

PORTUGAL - QUESTIONNAIRE FOR COUNTRY ASSESSMENT

ASSESSMENT PERIOD: November-December 15, 1999

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Jorge Portas, Director of the Refugee Division of the Aliens and Borders Service, Ministry of Internal Affairs

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DOCUMENTS USED or REFERRED TO:

(Portuguese documents marked with * are in/available in English)

1. Portuguese Legislation

The Constitution of the Portuguese Republic

Asylum Law* 15/98 of 26th March (The Asylum Law).

Law Decree 244/98 of 8th August on the entry, stay, exit and expulsion of aliens within the national territory of 8th August (the Aliens Act).¹

Law 34/94 of 14 September 1994 establishing centres of temporary reception (no centre has been built yet).²

Minors Tutelary Organisation (known as OTM). Law Decree (LD) 314/78 of the 27th October with the changes introduced by the LD 185/93, 22nd of May, LD48/95, 15th of March, LD 58/95, 31st of March, 120/98, 8th of May.³

Protection of children and youths in danger, Law 147/99, 1st of September⁴.

Educative Tutelary Law, Law 166/99, of 14th September

2. General Literature

Amaral, Anizabela; Nunes, Joaquim Pintado; Costa, Paulo Manuel, 1997, *Colectânea de Direito de Estrangeiros*, Lisboa, SOS Racismo

Amaral, Anizabela, et al, 1998, *Guia de Direitos e Deveres dos Estrangeiros*, Lisboa, SOS Racismo

Conselho Português para os Refugiados (CPR), 1998, *Guia de Acolhimento e Integração de Refugiados (trabalho preparatório)*, Lisboa, CPR⁵

¹ + changes introduced by the Law Decree 4/2001, 10th of January and the Law Decree 34/2003, 25th of February.

² A Temporary Reception opened in the Airport of Lisbon in 1999.

³ And Law 133/99, 28th of August, Law 147/99, 1st of September, Law 166/99, 14th of September and Law 31/2003, 22nd of August

⁴ with the changes of the Law 31/2003, 22nd of August

⁵ Conselho Português para os Refugiados (CPR), Julho 2003, *Guia de Acolhimento e Integração de Refugiados (trabalho preparatório)*, Lisboa, CPR

Costa, José Martins Barra da, 1996, *Exílio e Asilo (A questão Portuguesa 1974 - 1996)*, Lisboa, Universidade Aberta

Portuguese Refugee Council, 1998, *Refugee Guide**, Lisbon, CPR (also available in French)

Divisão de Refugiados (Serviço de Estrangeiros e Fronteiras), s.d., *Relatório Estatístico 1996*, s.l., DR/SEF

Fonseca, Aurora e Perdigão, Ana, 1999, *Guia dos Direitos da Criança*, 2^oed., Lisboa, Instituto de Apoio à Criança,

Sousa, Lúcio, 1999, *Politics of Admission and Integration of Asylum Seekers and Refugees in Portugal: an overview of changing practices and attitudes**, in http://www.userpage.fu.berlin.de/~migratio/Eurofor/e28_abs.htm

Comissão Nacional de Protecção à Criança, 1998, *II Relatório de Portugal sobre a aplicação da Convenção dos Direitos da Criança*, CNPC (Internet version provided by GDDC)

Machel, Graça (Relatora), 1997, *Impacto dos Conflitos Armados nas Crianças*, Lisboa, Conselho Português para os Refugiados GDDC, 1998, *Portuguese Report on the follow-up to the Vienna Declaration and Programme of Action**, GDDC

Ministério da Justiça/Ministério do Trabalho e da Solidariedade, 1999, *Reforma do Direito de Menores*, MJ/MTS

3. Portuguese Internet Sites

Portuguese Refugee Council* - <http://www.cidadevirtual.pt/cpr>

Cabinet of Documentation and Compared Law* - <http://www.gddc.pt>

ACNUR Web Page (UNHCR office in Portugal) - <http://www.cidadevirtual.pt/acnur>

Aliens and Borders Service (SEF) - <http://www.sef.pt>

TABLE OF CONTENTS

DEFINITION OF "SEPARATED CHILD"

- 1. ACCESS TO THE TERRITORY**
- 2. IDENTIFICATION**
- 3. APPOINTMENT OF GUARDIAN OR ADVISER**
- 4. REGISTRATION AND DOCUMENTATION**
- 5. AGE ASSESSMENT**
- 6. DETENTION**
- 7. RIGHT TO PARTICIPATE**
- 8. FAMILY TRACING & CONTACT**

9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY
10. INTERIM CARE - HEALTH - EDUCATION AND TRAINING
11. REFUGEE DETERMINATION PROCESS
12. DURABLE SOLUTIONS
13. DATA COLLECTION
14. INTERNATIONAL INSTRUMENTS
15. CONSULTATION WITH SEPARATED YOUNG PEOPLE
16. POLITICAL LEVEL - SUPPORT FOR CHANGE

DEFINITION OF "SEPARATED CHILD" (SGP: A 2.1)

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

The relevant child legislation consists of the Minors Tutelary Organisation (OTM); the relevant immigration legislation consists of the Decree of Law 244/98 of 8th August⁶ and the Asylum Law No. 15/98, of 26th March. In Portuguese child legislation aliens are not treated separately, so there are no specific mentions of alien separated children.

The term "separated children" is not used in Portugal. When referring to these children the terms "*unaccompanied/isolated minors*" or "*unaccompanied minor asylum seekers*" (and refugees) are used. The Asylum Law uses the term «*Minor asylum applicants*» in Article 56^o as one of Section II, Particularly vulnerable situations (for purposes of Social Support). The Aliens Act in its Article 16^o "*Entry and exit of minors*" uses the terms «*minors*» and «*unaccompanied*»

There are no specify national public guidelines being used by police organisations aside from the articles in the law in order to deal with alien children.

The concept of separated children does not receive general agreement among those we contacted. Although legally (everyone claims the need for a legal link between the child and any other person that travels with him/her), if the child has a relative, even an older brother, he/she is not considered "separated".

This situation is similar to the figure of the *de facto guardian* present in the Portuguese law, applying to those that have a child under their care in a situation of abandonment (a relative or a neighbour).

⁶ with the respective changes

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.

Although an older sibling is not a legal guardian according to the Children's Law, in daily practice children with older siblings are not considered separated as such.

