majority of these interviews were conducted in London and the South-East of England, which in itself is not surprising, given that asylum seekers appear to be concentrated in this part of England. The staff members who were interviewed for the project held numerous and different positions within the pre-schools but all had direct experience of supporting asylum-seeking children and their families and, as noted above, some have the additional experience of once being classified as asylum seekers themselves. The different positions that these pre-school practitioners held enriched the project by illustrating the diverse and multiple needs of asylum seekers and how practitioners try to meet these diverse needs.

The pre-schools that participated in this research were all members of the Pre-school Learning Alliance. The Alliance is an educational charity and the national dimension of the pre-school movement in England (it is the largest membership organization specializing in pre-school education and childcare in England). It supports and represents the interests of 15,000 early years settings and 500,000 children and their families in England. It is also the largest single contributor to the UK Government's National Childcare Strategy, Sure Start Strategy and Neighbourhood Nurseries Initiative (detailed below). It also provides vocational training for pre-school practitioners and explores new ways to engage parents in family and life long learning.

Some qualifications on the data-set are necessary at this stage. The number of enrolled asylum-seeking children varied from pre-school to pre-school; some had only one asylum-seeking child on their register, while in other pre-schools 95per cent of the enrolled children were asylum seekers. These striking differences in the number of asylum-seeking children in pre-schools also resulted in different factors gaining greater meaning and significance in some settings as well as considerable differentiation between the level and types of support that were offered to these children and their families. Indeed, the number of enrolled asylum-seeking children appears to be a significant variable when considering how asylum-seeking children are included in pre-schools and in the wider society. Similarities between the different settings were nonetheless apparent. Comparisons across settings were also influenced by the fact that local authorities (and not central Government) determine the types and extent of support that is offered to asylum-seeking children below five years of age and to their families.

The differences in approaches between local authorities on these matters and the individual local authority's relationships with other agencies (other central state agencies, private groups and voluntary/community organizations) influence the findings presented in this chapter. Once again, certain patterns and trends emerged as well as significant variations.

Early years services in England: setting the scene

The pre-school market in England is mixed; state providers as well as private and voluntary providers offer childcare and educational services for children and their families. Despite the mixed market of provision, state subsidies are provided for families to access all types of early years provision. Some of these subsidies are accessed directly by pre-schools and nurseries (for example, the Nursery Education Grant (NEG) funding stream that guarantees that 3 and 4-year-olds receive five two and half hour sessions of pre-school education per week), others are accessed by the families directly (for example, the Childcare Element of the Working Tax Credit, which is available to a single parent or both parents in a couple who work for at least 16 hours a week, worth 70per cent of eligible childcare costs of up to £200 a week). These different funding streams have greatly increased the access to early years services for children and families. These two subsidies that are available to families for early years services do not extend (in theory) to asylum-seeking families.

The Labour Government also created the Sure Start Initiative in 1998, which guarantees pre-school education and access to other services (health, family, etc.) for the children and families who live in the 20per cent most deprived wards (districts) of England. While the Sure Start initiative has undeniably given access to early years education, childcare and family support for many of England's most deprived children (including children who are classified as asylum seekers), it currently runs only 524 Sure Start centers across the country and 45 mini-Sure Start programs. The Sure Start initiative does not extend beyond the 20per cent most deprived wards of the country, and the children who live in deprived communities (pockets of deprivation as opposed to areas of deprivation) in seemingly (or – perhaps more correctly – ‘classified as’) affluent areas are thus frequently neglected.

The Neighbourhood Nurseries Initiative (NNI) and Early Excellence Centres complete this picture of early years provision. The NNI scheme, which was launched in 2001, has created 45,000 new childcare places (the equivalent of 900 new 50 place nurseries) to date to support families in the most disadvantaged areas of England and tackle the lack of childcare that often prevents parents from working. The unique feature of the NNI scheme is that it hopes to be responsive to local needs, aiming to ensure that childcare is established firmly in the heart of the community and community regeneration. The Early Excellence Centres program was also created in 1997. It was established to develop models of good practice for integrating services for young children and families. They offer high quality practice in one-stop-shop integrated education and childcare centers for young children as well as services and opportunities for parents, families and the wider community directly and in cooperation with other providers/organizations.

Children's Centres are the latest addition to the Government's panoply of provision for children under the age of five. The aim of Children's Centres is to ensure the

provision of good quality integrated services that have a long lasting and broad impact on children, their families and the wider community. The Government has stated that these centers will contribute to its agenda and commitment to give children the best start in life, better opportunities for parents, affordable and good quality childcare and stronger and safer communities. The Government envisions that they will further contribute to the existing good practice that is already visible on the ground in these service areas. The permeation of the notion of an integrated (multi-agency) approach to service delivery vis-à-vis children and their families should, at least in theory, create improved and new services where they are most needed.

Both compulsory education and pre-school education is regionally determined and structured in the UK, with Scotland, Northern Ireland and England & Wales operating as three distinct educational systems. (The peculiarity of England & Wales operating as one distinct and complete educational system is perhaps more indicative of the historic evolution of educational governance in the UK, as opposed to some centrally driven agenda to retain the Welsh educational system under the auspices of English policy-makers.) Another interesting feature of pre-school education is that the extent of the public support services offered and the levels of funding (that is, funding streams accessed directly by the pre-school both for individual children, e.g., NEG, and for support services, e.g., Special Educational Needs provision) are determined at the local authority level. As a result, the local context has a direct impact on the level and extent of support that is offered to children under five and their families.

The new asylum policy context

The *Asylum and Immigration Bill*, which received royal assent in July 2004, is yet another extension to the asylum and immigration laws that were already in place. The *Asylum and Immigration Appeals Act 1993*, the *Asylum and Immigration Act 1999* and the *Nationality, Immigration and Asylum Act 2002* have now been supplemented by this most recent bill. Most of these acts have been heralded as comprehensive reforms of the asylum system but before each act came fully into force, the next one appeared on the statute book. Additionally, each has a plethora of secondary pieces of legislation that amend statutory instruments, not only on immigration, but also on legal aid and social care. In fact, each act is grafted on its predecessors, with large parts amending the *Immigration Act 1971*. Alison Harvey has stated that the end result is “a legislative framework of astonishing breadth and complexity [where] consolidation of the legislation is long overdue [with] the new Bill merely embed[ding] its measures into the existing, rickety framework” (Harvey, 2004: 7).

This latest bill can only be understood with knowledge of the political context within which it was created, namely the desire to cut the number of asylum claims, to tackle sham marriages and to ensure that failed asylum seekers who cannot immediately be removed participate in community work. David Blunkett, the Home Secretary who proposed the bill, stated: “We have already made real progress on the asylum system – cutting new claims by more than 60 per cent, and speeding up the process so that 80 per cent of claims are dealt with in two months. This saves the taxpayers’ money and makes it easier to remove those whose claims are rejected, with 74 per cent more being removed now than in 1997. The measures in this act will allow us to take that reform forward to the next stage and build on our on-going work to tighten up the whole

immigration system” (Home Office, 2004: 1). This quote from the Home Secretary illustrates the significance attached to the need to appear that the number of asylum claims is decreasing (and, within that, decreasing relatively quickly) and to address the public’s (taxpayers’) concerns about asylum and immigration issues. In fact, asylum is a hot political potato. It is an issue that is determined as much by the media’s contribution to the debate as the legislation that is implemented.

The current bill: protection for asylum-seeking children?

This particular bill addresses the procedures that are involved when asylum claims are processed. It was hoped that it would set up special protection for children within the asylum and immigration system; protection that is long overdue. Like its predecessors, however, the bill is silent on the rights and protection of children. Indeed, this bill has been heralded as one that continues to neglect to protect children, limits asylum seekers’ rights to appeal and to representation, as well as one that denies support to families whose asylum claims have been rejected. Refugee and children’s NGOs have suggested that this bill may well lead to a situation where many asylum-seeking families try to survive unsupported and in isolation. Increased isolation and reduction in the support offered to asylum seekers can only contribute to their further exclusion from the wider community and perhaps further incite the already strong (and negative) feelings towards this group in many sections of mainstream society. The current legislative framework does not allow asylum seekers to work and they thus have to be supported as they go through the asylum process. Asylum seekers may be eligible to apply for support from the National Asylum Support Service (NASS). NASS is the government department responsible for supporting destitute asylum seekers and offers support for accommodation and help with living expenses (what is commonly referred to as ‘cash support’). There are various circumstances in which NASS refuses support to an otherwise destitute asylum seeker. A family or ‘household’ with children under the ages of 18, however, should (in theory) never be refused support from NASS. Additionally, pregnant women and families with children under the age of three who are receiving support from NASS are entitled to an additional weekly payment. A parent can also apply to NASS for a maternity grant for a newborn baby.

While NASS offers these forms of support during the process of determining their right to stay in the country, much of the frontline delivery of support services (education, health and social) to this group occurs at the local level where local authorities and voluntary and community organizations frequently work in partnership. Despite the existence of a centralized support service, the responsibility for supporting asylum seekers and their children, therefore, falls disproportionately on local authorities and on the voluntary and community organizations on the ground in local communities. Despite a concerted effort by Government to disperse asylum seekers across the country, in part to limit the ‘burden’ that falls disproportionately on some areas and some local authorities, asylum seekers continue to be concentrated in London and the South-East of England. As a result, as the policy context becomes increasingly focused on the need to limit the number of asylum applications and make the process speedier, the services and organizations/agencies that support asylum seekers on the ground become more and more stretched and less constructive advice is offered from the center despite seemingly increasing numbers of people who require support.

Asylum-seeking children's needs: a brief overview

Asylum-seeking children have already survived a number of difficult and traumatic experiences by the time they arrive in the UK. As a result, their needs and the type of support that they require differ considerably from other disadvantaged groups. The research indicates that the most pressing needs that must be addressed upon arrival are typically housing and health. They also, however, frequently arrive with psychological and emotional needs, which stem from their experiences in their home countries and the process of seeking asylum. Identifying their needs and developing forms of support is further complicated by the reality that asylum seekers are not one homogeneous group for which a generic set of recommendations and programs can be developed and implemented. The findings suggest that the particular situation in their home country as well as their language (both home and English acquisition), culture, norms and values become significant variables to factor into the equation.

Identifying these particular needs becomes even more difficult given that the asylum-seeking children considered in this chapter are under the age of five and hence have their own processes of understanding their own experience of seeking asylum and their family's situation. The children referred to here are also accompanied by parents (and in some cases they have siblings) and thus the needs of their families (parents, siblings over five years of age) must be addressed if the children are to thrive educationally, socially, emotionally and psychologically and if they are to be successfully included in the society in which they now reside, irrespective of the length of their stay.

The importance of an early start

The practitioners who were interviewed for this research stated that an early pre-school start is crucial if asylum-seeking children are to be ready for the transition to compulsory primary education. Readiness for school and concerns regarding educational delay, especially delays in learning the English language, featured heavily in all the interviews that we conducted. Pre-schools provide an opportunity for asylum-seeking children to become accustomed with group-based learning and social environments and they offer these children the prospects for beginning compulsory schooling on a more equal footing with their peers linguistically, educationally and behaviorally. It was suggested that exposure to the pre-school experience facilitated children's settling into group-based learning environments and that it is a valuable and necessary addition to the educational experiences of children. The importance of the pre-school experience for more effective transition to and inclusion in compulsory school settings gained greater relevance when we considered the initial process of asylum-seeking children's inclusion in pre-schools.

All interviewees noted that initial attendance at the pre-schools was frequently an overwhelming experience for these children and that some (a significant minority of asylum-seeking children) found it difficult to settle into group-based settings. Some practitioners commented that this was largely due to language issues; others, however, suggested that their unfamiliarity with group-based educational environments was the root cause of the 'settling issues'. Many asylum-seeking children have arrived from countries where formal education at any level may not be widely accessible and this was certainly more the case with regards to the pre-school level of education. The practitioners, however, also noted that some of the 'settling issues' were a direct result of

these children's prior experiences. The staff noted that children were often over-excited when they joined the pre-school and lacked focus on what to play with. The practitioners also stated that these children had anxieties regarding whether the toys that they had access to would be there at a later date. The scarcity of resources, especially resources to play, in their new home environments, as well as perhaps in their countries of origin, was often attributed as the reason for their sense of anxiety and difficulties in settling initially into the pre-schools. The abundance of resources and the children's behavior towards their presence, however, did alter over time as the children became more accustomed to the number of resources and to their permanent availability.

The difficulties in identifying asylum-seeking children's needs

Pre-school practitioners also noted that some of these children's needs, particularly their psychological needs, only emerged more gradually as the staff got to know the children and as the children became comfortable in the settings and around the staff. Many traumas experienced by the children prior to arriving in England were not observable in their behavior until a specific incident triggered a reaction in the children. For example, one child became hysterical when seeing red paint (associated with the traumatic experience of seeing his/her father murdered), another had a similar reaction when being cared for by a member of staff that was of black Caribbean origin even though this child was of black African origin and he or she would only become calm when cared for by white staff members. Further investigation by pre-school practitioners in this setting discovered that the child had witnessed his or her family being tortured. (In these cases both the red paint and the member of staff were reintroduced gradually into the children's daily routines.) Hysterical behavior, however, did not manifest in all cases when events triggered a response. Some children altered their behavior by becoming increasingly withdrawn and refusing to engage with staff members and other children or to participate in pre-school activities.

