

# SEPARATED CHILDREN IN EUROPE PROGRAMME QUESTIONNAIRE FOR COUNTRY ASSESSMENT

**COUNTRY:** BELGIUM

**EVALUATION PERIOD:** 2001-2002

**RESPONDENT:** Defense for Children International  
Coordination: Catherin Joppart

## **AGENCIES/ INDIVIDUALS CONSULTED :**

### Civil society:

- Members of the Plateform 'Minors en Exile', '*Mineurs en exil*' see annexe for contact details

### Authorities

- Home Office
- General Commissioner for Refugees and Stateless Persons (*Commissariat Général aux Réfugiés et Apatrides*)

## **DOCUMENTS USED OR REFERRED TO:**

### National Legal instruments:

- Law on foreigners, 15 décembre 1980 and royal decree of 8 octobre 1981
- Programme Law, December 2002 relativ to separated children's guardianship
- Home office Internal note, first of March 2002
- Circulaire of 17 July 2001
- Civil code : guardianship, unofficial guardianship and adoption
- Law of 8 July 1976 relativ to public social centres
- Decree of 4 March 1991 relativ to Youth Welfare
- Law of 29 June 1983 regarding compulsory education
- Decree of 30<sup>th</sup> June 1998 instituting positive discrimination in schools
- Decree of 14<sup>th</sup> June 2001 aiming at inserting new arriving children in state organised schools or school financed by the French Community,
- Intern directives of the Commissariat général aux réfugiés et apatrides (High Commissioner for Refugees and Stateless Persons)

### International Legal Instruments:

- Geneva Convention 1951 on the Status of Refugee
- Convention on the Rights of the Child
- European Union Council Resolution, 26 June 1997

### Bibliography:

- *Child Focus* "La disparition de mineurs non accompagnés et de mineurs victimes de la traite des êtres humains", avril 2002.
- *Senatorial working group « Children's Rights » (Justice and social affairs) on Separated Children, 23 January 2003.*
- *Many article published in : " Le Journal du droit des jeunes" (The Journal of the Youths Rights)*

- *Many article in the Separated Children NGO Plateform, “la lettre d’information de la plate forme mineurs en exil”,*
- *Many article in the “ Revue du droit des étrangers” (Refugee Rights Revue)*
- *Many articles in the presse, in the magazine of the reception center “Le Petit Château”, called “Magasil”.*

**Please note, that all new information, ie: laws, practices or policies, since the previous belgian country assessment (1999) is written in bold.**

### **DEFINITION OF ”SEPARATED CHILD” (SGP:A 2.1)**

In Belgium, the term ‘separated child’ is not used. All actors working on this issue use the term: ‘unaccompanied minor’. Because, it covers mainly the same definition as “separated children” and no one sees the need to change the term.

**a) Please give details of the definition used in your country. Different agencies may apply different definitions. Please give details of this.**

The law of 15 December 1980 on “access to the territory, the stay, the establishment and the return of foreigners”, which is the basic legal asylum instrument, does not make any distinction between adults and minors.

**In April 1999 and in March 2002, the Home office produced internal notes on how to manage separated children’s cases.**

According to the note of March 2002: separated children are:

“ children under 18 years old. They are not accompanied by a person representing him/her as his/her parents or a guardian according to his/her national law. He/she is a national of a country outside the EEC”

If a child is accompanied by an aunt, for example, he/she is considered as separated.

**The second instance body, the High Commissioner for Refugees and Stateless Persons (CGRA) uses its own definition. According to its internal note, separated children are :**

“children

- separated from his/her parents (mother, father),
- traveling without his/her parents but someone identified as the guardian for the child,
- traveling on their own, all alone.”

**The new law on separated children's guardianship (24 December 2002) defines separated children as:**

“ separated children are children:

- less than eighteen years old,
- not accompanied by a person representing parental authority or guardianship according to his/her national law,
- nationals of a country outside the European Economic Area,
- and in one of the following situations :
  - in the asylum procedure;
  - or, not satisfying the conditions to access the territory and to stay in the country according to the law of access, stay, establishing and return of foreigners.<sup>1</sup>”

In practice, no uniform definition of separated children is used nation wide. The civil society uses a definition close to the one given by the Statement of Good Practice (SGP), but not all NGOs know about the SGP definition.

**b) Are children with older siblings over 18 years of age considered to be separated children? Please refer to Annex II of UNHCR Guidelines 1997.**

- According to the Home office, a child travelling with older siblings is considered as separated except if it can be proven that the siblings have the authority over the minor.
- According to the CGRA, a child is considered as separated whenever he/she is travelling with older siblings.

**c) To what extent does this conform to the Statement?**

The definition given by the SGP is much wider than the one given above.

**d) Are any changes needed? In relation to any first principle?**

The term separated children should be used nationwide to highlight the separation of the child with his/her parents.

In relation to the first principles:

“Non discrimination” should be applied. It is currently not the case, as separated children are treated first as foreigners and then as children. Children between the age of 16 to 18 are treated as adults.

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<sup>1</sup> [http://www.just.fgov.be/index\\_fr.htm](http://www.just.fgov.be/index_fr.htm)

## **1. ACCESS TO THE TERRITORY (SGP: C1)**

### **1.a) Please describe:**

- **relevant law and policy in your country**

The applicable law is the one of 15 December 1980 applicable to all foreigners in which no specific difference is made between adults and children. This means, for example, that when a child arrives at the border without the needed identity papers, he can be kept in a closed center, like an adults.

There is no automatic access to the territory for asylum seekers, even for separated children.

### **Separated children can access to the Belgian territory in the following cases:**

1/ To study, work or to co-habit, he/she has to apply at the Belgian Embassy or consulate in his/her country of origin, (but, as far as a child under 18 has to go to school, he/she cannot work legally and get an authorisation to enter Belgium for the purpose of work; besides, the automatic right to enter the country for the purpose of studies is limited to upper studies (university or college); so, it doesn't concern those underage).

2/ In order to seek international protection under the 1951 Geneva Convention,

3/ For family reunification (but only in the case of one parent lives legally in Belgium and if the child applies for an authorisation to enter the country from his/her country of origin).

### **To access the territory separated children not seeking asylum should possess:**

- a valid passport and a visa if needed,
- sufficient personal fund to live in the country for at least three months and be able to pay his/her return,

The authorities in charge of the border controls might refuse entry to a separated child if he/she is not fulfilling these conditions.

If the child has no personal funding to help him/her to live in the country for less (or more) than 3 months he/she might ask someone in Belgium to take care of him/her. This has to be prepared in the country of origin, before departure (circular of 9<sup>th</sup> September 1998).

### **Please note that this circulaire has been abrogated but its principle remains.**

The person willing to care for the child (school, health, ...) should have sufficient funding to do so for a period of two years.

### **Separated children (SC) seeking asylum**

Separated children follow the same procedure as adults to apply for asylum. This means that they need to apply for asylum at the border or on the territory and that they can be kept at the border in a closed center until their request is received by the first instance body dealing with asylum application, ie: the Home Office (Office des étrangers).

To the contrary of the present practice, a particular procedure for separated children should exist. But it doesn't exist legally even though the CGRA takes the minority of the person seeking asylum into consideration.

SC seeking asylum should not possess the above requested documents to access the territory. But, up until now, they need them.

**According to the internal note of the Home office dated March 2002, three phases have to be followed:**

**Phase I:** , “when a durable solution cannot be found for a separated child immediately (integration, settlement in a third country, return to country of origin) all separated children should have access to the territory and receive a ‘*déclaration d’arrivée*’, (an arrival declaration) valid for three month, which might be prolonged a couple of times. Sanction: this declaration can be cancelled if the child cheated the authorities. If so, he/she received an order to leave the territory“.

**Phase II:** “When a durable solution cannot be found after a six months period and if the minor collaborates with the administration, the office working on separated children’s cases can give a CIRE (*certificat d’inscription au registre des étrangers*) which includes the child in the register of foreigners. It has a six months or one year validation. This period of time is chosen by the office in charge. Sanction: the CIRE might be canceled at any time if the child cheated the authorities. If so, an order to leave is delivered.”