There are very few cases for which it was possible to obtain examples, but in practice the process is made in common for both siblings. As we will refer to in the access phase, the situation of these minors depends on the place where they present the claim for asylum (at the airport or inside the territory). Nevertheless, the appointment of a legal guardian (or tutor) is not normal practice. There is however, legal representation from the Portuguese Refugee Council for the procedure period (admissibility procedure/ and asylum procedure if admitted). The CPR is reported to pay a special attention to these cases.

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

In the asylum procedure children without a legal guardian are considered as vulnerable cases (Asylum Law, Article 56^o). However, this does not represent any advantage for access into the territory, especially for those that are at the airport.

Legally, in the Children's Law, all children without a legal guardian are considered as abandoned (Article 15^o). They should receive help from the State and a legal guardian should be appointed. This, to our knowledge has only been tried once by a court decision but the NGOs refused to become the guardian of the children.

The protection measures for alien children are decided at the Family and Minors courts in Portugal for those children that are from migrant communities that are inside the territory. It has been recognised however that the issue of children applying for asylum has not been at the top of their agenda. However, the courts are concerned for those children that are at the airport as they can not act on their behalf because, legally, they are not inside Portuguese territory.⁷

⁷ Concerning **UNACCOMPANIED MINORS** the current asylum law devotes a section (Section II, articles 56 to 58) to "*particularly vulnerable cases*", in which is included the situation of minors and victims of torture, rape, or other abuses of a physical or sexual nature.

According to these provisions, unaccompanied minors should receive special care and attendance by the social security centre of their area of residence or other entities with which the centres have concluded co-operation agreements.

According to Article 56 of the Asylum Law, a public entity or an NGO, without prejudice should represent asylum seekers who are minors, to the guardianship measures applicable. Moreover, it is

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

The difference between the alien legal framework and the children legal framework is something that needs to be analysed. We fear that there is a possibility of discrimination and the practice implicates that in certain circumstances children are not being fully protected. There is a need to implement in practice the legal framework. The changes needed are not so much in the law but in the day to day action taken.

1. ACCESS TO THE TERRITORY (SGP:C1)

a) Please describe relevant law, policy and practice in your country.

In Portuguese legislation there are no references to children arriving unaccompanied. However, in the Aliens Act there is a specific article (16º) concerning children arriving in the territory. In the Asylum Law there is no mention of children concerning access to the territory. In the Children's Law there is no reference to these issues as it applies to children who are already staying or living in Portugal.

Two situations can be presented concerning access to the territory of unaccompanied children who claim asylum. One applies to those who have managed to enter the territory (either legal or illegally) and present the asylum request at a police station or at the Refugee Division of the Aliens and Border Service. Another situation refers to those that are "retained" while in transit or when trying to enter the territory at the airport. The Aliens Law permits the "refusal" of entry (Article 11º) to those persons who do not hold a legal visa for purposes of transit or entry, that may present a danger to the national security (and EU/Schengen States) or that do not have means of subsistence.

Article No. 16º of the Aliens Act deals with the entry and exit of minors. It states that the authorities should refuse entry whenever an alien minor, under 18, is unaccompanied by the person who holds parental power or when in Portugal there is no one allowed to assure his/her staying. With the

expected to implement more safeguards for the determination of Refugee status of unaccompanied minors in order to provide a clear minor guardianship. Although, no specific refugee status determination procedure has been set up as regards minor asylum seekers, practice has shown that some unaccompanied children have received special treatment by the authorities. After the submission of the asylum claim, the SEF – Borders and Aliens Service - informs the competent judge of the presence of the minor, and requests the appointment of a guardian, who will represent the child during and after the asylum procedure.

exception of some cases, the minors cannot enter when the person to whom he/she is entrusted does not enter, and vice-versa.

In the asylum law, the process of admission of children is not analysed in detail. For purposes of access to the territory the situation depends on if the claimant is already inside the territory or if he is at the airport. In the latter case they are "retained" in the International Zone (Article 5° of the Aliens Act), and subject to a process that is

extremely quick when compared with those that apply inside the territory. At the airport the immigration authorities, upon realising that the minor is seeking protection, inform the Refugee Division to follow up the asylum process. The child is kept in the airport international zone.

As regulated in the asylum law, airport cases are dealt with under a special section (Article 17°). In practical terms it means that the process is very quick because asylum seekers are "retained" inside the International Zone. In these circumstances, for admission purposes, the same criteria are applied to children as to other asylum seekers. This means to be subject to an admissibility process and the criteria of non admissibility (Article 13° of the Asylum Law). This includes the notion of "manifestly unfounded" request or "not admissible" grounded on criteria that include, aside from the exclusion clauses of the Geneva Convention, the application of the concepts of "safe country" or "third country of asylum".

Normally, the minor only leaves the international zone if he/she is admitted into the asylum process, or if the authorities exceed the legal time frame they have to present a decision, which is 5 days. Only if the case is admitted can the child enter the territory. Nevertheless, there have been cases which the CPR called to the attention of the authorities and consequently the minors were able to enter national territory.

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

Clearly, the issue of admissibility does not conform to the Statement. It is doubtful that the "*best interests of the child*" are being taken care of at the moment. Especially for those that are "retained" at the airport, for immigration reasons and discussible criteria of "safe country" of origin.

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

Admissibility should be abolished from asylum claims lodged by minors. Moreover, minimum guarantees should be implemented in a more comprehensive manner. There is a need, recognised by judicial entities to

deepen their attention in these issues. Nevertheless they are limited in their intervention within the international zone of the airport. Some of the NGOs contacted expressed their apprehension about the fact that processes of *refoulement* could be taking place at airports.

The authorities claim that a liberal attitude towards asylum seekers claiming to be under 18 will enable a major flux to be brought through under this claim of "children's rights".

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

Yes, according to the Aliens Law Article 21^o carriers can be fined for bring in someone without proper documentation. The company is obliged to take back the person as soon as possible and is responsible for the expenses during the stay of the person in the International zone. According to the information collected these expenses include food and health services when needed. This also applies to children and is the common practice for them.

There are two types of fines, one for bringing in someone to the country without entry documents (Aliens Law, Article 141^o) and another one for carriers that bring someone in without a transit visa, when required (id, Article 142^o). In the first case, the fine is between 1.246.99 and 1.995.19 Euros. In the second situation the fine is between 399.04 and to 897.84 Euros.⁸

Trafficking (SGP. C1.2)

e) Are you aware of any cases of children being trafficked for purposes of exploitation into your country? If so please give brief example(s) stating, if possible, the country of origin and nature of trafficking.