Pre-school practitioners commented that they were effective in the early identification of Special Educational Needs (SEN) and/or impairments in asylum-seeking children. This early identification was considered significant both for providing support and intervention when these issues manifested and for these children's transition to statutory schooling. Delays in learning the English language frequently masked more serious underlying issues, such as hearing/speech disorders. However, there were examples of pre-school staff members who were apprehensive of identifying such disorders until the child had developed an adequate level of English. Some parents were hesitant to accept the diagnosis of SEN and/or impairments, and to seek help within pre-school settings and from professionals outside. The manifestation of SEN/impairments with regards to particular children provided many challenges to the staff in pre-school settings, both with regard to getting parents to accept the diagnosis and seek help and with regard to receiving specialist help/support and services from outside.

Helping asylum-seeking children be children

A particular need that emerged for asylum-seeking children was to provide opportunities to play. Opportunities to play were considered of paramount importance by the pre-

school staff. The Alliance's educational ethos for 0-5 year olds is based around the educational philosophy of 'learning through play'. It gained greater meaning with regards to asylum-seeking children because of the cramped housing in which many of them live (e.g., single bedroom apartments or bedsits), which often afford limited space for children to play, and because of the traumas that these children had experienced. These traumas manifested themselves in children in a number of ways. Interviewees noted that some children were unable to play generally, in part because their opportunities to play in the past had been limited and they were unsure how to play alone and with other children. Other children avoided playing because they feared that the toys would be removed. Across all pre-school settings the staff believed that allowing these children to become children again was a crucial dimension of their role and aided them in meeting their needs first and foremost as children.

Supporting asylum-seeking children and their families' needs at the pre-school level

Beyond identifying the particular needs of each asylum-seeking child and implementing programs to support these needs effectively, voluntary pre-schools' holistic approach towards children requires that the support that is offered extends beyond the asylum-seeking child and to his or her parents and family. All of the pre-school staff acknowledged that meeting the immediate care, educational, emotional and behavioral needs of the asylum-seeking children were their primary goals. However, they also acknowledged that asylum-seeking children and their families require additional support and access to programs if they are to be effectively supported and successfully included in local communities during the asylum-seeking process.

The educational and care needs of asylum-seeking parents and children

The educational needs of asylum-seeking parents featured heavily in all the interviews that we conducted. Pre-schools provided opportunities for parents to acquire new skills/knowledge, to participate in worthwhile activities and to give them some respite time away from their children and their role as parents. This was especially important for mothers and particularly for mothers from Muslim asylum-seeking communities where attending such activities is not typically the norm. The vast majority of the pre-schools that participated in this research were active in providing asylum-seeking parents with access to courses. These courses included English for Speakers of Other Languages (ESOL), computing classes and childcare courses (all these courses were extremely popular with asylum-seeking parents). Only one setting, however, provided asylum-seeking parents with access to recognized childcare qualifications on-site. In this setting, staff commented that parents felt that qualification-centered courses were of greater value to them and the society in which they would permanently reside. The additional benefit of offering this course on-site was that parents could complete the 'placement' part of their course – the part where they have to be an assistant in a pre-school setting – and not be far away from their own children who were attending the pre-school. Attached to the importance of offering parents access to education, the childcare services that were available in these settings were viewed as invaluable by the

staff. Parents could access educational courses safe in the knowledge that their children were cared for by staff with whom they had developed relationships and who understood the needs of their particular child. The value of this service is further reinforced by the finding that asylum-seeking parents are particularly apprehensive of leaving their children with others, in part because of their own experiences of seeking asylum and of fearing ‘authorities’ more generally and they thus often perform the childcare dimension of their parenting role alone and unsupported.

The childcare dimension of pre-school settings was also crucial in meeting the needs of asylum-seeking children. Opportunities to play in supportive, secure, learning environments and the available resources provided opportunities for children to engage with each other and be stimulated. Staff in all settings noted that the availability of dual language books familiarized children with their home and the English language. By using terms/images that were familiar to them from their country of origin and by introducing them to new cultural/social terms/images from their host country, children developed educationally, linguistically and culturally. Asylum-seeking children who attended pre-schools quickly learned the English language (both via formal and informal channels) and were stimulated into learning and exploring activities, often for the first time. The ethos of voluntary pre-schools also led to many pre-school practitioners learning key words in a particular child’s language, which contributed to the children feeling more secure and approaching learning with enthusiasm. The familiarization of children with group-based educational and social environments and their routines also contributed to greater educational gains for the children both when they were at the pre-school and when they made the transition to statutory schooling. Pre-school settings also made regular observations of the children. While this is common practice in pre-schools for all children, it is particularly critical for asylum-seeking children. These observations considered educational, social and behavioral developments, allowing practitioners to develop individual programs that met each child’s needs appropriately and sensitively.

Pre-schools as ‘Directors’ to other services

Pre-schools also provide parents with opportunities to create relationships with others. Given asylum-seeking parents’ more general exclusion from mainstream society, this is a vital dimension of the work that pre-schools do. By developing relationships with pre-school staff members, asylum-seeking parents were able to develop trust relationships within which they felt comfortable asking for advice and help, knowing that their needs would be understood in context and treated with confidence. These trust relationships also helped pre-school staff to direct parents to the right services and professionals for them and their children. According to the interviewees, pre-school attendance also gave parents an occasion to speak English informally to other English-speaking parents who accessed the setting and to the staff. The learning resources in pre-schools (e.g., dual language books) also allowed asylum-seeking parents to develop their English language skills in tandem with their child/children.

The settings also addressed pressing issues for asylum-seeking children and families that may be considered outside their role. One such issue was the general health, fitness and well-being of the children and parents. Most pre-schools offered healthy snacks (fruit and drinks) to the children free of charge, while others provided hot meals for children and parents at a minimal charge. Additionally, parents were encouraged to use

the kitchen facilities to prepare their own food for their children and their households, as well as introduce their 'home' food to the pre-school to facilitate cross-cultural understanding and exchange. With regard to mental health issues, the interviewees commented that it often took parents some time to feel comfortable expressing their emotional/psychological needs. These needs often stemmed directly from traumas that they had witnessed/experienced in their home countries, although (worryingly) many traumas were also the result of experiences in their 'host' country. The parents' emotional and psychological well-being is vital for the emotional and psychological well-being of their children. As a result, practitioners tried to forge trust relationships with asylum-seeking parents both to identify their particular needs and to develop programs to support them or to direct them to the appropriate external professionals (social services, health services).

Pre-schools perform numerous other functions for parents some of which could be considered as outside their immediate role, although these varied from pre-school to pre-school. In pre-schools where only a few asylum-seeking children were present, practitioners were active in helping parents to fill out bureaucratic forms and attend meetings with social and health services and educational services (local authorities and schools). They often acted as the mediator between these professionals and the families. In pre-schools with many asylum-seeking children on the register, staff considered this a core component of their role. In addition to helping with filling out forms, they also wrote letters and made calls to external agencies (including the Immigration Office) on families' behalf as well as attended meetings with the families and external agencies in order to provide support and to interpret when necessary. Pre-schools that had greater numbers of asylum-seeking children on their register had also developed networks with other voluntary and community groups in their local communities and were thus able to direct asylum-seeking families to groups that could advise and support them during the asylum-seeking process. By creating such networks, pre-school practitioners were more likely to have access to translation services and interpreters for meetings in the pre-school and with external agencies.

Pre-schools as family social support centers

Parental involvement both in their child's development and in pre-schools is considered an imperative aim of the Alliance. This type of involvement includes parents in their children's development and allows them to gain confidence in their role as parents. Asylum-seeking parents in the pre-schools where the research was conducted were keen to acquire advice on dealing with their children's behavior. While all the pre-schools informally gave parenting and behavioral advice to parents, pre-schools with greater numbers of asylum-seeking children were more likely to offer parenting classes. Parenting advice and classes in all the pre-schools, however, did not necessarily result in changed practice. This was often the result of differing parenting styles (based on cultural appraisals of parenting) and of language issues. Breaking the language barrier was often easier than altering the culturally constructed parenting styles (e.g., parents that do not consider smacking problematic). Practitioners nonetheless suggested that prolonged exposure to pre-schools and informal discussions with staff did lead to changed parenting practices and greater understanding of their children's development.

Supporting the needs of asylum-seeking children and their families at the pre-school setting level was further complicated by the reality that many of these pre-schools are situated in deprived areas. Many of the issues that asylum-seeking children and parents contend with are thus akin to those experienced by other parents and children in the area. Some of the pre-schools in the most deprived areas were involved in running clothing and resources stores where parents could acquire, for free or purchase at a minimal price, clothing and other items (prams, cots, essential baby equipment). The poverty of the local area also led three out of the six pre-schools to organize free trips/outings for asylum-seeking children and their families (including siblings over five). These trips have social and educational benefits. They provided asylum-seeking children and families with opportunities to escape their day-to-day reality, afforded parents some stress-free time away with their children and to socialize with other families (both local and asylum-seeking families) and to visit parts of the country that they would not normally visit due to lack of knowledge, finances and/or transport. While only three pre-schools organized overnight trips or outings away from their immediate area, all the pre-schools organized outings closer to home. These more accessible trips included visits to libraries and to theaters thus providing asylum-seeking children and families with opportunities to gain knowledge and familiarity of local educational resources and access to cultural and social experiences.

Pre-schools as diverse cultural spaces

Supporting the right of asylum-seeking children and parents to express their diverse cultural identities was also considered a significant part of the pre-school practitioners' role. Pre-schools created events that celebrated the cultures of the children who accessed the settings. Three of the six pre-schools celebrated festivals from around the world and encouraged parents to visit the pre-schools with their families and bring their 'home' food and music and share these and the history of the festivals and specific events with other parents and children. Practitioners noted that such activities made asylum-seeking children and particularly asylum-seeking parents feel comfortable in expressing their cultural identity. It was also via the arrangement of such activities that pre-school workers noted greater participation of asylum-seeking fathers in pre-schools. The interviewees suggest that asylum-seeking fathers are particularly alienated from social networks and from their children's development. However, the fathers' inclusion in pre-schools (typically conceptualized as 'female' spaces) resulted in them feeling more secure about their children's and wives involvement and increased their access to educational courses and classes.

Perceptions of 'locals' towards asylum-seeking children in pre-schools

Including excluded groups in pre-school settings, local communities and the wider society means that it is important to consider how these groups are perceived. The perceptions of indigenous groups, which we have termed 'locals', of excluded groups are crucial for determining the extent to which these excluded groups are included in local communities and nation-state societies, as well as the role of state agencies and

other organizations in combating negative perceptions and feelings of hostility. This is particularly the case with regard to asylum-seeking children and their families. Unlike other excluded and disadvantaged groups, feelings of hostility from the dominant groups (including groups that may also be classified as excluded from economic, social and educational goods) towards asylum seekers are prevalent in local communities and in nation-state societies. This is perhaps associated with how these groups are presented in the media and the nature of the political discourse/rhetoric surrounding their arrival and presence. Indeed, the current political and policy emphasis on the need to cut the number of asylum applications and to process them speedily through the system, as well as the media's depiction of asylum seekers, have led to asylum-seeking families and their children appearing as though they are not necessarily fleeing persecution, but that they are instead seeking a better life, often at the expense of locals. Furthermore, it has caused this group to be targeted as the source of many of the problems in local communities. This is particularly problematic in local communities that suffer significant social, economic and environmental disadvantages. The Government drive to cut the number of asylum claims has no doubt shifted the emphasis away from identifying the needs of asylum seekers and creating programs to support them effectively while their applications are being processed, as well as influenced how these groups are included in and perceived by local users of pre-schools.

The research suggests that the need to identify their particular needs and develop effective forms of support and challenge stereotypes is further complicated by the reality that asylum seekers are not one homogeneous group, but instead comprise disparate people from culturally distinct communities from around the world. Given the fact that asylum seekers are not identical, but diverse people with particular needs, different types of support are necessary if they are to be successfully included and supported during the asylum process, as we have previously noted. Perhaps more importantly, challenging the stereotypes that are commonly associated with asylum seekers becomes of paramount importance and is considered as such by the pre-school practitioners who identify these children's needs and develop and implement forms of support to aid them during the asylum process.