**Phase III:** “After a three years period with a CIRE and no long-term solution found, if the child collaborates with the administration, the office in charge of minors might deliver a unlimited CIRE.”

This unlimited CIRE is delivered upon the following criterias:

- integration,
- knowledge of one of the three national languages,
- employment or internship,
- school results,
- social behavior,
- (the respect of the ) public order.

Sanction: the unlimited CIRE might be cancelled at any time and an order to leave delivered if he/she received it on a fraudulent basis.

- **relevant practice in your country**

In practice, all separated children do not have automatic access to the territory and might be kept in closed centers in the first phase of the procedure. Moreover, their access is different if they arrive via the airport or if they enter by land.

To reduce entrance, measures are put in place, such as:

- the fight against illegal immigration,
- carrier sanctions,
- detention,
- visa.

**1.b) To what extent does this conform to the Statement? Please outline in brief.**

According to the SGP all separated children should have access to the territory. This is not the case in Belgium. See section on “Detention”.

**1.c) Are any changes needed? In relation to any first principle?**

- Non discrimination: No measure to restrict the access to territory should be imposed on children, especially separated children. A temporary permit to stay should be delivered.

- Training: Border control staff should be trained on separated children issues. Currently they do not receive training.

**1.d) Please also indicate whether your country has a "carrier liability legislation" whereby airlines, train and boat companies can be fined if they bring someone without proper documents. Is this applied to children and young people under the age of 18?**

Belgium applies this legislation to everyone, included children, based on the law of 15 December 1980 to children (and the Convention of Chicago).

**Trafficking (SGP: C 1.2)**

**1.e) Are you aware of any children being trafficked for the purposes of exploitation into your country? If so please give brief example stating if possible the country of origin and nature of trafficking. Please also give examples where children have traveled along trafficking routes in order to apply for asylum.**

Yes, we have evidences of children being exploited in Belgium, for sexual and economic purposes.

In both cases, numbers are hard to find and if statistics exists they might not be accurate enough to draw conclusions.

However, a few studies on these two issues enable us to highlight the existence of network forcing children to beg, steal, work in restaurants, work in domestic areas or prostitute themselves.

The Home office gave us the number of 15 cases of children (2 boys, 13 girls from Romania (5), Albania (3), Nigeria (2), DRC (1), Bulgaria (1), Kazakhstan (1), Morocco (1), Latvia (1).) victims of sexual exploitation for the year 2002.

No numbers exists on the economical exploitation of children. However, the Center for equal Rights and fights against racism has a special web page on its site giving all results of court decisions on these issues, (<http://www.antiracisme.be>).

**Regarding the issue of sexual exploitation, a number of studies and researches have been done.** *Child Focus*, an NGO created after the discovery of the dead bodies of Julie and Melissa and the opening of the "Dutroux case" is mainly working on the issue of children victims of trafficking. Their mandate is to follow-up children's disappearance and to find them as soon as possible in coordination with the Belgian police.

Their first research on separated children highlights the disappearance of separated children and gives three categories of separated children in this case:

1. *First it concerns children disappearing because they did not know how to reach the reception center they had to go to. The report indicate that insufficient measures are taken by Home office's staff members to take care of at his/her arrival in a reception center,*
2. *Secondly, separated children have disappeared from private addresses where they lived following the Home office examination of the liability of the person the child is living with,*
3. *Thirdly, and this is what happens in most cases. Separated children, after living for a while in a reception center, an institution or a foster family tend to disappear in 45 to 50% of the cases.*

*These disappearance might be children running away, children becoming victims of trafficking for criminal purposes or children disappearing without a definite reason.<sup>2</sup>*

Three reception centers exist for victims of exploitation, Pag-Asa (Brussels), Sürya (Liège) and Payoke (Antwerp). They work mainly with children victims of sexual exploitation in 2000 (57%) versus economic exploitation (22%). The victims of sexual exploitation are mostly girls.

**The International Migration Office (IOM) also produced an important study on separated children in Belgium ‘Trafficking in unaccompanied minors for sexual exploitation in the European union’ in 2000, the countries chosen as study cases are Belgium, Germany, Italy and the Netherlands.**

**Regarding economic exploitation, a study has been done by the CODE, “La coordination des ONG pour les droits de l’enfant” (Belgian NGO Coordination for Children’s Rights) on children begging in Belgium. The Ministers of child welfare, Jean-Marc Nollet and Nicole Marechal have asked the CODE to explain the phenomenon and to make recommendations in order to develop a social response to it.**

**This study shows that begging is the consequence of a state of poverty and exclusion. People begging are mostly foreigners from the East and Central European States. Most of them are Roma. This study highlights the reasons for these people to leave their country, their life conditions in their country of origin and their life conditions in the country of reception to understand why they beg.**

**Main issue of concern, and one reason for these people to beg is the lack of flexibility of the asylum procedure.**

**All individuals entering Belgium’s territory with the intention to stay in the country have to apply for asylum. Most of the people from Romania, Ex-Yugoslavia, the main countries of origin of the children begging, do not get the refugee status but a lot of them (we could not find reliable statistics on this issue) stay in the country sometimes illegally, sometimes with a permit to stay but which doesn’t give social help.**

A little amount of separated children beg. Among them, the CODE identified children victims of exploitation, mostly handicapped children and vagrant children.<sup>3</sup>

The proportion of children victims of trafficking seeking asylum is not defined.

**1.f) Have any measures been taken by the state to combat trafficking of any sort?**

On 13th April 1995, a law has been adopted including dispositions to fight against trafficking in human beings.

A special unit working on cases of adults and children victims of trafficking has been created by the Home Office.

The second instance body, the CGRA, has one expert working on the issue of trafficking.

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<sup>2</sup> Source: Child Focus “La disparition de mineurs non accompagnés et de mineurs victimes de la traite des êtres humains”, april 2002.

<sup>3</sup> This study is available in French at the Ministers Jean-Marc Nollet or Nicole Maréchal cabinet, contact Sylvie Lemaire (sylvie.lemaire@cfwb.be) or via the CODE, contact Frédérique Van Houcke (fvh.coordination@skynet.be).

On 17 January 97 the Ministry of Justice issued guidelines for the Home office, the judges, police services, social inspectors related to the assistance of victims of trafficking on how to deliver permits to stay and work permit to victims of trafficking.

The federal police has a special unit working on ‘trafficking and illegal immigration’ and the local level is aware of the phenomenon but not always especially trained on the issue.

The response of the government on this issue is to offer a ‘status of victim’ to the people victims of such exploitation. This means that a temporary permit to stay is given to them. A definitive identity paper is given at specific conditions.

No specific measure are taken for children or separated children. The same rules as adults are applied to them.

The criteria to receive this status are as following:

1. one need to be placed in one of the three specific centers Pag-Asa, Sürya, Esperanto, Payoke,
2. he/she must testify and introduce a claim,
3. he/she should not return into the ‘business’

The status is hard to get as places are limited in the 4 centers, there is no guarantee that the trial will come to an end and financial assistance is often not enough to survive and to avoid people returning into the ‘business’.

Some children go into that procedure, but positive results are slim. No statistics are available.

## **2. IDENTIFICATION (SGP: C2)**

### **2.a) Please describe:**

- **relevant law and policy in your country**

No legal instrument and no policy exists on identifying separated children as such.

- **relevant practice in your country**

No procedure exists to identify separated children at ports of entry by the immigration authorities.

If someone declares to be minor, his/her age will be checked in case of doubt.

The new law on guardianship foresees that separated children will be identified by the guardianship service (this should be put in place as soon as the guardianship service exists).

### **2.b) To what extent does this conform to the Statement? Please outline in brief.**

The law, policy and practice does not conform to the Statement. See hereunder.

There will be an improvement when the law establishing a guardianship service will be put into practice.