Please give examples where children have travelled along trafficking routes in order to apply for asylum.

According to the police authorities contacted there is no record of children being trafficked for purposes of exploitation into Portugal. Nevertheless there are suspicions that some children are using trafficking

⁸ Today, in the first case, the fine for collective people ranges from 3.000 to 5.000 Euros, and for single person: from 2.000 to 3.500 Euros. In the second situation the fine ranges from 600 to 1.200 Euros for collective persons and from 500 to 1.000 Euros for single person.

routes to gain entry into Europe. There are also some cases where the minors have disappeared after entering the territory.⁹

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

Portugal has, in recent years, adopted some public measures concerning the prevention of trafficking of children. This is not so much because children are being trafficked into the country, but because of major news and investigations that are being done about the use and possible trafficking of minors for sexual purposes, namely on the Island of Madeira.

2. IDENTIFICATION (SGP: C2)

a) Please describe relevant law, policy and practice in your country.

There are very strict rules concerning the identification of the situation of the child at the points of entry. These are prescribed in the Aliens Law, article 16^o. If the minor is accompanied by an adult the relationship between them is analysed. If there is any problem the adult will be also detained and if the child is returned he/she is also returned according to the law. As for asylum, the Asylum law does not mention the identification of a child. The Aliens and Borders Service at the airport analyses the situation of the children and, if asylum is requested, forwards the application to the Refugee Division, which will send one of its inspectors to the airport. The decision of the Director of the Borders and Aliens Service, for these cases of admission, is taken within five days. For the claims presented inside the territory the decision is taken within 20 days. In the first situation the appeal to the National Commissioner for Refugees has to be made in 24 hours, while for those inside the territory it is made

⁹ Trafficking movements are not related in Portugal. So far, this year, only one case of trafficking was noticed from Faro, south of Portugal, to England. It was said that one citizen from Angola, resident in Portugal, was trafficking African minors girls with great profit, to prostitution and others exploitation activities. The process is still on trial.

Referring other children in need of protection, there is a situation that is difficult to qualify, concerning children of the *roma* ethnic, coming from Romania. In some parts of the territory, especially in the streets of Lisbon, they are seen asking for charity, sometimes followed in distance by the parents, or brother. In spite of their traditional habits, it seems that they could have some kind of national and international protection, despite the exploitation from their family. They are not qualified as refugees neither as illegal immigrants or resident. This people leave in a "limbo", without clear legal status. Moreover, Portuguese authorities are tolerant towards this kind of people.

The authorities, namely police and immigration services, are attentive of the needs on prevention and punishment, and they have been taken some preventive steps. It is necessary to say that, today, the Portuguese society is more sensitive, because of the existence of the trial of paedophilia involving some people of the high Portuguese society.

within 5 days. In any case there is a suspension of any measure for returning. However, if the National Commissioner for Refugees gives a negative answer then the person at the airport has just 24 hours to declare himself, and a further 48 hours can be obtained in order to instruct a lawyer to prepare an appeal (while the asylum seeker is sent back). The CPR action in these circumstances, legally, is very limited due to time limitations.

In the Aliens Law, if a person stays for more than 24 hours in the airport the court connected with the first instance of the legal process (TAC) has to be consulted. The same applies to the asylum seekers, nevertheless there is no special provision for children. The Family and Minors Court is not alerted to the issue because the children are not inside the territory.

Regarding social support, the persons, including children who are kept in the airport international zone are, for all purposes, taken care of by the airline company. There have been cases where the conditions of those staying have jeopardised the person's physical and psychological conditions.

Regarding the interviews, the inspectors of the Borders and Aliens Service only do the initial accessing of the children's situation. If a claim for asylum is "understood", it is reported to the Refugee Division which is not present in the airport. The airport police have no special training concerning asylum issues, in particular child interviews, either as an asylum claimant or not. The staff of the Refugee Division, although specialised in refugee issues, have no special preparation concerning child situations. One reason for this situation is said to be the small number of claimants in this situation. Also, there is a great deal of suspicion about the children's real age, something that has to do with the fact that the average child claimant is between 16-17 years old.

A last point concerns the "sharing of information" between authorities and other entities. It seems that very little is taking place, although now, in the new asylum framework, the Refugee Division is obliged to alert the Portuguese Refugee Council for every claim that is presented. The fact is that, aside from these institutions no other one is present at the airport. The Red Cross, is willing to act in this area, if it had the means and authorisation. They say that merely seeing the symbol of the Red Cross is a benefit for many people that are afraid and in fear.

A major issue concerning the minors identification is the doubt about their age.

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

It conforms to the Statement in the case of the identification of the children's situation but not so much as far as the procedure towards the children claiming asylum is concerned. There is a need for the authorities at the airport to be more willing to see the minors request for protection.

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

No changes are needed regarding the screening of the child's situation in general, but special attention should be paid to those that apply for asylum. Also, there is a strong need to implement measures for protection. In addition, there is a need for staff training (some improvements may be outlined under article 17, para 2 of the recommendation of the European Council, 7th November 1996).

3. APPOINTMENT OF GUARDIAN OR ADVISOR (SGP:C3)

a) Is a guardian or adviser appointed?

No, the appointment of a guardian or advisor with a "long term perspective" is not made. This is particularly the case for those children that are at the airport as they are not considered to be in the territory. Nevertheless, the Asylum Law in Section II, Social Support, does admit the possibility of tutelage measures to be taken. And, in the Children's Law there is, under Article 49^o, the possibility to act urgently in order to help the "abandoned" child. However, this has not been the practice for children who claim asylum.¹⁰

Although there is the possibility of a guardian being appointed, there is no such practice as regards unaccompanied minors that lodge the application for asylum at the airport. In fact this is not the practice. If the child is inside the national territory he/she will be helped legally and socially in the

¹⁰ The asylum law devotes a section (Section II, articles 56 to 58) to "particularly vulnerable cases", in which is included the situation of minors and victims of torture, rape, or other abuses of a physical or sexual nature. According to these provisions, unaccompanied minors should receive special care and attendance by the social security centre of their area of residence or other entities with which the centres have concluded co-operation agreements. According to Article 56 of the Asylum Law, a public entity or an NGO, without prejudice should represent asylum seekers who are minors, to the **guardianship** measures applicable. Moreover, it is expected to implement more safeguards for the determination of Refugee status of unaccompanied minors in order to provide a clear minor guardianship. Although, no specific refugee status determination procedure has been set up as regards minor asylum seekers, practice has shown that some unaccompanied children have received special treatment by the authorities. After the submission of the asylum claim, the SEF – Borders and Aliens Service - informs the competent judge of the presence of the minor, and requests the appointment of a guardian, who will represent the child during and after the asylum procedure.

first instance by the CPR. After a first period of two to four weeks, he/she is taken care of by the Santa Casa, who will help him/her by providing food, accommodation and other basic necessities.