Practitioners' perceptions of asylum-seeking children

Pre-school practitioners shared similar opinions of asylum-seeking children and their families despite the differences in the positions that they held and the number of asylum-seeking children on their register. In almost all of the interviews that we conducted the response was identical, namely that children are children. The child's legal status or ethnicity did not appear to figure in any way, as one would hope, and it certainly did not result in less favorable treatment or greater exclusion in pre-school settings. Exposure, however, and within that prolonged exposure, to different cultural groups was a significant factor in determining how pre-school practitioners approached these groups, formulated support packages and challenged stereotypes and negative feelings. The pre-school workers who were accustomed to working in culturally diverse settings, particularly settings where the vast majority of children came from different cultural groups, were more comfortable with addressing issues that stemmed from cultural differences (e.g., eating habits) or involved different parenting styles (e.g., the use of food as a comforter, parents who did not view administering a light smacking to their

child as a problem). Familiarity and exposure to black and minority ethnic groups and to asylum seekers in the past was a significant variable in influencing the way in which these groups' needs and concerns, as well as the ones of the local users, were addressed. Thus, while pre-school practitioners overall had positive perceptions of asylum-seeking children and their families and implemented packages and programs to support and include them, the pre-school practitioners who worked and/or had worked in more culturally homogeneous early years settings were less clear as to when some activity or behavior was a result of that child's cultural background (i.e., place of origin), as opposed to a particular familial tradition or the result of the distinct experience of being an asylum seeker. This finding suggests that there is scope for training pre-school workers, as well as other key workers, in the particulars of dealing with asylum-seeking children and their families (including educating pre-school workers about these groups' customs and traditions, reasons for fleeing, etc.) and in addressing the concerns of local parents. This appears all the more necessary given the Government's drive to disperse asylum seekers across the country, rather than to concentrate them in the cosmopolitan city-centers that is presently the norm and toward which asylum seekers have tended to gravitate.

Of greater interest was the finding that the pre-school workers who had the additional experience of once having been asylum seekers themselves tended to have more vocal views as to when it was acceptable for asylum-seeking children and their families to express their 'national' or home culture. For example, one of the pre-school workers whom we interviewed, a single mother of Ethiopian-origin who had fled her country in the early 1990s, expressed the need for asylum-seeking children and their families to assimilate as much as possible with the host people and to absorb the host culture. She stipulated that this was best achieved by ensuring that asylum-seeking parents and their children learned English and refrained from expressing their home culture and language in the public sphere. While her opinion is not representative of the vast majority of pre-school workers or of the Alliance as an organization, her feelings on this issue may illustrate the need for integration to be actively pursued by both the settings and the families seeking asylum.

Pre-school practitioners also expressed a desire to get more asylum-seeking children and families to access pre-school settings. The funding for asylum-seeking children in pre-schools was far from clear. Each local authority decides whether asylum-seeking children will receive funding for pre-school places and determines the level of such funding, which inevitably means that many asylum-seeking children and families attend these settings free of charge at the discretion of the pre-school. All the pre-school staff that we interviewed nonetheless actively tried to raise the profile of this provision among groups and to encourage greater access, which is a feat in itself given that many asylum-seeking groups are unfamiliar with this type of educational and care provision. The research indicates that most asylum seekers who access pre-schools became aware of pre-school provision either via word-of-mouth from other asylum seekers, especially mothers, or by being referred by Social Services or health visitors. Pre-school practitioners believe that pre-schools are positive environments for children, particularly children who live in cramped or sub-standard housing that limits their ability to play and their access to social and educational goods, which is an all too common situation for asylum-seeking children. Pre-school environments are also good for parents who require some respite from their daily situation and who need to be able to discuss their

experiences as parents and as asylum seekers, with other parents, asylum-seeking parents and trained professionals. This belief led to the creation of innovative ways of engaging with asylum seekers. Despite language barriers, many pre-school staff members implemented innovative out-reach strategies, like going to housing projects where asylum seekers tend to be housed, to raise awareness of the pre-school among this community group and to encourage greater use of this local community facility. Overall, pre-school staff, irrespective of the setting in which they worked and the number of asylum-seeking children on the register, actively engaged with the asylum-seeking communities to facilitate and encourage greater inclusion of these groups in local communities, increase their access to social and educational goods and challenge locals' stereotypes.

Local users' perceptions of asylum-seeking children

In contrast to the pre-school workers' positive perception of asylum-seeking children and their families and their desire to include them, local users (parents and not children) of the pre-schools tended to have vocal and negative feelings towards this group and to their presence in early years settings. There were evidently also significant variations in the opinions expressed here. The determining factors in generating a more neutral or positive perception of their presence and inclusion appeared to be the local community in which that pre-school was situated and the number of asylum seekers and/or culturally diverse users who accessed the setting. For example, in the pre-schools where only one asylum-seeking child or a few asylum-seeking children were enrolled, parents were apprehensive of their inclusion and tended to accord a significant role to the asylum-seeking child in disrupting pre-school activities and their own child. Such negative perceptions of their inclusion generated a great deal of disharmony in the pre-school settings and it was a great concern for the staff. Negotiating between, what appeared to be, conflicting groups took up a significant amount of the pre-school workers' time. According to the staff members who were interviewed for this research, this appeared to have minimal impact on the asylum-seeking child, though it did appear to have an impact on the asylum-seeking parent. Worryingly, the parents expressed to the staff that they were accustomed to being victimized and appeared to treat this as yet another component in the process of seeking asylum. Staff voiced disbelief and anxiety that local parents systematically identified asylum-seeking children and their families as problems in the pre-school setting. They gave numerous examples of local parents singling out these children despite the fact that they were usually not present when some of the events/occurrences that were reported back had taken place. They suggested that parents could more visibly identify children from asylum-seeking families and thus tended to give their names or point them out when they complained about other children's behavior towards their own child.

Pre-school staff in areas with high concentrations of asylum seekers, yet where this group's access to educational and social services was limited, stated that the local conditions, rather than pre-school related conditions, influenced the perceptions of local users towards this group. This typically occurred in areas where despite the presence of asylum seekers, they were not effectively included in the mainstream community and in local activities, as well as related to the extent of the poverty in that area. The local community and the extent of its deprivation as well as the degree of inclusion and

exchange between diverse cultural groups within the local community influenced the locals' attitudes towards asylum-seeking children and their families. Pre-school staff combated such negative attitudes and feelings of hostility by spending time with local parents, listening to their concerns and correcting their misinterpretations of events, as well as by creating programs and activities designed to facilitate cultural exchange and greater cultural understanding between locals and asylum seekers. These activities indirectly also resulted in the practitioners developing a greater understanding of the experiences and cultures of asylum seekers and the particular reasons that caused these families to flee their countries of origin and to seek asylum in England.

Even in areas where asylum-seeking children and their families made up the vast majority of the users of pre-schools, hostile reactions between different groups of asylum seekers were a common occurrence, particularly in the periods when these groups first began to access pre-school settings. Pre-school practitioners who worked in such settings commented that parents from different communities of asylum seekers who have historical or political reasons for their negative sentiments needed to overcome these feelings and build bridges with one another. Pre-schools and the diverse array of activities that they offer are effective forums for generating cultural exchange and for educating against stereotypes. Pre-school staff members who have had the experience of once being classified as asylum seekers themselves stated that pre-schools are crucial social centers which facilitate the building of bridges between different groups, create common affiliations based on their common experience of seeking asylum and/or of being parents, as well as help asylum-seeking children develop educationally, psychologically and socially in safe, tolerant and multi-cultural environments. This can in the immediate term reduce the likelihood of reproducing such negative perceptions and appraisals of other groups of asylum seekers, as well as address the longer term issue of promoting inclusion more generally in local and nation-state communities.

The effectiveness of the multi-agency approach

Including and effectively supporting asylum-seeking children under the age of five requires good communication and interactions between the various agencies that have direct dealings with these children during the asylum-seeking process. This is also in line with the Government's drive to create integrated services, which connect central state agencies with local state agencies, private groups and national and local voluntary and community organizations. A number of professionals and agencies at the local authority level support asylum-seeking children and their families. Two key public sector professionals have systematic and direct dealings with these children and their parents, namely health visitors and social workers. The interview data that we collected suggests that open paths of communication between these public sector professionals and voluntary sector professionals (primarily pre-school practitioners) are not always as they should be. Pre-school practitioners felt that it was of paramount importance to have open channels of communication and to exchange information that is relevant to particular children and their families. There were significant variations in the way in which the public sector agencies and the pre-schools communicated with each other. In some areas, pre-schools had developed good working relationships with some social workers and health workers and had created joint programs to guarantee access for asylum-seeking children and their families to local services and ensure that they are included in local communities. In other

areas, relationships were so strained that efforts to support and include these children effectively were significantly hindered. Given the current political and policy drive to create joined-up (integrated) services between public and voluntary sectors and workers both for children and for asylum seekers, this is surprising and worrying.

Cross-agency communication and perceptions of professionalism

The pre-school staff whom we interviewed for this research all commented that they were disappointed with the lack of acknowledgement that they received for what they did with asylum-seeking children and their families, and they were concerned that the information they were feeding back to these key professionals was not being registered and used to benefit and help the children and the families. As we have noted earlier, pre-school staff help asylum-seeking parents fill out bureaucratic forms, liaise with external agencies on their behalf, direct parents to appropriate services, fund asylum-seeking children's pre-school placements, as well as help these parents access English language courses and other courses. Pre-schools then play a crucial role in ensuring that asylum-seeking children and their families access the right services that will benefit and support them and facilitate their inclusion in local communities. Certain trends become visible across the pre-school settings vis-à-vis relationships with other professionals that deal with asylum-seeking children and their families. Almost all the pre-school staff members who were interviewed for the project generally had negative experiences of working with social workers. They stated that their concerns were not registered by this group of professionals and that they seemed not to care about the day-to-day experiences and needs of these children and their families. These concerns ranged in gravity from concerns about the individual child's psychological state and that of their parents to the housing in which many had to live. The interviewees suggested that many of the health problems of asylum-seeking children are due to the state of the housing in which they reside. Social Services often move asylum-seeking families into temporary housing (frequently just one room) on run-down local council estates that need much work and repair. There were even instances where children and families were sleeping on floors in small apartments already housing one (or more) asylum-seeking family with young children. The long waiting lists for council housing means that families are often not moved from the temporary accommodation in which they are initially housed while their asylum claim is being processed. Practitioners also noted that while they actively and systematically informed social workers about changes in the families' status and in their needs, they were rarely consulted on what Social Services were picking up during their exchanges with asylum-seeking parents and children and any changes in their circumstances and status.

Of greater concern is the reality that despite the fact that pre-school practitioners asked Social Services for more information on what asylum-seeking children and their families were entitled to and the programs that were available to them, they only occasionally received feedback from them and were never sent any information regarding changes and additions to the local services and programs available to this group. Nearly all the pre-school staff members whom we interviewed noted that they had to actively hunt down information and seek direction. Asylum-seeking children and their families, however, are allocated a Social Services key worker who should, theoretically, be aware of their distinct needs and the services and settings that they are accessing. Practitioners felt that these key workers should pass on information about the particular children and the services and

forms of support offered at the local authority level. Given the lack of exchange and communication, pre-school practitioners were forging relationships with other voluntary and community organizations that support asylum seekers in local communities. This finding suggests that a multi-agency approach to including and supporting asylum-seeking children is some way from running effectively, particularly with regards to relationships between Social Services and pre-schools. This could lead to many asylum-seeking families not accessing the services that they need and many asylum-seeking children not attending pre-school settings and benefiting from the social and educational services which they provide. This finding may translate into many asylum-seeking children and their families living in increased isolation and without support from the voluntary and community organizations on the ground that can support them and facilitate their inclusion into local communities.

Cross-agency communication and creating innovative programs of support

Pre-school practitioners in almost all settings had developed open and effective relationships with health workers, a key professional for these children and their families. The exchange of information between these two groups and the number of visits of health workers to pre-school settings has led to earlier identification of health issues and educational problems (e.g., Special Educational Needs). This exchange of information between pre-schools and health professionals led to a number of significant developments in pre-schools. One such development has been the provision of a hot meal to asylum-seeking children and their families during the days that they access some pre-schools. Many asylum-seeking children live in sub-standard housing, where entire families often live in one room without a kitchen. This is an important development and addition to the services that are offered to asylum-seeking children given the research finding that many asylum-seeking children go without daily nutritional warm meals. In some of the larger pre-schools, health workers were encouraged to attend the pre-schools in order to build relationships with parents in comfortable and non-threatening environments. The building of trust relationships between asylum-seeking parents and health professionals led to earlier identification and resolution of minor health concerns, as well as professional support when issues were of a more serious nature.

In addition to the relationships that pre-school practitioners have with public sector workers and with other voluntary and community organizations, they have also developed relationships with local colleges and schools to address some of the parents' educational needs. This is particularly important: if asylum-seeking children are to be effectively included in pre-schools and the wider community, pre-schools, voluntary organizations and state agencies must facilitate the inclusion of asylum-seeking parents in local communities and the wider society as well as increase their access to social and educational goods. Asylum-seeking parents in many settings had the opportunity to access courses (English language, childcare, parenting, computing) on-site or at local colleges. Access to these courses have helped them to develop their skills (language, educational, parenting), participate in worthwhile activities that give respite to parents from their day-to-day lives and facilitate inclusion in local communities, and it has led to asylum seekers accessing educational services that, in the future, will benefit them as well as the society in which they reside.

Conclusion

This research suggests that pre-schools play an important role in identifying the needs of asylum-seeking children and their families and in implementing programs to support these children and their families during the process of seeking asylum. It highlights the necessity to meet these diverse and multiple needs in the immediate term and before these children make the transition to compulsory schooling, thus ensuring that asylum-seeking children are on a more equal footing with their peers when they begin compulsory schooling. The research demonstrates that pre-school practitioners develop innovative programs to support this group of children. It also indicates, however, that practitioners who are accustomed to working with asylum-seeking children and with culturally diverse groups are more effective than others in addressing issues that perhaps stem from cultural differences and different parenting styles, as well as those that stem from a particular familial tradition and/or from the distinct experience of seeking asylum.