## **2.c) Are any changes needed? In relation to any first principle?**

On this issue, a lot has to be improved. The case of the 5 year old Congolese Tabitha is a good example here.

No identification of the child, the adult accompanying her and her reason to travel have been done. She came to Brussels from Kinshasa in order to take a plane to Canada where her mother, a recognised refugee, was waiting for her.

The authorities declared the child was unaccompanied according to the definition used by the Home office. She was separated from her uncle who traveled with her and placed in a detention centre.

In order to stay in Belgium, she had to launch an asylum application, which has been rejected. Tabitha was then sent back to Kinshasa after being kept in a detention center for a period of two months.

In Kinshasa no one was waiting for her.

The NGOs alerted the media and the authorities, which made her come back for family reunification. The little girl was finally reunited with her mother in Canada. This positive issue was finally obtained thanks to the big scandal it caused in the country and because the press took this case very seriously. Following this story, the parliament urgently voted a law creating a guardianship system for S.C. (see here under).

## **3. APPOINTMENT OF GUARDIAN OR ADVISER (SGP: C3)**

**The legal instruments referring to guardianship are as follows:**

- Civil code : law on orphans children or children who's parents cannot take care of them
- Civil code : law on adoption
- Law on guardianship of the Public Social Assistance Centers (*CPAS, Centre Public d'Aide Sociale*)
- Specific law on guardianship of separated children

It exists different ways to organise guardianship.

Guardianship means: to identify a person who will represent the children and replace the parents, unable to exert their parental authority.

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In line with the recommendations of the Child Rights Committee, a guardianship service for separated children set up by the programme law (*Loi programme*) of 24 December 2002 will be created to better protect separated children in Belgium.

### **3.a) Is a guardian or adviser appointed?**

Currently, no systematic appointment exists. Although the law on the Public Social Assistance Centers (CPAS) says that all CPAS are competent to identify an adult to represent and protect separated children. Out of 350 CPAS, only three do appoint guardians for separated children (Assesse, Wervik and Ieper)

An adult, a member of the family or a foster family, may agree to take care of the child. But a major issue to do so is to prove the death or the disappearance of the legal parents. This is the condition established by the law. If this cannot be proven, one has to start a long and complicated procedure in front of the Tribunal,

which has to accept the death of the parents or they are unable to take care of the child. It is then possible to appoint a guardian for the child.

**On 24 December 2002, the Parliament adopted a law creating a guardianship system for separated children<sup>4</sup>.** This process began in 2000. According to the new law, a body will be created to work independently. This ‘guardianship service/system’ mission is to guarantee the protection and the representation of all separated children<sup>5</sup> defined as all person under 18 years old separated from his/her caregiver(s) or from his/her guardian. It should also work in finding a durable solution for these children<sup>6</sup>.

The platform ‘Children in Exil’ has been closely involved in the creation of this new law.

According to article 28 of this law, it should come into force after the adoption of a royal decree by the Council of Ministers (some NGOs expressed their fear towards this decree by saying it will last too long or worse, it might never come to reality because no sufficient political will and no sufficient budgets exists to put it into practice.)<sup>7</sup>. The guardians should be professionals working especially on this issue. They would work under the supervision of a judge and the guardianship service.

### **3.b) If so what is their role?**

According to the recently adopted law, the role of the the guardianship service should be, among other to :

- identify a guardian to all separated children,
- identify separated children. In case their age is contested, the guardian should proceed in a medial test to identify the child’s age, the results of the age assesement should take the minimum age,
- coordinate with the competent asylum authorities and reception centers,
- producing a list with contact of guardians,
- offer one training to guardians when they start work,

The service will be operational 24/24 hours

The guardian mission is to:

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<sup>4</sup> Loi programme du 24 décembre 2002, “Chapitre 6. - Tutelle des mineurs étrangers non accompagnés”, M.B. 31/12/02.

<sup>5</sup> L’exposé des motifs de cette loi mentionne :

*L’un des problèmes importants est que ces mineurs sont, vu leur situation, dépourvus de représentant légal, et qu’aucun encadrement spécifique n’est organisé.*

(...)

*Afin de remédier aux carences des dispositifs actuels, il est proposé de créer un organe, dénommé « Service des tutelles », qui aurait pour mission de mettre en place une tutelle spécifique sur les mineurs étrangers non accompagnés en vue d’assurer leur représentation. Pour chaque mineur, le Service des tutelles désignerait un tuteur investi d’une mission de représentation, notamment dans le cadre des procédures relatives à l’asile et au séjour.*

(...)

Le présent projet de loi crée un Service de tutelle qui dispose d’une cellule administrative et d’un certain nombre de tuteurs qui ont pour mission de représenter les mineurs non accompagnés "de iure" dans tous les actes juridiques et dans le cadre de toute procédure administrative ou judiciaire, notamment dans les procédures relatives aux lois sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers. Lors de la représentation et de l’accompagnement du mineur, le tuteur se laisse toujours guider par le critère de "l’intérêt supérieur de l’enfant".

<sup>6</sup> La loi du 24 décembre 2002 prévoit notamment que :

Art. 11. § 1er. Le tuteur prend toutes mesures utiles afin de rechercher les membres de la famille du mineur. Il fait les propositions qu’il juge opportunes en matière de recherche d’une solution durable conforme à l’intérêt de ce dernier.

<sup>7</sup> This has been denounced in a press conference from the platform “children in exile”, the 12<sup>th</sup> march 2003

- represent the child in all legal action, in all procedure on access to the territory, stay, establishment and return of the child and in all necessary administrative procedure.
- He/she is competent to:
  - apply for asylum,
  - ask for a permit to stay,
  - look after the child's interests, respect the law on access to the territory, stay and return,
  - proceed in appeal procedure,
- he/she assists the child at all stages of the procedure
- he/she is with the child at all interviews,
- he/she can ask for a translator,
- he/she can appoint a lawyer,
- he/she takes care of the child (school, health, placement)
- he/she ensures that the child's political, philosophical and religious opinion are taken into account,
- the guardian look for the child's family,
- he/she search for a long term solution in line with the child's interest,
- he/she has regular contact with the child and develops a close relation with him/her,
- he/she explains to him/her the importance of his/her decision,
- he/she takes care of the child's finances without benefiting from it,
- after maximum 15 days, the guardian writes a report on the personal situation of the child and his/her belongings. He/she brings this report to the guardianship service and the judge of the peace ,

**3.c) How soon after the arrival are they normally appointed?**

As soon as the child has been identified as separated and as minor by anybody in contact with him/her. For children who arrive at the border, it is the duty of the authorities to inform the guardian service.

**3.d) What kind of background and expertise do guardians/advisers have"?**

No specific background is requested for guardians. Once they start working the guardianship service offers them training on separated children issues.

**3.e) To what extent does this conform to the Statement? Please outline in brief.**

**Best interests:** The new adopted law says that 'all decisions concerning a separated child should be done in her/his best interests as a prime consideration.

The new law is mostly in line with the STG. The only issue of concern is the acces to the territory, which is still not guarantee for separated children.

**3.f) Are any changes needed? In relation to any first principle?**

We should wait for the service to exist to make comments on any changes needed. At this stage though a few comments can already be made on the following points:

- access to the territory: separated children have no automatic access,
- payment of the guardian: if the guardian is working as an independant his/her salary is much too low
- the financing of the whole service is not precised yet,

- the impossibility for a member of the child's family to be appointed as a guardian by the guardianship service under its responsibility.

#### **4. REGISTRATION AND DOCUMENTATION (SGP: C4)**

##### **4.a) Please describe:**

- **relevant law and policy in your country**

The law on access, establishment and return of foreigners of 15 December 1980 is used here.

- **relevant practice in your country? Please outline in brief.**

At the border, the services in charge of immigration are not trained on separated children issues and do not interview the child in an appropriate manner, but exactly as they would do it for an adult.