Even in the case of the institutions that act as guardians the "long term perspective" is not the paradigm. The NGOs working in this area recognise this limitation. They are not prepared to assume such a task per se because of their lack of human and financial resources.

Some NGOs have recognised that the current division of tasks by the different institutions does not work in the best interests of the child. Although, according to the law, there is the possibility of appointing a tutor, this does not happen. However in the Children's Law there is the possibility, which is not explored by the institutions, to deal with these issues. In fact, the officials responsible for these problems are not particularly aware of these issues and have asked NGOs to act when they think that there is a problem. This means that the minors claiming asylum are receiving, in practice, different treatment than other children in Portugal.¹¹

Another problem arises from the fact that the measures taken towards the children depend on the legal situation. If the minor is admitted in the asylum procedure he/she is entitled to a temporary residence permit that will enable him/her to study. If not it is not possible for him/her to do many tasks.

According to the information gathered, under the law, even if the child's case is under appeal, he/she is entitled to receive help from the State. Although they recognise that this has not been the practice they say that this should be implemented.

b) If so what is their role?

In our opinion the main problem is that there is not a guardian or adviser that follows the whole process and deals with all the issues pertinent to

¹¹ On the 23rd of August, the Law 67/2003 transferred the European Directive on **Temporary Protection** into the national legislation. According to Article 18 of this Law, the Portuguese state must guarantee the representation of the unaccompanied minors by a guardianship or, in some cases, by an organisation responsible for the cares and for the well being of the minor, or other adequate representation. Furthermore, during the period of the temporary protection, unaccompanied minors will have to be placed close by adults relatives, a host family, in reception centres with proper equipment for minors or in other places with adequate equipment for minors or close by the person that took care of the minor on the occasion of the flight.

the child. There is a strong effort for co-ordination made by the main non-governmental institutions working on these matters. However, they recognise that this follow-up is problematic and sometimes the minor is left to do many things on his/her own because there is an insufficient number of assisting staff.

The Portuguese Refugee Council provides legal and social assistance and consultation, the first two/four weeks accommodation, food and travel tickets, Portuguese classes and support in obtaining admission into schools. The Santa Casa provides assistance with food, pocket money, accommodation and social counselling.

c) How soon after arrival are they normally appointed?

There is no time indication. According to the Asylum Law 15/98, Article 18^o, the CPR is informed of the situation by the Refugee Division of the Aliens and Borders Service when the application is lodged. At present we are unable to obtain a reference of a judicial appointment by the state being made.

d) What kind of background and expertise do guardians/advisers have?

The advisors at CPR have legal expertise; there are also two social workers and a psychologist¹². The Santa Casa social worker has received training recently about minors in danger.

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

Once again, it is doubtful that the "best interests" of the children are being taken into account. Although accommodation and health care is provided during the period of admissibility, the same resources and educational facilities only continue if the child's case is forwarded into the merits procedure or if he/she receives a temporary residence permit. The legislation (Aliens and Asylum) and the practice does not conform to the Statement and there is a need to implement the internal Children's Law.

f) Are any changes needed? In relation to any first principles?

¹² There is no psychologist working in PRC currently.

There is the need to raise awareness among the usual entities that work on this issue, and above all to involve other institutions that work on children's issues but that do not have a direct role in these areas.

This is something that is prescribed by the law and can affect the issue. Also, there is a need to implement training, both for the authorities and for the NGO Staff.

We hope that in the new framework of the Children's Law, published but not yet implemented, where the division between protection and educational measures is made, it is possible to involve more organisations.¹³

Many of the organisations contacted throughout our work claim the need for more information about the issue. In spite of this interest most NGOs and government entities considered is to be difficult to fulfil all the tasks needed. However, one statement made by a government official states that "if there is political will everything in this declaration is possible".

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

a) Please describe relevant law, policy and practice in your country.

The Child Care Act does not specifically deal with the registration and documentation of separated children arriving in the state, neither does the Aliens Act or the Asylum Law regulate such issues. Although the administrative acts are done confidentially, the fact is that the interviews are held without the adviser or guardian being present. This is not prohibited by the law and the Refugee Division Director states that the CPR can attend their interviews. This is not, however, taking place due to limited resources and personnel of the CPR.

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

The practice does not conform to the Statement. The minor is not assigned a guardian or adviser before undergoing registration and documentation. Also, although the CPR and Santa Casa conduct another interview for social purposes there is not a full social history as prescribed in the Declaration. There is no special formula for interviewing children. But the collected data is done in accordance with the child's age, therefore, the younger he/ she is, the shorter the interview will be.

¹³ The Children's Law is implemented and it seems to be better than the previous one, for children in danger.

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

There is the need to appoint a guardian or adviser that has responsibility for the minors. The problem that most organisations comment on is the difficulty to provide one due to either lack of staff or resources. They work merely at an emergency and transitory measure.

Perhaps we need to implement other measures, namely involving other institutions that have, according to the law, specific concerns for children and which are steadily working in this area.

The need to prepare a guideline for interviewing children and training personnel able to do so.

The need for interviews to take place in a proper installation. This is particularly important at airport facilities where the issue of "confidentiality" can be jeopardised by the fact that the interviews are sometimes held in a bar or in a room which people are constantly entering.¹⁴

5. AGE ASSESSMENT (SGP: C5)

a) Please describe relevant law, policy and practice in your country.

There is no legislation or policy with regard to the age assessment of an asylum seeker claiming to be under 18 years of age. Nevertheless, the Asylum law refers the possibility of specialists being asked to make external assessments. there is no record of any doctor ever making such an age assessment, even when, the Aliens and Borders Service had serious doubts about a minors age.

There is a wide suspicion of asylum seekers who claim to be between 16-17 years old. They are regarded as de facto adults.