Given the research evidence that suggests that the pre-school experience is crucial to enhance children's life chances, especially those who are most disadvantaged like asylum-seeking children, access to this level of educational and care provision contributes significantly to their life chances. This research evidence conceivably also influences pre-school practitioners' activities in engaging with these groups even when they are not yet accessing pre-schools or are included in mainstream local community activities. Despite much activity at the pre-school level to support and include asylum-seeking children and their families in pre-school settings and local communities, the local users' perceptions of these children and parents pose many additional questions for pre-school practitioners. The current media and policy climate toward asylum seekers has elevated the importance of challenging stereotypes and negative appraisals of asylum-seeking groups by locals and by other asylum seekers. The extent of local community deprivation and the inclusion of diverse groups also influence the level and extent of support as well as how other groups in that area perceive asylum-seeking children and families. The reality that pre-schools operate as social, as well as educational, centers creates many opportunities to challenge such negative appraisals and stimulates cross-cultural understanding and exchange. Worryingly, the policy drive to promote and develop integrated services for children generally and for asylum seekers does not appear to be working successfully across all professionals and sectors, particularly with regards to pre-school practitioners and social workers. This finding suggests that creating an effective integrated approach requires more than political rhetoric.

Funding for educational and care provision for asylum-seeking children under the age of five and for asylum-seeking parents to access meaningful and worthwhile services to aid their personal and professional development is a pressing concern. It is of fundamental importance if the Government and local authorities are to withstand the charges that they neglect asylum-seeking children and parents. Funding would also allow local and national voluntary and community organizations to assist central and local state agencies in supporting and including these children (and families) during the difficult process of seeking asylum and building new lives.

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¹ We would like to express our sincere gratitude to all the pre-schools and pre-school staff who took part in this research. Despite demanding and difficult schedules and workloads, pre-school practitioners gave up their time to participate and, as a result, we were able to draw on their experience and expertise. We would also like to thank colleagues at the Pre-school Learning Alliance’s National Centre that supported and contributed to this project, particularly Kathleen Quirke and Neil Leitch, and the Regional Executive Officers for facilitating contact with the pre-schools.

² The interviews entailed answering six open-ended questions and were semi-structured. The semi-structured approach appeared the most valid for illustrating the complexities involved in understanding asylum-seeking children’s needs and the support offered, as well as allowed the interviewees to comment, in their own way, on their experiences of supporting and educating asylum-seeking children under five. The six open-ended questions allowed for the drawing of conclusions and the making of comparisons across settings and areas.

Chapter 15

Meeting the Needs of Young Asylum-seekers: The Role of Creative Activities¹

David Ingleby

Introduction

Creative activities are a well-established way of helping refugee and asylum-seeking children. This category may include ‘artistic’ activities such as drawing, painting, drama and dance, or other forms of play that involve an element of imagination. Usually, a distinction is made between ‘creative’ and ‘recreational’ activities such as sport.

Creative activities may be used as a form of therapy, but more often they are described as a preventive intervention. In psychotherapy with children, play and the ‘artistic’ activities mentioned above are widely used techniques, which date back as far as the 1920s. They are seen as ways of getting in touch with the child’s deepest preoccupations and with feelings that are too difficult to put into words. When children have been victims of violence, these methods are often used to facilitate ‘working through’ traumatic experiences.

This chapter, however, will not deal with the therapeutic applications of creative activities. Instead, it will focus on their use as a form of prevention. In this type of applications, in fact, it is usually considered inadvisable to include children with serious or deep-seated disturbances: the activities might bring problems to the surface which cannot be adequately addressed within the framework of the intervention. It is, however, difficult to draw a clear line between ‘therapeutic’ and ‘preventive’ applications of creative activities.

Preventive activities are usually theorized in terms of the model of ‘risk factors’ and ‘protective factors’ which goes back to authors such as Garnezy (1985).

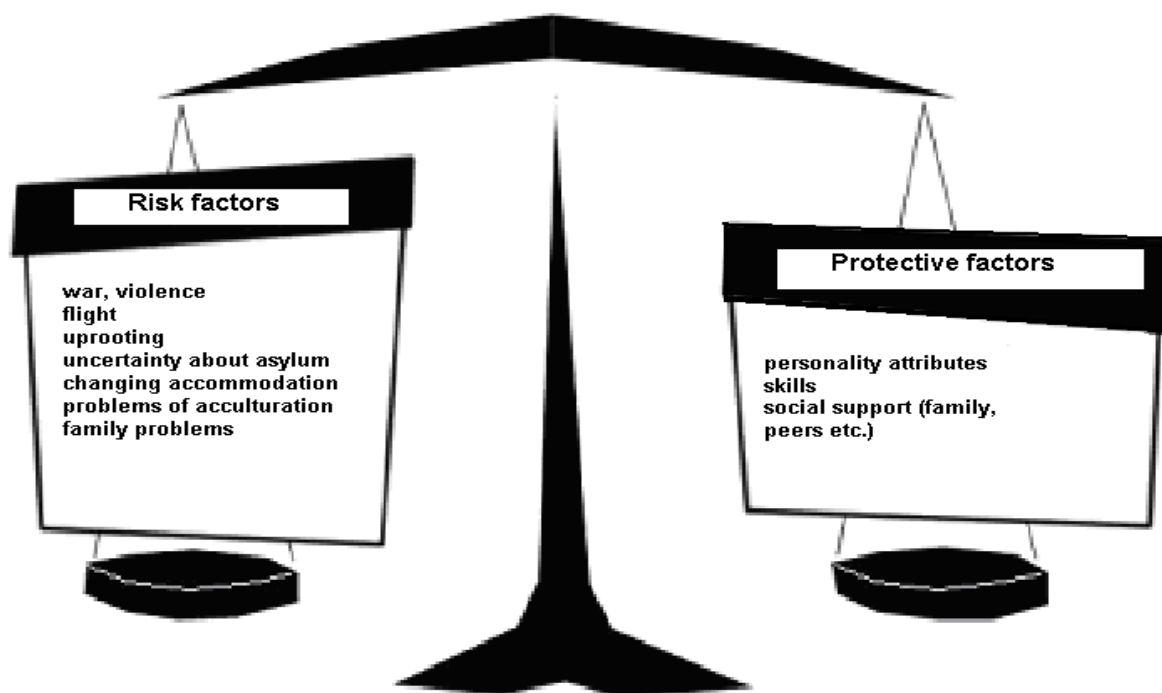


Figure 1: A model of 'risk factors' and 'protective factors' for refugee children

Figure 1 illustrates this model as it applies to refugee children, filled in with some widely recognized examples of both kinds of factors. Preventive activities may aim to strengthen attributes of the child's personality such as resilience, self-esteem and optimism, or to further (social) skills, or to bolster the social resources available to the child. Creative activities are carried out because they are believed to produce a range of positive effects:

- They help children to get in touch with their own feelings and thoughts and to share these with other people.
- They develop a sense of self, by enabling the child to produce something of his or her own.
- They foster autonomy because they provide a space which the child is free to fill in any way he or she feels like.
- They provide the experience of work and play in a secure, accepting and stable environment.
- Some activities also have the goal of (re-)establishing contact with cultural traditions.

More generally, creative activities are seen as essential for the healthy development of *any* child. In this light, putting on such activities for refugee children is simply helping to meet their normal needs. It remedies a deprivation, since the opportunities for such activities may otherwise be scarce, and in this way it furthers the child's healthy development. So much for the rationale that usually underlies these activities.

A recent study of mental health and social care provisions for refugees and asylum seekers in four European countries (Watters et al., 2003; Watters & Ingleby, 2004; Ingleby & Watters, 2005) found that many interventions fall into the category

‘prevention’. Of these, most are labeled as ‘creative’. In the Netherlands, no fewer than six programs were found aiming to provide creative activities for asylum seekers.

A preventive program is in many ways easier to implement than one which is designated as ‘treatment’. Unlike therapeutic interventions, preventive activities usually do not require highly trained professionals and are therefore much cheaper. They are not surrounded by as many legal and professional restrictions and they do not need to be as rigorously controlled. In many cases, they can be carried out by volunteers, often with a minimum of special training².

There is increasing pressure on agencies to evaluate even ‘preventive’ interventions. One may make a comparison here with vitamin C, which happens to be the name of a preventive program that has been presented at this conference. The metaphor of vitamin C is highly appropriate and conveys, in a nutshell, what such interventions try to do. Regarding the *real* vitamin C, there is a vast body of research literature which we can consult in order to find out if it really does protect people against infections, accelerate recovery and so on. The findings are complex and sometimes hard to interpret, but we do not have to rely entirely on blind faith when deciding whether to invest in a supply of the vitamin.

It is logical that there should be a demand for the same kind of information about the effects of preventive programs such as creative activities. Agencies need this in order to be sure they are putting their efforts into the right activities. Those who subsidize preventive interventions, or give permission for them to be carried out, also need to know if they are effective. In fact, Western culture is characterized by an increasing emphasis on ‘quality control’, ‘good practices’ and ‘evidence-based’ approaches.

Unfortunately, however, it happens to be extremely difficult to evaluate activities like the ones we are talking about. They are not like pills that can be swallowed in a controlled dosage: they are complex, situated human activities. In addition, the outcome is not a measurable physical condition: it is a complex configuration of behavior and experience. In these circumstances, it is difficult to conduct anything which might be compared to a ‘randomized clinical trial’ (RCT).

In this chapter, I will discuss how we should respond to these difficulties. I will argue that we may be going in the wrong direction if we try to carry out evaluations using the model of RCTs. Many practical and methodological problems make it extremely difficult to measure the positive effects that such interventions may have. Instead, I will argue for a broader approach. We should think hard about what it is that we are trying to achieve and whether the activity undertaken is likely to achieve it, as well as looking more closely at the things that go on during the activity itself.

Types of evaluation

In the context we are considering here, one may distinguish between three main types of evaluation:

- *Plan evaluation.* Is the activity a good idea *in principle*, does it take account of what we know about the activity and the target group?
- *Process evaluation.* What actually goes on? Is it anything like what was intended?

- *Outcome (or effect) evaluation.* Does the intervention produce a change of the sort we had hoped for?

This chapter will make the case for more emphasis on the first two types of intervention. In fact, the argument can be extended to the whole field of psychotherapeutic and psychosocial interventions. Effect evaluation is much harder for these types of interventions than it is for a physical intervention such as a dose of pills. This has given drug therapies, for example, an unfair advantage. In other words, if we adopt the standard clinical paradigm of evaluation when we are dealing with complex activities and subtle effects, we may be walking into a trap. A similar argument has been put forward by the Dutch philosopher of science Trudy Dehue (2002).

I will illustrate this contention by drawing on two studies that were recently carried out for agencies which promote creative activities for asylum-seeking children. For ethical reasons, these agencies will not be identified by name, since the reports were commissioned solely for internal use. In one study, the emphasis lay on measuring effects using standardized rating scales; in the other, a more 'phenomenological' approach was chosen. The studies will be presented in outline form only, partly to preserve anonymity but also because they are only used to illustrate my general argument.

Study one

The first study was carried out by Lineke Sassen and set out to evaluate a series of lessons that were designed for use by primary schools teaching 4-6 year old refugee children. These lessons were led by the children's own teachers and involved a range of creative activities centered on the theme of *feelings*. They were designed to focus the child's attention on his or her own emotions and the emotions of other people, and the many ways in which these can be expressed.

For this activity we chose to carry out all three types of evaluation (plan, process and effect). We believed that there would be a reasonable chance of measuring results with an effect evaluation, because the numbers were reasonably adequate: 51 children in the experimental group, plus a control group of 36 children. Of course, this is nothing like the thousands of cases which are routinely used in drug trials, and any effects would have to be quite marked to show up, but researchers in this field count themselves lucky to be able to study a sample of this size. The children were assessed by the teachers before and after the intervention, using a questionnaire with proven reliability and validity.

Results

The plan and process evaluations were very favorable, but the study failed to reveal any effects, positive *or* negative, of the series of lessons. This was despite the fact that both the children and the teachers who carried out the intervention were very satisfied with it. What went wrong? The data suggested that many factors apart from the intervention were influencing the children's scores on the rating scales. Many were adapting to their first experience of school, which probably accounts for the fact that scores in *both* the experimental group *and* the control group tended to rise. Most children were involved in asylum application procedures, which could have a dramatic emotional effect on them

and their families. Events at school and in society at large – at the time of the study, the political debate in the Netherlands about asylum seekers was particularly intense – could also have been affecting them. In short, the effects of the intervention were probably hard to discern because they were masked by variations caused by other effects ('background noise').

My impression is that this outcome is all too typical for effect studies in this field. This impression is not based on a systematic survey and even less on a proper meta-analysis, which would in any case be virtually impossible to carry out, since these studies often remain unpublished and many do not satisfy the necessary conditions for a meta-analysis. Very thorough evaluation studies, which are sensitive enough to display subtle effects, require much time, effort and money, and may be logistically speaking virtually impossible to carry out. For example, a follow-up after one or two years is impossible, when many refugees are untraceable and some have even been sent back to their country of origin. We should also ask ourselves whether interventions as 'light' as those that are usually undertaken are really likely to change fundamental habits of thinking and feeling in a lasting way. I will return to this question later.