Once the guardianship service is created, the guardian is the person who will, once the child entered the territory and after a certain period of time, writes a report on the child's identity. The age determination is still an issue of concern though (see hereunder).

##### **4.c) Are any changes needed? In relation to any first principle?**

At the border the immigration staff should receive training on separated children issues. They should cooperate with social services specialised in child rights issues.

#### **5. AGE ASSESSMENT (SGP: C5)**

##### **5.a) Please describe:**

- **relevant law and policy in your country**

No legal base exists on age assessment. The policy is that in case of doubt of the age given by the child, the Home office is allowed to ask for a medical examination, the x-ray of the child's wrist. This is undertaken by the hospital of Antwerpen, the only one willing to carry out this examination. Many hospitals in Belgium deny doing it, as this method has been proven to be unreliable.

- **relevant practice in your country**

Age assessment is done by x-ray of the wrist bone of the child. The Home office told us it is not the only criteria taken into consideration to assess the age of a child. If another bone test is done and gives another result, in favour of the child. The SC service at the Home office takes it into consideration.

Age assessment is a constant concern for NGOs as no method is to date is reliable. Two lawyers working on a separated child's case asked for another examination stating that the one asked by the Home office was incorrect. They came up with three different results proving the margin of error of such a method.

In theory, children should benefit from a margin of error (official position of the Home office; and of the law of 24 Decembre 2002 creating a guardianship service). In practice however, too little attention is given to this margin of error.

Often, children of 16 years of age and above are treated as adults.

Furthermore, the ethnic/cultural background of the child is not taken into consideration. No information on a systematical base is given to the child to explain why an age assessment has to be done, when, where and why. A child told us he had to climb into a police car without knowing where he was going. Antwerp is on the way to Brussels Airport. The child was scared he would be put into a plane back to his country of origin.

**5.b) To what extent does this conform to the Statement? Please outline in brief.**

- The x-ray examination should be stopped,
- More information should be given to children. Why, how and where the test is undertaken,
- The Child's ethnic and cultural background should be respected,
- According to the child's gender, a male or a female doctor should be appointed,
- The benefit of the doubt should be taken into consideration,
- A multidisciplinary examination should be used to determine a child's age.

**5.c) Are any changes needed? In relation to any first principle?**

See above.

**6. DETENTION (SGP: C6)**

In theory, as soon as this service is created, separated children will not be placed in closed centers, but in adapted institutions in line with the children's age. In Practice,

(Rem : ceci ne ressort pas de la loi ; il pourrait y avoir un tuteur mais le mineur reste en centre fermé. Le gouvernement a toujours refusé d'accorder un accès automatique sur le territoire. Mais l'accord de gouvernement prévoit que les MENA ne seront plus placés en centres fermés ; il s'agit encore que d'une déclaration politique qui doit encore faire l'objet d'une application). They will be assisted and protected to avoid exploitation by criminals.

**6.a) Please describe:**

- **relevant law and policy in your country**

The asylum law of 1980 states in its article 63/5 the possibility to maintain an asylum seeker in a closed center until his/her asylum claim is considered. No mention of children is made in this law. A royal decree of 4 May 1999 on the rules applied to a closed center and its functioning, says that a minor should stay at the same place as his/her parents accompanying him/her or with his/her legal representative who is also placed in the closed center. Thus detention of children is accepted and organized.

- **relevant practice in your country**

Separated children are regularly detained in closed center at the border, which are considered as international zones. Currently, an average of 20 children (with or without parents or guardians) are detained. These centers have no facilities for children, no special room and nobody in particular to assist them. According to a group of various NGO persons, whom the government accept to visit the closed centers, '*the transit group*' (*le groupe transit*), all asylum seekers are placed in the same room and too few social assistants work there. The center offers a two hours walk outside the building per day in the centers area closed by a wall and barbwire.

The case of Tabitha highlighted the lack of a legal status and the crucial need of a guardian for separated children as soon as they enter the territory. Following this case, a number of NGOs asked that each separated child arriving in Belgium receives protection and a temporary right to stay until a long term solution is found (integration, return, settlement in a third country), with the guarantee that complete interim care is provided.

They also asked that all children would not be placed in closed centers anymore but in special care institutions, which would provide them all the assistance and care they need.

These organisations also highlighted the need for a guardian for each child to guarantee their best interests. The Committee of the Rights of Children, in its final observations of 7 June 2002 regarding Belgium insisted on this point.

All of this while the of the Council of Europe Parliamentary Assembly adopted a Recommendation 1596 (2003) regarding the situation of young migrants in Europe (the text has been adopted by the Assembly on the 31th January 2003). Belgium has a long way to go to implement this recommendation.

**6.b) To what extent does this conform to the Statement? Please outline in brief.**

Currently, the law, policy and practice does not conform to the SGP. Children are detained for reasons related to their immigration status. They need special assistance and care, this is not available in the closed centers. In addition, these centers are considered as international zones, which means being placed there is not being on Belgian soil. This does not give them the same rights as someone who entered the territory.

With the creation of a guardianship service separated children are not protected from detention. Separated children might still be detained. The difference is that a child will be assisted, in theory systematically, by a guardian, who's role is to act in favor of the child's liberation. To do so, she/he would have to act in front of the tribunals.

**6.c) Are any changes needed? In relation to any first principle?**

There shouldn't be any children in prison for reason of immigration (the government has already promised it a few times in the past) ; it has, once again, taken that decision, but we are still waiting for the concrete application of this political decision.

Separated children should get a lawyer as soon as possible. **This is now possible thank to associations and lawyers who created a « pool of lawyers », trained to represent and defend separated children's rights. A turnover is organised to enable children placed in closed centers to get a lawyer at all time.**

**Those lawyers are volunteers; they follow specific training and work closely with social services in order to provide children with the best assistance possible. The problem is that the lawyers have no right to be present at some stages of the asylum procedure.**

**7. RIGHT TO PARTICIPATE (SGP: C7)**

**7.a) Please describe:**

- **relevant law and policy in your country**

No mention of the right to participate is mentioned in the law of 15 December 1980. However, reference to this right is made in the guardianship law of December 2002.

- **relevant practice in your country**

In practice, children have the right to participate. But to participate they need a translator and a guardian to guide them during an interview, which is not always the case.

The right to participate is in fact very limited. Children will not systematically be consulted on important issues such as his/her living conditions in the centers, the place to live, the internal rules in the centers, ... He/she will eventually be consulted about his/her schooling, the long term solution, but this is not, again, always the case.

**7.b) To what extent does this conform to the Statement? Please outline in brief.**

This doesn't conform to the SGP. On a systematical basis, children are not given their right to express themselves and decisions are taken without their consent.

**7.c) Are any changes needed? In relation to any first principle?**

The right to participate should be taken into consideration at all decision level when an issue concerns a child's future, the long term solution, the living conditions, the schooling,...etc

**8. FAMILY TRACING & CONTACT (SGP: C8)**

**8.a) Please describe:**

- **relevant law and policy in your country**

The law creating a guardianship (not yet in application) system refers to the need of family tracing and contact.

- **relevant practice in your country**

In practice it is the Belgian Red Cross who mandated to do family tracing and to establish contact with the child's family.

The action taken by the authorities in cooperation with Embassies and Consulates are limited. Because of a lack of capacity and not enough human resources. The enquiries are hard to do: one has sometimes to travel to remote villages, far away from the capital, difficult to access and with little information at the beginning,...). The authorities would like to develop links with various NGOs or UN agencies in the countries of origine of separated children to improve tracing and family researche, unfortunately this is often to repatriate the child against his/her will.

**8.b) To what extent does this conform to the Statement? Please outline in brief.**

In many aspects, this does not comply with the SGP.

**8.c) Are any changes needed? In relation to any first principle?**

A lot of improvement is needed.

The children often fear that, if they give information about the place where their parents live, they will have to go back to their country of origin, no matter what is in their best interests.