One of the reasons for this situation arises from the fact that most of the minors who claim to be under 18 come from Sierra Leone, and the practice of the authorities is to consider their claims as non admissible because they consider their origin to be a "safe country", so there is no need for a further age assessment.

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

¹⁴ The New Temporary Reception Centre at the International Airport of Lisbon has now a proper installation, for asylum seekers and illegal immigrants.

The situation does not conform to the Statement. Authorities sustain the view that a liberal acceptance of the age claimed could lead to more applications for underage asylum seekers. The benefit of the doubt is not widely given in child situations.

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

There is the need to implement an independent age assessment when there are doubts about the age of the asylum seeker. Nevertheless, the age assessment, and the minors situation in general, is problematic if the causes for their inadmissibility rely on procedures like "safe third" country and "third country of asylum". In these cases age is irrelevant and age assessments are not considered at all necessary.

6. DETENTION (SGP: C6)

a) Please describe relevant law, policy and practice in your country.

There is no mention in the Aliens Law, or the Asylum Law, of allowing or prohibiting the detention of separated child asylum seekers in Portugal.

There are no records of children being kept in prisons or detention centres but, according to the authorities, children are "retained" in the international zone of the airport.

They also mention the fact that, if these persons are kept in the international zone, nothing forbids the airline company from taking them outside, to hotels, at their responsibility. This has never happened, as far as we know.

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

This does not conform to the Statement because in practice asylum seekers, and children in particular, are detained in the international zone. Once in this situation, they are not inside the national territory and therefore, they are not assisted in their best interest.

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

To eliminate the "retention" of minors at the airport international zones. The fact that the temporary reception centres have not yet been built

(Law No. 34/94 of September) can not be an excuse to maintain minors in the International Zone.

To advocate an age assessment procedure when there is any doubt over the minors age at point of entry and a procedure that allows them to benefit from social and medical support as they are not fully protected by an airline company.

7. RIGHT TO PARTICIPATE (SGP: C7)

a) Please describe relevant law, policy and practice in your country.

There is no specific provision within the immigration legislation and asylum law. In practice, children are heard once their request is accepted.

According to the child legislation the authorities are obliged to hear the child's position and, for those between 12 -15 years, they are entitled to decide for themselves certain aspects and make decisions about their lives.

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

There are no national guidelines for children's interviews. The police at the border, and the personnel of the Refugee Division, are not trained for interviewing children. The use of interpreters is not a prerogative of the asylum seeker but a measure that may be taken by the authorities if they think it is necessary.

c) Are any changes needed? In relation to any other first principle?

There is a need to place the national law, which does not distinguish national from aliens children, at the core of the issue. National child legislation is far better prepared to protect the child. In particular the recent Laws No. 147/99, 1st September and Law No. 166/99 of 14th September will allow a much higher level of protection of children, when they come into force. The new framework, following Beijing UN measures, clearly distinguishes the issue of Protection of children in danger and the necessary measures for re-education. In order to involve the actors to the level of the protection of children we need to prepare the persons and the institutions at all levels.

8. FAMILY TRACING & CONTACT (SGP:C8)

a) Please describe relevant law, policy and practice in your country.

There are no special procedures concerning family tracing and contact in the legislation. Nevertheless, authorities and NGOs reported that they try, as soon as possible, to analyse this situation.

In the case of the Refugee Division this tracing is done during the admission process, through contact with other European Borders Service, enabling the possibility of the children being transferred to another country. In the case of the NGOs this work is also done but with more limitations, involving the co-operation between them. The main actor in this field is the Portuguese Red Cross which has a department for tracing relatives and exchanging messages, which has had some success in cases of separated children. This service can work either in Europe or in any other country in the world due to the International and local units of the Red Cross and Red Crescent.

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

Although there is no special provision we could say that this issue is taken care of speedily. The problem raised is whether this is done for all cases. In fact there is the possibility that this is done especially for small children, and for those who come from countries not labelled as "safe countries".

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

Tracing should involve all minors, regardless of their age. There should be more co-operation between authorities and NGOs on this issue in order to improve the chances of tracing.

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

a) Please describe relevant law, policy and practice in your country.

The Asylum Law previews the return of a person to another European country in the mainframe of the third country grounds but does not mention family reunification separately in this context. Likewise, child reunification is also not contemplated.

Nevertheless, there have been some, although very few cases, in which, following the tracing process mentioned above, it was possible to transfer the child's case to another country where he/she had a relative and where the relative had a legal residence. This has happened recently with a Rwandan girl who was reunited with her brother in a northern country.

b) Does this conform to the Statement? Please outline in brief.

Yes it does, in this case, the practice is ahead of the existing legislation.

c) Are any changes needed? In relation to any first principles?

Another situation is where the existing legal framework on child legislation could be linked with Aliens and Asylum laws. There are specific measures in the child legislation that promote reunification with the family.

10. INTERIM CARE - HEALTH - EDUCATION AND TRAINING (SGP. C10)

Interim Care (SGP: C10.1)

a) Please describe relevant law, policy and practice in your country.

Chapter II of the Asylum law concerns the Social Support provided for asylum seekers. Under Section II: Particularly vulnerable situations, Article 56 deals specifically with minors. It states:

Without prejudice of any tutelage measures which shall apply in accordance with the provisions of the legislation concerning minor tutelage, and when the circumstances so require, minor asylum applicants can be represented by a non-governmental organisation.

In spite of the possibility of the application of tutelage measures this has seldom happened. In practice, as mentioned before, the situation of the child depends on his/her position in the territory. Namely, whether he/she is inside the territory or in the "international zone". In this last case, according to the person responsible in the Minors Court, there can be a problem of access to these children, and in fact, she did not recall any such situation, whereby the tutelage measures had been applied in these cases.

In practical terms the actual situation is as follows. After lodging the application inside the territory, or after leaving the "international zone" of the airport, the child is placed in the CPR reception centre for the period of analyses of his/her admissibility process.

Meanwhile contact is made with Santa Casa, which has a special agreement with the Social Security department, in order to assist with vulnerable cases of asylum seekers. This can take from two to four weeks. With Santa Casa the minor is moved into a hostel (the hostel receives minors from

Santa Casa and other persons) where he/she stays. In principle, Santa Casa helps the youth until the end of the process. This means that, if the minor received a refusal the help would be stopped. This does not mean that in special cases the help would be maintained.