Study two

The second study (carried out by Nina de Ruuk and Claudia van Diessen) examined interventions that were carried out by an agency dedicated to organizing creative activities for asylum seekers who were living in accommodation centers. These activities are run by volunteers, some of whom, however, have much experience of this type of work. Many different types of projects are organized, of which two were selected:

- A story-telling project for 6-12 year olds which is carried out in a specially designed tent and involves a range of additional activities.
- A painting project for children of 14 upwards involving both group and individual aspects.

As a means of evaluating these activities, the researchers believed that little could be expected from effect measurements. Unlike the previous study, in which the children's teachers were able to fill in rating scales, there was nobody who could provide assessments apart from the children themselves. This often leads to unreliable results, because the children – who may come from all parts of the world - have little idea what is expected of them in self-report questionnaires and often do not understand the questions properly. Instead, we focused on *plan* and *process* evaluations.

For the plan evaluation we went back to first principles. What are the needs of these children? In what ways and to what extent can the interventions aspire to meet these needs? To explore the needs of children living in centers for asylum seekers we used interviews, focus groups and participant observation. Researchers became involved in a range of volunteer activities and spent as much time as possible on campus. In this way, they got to know some of the children and their families and experienced the living conditions in the centers first hand. (See Kramer, 2005, for an account of a comparable study with adults). We also analyzed the nature of the creative activities that were organized and the effects they were likely to have on the children, in order to evaluate the degree to which they were likely to meet children's needs.

In the process evaluation, as in the first study, the activities were closely monitored to study the interactions that were taking place. The researchers actually carried out the first project, and participated in the second.

Results

To provide an indication of the major needs and problems of these children, the 'plan evaluation' invited them to discuss their grievances and difficulties. The ones most frequently mentioned were:

- Lack of space, security and privacy in reception centers
- Monotony, boredom, lack of activity
- Being looked down on by Dutch children
- Family problems, inadequate parenting
- Uncertainty about the future, grief over the past
- Longing for a 'normal' childhood

These findings fit in well with other studies and with the experience of many who work with these children, so in a sense nobody was surprised by them. The research elicited much specific information, however, about how these problems affect the children's everyday lives.

The next question is: do the creative activities meet these needs? As far as boredom and inactivity is concerned, the answer is probably 'yes', though of course the activities offered are few and far between. Moreover, children expressed special appreciation for two aspects of the activities: the social contact which they provided, and the opportunity to use their imagination, reflect and tell their story.

However, none of the other needs that were mentioned previously are met by these interventions. They do not offer better accommodation, abolish discrimination, revitalize parents, put right the past, or restore a normal life to the children. All these are external problems, and the most such interventions can hope to do is to open up a little space *in the child's mind*. In stories, children can put difficult experiences and feelings into words and enter into each other's experience. In paintings, they can express their memories, dreams and fantasies. It is clear from looking at the paintings that the children have been able to get in touch with their own *vitality*, which asylum center life overwhelmingly suppresses.

In addition, the very fact that Dutch people take the trouble to organize these activities, as well as the personal attention that is given by the volunteer workers, sends a very different signal to the children from the rejection they often experience at school, and the interminable trials and tribulations they suffer at the hands of the Dutch bureaucracy. Such effects are difficult to measure with rating scales, though one study by Sander Mateman (1999) showed that children had a stronger feeling of recognition by Dutch society after being involved in a special program of creative activities at school.

Conclusion

Although the pressure to evaluate interventions is increasing and unavoidable, we should not fall into the trap of adopting inappropriate methods for evaluation. In particular, quasi-clinical studies using standardized measures of psychological characteristics are almost bound to yield disappointing results, which may lead to an unnecessarily disparaging view of the intervention's value. I will summarize the main arguments for this viewpoint which have been mentioned so far.

Available instruments are crude and insensitive

In an ideal world, an evaluation study would be able to develop sophisticated, tailor made methods for measuring change, but in reality - where budgets are limited - studies have to be simple and to make use of existing methods. This means using instruments which are neither very specific nor very sensitive, and which are unlikely to be capable of measuring subtle changes in people. The widespread popularity of rating scales and psychological questionnaires has led to an almost delusional faith in their power to give us insight into what goes on in people.

The conditions under which evaluation studies are carried out, as we saw in the previous sections, are usually far from ideal. Methodological problems abound and there may be insurmountable logistic difficulties in setting up a study which conforms to scientific requirements.

It is very difficult to change people's psychological characteristics

If the goal is to produce long-term, stable changes in people's habits of thought, feeling, or behavior, then it is pure wishful thinking to imagine that this may be produced in a few sessions or activities. Of course, people can have intense, drastic 'conversion experiences' such as that undergone by Saint Paul on the road to Damascus, but the ambitions of most workers are (hopefully) more mundane than this.

We need to think long and hard about what we are really trying to achieve

Even if we were to succeed in producing the psychological change which we were aiming at (to improve a child's 'self-esteem', for example), the expectation that this will protect the child against psychological disturbances is still only a theoretical one. We still have no guarantee and even less empirical confirmation, that the child's resilience has been strengthened.

However, our failure to detect psychological changes after activities which all concerned regard as extremely worthwhile and productive, may simply indicate that we are looking for effects in the wrong places. Perhaps this was the main reason for the discrepancy in the first study between the participants' enthusiasm and the lack of measurable effects. The children may have changed in ways that our scales could not detect; and why should we only look for effects in the children? Several teachers in this project reported that giving the lessons had opened up new ways for them to relate to the children and had given them new perspectives on learning. That, surely, has to be regarded as a positive outcome.

The Bottom Line

In summary, a failure to measure positive effects may not mean that there is something wrong with a project; the fault may lie with the methods used to evaluate them and the theoretical models used to justify them. I have argued for more emphasis on ‘plan’ and ‘process’ evaluation, because these can often lead to major improvements in a project. More generally, I have recommended a phenomenological approach, in which we stay as close as possible to the experience of all concerned. We need to broaden the concept of ‘evaluation’ in order to be able to do justice to the value of creative activities. Instead of relying excessively on abstract models from clinical or developmental psychology, we need to go deeper into the questions of what happens during these activities and what children get out of them. By using quasi-clinical measurement techniques, we may fail to catch the phenomena we are looking for. If we do not take urgent steps to revise our paradigm of evaluation, there is a danger that many worthwhile projects will end up being sacrificed on the altar of ‘evidence-based good practice’.

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¹ The author would like to acknowledge the valuable contributions of Lineke Sassen, Nina de Ruuk and Claudia van Diessen, who carried out the studies described in this chapter.

² Some agencies take advantage of this and use the label of 'prevention' as a way of doing therapy on the cheap. Although there are many good reasons for wanting to operate outside the aegis of professional organizations, this can lead to irresponsible practices, for example ones which reactivate traumatic memories without offering the sustained follow-up which is often necessary to cope with such experiences.

Chapter 16

Needs Assessment of Asylum-seeking Children in St. Petersburg

Oleg Pachenkov and Katerina Guerassimova

Introduction

This chapter is based on the results of two research projects by scholars from the Center for Independent Social Research in St. Petersburg in 1999-2000 and in 2001¹.

The first of these studies was devoted especially to the assessment of the needs of children from asylum-seeking families and was commissioned by UNHCR. The research was undertaken in order to assess the needs and problems of children (under 18 years old) of refugees and asylum seekers in the psycho-social and educational fields in St. Petersburg and work out the recommendations on further efforts with this target group. The second study, which was carried out in 2001 was supported by the Swedish organization “Rädda barnen” and was focused on the broader topic of needs assessment of children of all types of forced migrants. For this reason, my focus here is mainly on the results of the first study while the data collected in the second study will be drawn on to provide typical examples and apt illustrations.

Process and methods of the research

During both projects researchers visited several families to learn more about cultural traditions, family structure, living conditions, problems and strategies of coping with the situation, of the groups involved. They also visited sewing and hair-dresser courses for female refugees at the Red Cross, as well as English and Russian language classes and kindergarten there. Observations in the markets, where many Afghan men work, were also carried out in order to understand better the families' life conditions. People from the communities were also involved as co-researchers and interpreters.

During the project, data was also collected through interviews:

- *Interviews with experts (21) such as:* officials at the St. Petersburg and Leningrad region Migration Service, employees at St. Petersburg's Branch of the Red Cross, teachers and directors of the schools where refugee and asylum-seeking children are studying, leaders and members of ethnic communities, leaders of NGOs, officials from the City Committee for Education and the District Department of Education.
- *In depth interviews with teenagers* 13-18 years old, 5 interviews and several discussions in family group interviews. All informants differed with respect to family composition, marital status, employment status, income, and involvement in community life.

- *In depth interviews with parents (7)* These also reflect different experiences and the current situation of families. Parents were from Afghanistan, Jordan, Rwanda, Iraq, Ethiopia; the number of children per family ranged from 1 to 6.
- *Focus-group discussion (1) with 5 Afghan women* who attended the courses attached to the Red Cross (interpreter used).
- *Survey questionnaires for formal interviews* with parents and teenagers:
 - 48 questionnaires with parents.
 - 51 questionnaires with teenagers.

The situation of asylum seekers in St. Petersburg

Statistics and research sample

The research was focused on asylum seekers living in St. Petersburg. According to the Migration Service data, the following numbers were registered on 1 October 1999:

- *94 families of refugees and asylum seekers with 260 children under 18, among which there were:*
 - 60 asylum-seeking families
 - 11 families who had applied for refugee status and had passed the initial consultation.
- Most of the *families* were from Afghanistan (90-95 per cent).
 - 100 per cent of the refugee children and 90.1 per cent children of asylum seekers were Afghan.

The number of asylum-seeking families with children who came from Iraq, Rwanda, Jordan and Ethiopia was smaller but they were also included in our study (Table 1)

Table 1: Distribution of children by age, country of origin and status of parents

Country of origin	Status	Number of children	0-5 y.o.	6-10 y.o.	11-15 y.o.	16-17 y.o.
Afghanistan	refugees	35	7	15	11	2
Afghanistan	asylum s.	156	40	53	48	15
Jordan	asylum s.	2			2	
Iraq	asylum s.	2		2		
Rwanda	asylum s.	2	1	1		
Subtotal		207	48	71	61	17
Afghanistan	initial cons.	40	17	16	5	1
Algeria	initial cons.	1				1
Iraq	initial cons.	3		1	2	
Congo	initial cons.	1	1			
Sudan	initial cons.	1	1			
TOTAL		253	67	88	68	19

Source: Guerassimova et al., 2000

In addition, to this data I would like to add that of the 94 families with children who were registered with the Migration Service:

- only 19 families were single- parent families.
- one child was without parents and (officially) accompanied by his or her brother.

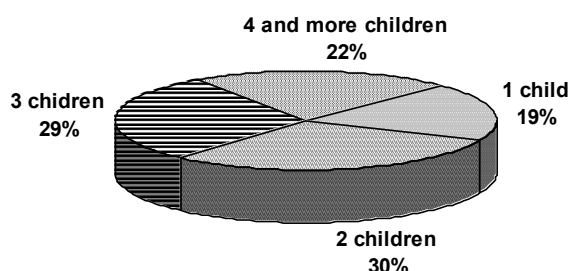


Figure 1: Distribution of families (Registered in Migration Service) by number of children (in per cent)

Source: Guerassimova and others, 2000

In this chapter, I will say a few words about the general situation of the asylum-seeking families in St. Petersburg and I will dwell on the issues which concern the situation of children in more detail.

Legal status

Only high status militants or political activists have any real chance of obtaining *refugee status* according to "The Law of Russian Federation on refugees". The article on status of *temporary residence* has not yet been passed and the number of asylum seekers and illegal migrants is thus extended artificially. This means that since the status of temporary residence does not officially exist, people who did not get refugee or asylum-seeking status have no other status and their stay at RF territory is therefore illegal as they have no reasons to stay. The process of status determination might last several years. This means that applicants have a semi-legal status which prevents them from finding appropriate jobs or otherwise plan for their future.

People with the status of refugees and asylum seekers have to register with the Migration Service every three months in order to obtain residence registration or documents for work or study. At these intervals, they thus have to renew their residential registration, or change medical insurance and other documents connected with residential registration. Only 35 per cent of families according to the parents' survey and 27.5 per cent of families according to the teenagers' survey had residential registration and about half of them were not registered at their home.

Documents and registration are rather frequently requested by police and other authorities, especially from men. All members of the family, as a rule, are registered in the same document and it is dangerous to leave home without documents, so members

of the families have to keep together. It is less risky for women and children to go out alone. Sometimes men use their children as so called “visa”: they take their children with them in order not to be arrested. In that way children can be involved in situations of aggression and violence.

Legal issues are vital because problems with legal status and registration cause problems with housing, medical care as well as employment and affect the children’s educational possibilities.

Occupation and income

Our data shows that about 40per cent of women and 60per cent of Afghan men have higher education. But now they have almost no possibility to apply their professional skills and earn money in a legal way.