Most important goal of family tracing should be to allow the child to have contacts with his/her parents and, why not, allowing children to go back to their country of origin and see their parents again but without an obligation to stay in the country. It is often important to trace the parents because the children do not always know if their parents are still alive and the parents do not always know what happened to their child.

## **9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY (SGP: C9)**

### **9.a) Please describe:**

- **relevant law and policy in your country**

Family reunification is foreseen by law of 15/12/80 according to the following conditions:

- if parents have a permit to stay in Belgium legally,
- a child can join his/her parents if he/she is a minor (in some case up to 21 years old or children under their parents' charge),
- if a person arrived in Belgium in a framework of a family reunification, she/he cannot bring family members to Belgium.

- **relevant practice in your country**

Family reunification is globally limited to the parents and their children to the first degree. Although it is often an uncle, aunt, grandparents whom a child wants to join.

Furthermore, the person the child wants to be reunited with is not always on a regular basis in Belgium with a permit to stay. Besides, when a parental link exists between the child and an adult it is often hard to prove.

### **9.b) To what extent does this conform to the Statement? Please outline in brief.**

Family reunification is hard to achieve. Cases exist where children had to wait in closed centres although a member of their family or an uncle/aunt was in Belgium and could take care of the child.

Therefore, it doesn't conform to the SGP.

### **9.c) Are any changes needed? In relation to any first principle?**

**Best interests:** the child's best interest should be taken into consideration and not the one of the state.

Family reunification should include family to a larger extent, particularly when the child has lost his/her parents and when the only family left is composed of uncles, aunts, grandparents, brother or sisters.

It should also establish a right to family reunification authorizing parents to join their child legally established in Belgium.

## **10. INTERIM CARE - HEALTH - EDUCATION - TRAINING (SGP: C10)**

### **Interim Care ( SGP: C10.1 )**

#### **10.a) Please describe:**

- **relevant law and policy in your country**

Regarding interim care (reception, youth assistance, social assistance, education, health) there are a significant number of laws and decrees protecting separated children :

- decree related to youth assistance (one in each Community, French and Dutch);
- law on social assistance, which is guaranteed by the Public Social Assistance Centers;
- law on health assistance, child benefit, handicapped benefit, ... that can be applicable in a limited number of cases;
- decree on education of children staying illegally in Belgium, to the first arrived children (*primo-arrivants*).

- **relevant practice in your country**

Different kind of placement for separated children are possible:

In autonomy:

- a placement in a flat with help of the CPAS (public social assistance) or the child welfare system,
- foster family. Option chosen more often in case of young children.

In a reception center:

- in a state reception center, currently there are 15 of them, (+ minors sections in federal reception centers for asylum seekers)
- in a reception center of the Belgian Red Cross, 15 exist to date.

#### **Specific centers for separated children have been created in 2002:**

- **In Brussels: Minor N'Dako** ‡
- **In Wallonia: Gembloux for asylum seeking separated children and another center in Assesse.**

These centers have multidisciplinary staff and training is organised in collaboration with other child rights NGOs.

**Information on centers depending on the child care protection system :** Children placed in child care centers of the child care protection system are placed with Belgian children in need.

Those centers have special staff to handle the situation of children in need of protection but are not specialised and trained to deal with separated children.

**One new center for separated children victims of trafficking has opened its doors on December 2002: Esperanto.**

The number of separated children is increasing. In 1999, the number of these children who applied for asylum was 1443. In 2000 they were 1622. The problems of finding a suitable placement for them is therefore on top of the agenda, even though new centers have opened recently.

It is necessary to find a consensus on a system adapted to separated children and to create reception centers specialized in children victims of trafficking. The ministers of Child Welfare in the French and Flemish Community refuse the forced return of separated children. Thus they support the implementation of a guardianship service and a specific reception system respecting separated children's rights.

Most of the time, separated children, as soon as they enter the territory are placed in a reception center for asylum seekers, which has not always facilities and special assistance for children. A list of all Youth assistance services which should find a placement for these children has been communicated to the Home Office via the Minister of Child Welfare. The authority in charge of the placement is too often facing a lack of places. In these conditions, the Home office pretends that there are no alternatives than to place the child in a closed center. It is sad to realize to date, with all the communication system existing, no listing of the places available for children exists.

The CIRE (Coordination and initiatives for refugees and foreigners) highlighted that article 72 of the royal decree dated 4/5/1999 setting the working rules and the regime of these closed centers says that minors cannot be detained in such centers except in certain conditions, such as :

- 1° « the child is apprehended at the frontier and he/she is maintained while his/her asylum claim is considered;
- 2° the minor accompanied by one or more parents ou any legal representatives, who are with him/her in the center ...»

Thus, minors found at harbours or airports, who apply for asylum, as well as those who are not admissible on the territory and who do not ask for asylum are founded in centres such as the "INAD" center, the transit zone "127" for people applying for asylum who are not authorized to enter the territory. They stay there till their application is accepted. The " Centre 127 bis" for asylum seekers entered illegally on the territory and for whom a negative decision has been given to their application or for anyone whose application has to be dealt by another country (Dublin). They stay there until their return to their country of origin or till they are sent to the country responsible for their asylum claim. These people might be alone, they might also be accompanied by members of their family.

A child should not be placed in a closed center. The MOI made it clear that the placement of children in these centers is temporary, prior to their return.

One should note that since May 2001, the MOI decided not to (something missing here) separated families, prior to their return. Before only the head of the family was detained prior to the return of the whole family. The placement in a closed center of families is not the best solution. Therefor the MOI decided to repatriate families on the same day of their interception. This would stop them to be maintained in closed centers.

In reality, the services in charge of family repatriation are asked to respect certain material constraints such as : deadlines for readmission of the family in the country of origin and the places available in the plane. To conclude, the placement of families in closed centers is still in place.

**A great concern is the disappearance of separated children from reception centres.** A newspaper wrote about 216 cases of children missing in September 2001 since February 2001. (Many NGO have expressed their concern about the way to unite those statistics; the problem of children disappearing is real but it is impossible to say how many missing children are of real concern. Some disappeared children just want to carry on their journey to the United Kingdom for example, or another country).

In order to understand this phenomenon, the MOI created 5 working groups regarding separated children's issues. A Ministerial Directive is in the process of being elaborated on this topic and a guardianship service is underway. At the federal level, the development of a protection legal system and the interim care and placement of separated children is being studied.

The MOI also gave particular attention to disappearance of separated children in a new directive regarding this issue. This directive should have been finalised in January 2002. Some priorities have been highlighted by the Minister of Justice. Though the unit dedicated to separated children of the Home office as well as the NGO "Child Focus" and the legal authority have to be informed of any disappearance of a separated child. A person of reference has to be identified to follow-up on this disappearance ( a member of a CPAS or from the You welfare service for instance, ...).

**10.b) To what extent does this conform to the Statement? Please outline in brief.**

We should wait for comments that the new guardianship service works.

**10.c) Are any changes needed? In relation to any first principle?**

Changes should include:

- guarantee minimal reception norms of separated children in reception centers,
- harmonise the reception practices (they are different from one center to the other. This depends from their status and of the public perception: asylum seekers, refused asylum seekers, non-asylum seekers, victim of trafficking,...),
- develop structures of assistance for separated children who live autonomously
- create more places in reception centres.

With the implementation of the guardianship system, things should change a lot. We'll wait and observe its development and support changes if needed.

**Health (SGP: C 10.2)**

**10.d) Please describe:**

- **relevant law and policy in your country**
  - Organic law of 8 July 1976 creating the Public Social Assistance Centers (CPAS) which guarantee to everyone the most adequate assistance, in particular an assistance in terms of access to health care;
  - Legislation relative to health insurance;
  - Law on the rights of the patient.
  
- **relevant practice in your country**

All children, illegal and legal have the right to urgent medical assistance, it is an absolute right. However, this assistance is particularly restricted. But the right to be insured against sickness and disability isn't guaranteed to all. Only children having a permit to stay (at least a provisory permit) can benefit from it. It excludes a large number of children.