This help by Santa Casa is determined in the framework of an agreement with the Social Security (Santa Casa provides help for vulnerable asylum seekers, women, women with children, unaccompanied children and, although exceptional, cases of men with health problems).

The support includes accommodation, food and pocket money, social counselling and health assistance at the Santa Casa medical facilities.

For those minors who receive admission in the asylum procedure and receive their temporary residence permit they are entitled to receive, for a four month period, help from the Social Security (which is around 600 Euros) like any other asylum seeker.

The main problem with children arises with those minors who receive a negative decision from their admission process, and for those who have, in the asylum process lost their case. Once they are informed of this, they have to return their temporary residence permit and they remain with no other document. While in this situation, which is the case for the majority, they have great difficulties to get normal help from state facilities.

Also, without help they have to work for a living, although many start to work even sooner. This is reasonable under certain circumstances. In the Portuguese law children who are 14 to 15 years old, and are obliged to attend school, can do light work. At the age of 16 to 17 a minor can start doing other types of work.

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

It does not fully conform to the Declaration because the "long term" perspective is missing in most of the cases.

c) Are any changes needed? In relation to any first principles?

The need to make special arrangements for minors. This includes accommodation which is recognised as insufficient because the minors are mixed with other persons and the conditions are not satisfactory.

Analyse the possibility of extending, in practice, the tutelage protection measures to minors in this situation. This needs to be discussed involving institutions that are not in the mainstream of the issue at the moment.

Health (SGP: C10.2)

According to the current law, asylum seekers are entitled to access to the health system. But there is no special provision for this issue. The CPR has established this year, for the first time, an agreement with the Hospital of Tropical Medicine in order to screen all persons upon arrival, including children. They are seen and examinations are conducted in order to look at their situation. Afterwards, through the help provided by the SCML, there are provisions for health treatment because they can be received at their facilities.

Health facilities sometimes deny them access because they state that their legal situation is not clear. This is the most complicated issue, after they have received a negative decision. There are some cases of accidents at work that lead to many daily problems, this is in connection with the illegal character of the performed work and the fear/negligence of employers to register these employees for health insurance.¹⁵

d) Please describe relevant law, policy and practice in your country.

¹⁵ In an initial phase, the CPR sends the asylum applicants to the “*Instituto de Higiene e Medicina Tropical*” – IHMT, usually in the two weeks immediately after their arrival, for medical check-ups. They are attended free of charge, in the clinical unit of tropical diseases, which results from a protocol made with the CPR. The check-up is not compulsory, the applicants have one only if they want to.

Decree N.º 30/2001 of 17th of 2001 from the Minister of Internal Affairs and Minister of Health entitles Asylum seekers to have access to the National Health Service and to the same rights as nationals (Art. 53 of the asylum Law).

If applicants are sick, while residing in the Reception Centre of Bobadela, (CAB) run by the Portuguese Council for Refugees, (initial phase), they usually turn to the services provided by one of the 8 units of the *Sacavém Health Centre*, the CAB pays for all the expenses relating to medication prescribed (both by the health centres and the IHMT).

There is no structured reception system for these cases nor is there any doctor working specifically with this population (or with immigrants), thus they are attended just like any other national or foreign citizen. No specific psychological help is given to asylum applicants, they have access to the same clinical structures (which are few) as nationals. Many of these persons are psychologically disturbed, some more seriously than others, and therefore have few means to overcome these problems. They are not often, even aware of their own psychopathology.

Nevertheless, the Portuguese Refugee Council signed a Protocol with CAVITOP (“*Centro de Apoio a Vítimas de Tortura*” / Support Centre for Victims of Torture) to provide free systematic and continuous psychological and psychiatric support to asylum seekers and refugees that suffered from torture, violence or ill treatment. This protocol represented a great achievement since there is an increase in the number of asylum seekers that present signs of torture, violence or ill treatment.

Access to health facilities for children and minors should be more structured, especially for those that are under appeal.

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

The specific situation of the children is dealt with through the help and effort of the NGOs involved as a branch of vulnerable cases. However there are no specific provisions regarding the situation of separated children and their particular needs. There is also the risk that separated foreign children are treated differently from national children.

f) Are any changes needed? In relation to any first principles?

Yes, to extend the measures consecrated for all other children to be applied to these children.

Education, Language and Training (SGP: C10.3)

g) Please describe relevant law, policy and practice in your country.

Education measures for the asylum applicants of school age (mandatory school attendance up to 14 years old) are applied. The problem is that this is only possible for those who have been admitted into the asylum procedure and hold a temporary resident permit. Those who have been rejected do not hold any papers, aside from the one with which they claim for appeal, and this is not useful for anything else.¹⁶

The CPR teaches Portuguese classes and has recorded some successful cases of integration in certain school facilities. However, this possibility is not made fully available for everyone. The situation of the spontaneous asylum seekers is far more difficult than for example that of the people from Guinea Bissau who receive a special decision. Of course these people

¹⁶ Refugee children enjoy the same right as nationals. According to the Asylum Law, “asylum seekers of school age and to whom a provisional residence permit has already been issued shall have access to public institutions of compulsory education under the same conditions as national citizens.” (Article 57, Law 15/98). The persons of school age and who have had their legal situation regularised must be integrated into the national education system.

In this case, and because it is a primary school, involving very young children, the absence of documentation confirming their educational level is not that problematic, as it will not be particularly high. When these children are older, the situation could be more complex. If they have documentation that proves the educational level achieved in the country of origin, the individuals should request the corresponding equivalence. Otherwise, they should go to the Department of Basic Education (DEB) or to the Department of Secondary Education (DES) where they are required to do a test to determine the level in which they will be placed.

speak Portuguese and the structure of their home country is more similar to that of Portugal.

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

According to the law, there is conformity. But in fact, the need for the temporary residence permit needs to be analysed. Also these steps are very limited during the asylum process because the long-term situation of the children is unknown. As for the cultural background of the children, changes are taking place in the educational system by the Intercultural Cabinet of the Ministry of Education. However, most of the measures are towards the children of Portuguese Speaking Countries of Africa, where many Portuguese immigrants and asylum seekers in the past have come from. Today many of the children come from countries where English is spoken.

i) Are any changes needed? In relation to any first principles?

To define the conditions of reception of separated children earlier and with a long term perspective (either integration or return).

11. REFUGEE DETERMINATION PROCESS (SGP: C11)

Access to normal procedures (SGP:C11.1)

a) Please describe relevant law, policy and practice in your country.