Almost all Afghan men in St. Petersburg work in the market as vendors or loaders, Jordanian and Iraqi men work as service staff in snack-bars. They work without permission, which is a reason for fines, arrests, beating by police and confiscation of goods. A man can earn 100-300 USD per month in this job. Young men work as loaders in the market and earn less.

Most women run households and care for their children. Educated women would like to work and earn money for support of the family but the only available job is in the market and it is traditionally male. The best jobs they can find are workers for the Red Cross, or in the Afghan café. Some of them cook food at home and then their sons sell it in the market.

Assessing the financial state of the families is quite difficult. According to information about income given by informants, the average income per person in Afghan families is about 20 USD per month. There are reasons to doubt this data because in the interviews it turned out that some families pay more for rent than they earn. They probably do not count financial support from relatives or friends as income (18per cent of our informants are supported by relatives and friends). Observations made by researchers at the homes of refugees and asylum seekers, however, does confirm the fact that a majority of these families live in a situation of financial shortage and poverty.

Housing and Living conditions

On average, half of the family income is spent on rent. The cheapest housing is in a hostel, where a room costs 15-20 USD. Separate apartments rented by asylum seekers cost from 200-300 USD per month. According to the parents’ survey,

- about 30 per cent live in a hostel,
- about 60 per cent - rent an apartment.

Living conditions are rather bad. It is common for three to four people to live in one room. The worst situation we met was when 14 people shared a two-room apartment and nine people lived in one room. Such crowding means that there is no place for children to study or play. When individuals of different genders live in one room (often even with their parents) it could also cause undesirable emotional pressure. It is also dangerous for inhabitants’ health: tuberculosis is one of the most wide-spread diseases

among migrants from Afghanistan. In some dwellings, sanitary conditions are very poor, without hot water or a bathroom, and there are rats.

Some families from our sample have already moved ten to fourteen times in the past eight years. On average, a family moves twice a year. 40 per cent of our informants (parents' survey) had been living in their apartments less than six months at the time of the study.

Nutrition and health

According to information given by a Red Cross worker, about 80 per cent of asylum seekers need regular medical assistance. Almost every Afghan woman suffers from anemia. As parents said, children under the age of 12 are sick an average of five to six times a year. Medical assistance at the Red Cross is limited to help people with the most common and dangerous diseases. There are no particular specialists such as speech therapists, neuropathologists or dentists, who are needed badly, especially for children. The Red Cross has agreements with some medical services and often sends patients to them or to the district polyclinic. Asylum seekers know about it and do not want to spend money for an "odd" trip to the Red Cross in order to be sent somewhere else; especially in the situation when each trip in the city is rather dangerous and very stressful for them. From their point of view, medical assistance should ideally be provided directly by a polyclinic nearby but sometimes they cannot get care there because they lack residential registration. Schools and kindergartens provide elementary medical help and a check on the children's health.

Parents pointed out the absence of fruits in their children's rations and complained that food assistance includes products that they are not accustomed to use such as buckwheat instead of rice or pasta, for example.

There is a problem with infants' nutrition: it is rather expensive and mothers cannot get it from district polyclinics because they are not registered.

Assessment of children's needs

Notably, educational and psycho-social needs of the children are not considered to be a first priority by parents and experts; they are only considered after more serious problems with registrations, housing, job for parents, money, medical assistance are addressed. It reflects on children in different ways such as the absence of a clear strategy for education, psychological tension, and difficulties adapting to the Russian language and culture.

The questionnaire for teenagers asked "What is the most serious problem for your family at the moment?" They ranked their problems as follows:

- 38.5 per cent financial problems
- 16.9 per cent - problems of a divided family
- 15.4 per cent - housing problems
- 6.2 per cent - absence of documents
- 4.6 per cent - employment
- 4.6 per cent - uncertainty of the future

When teens were asked about their personal problems: “What is the most serious problem for you personally?” they responded as follows:

- 38.4 per cent - problems connected with education (they could not attend or they had at trouble school).
- 13.9 per cent - financial problems
- 12.3 per cent - lack of documents.

Regarding children in general, the mothers stressed the following main problems for children (in interviews and at the focus group discussion):

- Poor housing conditions and lack of space for children.
- Age gap between asylum seekers' children and their classmates that causes psychological difficulties.
- The schools demanded high additional costs.
- No normal relaxation on holidays; almost all children spend their summer holidays in the city although they have poor health and awful living conditions.
- Poor involvement in extra-curricular activities because of a shortage of money and lack of information about free hobby groups, clubs, etc.
- Lack of time to learn their native language and culture.
- Fear of police caused by constant check-ups at hostels, schools and in the markets.

I will elaborate on some these problems in more detail below.

Educational needs

Legal provisions and official position of the city authorities

Under the Constitution of the Russian Federation and the Russian Federation Law “On Education”, every child under the age of 15 has the right to free secondary education irrespectively of the parents’ citizenship, status or registration. Article 43 (part 1) of the Russian Federation Constitution follows article 13 of the Universal Declaration of Human Rights, which includes the right to education among other basic human rights.

Based on these legal regulations, the municipal Committee for Education made a decision to admit all children to state educational establishments in St. Petersburg. When interviewed, one official from the Commission for Education said that the refugee and asylum-seeking children must be admitted to educational establishments, with all documentation confirming the fact of their registration at the Migration Service. If the refugee has no such documents, the parents must approach the District Committee for Education for a paper that will be regarded as a document allowing the child to be admitted to a kindergarten or a primary/secondary school, but without the official registration of the fact of their admittance to school.

Admittance to educational establishments and certification

24 of the children in the study who were between 2 and 6 years old could potentially attend kindergarten. Only 13 children actually did so. Kindergartens are not very popular among parents, since the majority of mothers do not work and feel little need for this service. This is especially typical for religious families and families with many children.

For those who do attend, parents feel that it helps their children to learn Russian and that it is a good preparation for school. This was confirmed by our survey: all the children who attended Russian kindergarten are now going to school. A majority of these parents - at least the fathers - have a higher education. They usually occupied high positions in Afghan power structures and that is why they had to emigrate when the political regime changed. Some of them had studied in the Soviet Union and can therefore speak Russian rather well. Russian kindergarten was not perceived by them as dangerous compared with those migrants who less were acquainted with Russian culture.

Residential registration and medical certificates are necessary documents for a child to be enrolled in kindergarten. Parents, who wanted to enter their children, may face the problem of not having the necessary medical certificate or having one only in their native language. As many of those interviewed did not know that the Medical-Social Service at the Red Cross could help them, they had the document translated for a charge (10 USD). In general, however, parents did not report having had any significant difficulties when enrolling their children in kindergartens.

The number of school aged children in the study was 63 (of 92 involved). 54 of them attended school (85.7 per cent). The teenagers in the study were enrolled in twelve different schools in the city.

A child needs the same documents to be admitted to a school as to kindergarten: residential registration or a document about official registration in municipal bodies, or a document from the Migration Service. That is all, according to the directors of the schools whom we interviewed. Parents were, however, not as optimistic concerning the availability of education as the representatives of the city and school administration were.

The majority of the parents noted that they faced certain difficulties when trying to place their children in school. The most frequent problems were the following:

- the lack of residential registration and necessary documents
- expenditures for medical certificate
- poor knowledge of the Russian language among children which affects studying and poor knowledge of the Russian language among adults for establishing contacts with the school administration.

In one of the interviews, one informant thus mentioned that his children were admitted to school only "after presenting some things" to the director. Another family had to spend about 30 USD for school building maintenance so that the child could be admitted to the school. Some families had to spend much more. Many parents treat the placement of their children to school as the favor done by the director personally.

Difficulties caused by legal issues

According to the director of one school, the main problem with respect to these children is the limited term of validity of the documents (three months) and the constant need to update them. Compliance with this rule is controlled by the District Department for People's Education (RONO) and by the police. The inspectors come to check the students' documents about four times a year - twice by the RONO and twice by the department of passport control at the police authorities. Shortly before such inspection, the children rush to get the necessary documents and many thus do not attend school for

a few days. The director therefore suggested that registration for the entire academic year would be more appropriate.

One of the serious problems connected with school and education is the lack of library facilities. If the children do not have registration, they are not allowed to borrow books from city libraries and therefore cannot prepare for their Russian literature classes.

Financial difficulties

The majority of asylum-seeking families lives in a situation of financial shortage and needs special forms of economic support. Most such privileges for school children are granted by schools. According to the information given by the Committee for Education, when a refugee child has been admitted to an educational establishment and entered in the files, he or she is eligible for a number of privileges *pari passu* with other students. These privileges include a monthly transportation ticket and free breakfasts at school. Children from families with more than three children under 18, and low income families, are entitled to this assistance. Most of our informants do not pay for breakfasts, monthly tickets and school guards.

If students are not registered in school documentation, they may not get the student's card that is necessary for getting a monthly ticket. Some children who were born in the country of origin do not have a birth certificate in Russian that is needed to buy monthly transportation ticket at a low price.

Every class excursion costs about 1-1.5 USD. Many parents can hardly afford to pay for it and sometimes their children stay at home. The children then feel excluded from the collective and cultural life of the school and the city. Notably, five of the 19 interviewed teenagers who attended school (i.e. 20per cent) had never joined the class for excursions or cultural events.

Every party or holiday at school is about 1 USD; 25.5per cent parents do not pay for it because of a lack of money, which sometimes causes conflicts with other parents or teachers.

Language Competence

The survey of teenagers indicates their language competence as they themselves estimate it:

Russian language:

37.3per cent understand and speak Russian fluently or fairly well;

23.5per cent can read Russian fairly well;

19.6per cent can write Russian fairly well.

Mother language competence:

94.1per cent understand well;

92.2per cent speak fluently or well;

37.3per cent teenagers can read well

29.4per cent can write well

19.6per cent of the interviewed teenagers are semi-literate or illiterate.

In other words, more than 60per cent of the teenagers recognize that they lack a sufficient competence in understanding and speaking Russian. Importantly, in addition, almost 20per cent of interviewed teenagers are semi-literate or illiterate. 80per cent of

their family and relatives do not speak Russian. For communication with parents almost all children use their native language.

Russian and English courses at the Red Cross as a rule are attended by people between 8 and 18 years old. Many children speak English better than Russian at the first stage. English courses are very popular and children ask for a more extended program.

Russian language courses at the Red Cross are not as effective to help children who are between 10 and 15 years old to overcome the language gap with Russian peers. The courses in this form are more suited for housewives or newly arrived migrants who need basic language knowledge for elementary communication.

Teachers' attitude and assessment of pupils' progress

Teachers mostly seem to show tolerance and goodwill with respect toward refugee children. According to the teachers, refugee children actively communicate with their classmates. In many teachers' opinion, Afghan children "are very clever and gifted", and they therefore have no problems with their studies. The children study well, they understand all the tasks. Their written Russian, however, in the teachers' opinion, remains the main problem for these children. 36.8 per cent of Afghan schoolchildren (from the teens' survey) did not know Russian at all when they first entered school.

In one school in St. Petersburg, all the asylum-seeking children study in a special class with so-called "compensating education". It differs from the ordinary class by the individualized teaching according to the pupil's ability. The director of the school said in the interview: "It's only the name; they have the same program. There are only fewer pupils in the class, so I can pay more attention to them" (eleven students are in this class in comparison to the usual number of 25-30 students). Some experts, however, would not agree with the claim that fewer students is the only difference of the class with compensating education. There are also disadvantages of this system, in terms of: social and language segregation of the students, which gives these types of classes very low status among other pupils and teachers and seem to affect their chances to continue in other educational institutions, which amounts to institutional discrimination.

Parents' opinion

According to parents, the educational level at the St. Petersburg schools is obviously higher than what the children could reach in their native country. Practically all parents expressed the wish that their children study.

However, a relationship between teachers and parents is rarely established. In some schools, the class leader and the school administration have no contacts with the parents of the asylum-seeking children, because mothers in these families do not speak Russian, while fathers work much and are in no way connected with school. In general, however, all interviewed parents answered that teachers treat their children "well" and "benevolently". Only three informants consider that the teachers demonstrate roughness and tactlessness towards the children.

Parents had the following suggestions for a better organization of the children's education:

- 41 per cent of the parents believe that their children should study with Russian children but almost all of them at the same time think that they should be taught the native language and culture.
- 26.8 per cent of the informants would like their children to study with their compatriots, according to special programs developed for refugees.
- 6.5 per cent of the respondents expressed the wish that their children attend a school with religious Muslim education.

In comparison, teenagers seem to be less concerned about this issue. Out of 19 teenagers interviewed:

- 6 (33 per cent) want to have more compatriots in their classes (five of them want to study in nationally homogeneous class),
- 3 (16 per cent) do not want it and
- 10 (51 per cent) do not care about it.

The younger children would like to go to school where there are Afghans already, but school authorities are against such a concentration of asylum-seeking children, because they would require more attention, they would speak Afghan among themselves and would form their own isolated group.