Likewise, most separated children have no rights to families benefits, either because they are in a precarious situation, or because there is no adult, member of the family, who can “open” this right for the child.

**10.e) To what extent does this conform to the Statement? Please outline in brief.**

**Non discrimination.** In certain cases, health assistance is not guaranteed in a correct manner to separated children. All children do not have the same rights to health.

**10.f) Are any changes needed? In relation to any first principle?**

The right for all children to health/disability assistance should be guaranteed.

**Education, Language and Training (SGP: C 10.3)**

**10.g) Please describe:**

- **relevant law and policy in your country**

The right to education is guaranteed to all children by the Belgian Constitution, article 24.

For separated children and newly arrived children in general (*primo-arrivants*) **special classes have been created by the French Community in a decree of 14 June 2001. This exists also on the Flemish side.**

These classes objective is to help children to quickly learn a language (French or Dutch).

Furthermore, these decree allow newly arrived children to integrate courses in line with the level of education received in the country of origin. This system is unfortunately reserved to children seeking asylum.

We should also highlight the decree on “positive discriminations”, which guarantees the participation of all children to school, even the children with an illegal status.

- **relevant practice in your country**

Although education is a right and an obligation to everyone, in practice not all children join a school. It results mainly from the lack of flexibility of school directors and programmes, who do not accept or allow the admission of children at any time of the year.

Another main issue of concern is the lack of places available in schools for separated children.

To reaffirm this right, the French Community adopted a decree called « Positive discriminations », on the 30<sup>th</sup> June 1998 where it highlights the right of education in its article 40. It states that all children, legal or illegal, accompanied or separated have the right to education.

But, although these legal instruments confirm the right of education to all children, not all parents put their children into school. It might be for financial reasons. It might be that the parents do not know about the schools willing to accept their child. Some parents, whose asylum application has been rejected, don't dare to put their children in school anymore because they fear that the police will come to pick them up in the school to send them back in their country of origin. Such cases have been reported several times. The Ministry of Home Affairs has just sent new rules to the police forbidding them to go in the schools and pick up children. They are not even allowed to take them at the schools door (except if the parents have been arrested!).

### **Good Practice:**

One school in Brussels for instance accepts children at any time of the year (legally, this should be the case for all schools) and proposes a very flexible programme for children who need help to learn a new language and to catch up with the various subjects. Although, a child might follow languages courses, or any lesson, he/she will participate to all outside activities with the children of his/her age. This method helps the child in making progress in learning a language and adapting him/herself to a new environment.

### **10.h) To what extent does this conform to the Statement? Please outline in brief.**

It conforms to the SGP, but improvement should be done to the education system in order to guarantee that all separated children benefit from education in Belgium.

Separated children should have the right to access to all schools at any time of the year.

Education should give separated children the right to obtain a diploma at the end of his/her studies.

### **10.i) Are any changes needed? In relation to any first principle?**

**Non-discrimination:** This principle is not properly followed now and should be respected.

More places are needed in schools for newly arrived separated children .

Programmes should be adapted to separated children's level. The programmes should be more flexible to integrated separated children.

## **11. REFUGEE DETERMINATION PROCESS (SGP: C 11)**

### **Access to normal procedures ( SGP: C11.1 )**

#### **11.a) Please describe:**

- **relevant law and policy in your country**

There are three stages to apply for asylum :

- the determination of the State responsible for the asylum claim inline with the Dublin Convention (DC) ( little criteria concern separated children in the DC );
- acceptance of the asylum claim ( the Home office is responsible for that); one should highlight that the same number of separated children and adult cases are accepted;
- decision on one's asylum application giving the refugee status (competence of the High Commissioner for Refugees and Stateless Persons, *CGRA* ); *idem* : there are no more recognition for adults than for children.

The same procedure exists for children and adults. The only difference is that normally a person sensitized to separated children issues interviews the child. It is definitely the case at the CGRA (in principle at the Home office too, but this is not on a systematical basis).

The asylum claim has to be introduced at the border (if so, the child stays at the border, ie: detained until one considers his/her claim positively), or in the territory (if so, the child is in principle placed in a reception center for asylum seekers (many of these centers have special sections for separated children), or children are placed in foster families or with member of their family.

Various appeal procedures exist in the asylum procedure at all stages, CGRA (to contest the *recevability*) in front of the highest administration (*Conseil d'Etat*) (for a confirmative decision of the CGRA), in front of a permanent Commission for refugees (*Cours Permanent des Recours des Réfugiés*) (for a refusal of recognition of refugee status) with an additional appeal to the *Conseil d'Etat* (against a decision of the *CPRR*). Minors, who have currently no guardian should do the appeal on their own!

Regarding claims which receive a positive decision, we observed that it is rare that a status is delivered based on child rights arguments, particularly if the child is separated.

Being a child is very rarely taken into consideration as a category of person whom might fear persecutions (although the issue of child soldiers, the growing vulnerability of children and the subjective dimension of persecution should be noticed for children, especially for separated children.

**11.b) To what extent does this conform to the Statement? Please outline in brief.**

A lot of principle of the SGP are not respected in Belgian foreign legislation.

**11.c) Are any changes needed? In relation to any first principle?**

**Best interests:** In Belgium, there are no real alternatives to the asylum procedure. Children's best interests are not always to start a long and difficult asylum procedure (not all the children fall under the criteria of the Geneva Convention), but they have no other choice.

A child arriving at the border has to do so if he/she doesn't want to be sent back to his/her country of origin (See Tabitha's case).

Up until now, the child is alone in this procedure; he has no legal guardian, not always a lawyer, he cannot be assisted at the first interview.

**Non-discrimination:** The asylum procedure is not adapted to children. During the interviews, they are questioned like adults<sup>8</sup>, at best by persons caring about their particular situation.

The asylum procedure is complexe, it includes a number of appeals, which is hard to understand for children.

**Legal Representation (SGP: C 11.2)**

**11.d) Please describe:**

- **relevant law and policy in your country**

The law on legal assistance considers that all children have the right to legal assistance. It is also the case for foreigners regarding their permit to stay. Therefore, all separated children should, according to these two points, have the right to obtain a lawyer free of charge.

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<sup>8</sup> "Demande d'asile, audition du mineur, tolérance zéro et intérêt de l'enfant ... chronique d'un mensong annoncé", par Fabienne Druant et Jean-Yves Hayez, in JDJ n° 218, octobre 2002, p. 20;

- **relevant practice in your country**

A lawyer is appointed to all children arriving at the border. But a minor arriving in the territory and asking for asylum will not get a lawyer automatically. He/she needs to ask for it. To do so, the child need to be informed, this is not always the case.

Anyway, a lawyer can not assist his/her client at the first stage of the procedure.

We too often noticed that lawyers are not specialised in children's issues. When they face a separated children's case, refugee law specialists often send it to youth law specialists.

These are facts highlighted by children's rights associations and the Bar. It pushes them to create a 'pool of lawyers' specialised in separated children's issues. A Training is organised for them and they are largely documented and assisted when dealing with separated children's cases.

**11.e) To what extent does this conform to the Statement? Please outline in brief.**

**11.f) Are any changes needed? In relation to any first principle?**

All separated children should get a lawyer (this should be the case once the guardianship service is in place).

The 'pool of lawyers' should be systematized.

Training should be systematically organised for lawyers.

### **Minimal Procedural Guarantees (SGP: C 11.3)**

**11.d) Please describe:**

- **relevant law and policy in your country**

No specific law exists.

There are internal directives to the *CGRA* regarding separated children. These directives tackle particular procedures rules for asylum seekers and separated children.

- **relevant practice in your country**

To the first procedure stage (*recevabilité*), it appears that no real rules of minimum procedure applicable to minors exists. Except the fact that they should, in principle, be heard by employees trained in hearing children.

At the *CGRA*, a special attention is given to minors. The *CGRA* issued recently an internal note (March 2003) in which they highlight the vulnerability of children and particularly of separated children.