The handling of the applications of minors under 18 follows the same process as adults. The first step of the asylum process is the admission procedure. This means that they are put into the admissibility process and their case is analysed. Only if it is considered to have grounds for asylum will he/she then be admitted into the process.

Also, like other asylum applicants, minors are screened with special procedures like "safe third country", "manifestly unfounded" and "safe country of origin".

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

Underage asylum seekers are screened with the concepts mentioned above and have to pass through the admissibility process. This falls short off the

Statement. This is happening with the those minors coming from Sierra Leone, Guinea, Senegal and the Ivory Cost. These, although not defined by any public law, are considered as safe countries.

c) Are any changes needed? In relation to any first principles?

There are very few cases, nevertheless we need to pay attention to the possibility of deportations that can have a *refoulement* connotation.

Legal Representation (SGP: C11.2)

d) Please describe relevant law, policy and practice in your country.

Children do have a legal representative during the entire procedure. The problem arises from the fact that his/her legal representative is not the same person throughout the procedure. The CPR follows the case during the asylum procedure but if the case is refused, it only goes as far as the appeal to the National Commissioner for Refugees. Further steps, like court action, are taken by other lawyers (there is the possibility of applying to get one free of charge). There is free judicial support although the CPR tries to indicate those that have done the asylum courses run by the CPR.

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

This is does not fully conform with the Statement. There is the need to implement existing measures in the most urgent procedures.

f) Are any changes needed? In relation to any first principles?

To implement in practice the existing measures.

Minimal Procedural Guarantees (SGP: C11.3)

g) Please describe relevant law, policy and practice in your country.

The decision is made by the Director of the Aliens and Borders Service. There is the possibility to appeal to the Commissioner for Refugees and afterwards to a court, up to the Supreme level. There is the right to appeal if refused. One problem is the deadlines for appeal. In the case of the airport the application situation is only 48 hours, while inside the territory it is 5 days.

Another main issue is the fact that the appeal to the court in airport situations does not prevent the person from being sent back to the country where he/she came from. Once returned the applicant is supposed to wait for the result, which can take months.

There are no special provisions to prioritise underage applications.

There is the possibility of a legal representative to assist in the police interviews but this is not a practice because the NGO does not have the staff and resources to do so. They do another interview. The CPR has called for attention to be paid to the conditions in which the interviews are held in the airport. Sometimes there are no private rooms available and interviews are held in a bar or in a room where people are constantly entering and leaving. The principles of "best interests" and "confidentiality" are thus compromised.

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

In legal terms they are protected and they have the right to appeal. However, the problem is that they are in legal limbo before a decision is taken and they are treated as if they were staying in the country illegally.

i) Are any changes needed? In relation to any first principles?

The need to have more privacy during interviews and give priority to children in order to avoid lengthy processes.

Independent Assessment (SGP: C11.4)

j) Please describe relevant law, policy and practice in your country.

There is no provision for this issue. In addition, no independent access is given, although the CPR can take a position about the issue.

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

This does not exist and normally the decision is negative.

l) Are any changes needed? In relation to any first principles?

To involve other institutions with legal expertise on children and improve the ability of the CPR in these issues.

Interviews (SGP: C11.5)

m) Please describe relevant law, policy and practice in your country.

There is no provision concerning the interviews. They are made by personnel of the Refugee Division who have been prepared for dealing with asylum issues but not specifically with child interviews. The police officers at the airport have general training but not the more specific training of those in the Refugee Division.

The interviews are held at either the Refugee Division or at the Aliens border, which is normally some days after the request or after the child has been installed at the CPR reception Centre. At the airport the interviews are held in the period after the request has been made.

During the interviews there is the possibility of assistance from an interpreter. This only normally happens when the asylum seeker does not speak either French or English.

Although there is in the law the possibility for the interview to be attended by someone of the child's preference we were able to find no record of this happening. This possibility was included in the last revision of the Law.

During the appeal there is the possibility of the National Commissioner for Refugees to interview the asylum seekers directly, which is an improvement compared to the previous law. Nevertheless, as far as we have been told, this has never happened with separated children.

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

The practice falls short of the Statement.

o) Are any changes needed? In relation to any first Principles?

More training and awareness both for police officers and NGO staff.

Criteria for making a decision on a child's asylum application (SGP: C11.6)

p) Please describe relevant law, policy and practice in your country.

There is no special provision concerning minors. Nevertheless, in practice there is a dual attitude, one concerns very young children, to which the benefit of the doubt is more easily applied. The other concerns those minors who claim to be 16 to 17 years old. In these cases there is more suspicion, as previously mentioned, concerning both their age and also their nationality.

We do not observe a very liberal application of the benefit of the doubt. As one police source put it: «If we (authorities) become liberal about accepting all those who claim to be under 18, in the following months we will have more people claiming to be minors.»

We have to note that the majority of those who claim to be underage have received negative decisions in the admission process. Those who have been accepted in the asylum procedure and get a temporary residence permit are very few. Most of them have had a negative decision and are now waiting for an appeal decision, without holding any documentation whatsoever.

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

This does not conform to the statement.

r) Are any changes needed? In relation to any first principles?

To ensure that the principles of admission consider each child's case individually. To make the necessary arrangements to evaluate the child age.

Young People who become adults during the asylum process (SGP: C11.7)

s) Please describe relevant law, policy and practice in your country.

There are no measures concerning these youths. They are, in practice, the vast majority of those who are in Portugal. They mostly work in the civil construction.

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

There is no special "generosity" shown towards these cases, as far as legal measures are concerned.

u) Are any changes needed? In relation to any first principles?

Yes. They are not treated as children but as aliens. The immigrant status is more important than the fact of their being minors.

12. DURABLE SOLUTIONS (SGP:C12)

Remaining in a Host Country or Country of Asylum (SGP: C12.1)

Grounds for a child remaining in a host country (SGP: C12.1.1)

There are different categories of protection granted by the Portuguese Asylum Law, and Aliens Law.