Teenagers as a vulnerable group

51 questionnaires with Afghan teenagers (aged 11 to 19) were conducted. One of the main problems with them is that there are those of school age in the asylum-seeking category who do not attend school at all (see Table 4). Their parents explained this as a problem of documents and the family's financial situation, but in depth interviews disclosed many other reasons. Documents are not the most serious obstacle; there are others:

- *Mismatch of the knowledge of the Russian language and the teenagers' age.* We can see that teenagers are the most vulnerable group with respect to access to education. All children who arrived in Russia before the age of 9 attend school at the moment. However, teenagers who arrived to Russia when they were 12 to 17 years old cannot learn Russian easily and school authorities register them unwillingly because they would be placed in the 1st or 2nd grades. Among 54 children who attended school, 19 are older than their classmates (35.8 per cent). It causes discomfort in communication and difficulties in finding friends among peers. There were two teenagers among our informants who refused to go to school because of the big age gap between them and their prospective classmates.
- *Age limits.* As school education in Russia is guaranteed until the age of 15, school administration has the right to refuse all children over 15. Newly-arrived teenagers who are older than 15 have the only option of taking the courses offered by the Red Cross.

On other hand, there are additional *cultural factors*, which prevent newly arrived teenagers from attending Russian schools. There are different typical scenarios for males and females. Teenagers over 15 are considered to be adult enough to undertake traditional "adult" work: at the market for men, and in the household for women. These

adolescents thus have the choice of either going to a class where children are much younger or working, either at home or in the market.

Both working teenagers and those who stay at home are rather isolated in their ethnic circle. The former communicate mostly with co-workers in the market, the latter with relatives. A big part of these teens pointed out that they wanted more opportunities to communicate with Russian peers than they currently have. One third of the working teenagers want to study. They also would like to work in a technical profession in the future and hope to attend evening courses, for example, to become drivers or technicians. In addition, 3 out of 12 teenage girls who are currently staying at home would like to go to school.

Leisure activities and relaxation

The children were asked about what their interests are, and the answers are listed below

- Painting
- Modeling
- Sports and sport games (football, basketball)
- TV, videos
- Science (Biology, Math)
- Native language - courses attached to children's room (Red Cross)
- English language - courses attached to children's room (Red Cross)
- Computer
- Music, dancing

19 of the 51 teenagers attend different courses (sports, language, on school subjects). The most popular courses that the teenagers want to attend are:

- English,
- computer courses,
- sports,
- native language courses.
- boys like football and different kinds of games and competitions
- swimming (popular among both boys and girls).

In conclusion, the main difficulties that asylum-seeking children have in pursuing their interests are the following:

- Financial problems (inability to pay for courses, or obtain free entry)
- Social problems (small number of free courses, lack of information about them)
- Cultural obstacles (especially for young women who are not allowed to go alone in public spaces)
- Psychological problems (fear of police while moving to the courses, parents' lack of understanding of children's development needs)

One of the most serious problems is the children's summer break. Almost all the interviewed children spent their holidays in the city with few outings to the countryside.

In our sample only one teenager had been to a summer camp organized by NGO. Working teenagers have no holidays at all.

Conclusion

As both studies showed, asylum-seeking families in St. Petersburg live under rather poor and limiting social conditions which cause health problems among asylum-seeking families, including mental health problems. Realization of the right of children to an education is complicated because of legal issues. However, educational needs of children are often satisfied and the children almost have no psychological problems in schools with teachers and have rather good relationships with their peers. The language problems, however, still matter for many families and it is especially important for children for whom language troubles cause problems in communication with their peers, which is a very important part of socialization. In addition, for some of the older children, a mismatch of age and the grade in the Russian schools make attending school difficult. We could thus generally characterize the conditions under which asylum-seeking families with children live as fairly tolerable even though there are several problems, which have no real solution in the city/country under the present circumstances. As mentioned above, these are primarily problems of employment and education, general living conditions and health care.

On the other hand, it is no secret that people who are officially granted the status of asylum seekers form just a small part of the whole quantity of migrants living in the city. According to qualified estimates the number of illegal migrants – people who did not apply for any status (for instance, economic migrants) or those whose status applications were rejected, but who remain in St. Petersburg are between 300,000 and 1 million, which is about 10-20 per cent of the city's population. Importantly, these illegal migrants sometimes live in even worse conditions than asylum seekers and refugees who were described above; they have much more difficulties in placing their children in schools because of their illegal status. Thus, what we have described in this chapter is just the smaller and in some sense, the better part of the “iceberg”, referring to the situation of forced migrants in contemporary St. Petersburg and Russia. Even though this conference is primarily concerned with the situation of asylum-seeking children, we believe that a “humanistic” approach requires us to pay more attention to investigating the situation of the broader group of children from the families of forced migrants in Russia. Some studies in this field are those of for example Guerassimova and Pachenkov (2001) and, Brednikova and Pachenkov (2002) and we look forward to sharing these findings with colleagues and interested experts in the near future.

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¹ Text is based of two analytical reports written by K.Guerassimova (2000) and by K.Guerassimova and O.Pachenkov (2001). Please note that the legal situation has changed since that time and the humanitarian status was adopted by the RF which changed the position of many international migrants for better. It is worth noting that about 80per cent of those who had been involved in the study migrated to third countries over the next 2-3 years.

Chapter 17

Changing Family Relations and the Situation of Children: Kosovo Albanian Asylum Seekers in Sweden

Karin Norman

Introduction

The title of this chapter touches on a number of problematic concepts and relationships, which need clarification, such as those of the family, the child and change. Implicit in this specific context of the asylum-seeking process are also assumptions about culture, difference, and ethnicity.

Anthropologists, as other social science researchers, are confronted with trying to understand and analyze the ways in which people in different social situations attempt to make sense of the world; how they make distinctions between themselves and others; how they classify events, things and persons and the relationships between them. Such meaning-making processes engage us all throughout every phase of our lives and are closely tied to ongoing social experiences and practices, both on a local and a global level. This means that being cultural is a social and relational activity which is conditioned by the means at our disposal. In this way, the meanings we create are necessarily, to some extent, shared but also contested, and open to shifts and changes in relation to everyday practices and experiences and thus also to the local and global political and economic processes of which we are part. From this point of view, then, 'people *live culturally*, rather than *live in cultures*' (Rapport and Overing 2000: 97). This perspective has important methodological implications for how we study 'others' so as to grasp the processes that entail such embodied experiences and meanings. It also raises the very complex issue of distinguishing between what is shared and what is more open to change and individual differentiation.

The issue of culture and ethnicity is a conspicuous theoretical and political problem in relation to refugees/asylum seekers in Europe and the policies that regulate their lives. Among policy makers, bureaucrats, as well as among many researchers, culture is reified as a collective 'trait' or sets of traits, thereby essentializing difference and ethnicizing the refugee other (cf Graham 1999, Norman 2004, Stolcke 1995). In a similar vein, refugees may be reduced to an undifferentiated group with only one common experience, 'the refugee experience', without taking stock of the impact of ongoing activities and the subjective experiences of individuals (Eastmond 1998, Malkki 1995).

Cultural ideas and values, however, are not static and unchanging, which raises the complex issue of identifying and explaining change. With regard to changes in the family and household, for example, it must be specified which aspects are in focus and how these relate to and influence each other. Do changes refer to family and household composition, to relationships between members, or to the experiences and memories of the different

members; or to all of these? In other words, on which levels do we seek signs of change and their complexity of meanings and what (explanatory) connections are we looking for? To identify and understand change, it is important to see social life in terms of both structure and process. This implies that social and cultural changes take place through the shifting everyday practices of the actors in relation to politically and economically formative structures.

In approaching issues concerning children, I first wish to question the assumptions that underlie the common reference to '*the child*'. In much writing and perhaps significantly in the UN Convention on the Rights of the Child, there is a strong tendency to universalize childhood and the meaning of being a child. The point of reference, to a large extent, is the modern Western concept of childhood and children where children are seen in terms of 'development' and are placed outside economic and political decision-making (James and Prout 1997, Toren 1993). Distinguishing between children and adults raises the question of whether such distinctions have the same meaning for the people concerned as for policy-makers, bureaucrats and researchers. This is not a question that can be answered without carefully taking note of how experiences of age, gender, knowledge, pre-flight life circumstances, and policy measures emerge and are given meaning in social life.

So, when considering what happens to children in an asylum-seeking family (or a child on its own) and what assistance should be given, any analysis must take the following into account:

- To start with, the assumption must be that children are active subjects within any social context, also in the family. Children are not just acted upon, they act and influence actors.
- Age and gender must necessarily be problematized. What notions of gender and age prevail? How do age and gender relations permeate family and household constructions, what contradictions and conflicts do they engender?
- What is the social, political and emotional history of the family? (Class position, education, rural/urban background, experiences of repression and violence).
- What are their relationships to 'home'? (In this case, Kosovo) What are their obligations, hopes, fears, and their relationships with compatriots in Sweden?
- And not the least: what are the effects of the asylum-seeking process? How the varying implementations of local and national refugee policy penetrate family relations and affect the children in a myriad of visible and invisible ways.

Aspects of family changes in the asylum-seeking process

One Albanian family/household consisting of a widowed mother and her two adult children, one an unmarried daughter, Lulieta, and the other a son, Arben, and his wife and their three young children, may briefly exemplify some of the complex dynamics to which I previously referred.

The different members of this family, that I call Fishta,¹ had shared a household in Kosovo since Arben married several years before arriving in Sweden as asylum seekers. During the years when they lived in a few different refugee reception centers while waiting for a residence permit, Arben and his wife and children were placed in a small apartment and his mother and sister, Lulieta, were placed together in another separate one-room apartment. This was the first time in their lives that the young children did not share a

household with their aunt and grandmother, and it was the first time that the brother and sister did not live under the same roof. This was a change of circumstances which would prevail and appear more and more 'natural' to the children, and preferable to at least Lulieta and her sister-in-law, Arben's wife, as the years passed.

According to Swedish legislation, these persons were not considered one family with the result that Lulieta and her mother, the children's grandmother, did not receive a residence permit when the rest of the family did. They were seen by the authorities as constituting a separate family/household unit and their relationship to the children were not considered close enough. For the children especially, this meant several years of fear that their beloved aunt and grandmother would be sent away, when they themselves were going to stay. During this long period the grandmother was most often ill, depressed and sat smoking incessantly which in time also appeared to distance the children from her. When Arben and his wife and their three children received a residence permit, they moved to a town in southern Sweden. It was accepted by the Immigration Bureau that mother and daughter also change residence to live near their son/brother. But instead of sharing an apartment and household, as one might have expected since it was accepted by the authorities and also given the family's own comments about how close they were and that they had always lived together, that this was 'their tradition'; they nonetheless kept to the solution of separate households. They continued visiting each other every day, however, which meant that grandmother and aunt Lulieta came to visit Arben and his family.

There was no radical change in their relationship but it appeared that the influence of the grandmother/mother-in-law in the household diminished somewhat, whereas a greater dependence between mother and her still unmarried daughter Lulieta seemed to develop, especially since the mother was constantly feeling unwell and was incapable of learning Swedish. This may have been a burden for Lulieta, but after some time it also became apparent that Lulieta felt a greater freedom living apart from her brother as she was less burdened by his domineering ways and whims. However, she missed the children so much that she could not abstain from visiting her brother's house every afternoon/evening. When Lulieta and her mother finally did receive a residence permit after many years, they continued to live together separately and the children came to accept these changes as part of everyday life, satisfied that grandmother and auntie were not sent away.

Should Lulieta marry, then, she said, her mother would not live with her, 'that is not our way', she explained. That is, in general married couples in Kosovo live, at least for a time, with the husband's parental family, seldom if ever with that of the wife (I shall return to this issue of household locality and family ties below). Should she marry, her mother would go live with the brother again. To live alone would be unheard of. Under such circumstances they would then go back to 'tradition', as it were. And no one would have to declare who was burdened by whom.

These few aspects of change that I have described, very briefly, point to the several levels on which changes may be perceived, emotionally experienced, and analyzed. Changes that at first may appear to the actors to be both difficult and incomprehensible, given their age, social experience and social position, shift significance over time and in relation to ongoing experiences. What is perceived as 'traditional', and so unchanging, by outsiders or referred to as such by the actors themselves may very well prove to be quite the opposite, especially as changing political and economic relations are taken into account. The possibility of Arben to live on his own with his wife and children in Kosovo were hampered, to an extent, by tradition, since his mother was widowed and he was the only

son: the obligation of sons is to care for elderly parents and minor siblings or unmarried sisters. His mother and sister were in need of his 'cultural protection', more so than his economic support since the mother did have employment, until she was sacked by the Serbian authorities for supporting the Albanian cause. For Arben, the economic situation in Kosovo was such that he did not have the means to build or buy a house of his own for his wife and children. In Sweden, some of these conditions changed, which affected their family and household organization. The new circumstances influenced both their perceptions of change and the ways in which family members dealt with it.

Forms of relatedness among Kosovo Albanians

After several periods of fieldwork among Kosovo Albanians, in Sweden and in Kosovo, it has become apparent to me that for most Albanians, 'the family' evokes strong and often ambivalent feelings. Being part of a family is a prerequisite for being conceived of as a 'social person'.