**11.h) To what extent does this conform to the Statement? Please outline in brief.**

This does not conform to the SGP.

**11.i) Are any changes needed? In relation to any first principle?**

The government should adopt minimum rules of procedure for separated children asylum application. These rules should be in line with the Convention on the Rights of the Child and the European Directives (currently in preparation) in that field.

**Independent Assessment (SGP: C 11.4)**

There is no independent assessment of the asylum procedure for separated children in Belgium.

**11.j) Please describe:**

- **relevant law and policy in your country**

There are no relevant laws and policy on this topic in Belgium

- **relevant practice in your country**

There are no relevant law and policy on this topic in Belgium

**11.k) To what extent does this conform to the Statement? Please outline in brief.**

This doesn't conform to the SGP.

**11.l) Are any changes needed? In relation to any first principle?**

**Interviews (SGP: C 11.5)**

**11.m) Please describe:**

- **relevant law and policy in your country**

**In the internal note of the CGRA**

- **relevant practice in your country**

In practice, there is a difference between the interview done by the Home office and the ones organised by the CGRA. The latter, in its recent internal note, highlight the following issues of concern:

- the need to respect the child's level of maturity;
- the need to take into consideration that a child may not express his/her fear like an adult;
- the agent of the CGRA interviewing a child should be careful about the child's living condition in Belgium, in other EU states and his/her family situation as a whole in Belgium and in his/her country of origin;

Person accompanying the child at the audition:

- a translator,
- social assistant,
- lawyer,
- guardian.

The note also gives guidelines on how to conduct a child's interview, being careful about the way questions are asked.<sup>9</sup>

Auditions are also differentiated according to the child's ages.

**11.n) To what extent does this conform to the Statement? Please outline in brief.**

Like the *CGRA*, the Home office should issue guidelines on children's interview procedures to improve its practice.

**11.o) Are any changes needed? In relation to any first principle?**

Improvement is need on the Home office side.

**Criteria for making a decision on a child's asylum application (SGP: C 11.6)**

**11.p) Please describe:**

- **relevant law and policy in your country**

No specific law exists.

The internal Directive of the *CGRA* includes criteria for making a decision on a child's asylum application, such as<sup>10</sup>:

- how to formulate a negative decision in case of a minor and the elements to take into consideration,

- **relevant practice in your country**

Except for the *CGRA*, there is no specific practice that exists for now. The internal Directive of the *CGRA* is too 'young' for us to judge yet, we'll wait and see.

**11.q) To what extent does this conform to the Statement? Please outline in brief.**

This does not conform to the SGP.

**11.r) Are any changes needed? In relation to any first principle?**

Criteria in line with the CRC and the SGP should be implemented.

**Young People who become adults during the asylum process (SGP: C 11.7)**

For young people becoming adults during the procedure nothing changes really. The law is the same for adults and children. The special clauses mentioned by the *CGRA* to refuse a child's application referring to the CRC are not used for young people.

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<sup>9</sup> Internal Directive, March 2003, *CGRA*.

<sup>10</sup> *Ibidem*.

**11.s) Please describe:**

- **relevant law and policy in your country**

No specific law exists.

- **relevant practice in your country**

See above.

**11.t) To what extent does this conform to the Statement? Please outline in brief.**

This does not conform to the SGP.

**11.u) Are any changes needed? In relation to any first principle?**

## **12. DURABLE SOLUTIONS (SGP: C 12)**

For grown up children, after 18, there are no more guarantees to reach a durable solution. In some cases, the young will be allowed to stay for example to end his studies. But in most of the cases, the child has to leave the country when they reach 18.

### **Remaining in a Host Country or Country of Asylum (SGP: C 12.1)**

#### **Grounds for a child remaining in a host country (SGP: C 12.1)**

**12.a) Please describe:**

- **relevant law and policy in your country**

Law of 15/12/80 : determines all the conditions of entry, stay for adults and minors. It also includes the possibility to ask for a permit to stay when the person is on the territory. This is often considered as the last chance to stay.

This enables the applicant to regulate one's status in Belgium.

Regarding minors, there is an internal note of the Home office and special unit dealing on that issue for separated children:

- **relevant practice in your country**

#### **Three services work at the Home Office on separated children's cases:**

- at the frontier. It works on SC cases although it is not specialised to do so ;
- the service for separated children seeking asylum : it is composed of 5 people, the person in charge of it is Mr Jollet. The staff is sensitized to the issue of separated children.
- the service for illegals or children whose case has been refused : the service is composed of 11 people. The person in charge is Mme Raymaekers. This service is working with the service dealing with trafficking issues (3 specialised persons).

a) **Compétences :**

The services work is based on an internal note from 1<sup>er</sup> March 2003 (see above). The Home office plans to develop another text, more « solid » (words used by Ms. Raymakers) and to replace the present note. Ms Raymakers told us that this internal note should be re-written and included to the law.

#### Protection system adopted by the SC service

- *Identification* : most of the time, a minor arrives without documents. First thing to do is to know who the child is and try to obtain documents (passeport, birth certificate). The youth is asked to produce these documents. Besides, the SC service uses two other methods :
  - police identification sheets and
  - the bone test to assess the child's age.
- *Placement coordination* : The service calls various reception services to find a place for the minor, which is very often hard to find.
- *Search for a durable solution* : Various options exists :

- **Family reunification** :

Family reunification in the country of origin or in a third country is the first solution search. The Home office service is very cautious about this practice. In the future, the Home office service hopes to work with IOM in order to get more information on the country of origin of the child and to better organise his/her return.

Repatriation is not always done on a voluntary base.

According to the Home office, parents are first the father and mother (with proof of the parental link), but also the extended family or a social reception institution in the country of origin.

➔ **Voluntary family reunification (with IOM collaboration) in 2003 :**

- 19 to the country of origin
- 14 to a third country.

- **Regularisation**

Definitive regularisation of the child's stay in Belgium is done when the family could'nt be found or when family reunification could'nt be possible.

Besides, the search for a durable solution, permits to stay are delivered to the children :

- A declaration of arrival for 3 months : renewable once, more often if the child's identification is not done or if it takes more time,
- A *CIRE* (see definition above) of 6 months renewable during a period of 3 years,
- Long term *CIRE*.

In theory, a definitive permit to stay, *CIRE*, is delivered after a period of three and an half years of temporary stay (for the children whose applications have been rejected, this period begins at the end of the asylum procedure).

- **relevant practice in your country**

See above the chapter on asylum procedure. It is the same for children and adults, little is done to take the status of « child » as a factor for the refugee status, given that few lawyers are appointed at the first stage of the procedure (this might change when the guardianship service will be put in place).

One has to highlight that a special unit for SC exists at the *CGRA* and at the Home office.

**12.b) To what extent does this conform to the Statement? Please outline in brief.**

It does not conform to the SGP, as no real and legal alternative to refugee status exists.

**12.c) Are any changes needed? In relation to any first principle?**

The procedure enabling people to regularise their situation should be included into the law with applicable criteria.

A better legal security system should be put in place with clear criteria..

**Family Reunification in a Host Country (SGP: C 12.1.2)**

**12.d) Please describe:**

- **relevant law and policy in your country**

Law of 15/12/80 includes family reunification but in a limited way (separated children, children under the responsibility of an adult and spouses).

- **relevant practice in your country**

It is difficult for family reunification to succeed. The necessary documents are hard to find, they have to be translated and legalised by the Belgian Embassy, they have to be legalised once more by the Minister of foreign affairs. It takes months before everything is in order and before a reunification can be made.

**12.e) To what extent does this conform to the Statement? Please outline in brief.**

It does not conform to the SGP.

**12.f) Are any changes needed? In relation to any first principle?**

The law should include criteria to regulate someone's status.

**Integration (SGP: C 12.1.3)**

**12.g) Please describe:**

- **relevant law and policy in your country**

No specific law, policy exists.

- **relevant practice in your country**

Many aspect of the life of separated children are factors of integration:

- education,
- family, ...

But no specific practice focusing on 'integration' exists in Belgium.