When they talk about kin and family, people will commonly speak in terms of blood, (e.g. 'we are the same blood') and one counts one's kin through males in ascending and descending lines, as well as collaterally (cousins). Ideally, then, the family and kinship system as well as the household organization among Kosovo Albanians stress the patrilineal and patrilocal links between members. Ties with maternal kin are not conceptualized in terms of blood, but such ties may be emotionally and socially very close. However, in relation to maternal kin one does not have formal economic rights: once a woman is married, the economic responsibility for her and her children is that of her husband's family. (In practice, it may be possible for a woman to receive some forms of help from her brothers especially in situations of crisis). Residential units and households are ideally organized around related males and their wives and children. In principle, and often in practice, the sons of the family remain at home when they marry, while their sisters leave and join other households as they wed (cf Reineck 1991). This may vary regionally and many urban Albanians stress that the extended family-based household is much more prevalent in rural areas. The distinction between the urban and the rural is often referred to among especially urban Albanians as very important. Towns and urban areas, however, are in many ways intertwined with rural areas given the mobility of many persons, especially since the 1980s, and even now more so through the many displaced villagers who reside in Prishtina, the main urban area.

Commonly, in much literature on the Balkans or Southeast European societies, the large extended or joint family (what is often termed *zadruga*) has been a primary focus, giving an impression of some age-old unchanging 'tradition'. However, the joint family is often more of an 'ideal type' than a depiction of actual family and household composition (cf Bringa 1995, Malcolm 1998). Households or domestic units may instead expand and contract, changing over time as members' life situations change and at some point many households consist only of the nuclear family: a married couple and their unmarried children. One important feature of many family/household units, for example, has been labor migration, primarily of males (Reineck 1991). In the mid- and late 1980s and especially the 1990s, Albanian (labor) migration was accelerated by political repression and their massive expulsion from the labor market by the Serbian government. Such processes of change have contributed to the reconstitution of many households and family relations. In this way, many Kosovar families are not unaccustomed to rapid change.

Family relations, patterns of locality or residence and kinship 'systems' are then closely linked to political and economic processes, with which every family must find ways of coping and integrate into their own relationships (cf Goody 2000). Family relations and the everyday experiences of family life, create emotionally strong ties of love, conflict and dependence between family and household members which, in turn, will influence future preferences and choices and the general outlook on what 'family' stands for. Being part of a family is also being part of the social reproduction of power relationships, primarily in terms of gender and age hierarchies and economic resources.

It has often been noted in the literature on Kosovo that the Albanians have a very high birth rate (Reineck 1991), which was one of the 'facts' about Kosovo Albanians to which Western media constantly referred with regard to the many refugees seeking asylum in European countries throughout the 1990s. It has been a 'fact' implying the 'backwardness' or 'traditionalism' of Kosovo Albanians, their 'otherness' as Muslims (which was also used to nourish Serbian nationalistic fear of losing Kosovo). A different aspect of this otherness is that it may enter into the underscoring of Albanian ethnic exclusiveness as 'a people', part of a more conscious ethnic-political strategy. To Albanians in their everyday lives, a high birth rate has been, and for many still is, a question of an economic and social/cultural need for sons; it is also connected with rural versus urban life, class position and educational level. But if people feel they must 'explain' why they have many children they will often say, as one young girl happily exclaimed, 'we Albanians love children!'

Children in an asylum-seeking family, an ethnographic case

The following ethnographic example attempts to show how a few children of different ages have experienced and managed their existence in relation to their changing family circumstances, which in turn are closely linked to the asylum-seeking process. Descriptively, the examples are meant to problematize the meaning of children, being a refugee, culture and that of family life, and linking them back to the earlier description of forms of relatedness among Albanians and to the case of the Fishta family.

In the early 1990s, Fatbardha, a middle-aged woman, took her four children, their passports and got on a bus, thinking that she was headed for Germany where her brother lived but she ended up instead in Sweden. Strains of her marriage and the demands of the extended family constellation, with a domineering mother-in-law, increasing political repression and an intermittently imprisoned husband, finally made her feel forced to flee to save her children. Given the patrilineal (and patriarchal) bent of the Kosovo Albanian family structure, Fatbardha should have left her children, especially her sons, with her husband, i.e. his parental family. However, Fatbardha was not about to leave her children with a mother-in-law she could not stand. The children, however, were close to their grandparents and did not really understand why they were leaving.

In Sweden, this family lived for longer or shorter periods in various refugee reception centers or 'camps' as they often are called and like the Fishta family they applied and waited several years for a residence permit. Fatbardha became the head of family and household and resided over her daughters and sons, the youngest of whom was six years old. While she waited in Sweden, Fatbardha was intent on keeping her family together and she was careful not to get caught up in the gossip and reciprocal demands of her compatriots. Compatriots are not always a resource: they may, under certain circumstances, be experienced as too controlling and demanding. She was socially vulnerable given her in-

between, precarious, status of 'single' mother especially with young teenage daughters, who would soon be marriageable. She started, perhaps not completely consciously, to create a new image of herself – as a drab woman who apparently did not care about her looks, which was quite different judging from photos taken in Kosovo, and quite different from her young daughters' wishes and their preoccupation with their own dress and appearance (cf Norman 1997). Her isolation and not having access to paid work, and being dependent on the control of the immigration bureau and later, after finally receiving a permit, dependent on the social welfare bureaucracy, she became emotionally more dependent on her daughters and kept them close to her. Her complaints of aches and pains, fears and worries have echoed throughout these children's lives in tune with the ad hoc policies that have set boundaries to their movements. How have the children managed?

In the spring of 1994, in order to manage the great many applications for asylum from primarily persons coming from former Yugoslavia, it was decided that cases would not be tried individually. Instead, a general amnesty was declared which collectively gave permanent residence permits to all asylum seekers who had arrived before January 31, 1994 and who, at that time, had small children. This was a situation of collective judicial processing which is a major step away from the modern jurisprudence of trying cases individually. This had specific repercussions for Fatbardha and her family (as it had for many others), which I describe below.

Fatbardha's youngest son, Najm, although he was cared for by his older sisters and at times also bullied by them, was off and on left a great deal to his own devices. Sometimes he appeared more or less forgotten. He was considered too young to remember much of what had happened in Kosovo and no one really explained much to him or asked what was on his mind or if he missed his father or grandparents. After a few years, the older sisters married and only the youngest sister, Marigona, and Najm lived with their mother. The sisters lived in a neighboring town but they constantly visited each other back and forth, spending the night together, at their mother's house, bringing their babies as they arrived. Marigona was in those early years often angry with her mother, and annoyed with Najm, nagging him and complaining. She was feeling unhappy and unloved and she envied her sisters. She was very interested in talking to me and telling me about her life, asking my advice. But somehow I often lost sight of Najm. He slipped out, possibly 'helped' by my arrival. The others would not pay as much attention to him when I came on my recurring visits. He was for several years keen on keeping his whereabouts and contacts secret, seeking friends among the 'wrong company' – among them an old (Swedish) man who gave him sweets and money and who possibly showed him pictures of 'naked ladies' – Fatbardha, his mother, suspected as much. Later he started associating with some Swedish boys who were older than he and who smoked, drank beer and skipped school. He became more and more of 'a problem'.

Marigona had always been the most oppositional and 'daring' of the sisters. In the refugee camp, although she lost weight, started to smoke, and did things that set off chains of gossip among other Albanians, she became active as an assistant at the camp nursery and became indispensable to many Albanian mothers and their children who visited the nursery – as a funny and lovable playmate and interpreter. Fatbardha also became more and more dependent on her skills, especially in Swedish.

Besa, Marigona's one year older sister, fell in love with an Albanian young man, a 'village boy' as she teasingly called him, as her family came from a more urban background (as noted above, an important distinction for many Kosovo Albanians). With the final

approval of Fatbardha, who was now the head of the family - which was a fairly unusual position for a woman as young as herself - the two married just before the general amnesty of 1994. This proved to be detrimental for their continuing life together. While Besa's mother and siblings received a residence permit, since the children all were under 18 when they had come to Sweden, Besa was no longer considered belonging to her mother's family. She and her husband and their newborn child remained classified as asylum seekers. Although bureaucracy's definition of family in some ways happened to coincide with Albanian notions, it did not take into account the family's shared history, their emotional ties and immensely important continued reciprocal relationship. In Sweden, while officially a 'family' is a nuclear unit of parent(s) and their minor children, in practice, a family may be many different things. Among Kosovo Albanians, family is rather a patrilineal unit with blurred boundaries and the nuclear unit of parents and children is at some point in a family's domestic history the lived, and perhaps even the preferred unit.

For Besa this turn of events was humiliating and detrimental to her ability to care for her child. As the years passed she started desperately to blame her young husband for her ill-fortune. They were caught in a spiral of quarrels and fights and their little boy, Luki, ran from one to the other. He was often sick, he cried easily, and unhappily annoying his parents, however sweet he was. He would not give up nursing and Besa went to stay nights with her mother for a week to wean him when he was nearing 18 months. Among Luki's first words was *tut*, afraid. He would bang doors, run around incessantly and scream fearfully as soon as his mother disappeared.

Finally, after more than two years, they were recommended to see a psychiatrist. Doctors, and until recently, at least, psychiatrists, comprise the only category who in the end has the position of making a new case for asylum seekers, since politically it is usually not possible to add anything new to the appeal, which contributes to the prevalent medical problems among asylum seekers (cf Eastmond 2005). Many Kosovo Albanians feel that it is demeaning to go to a psychiatrist but they become aware that it is, in this situation, politically necessary. Besa's husband was by then, on medication and had been briefly hospitalized for a breakdown. During the first and only session, the psychiatrist found Luki - who on the occasion was calm, shy and apprehensive - to be a healthy, functioning boy and he was not willing to write anything which could be used in their favor. The family thus spent another year of uncertain waiting, even periods of hiding. Besa could not bear the thought of returning to Kosovo and being forced to live with her unknown village in-laws, reduced to a *nuse*, bride, the lowest on the social scale, and never to see her mother and sisters. No!

During this time of Besa's waiting and despairing, Marigona who now had a new residence permit and a still valid passport, decided to go back to visit her home town. She was by then 18; it was only a few years before the outbreak of the war (1997-98, with NATO bombings in 1999) and felt that she had lost everything in life. She had no real friends, no boyfriend, she did not manage school and there were always sorrows and worries in the family. She was furious with her mother for having dragged them all to Sweden. What had they left behind? The reasons for fleeing and the memories of this event shift and change over time and children do not necessarily have the same understandings and make the same interpretations of the motives for fleeing, nor do they carry the same memories. So, having overcome her mother's fearful protests, they all pooled what little money they had and she went (and I accompanied her). The few weeks she spent in Kosovo wore her out but gave her some of her own history back and she slowly started to get a grip

on her own life throughout the following years in Sweden (now she has a college education, a husband, children, and a good job).

But what has happened to Najm? During those years of turmoil, when Marigona also was down, he kept to his 'bad company', worrying Fatbardha who could not give him the life he wanted: his father, happy sisters, money or security. But throughout this time, the sisters somehow did keep an eye on him and they took turns to care for him in their new homes; he was their baby brother who in Kosovo had always been so much in their childish care. As things fell more into place, the sisters' husbands found various jobs, Marigona married, new babies were born, and the sisters have taken various classes, and they have found work. Fatbardha has in a sense calmed down, and Najm who observed all this from his vantage point finally started to find his bearings, partly because he was encouraged to discover that he was good at computers, partly through growing older and acquiring new perspectives on his early experiences. He decided to manage school and started to identify more with his sisters' husbands and wanting to be adult. He is now in his late teens and has finished secondary school and applied to college. He has moved to another town away from this lovable but very trying family. He wants to rule over his own life. How family relations will develop if and when he one day marries, is yet an open question.

From the perspective of the asylum-seeking process, Luki is the one who has, in a sense, carried the heaviest toll in this constellation of families, although he was born in Sweden and never had to flee. The others have been more able to negotiate, as it were, their positions in the various family changes, which have been shaped in relation to Swedish society and bureaucracy and in relation to transnational family and kin ties and contacts with Kosovo. Luki was born into an ongoing crisis, political-bureaucratic as well as domestic, and even if it was not intended, the consequences were, in many respects, as violent as those suffered by people during the repression in Kosovo.

As the ethnographic examples are meant to show the construction of the family, family relations, and the position and experiences of children change over time and in relation to a number of different outer and inner (or global and local) circumstances. As things have developed in later years, Fatbardha, a middle-aged, married, single mother with married children, is now for the first time in her life living completely on her own, which constitutes an apparent anomaly in relation to ideals of the patrilineal-patrilocal family-household. Culture may often be reduced to refer to sets of ideas and norms, which groups of people share. However, 'culture' is meaning-making in a changing social world and the concept of culture in anthropology rather refers to the notion that socially held ideas, meanings and norms shift and change and are often being contested (Baumann 1996, Hannerz 1992, Okely 1996). So, even if Fatbardha and her family could superficially be identified with 'Albanian culture', that would be overlooking everyday social practice and their experientially gendered history with which they continuously struggle, both reproducing and renegotiating positions as they go along. In addition, her children and grandchildren are coping very differently given their historical, biographical positions in the family and the political processes which have contributed to forming it.

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¹ All names have been changed as well as certain information about persons in order to protect their anonymity. Giving names to some individuals is mainly to avoid confusing the reader about whom we refer. For that reason, it is not necessary to name everyone.

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