**12.h) To what extent does this conform to the Statement? Please outline in brief.**

**12.i) Are any changes needed? In relation to any first principle?**

**Adoption (SGP: C 12.1.4)**

**12.j) Please describe:**

- **relevant law and policy in your country**

Adoption is possible but to a very restrictive measure. The agreement of the parents is needed or the proof of their death or of the incapacity of the parents to act as respondents for the child.

- **relevant practice in your country**

No specific practice exists.

**12.k) To what extent does this conform to the Statement? Please outline in brief.**

It does not conform to the SGP.

**12.l) Are any changes needed? In relation to any first principle?**

A lot of changes are needed. A new draft of law is under discussion to adapt the Belgian law to the "The Hague" convention on international adoption. The follow up of those adoptions need also to be improved.

Clear criteria should be defined and inserted into the law.

**Identity and Nationality (SGP: C 12.1.)**

**12.m) Please describe:**

- **relevant law and policy in your country**

Identity is defined via the age assessment. The Home office and the *CGRA* have different practices.

Nationality : no specific law and policy exists except if a child is born in Belgium, he/she can ask for Belgian nationality if he/she has no other nationality before his/her 18 years of age.

- **relevant practice in your country**

There is no relevant practice.

**12.n) To what extent does this conform to the Statement? Please outline in brief.**

**12.o) Are any changes needed? In relation to any first principle?**

## **Family Reunification and Returns to a Country of Origin (SGP: C 12.2)**

### **Voluntary return (SGP: C 12.2.1)**

It also insisted on the importance of following up the situation after their repatriation.

#### **12.p) Please describe:**

- **relevant law and policy in your country**

Internal note of the March 2002, the hidden objective of this note is to return children to their country of origin.

- **relevant practice in your country**

Voluntary return is little developed, essentially because there is no real tracing done.

Return is organised when the child is detained at the border, or if he/she becomes 18 years of age. He/she might also be accepted on the territory. If a child gets an order to leave, it is rarely put into practice. However, lately, judges decided to return children who committed crimes to place them in their 'environnement of origin'. It is not considered as a voluntary return of course.

There are some cases of voluntary return from reception centers, which assist the child in this procedure.

#### **12.q) To what extent does this conform to the Statement? Please outline in brief.**

It does not conform to the SGP.

#### **12.r) Are any changes needed? In relation to any first principle?**

A lot has to be changed. Everything has to be developed on that issue. The tracing has to be organised but in the best interest of the child. The family reunification should be possible in the country of origin but also in Belgium if it is proven that this fits the best interest principle.

In any case, the view of the child has to be fully taken into consideration.

### **Conditions that must be fulfilled prior to return (SGP: C 12.2.2)**

#### **12.s) Please describe:**

- **relevant law and policy in your country**

Nothing particular

- **relevant practice in your country**

Idem

#### **12.t) To what extent does this conform to the Statement? Please outline in brief.**

#### **12.u) Are any changes needed? In relation to any first principle?**

### **Programmes and Aid to Facilitate Reintegration (SGP: C 12.2.2)**

**12.v) Please describe:**

- **relevant law and policy in your country**

Nothing particular

- **relevant practice in your country**

Nothing particular

**12.w) To what extent does this conform to the Statement? Please outline in brief.**

**12.x) Are any changes needed? In relation to any first principle?**

### **Settlement in a Third Country (SGP: C 12.3)**

**12.y) Please describe:**

- **relevant law and policy in your country**

This can only be done if the third country accepts the child and if parents in this country have been traced. The parents have to live legally in this country and are able to take care of the child.

- **relevant practice in your country**

We can see that it may take a long time before the Belgian authorities receive an answer from the third country. It is often the case that this country refuses the entry of a separated child because there is no legal proof of the family link between the parents and the child or because the parents do not live legally in the country (or only on a temporary basis).

**12.z) To what extent does this conform to the Statement? Please outline in brief.**

It doesn't conform to the statement. But this is caused by other countries authorities.

**12.zz) Are any changes needed? In relation to any first principle?**

The condition for a family reunification in a third country of Europe should be much more flexible.

### **13. DATA COLLECTION**

**Good data on separated children is required to assist the implementation of good practice.**

**a. Who should be responsible for collecting data on separated children? Please consider both government departments and NGOs.**

It is mainly the government departments who should be responsible for collecting data on separated children. At this time, some departments try to collect information but it is not especially on the same basis; thus, it is difficult to compare and to see the evolution of the data.

The NGO's are not responsible for collecting this data; they do not have access to the needed informations.

**b. What sort of data is required? From government? From NGOs?**

How many children arrive at the border, how many apply for asylum; how many are recognized as refugees, how many are kept in closed centres, how many go to school, ...

We also need the ages, the nationality, the reason of their travel, ...

**Please provide any current data (1997 - 1999) on separated children, which is available ( from both government and NGOs ) . We appreciate that at this time most of this data will relate to asylum**

The following statistics are available on separated children :

1. Separated children illegally on the territory and decision on their placement following the police intervention.

	01/03	02/03	03/03	04/03	05/03	Total
<b>Closed centre followed by a judge decision</b>	3	1	1	2	1	8
<b>Not informed about the placement</b>	93	73	102	87	68	423
<b>No placement found</b>		2	1	4	4	11
<b>Foster family</b>	1	1			1	3
<b>Placed by Youth Welfare Service (flemish)</b>	6	12	8	5	4	35
<b>Placed by the Youth Welfare Service (French talking)</b>	2	1	2	4	3	12
<b>Placement with an adult, identified as reliable</b>	1	1		3	7	12
<b>Placed in a crisis centre</b>	2	5	9	3	3	22
<b>Placed in a reception center</b>	7	5	1	1	4	18
<b>TOTAL</b>	<b>115</b>	<b>101</b>	<b>124</b>	<b>109</b>	<b>95</b>	<b>544</b>

**Global number of separated children (SC)**

	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>SC seeking asylum</b>	848	747	605
<b>Non seeking asylum</b>	852	473	1135
<b>TOTAL</b>	<b>1700</b>	<b>1220</b>	<b>1740</b>

**Separated children found at the frontier in 2002**

	<b>girls</b>	<b>boys</b>	<b>TOTAL</b>
Angola	1	2	3
Burundi	2	3	5
China		1	1
Guinea	1		1
Irak		1	1
Liberia		2	2
Nigeria		1	1
Palestine		1	1
DR Congo	30	12	42
Rwanda	4	3	7
Sierra Leone	5	9	14
Somalia	1		1
Sri-Lanka	1	2	3
Turquie	1		1
<b>TOTAL</b>	<b>46</b>	<b>37</b>	<b>83</b>

## **14. POLITICAL LEVEL - SUPPORT FOR CHANGE**

**Please where possible provide the following information :**

- \* describe the level of contact NGOs working with separated children have with: central government departments, local and regional governments**

We can say that the last years, there has been more and more contacts between NGOs and the government departments. When NGO organize a meeting, a conference, ... members of the government departments are usually present and do participate.

The NGO are also more and more consulted about the drafts laws and regulations.

- describe any contacts with European institutions e.g.: members of European Parliament, European Commission, or European Council. (give names if possible)**

We only have punctual contacts, nothing systematic.

- can you identify at the different political levels, any sources of support for improving the situation of separated children?**

In several government departments, in the Parliaments, and in many other places (study centers of the parties, universities, ...), one can find people very much involved in the seeking of a solution and global statute for separated children. We know them and they generally know us.

- can you identify, at the different political levels, the main obstacles to change?**

There is certainly a problem of money. All the improvements needed to improve the situation of separated children will cost some money and everybody is not ready to afford it.

There is also the fact that many politicians see separated children in the first place as foreigners and want to apply them the same kind of rules as adults. The trend is to limit as much as possible the entry in Europe and to send them back, as soon as possible, in their country of origin. They fear that if the situation is too good, we would have a great increase of separated children coming to our country.

## ANNEXE I

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