Refugee Status (Article 1º)

- 1. The right of asylum shall be guaranteed to aliens or stateless people persecuted or seriously threatened of persecution in result of activity exercised in the State of their nationality or habitual residence, in favour of democracy, social and national liberty, peace among peoples, freedom and the right of the Human being.*
- 2. Shall also be entitled to the grant of asylum any aliens or stateless people who, having a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinions or membership of a particular social group, are unable to or, owing to such fear, are unwilling to return to the State of their nationality or habitual residence.*

Residence permit for humanitarian reasons (Article 8º)

- 1. Shall be granted a residence permit for humanitarian reasons to aliens or stateless people to whom the provisions of Article 1 do not apply and that are prevented or feel unable to return to the country of their nationality or habitual residence, for reasons of serious insecurity emerging from armed conflicts or from the repeated outrage of human rights that occurs thereon.*

Temporary protection (Article 9)

1. *The Portuguese State can grant temporary protection , for a period not exceeding two years, to persons displaced from their country as a consequence of serious armed conflicts which generate refugee flows, at a large scale.*
2. *The criteria based on which temporary protection is eager to be granted shall be defined, in each case, by Cabinet Resolution.*¹⁷

As a last resource, a refused asylum seeker may apply for article 88° of the Aliens Act, the exceptional regime, a residence permit for cases of national interest or for humanitarian reasons (compassionate grounds).

Portugal does not have a quota system for refugees. The cases of Resettlement of refugees is only done upon submission of the UNHCR (Article 27 of the Asylum Law). Very few cases have occurred in the last twenty years.

a) Please describe relevant law, policy and practice in your country.

The most common attribution is the residence Permit on Humanitarian grounds. Some other minors, many of whom have become adults, are now applying for the exceptional regime, on compassionate grounds.

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

The several status system conforms to the Statement, namely the immigration one. It can also be stated that, in 1994 and 1996, exceptional processes of legalisation took place in Portugal, and that we now know that the possibility of another one is being discussed.

c) Are any changes needed? In relation to any first principles?

The problem of the system is the fact that it is seldom applied. Another problem is the question of the time period allocated to each status, which results on the existence of different levels of protection. For example, in Portugal, the refugee status entitles the beneficiary to a 5 year renewable, refugee card. The resident permit on humanitarian grounds is issued for a one year period for a limit of five years, when the situation of the home country has to be analysed. During this five year period, each

¹⁷ [The Law 67/2003 of the 23rd of August transferred the European Directive on Temporary Protection into the national legislation.](#)

year the person has to prove that he/she is integrated in the Portuguese society with work and housing. Temporary permission is issued with a two year limit. The exceptional regime is for two years, renewable for periods of another two.

The concept of "durable solutions" can be questioned in these circumstances.

Family Reunification in Host Country (12.1.2)

d) Please describe relevant law, policy and practice in your country.

There is the possibility for family reunification in the asylum law, namely for relatives in direct ascending and descending line and minor siblings of the refugee. Asylum seekers do not have such right.¹⁸

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

This does conform to the Statement.

f) Are any changes needed? In relation to any first principles?

No changes are needed. The problem is that there is no case of this sort because few minors are given a positive decision.

Integration (SGP: C12.1.3)

g) Please describe relevant law, policy and practice in your country.

¹⁸ The regulation of this law is expected to clarify matters related to **FAMILY REUNIFICATION**. In this area, there has been a clear improvement, by including the guarantees of Portuguese Constitution and Law 15/98 of 26th March regarding family, that states the rights of asylum extended to the spouse and minor children, including adopted children, and legally incapable dependants, when requested by the asylum-seeker. Furthermore, if the asylum-seeker is less than 18 years old, and if so requested, the same rights are extended to the parents and to underage siblings.

However, it is often very difficult to fulfil all the requirements in order to get the family reunification.

A person who has been granted refugee status is entitled to the family reunification. As for the bearers of an Authorisation Permit for humanitarian reasons, the procedure is different. They will have to follow the reunification family procedure applied for migrants, consequently they will have to make their request, present a marriage and a birth certificates, and prove that he has a solid economic situation. Meanwhile, the overseas family member will have also to make a visa application at a Portuguese Embassy.

This law also foresees an alternative system in which the family members may receive an exceptional residence permit without having to fulfil all the conditions required by the law concerning the stay of aliens in the national territory.

In the case of the B-status refugees, the principle of family reunification is not contemplated on the Portuguese asylum legislation. However, persons granted B-status can be reunited to their family on the basis of the provisions of article 56 of the new Aliens Law, provided that sufficient means of subsistence are available for the family

There are no specific measures for the integration of recognised refugees aside from the help provided for four months, of about 600 Euros per month. Until 1991 there were programmes for refugees in need, run with UNHCR funds. Since then, only the vulnerable cases, including some women with minor children, are being helped.¹⁹

After a positive decision the recognised refugee should be helped by the Social Security. However in many instances, due to lack of funds available, even recognised refugees come to the CPR again for help, namely regarding health issues, such as money for medication.

According to the law the recognised refugee is entitled to the same rights and duties as a Portuguese citizen according to the law. However the disadvantageous position that he/she has compared to the other citizens is a reality which is not taken into account.

In the cases of children who have become adult during the process, almost all of them work in civil construction in order to pay for their needs.

As said, there are good measures in the child legislation, the problem is the lack of complete application of the law.

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

It does not conform fully to the statement in practical terms.

¹⁹ In the Asylum Law, minors are integrated into the category of “*The particularly vulnerable situations*” which means that they should be given special social support (Article 56° of Asylum Law) and follow-up by the social security centre. The support for these individuals, from the very beginning is the State’s responsibility, through the “*Instituto de Solidariedade e Segurança*”.

There is a legal gap relating to unaccompanied minors, in practice. The Portuguese State doesn’t attribute legal tutelage for minors who apply for asylum.

There are no other specific provisions regarding the proceeding of applications submitted by unaccompanied children and, in practice, they follow the same procedure as adults.

A specific agreement between the “*Instituto de Solidariedade e Segurança Social*” (ISSS) and the “*Santa Casa da Misericórdia*” – SCM- assigns to the latter entity, the provision of social support services in Lisbon. Initially, the SCM supported all asylum seekers, but, since 1995, this support has been restricted to vulnerable cases (they only stay in the CAB pending the authorisation, from the SCM, to receive these persons (which sometimes takes just a few days, but other times can take up to 4 to 5 weeks). When the residence permit is granted, the Social Security system takes on board the expenses for food and transport.).

Nonetheless the support of the SCM is distant and relatively passive, but also the SCM has no intention of providing them with accommodation in its Centres for minors, given their age difference (they are older than the children who stay at these centres, usually until they are 6 years old) and of a cultural origin, which might disturb the regular running of these Centres. Consequently, minors are often placed directly by ISSS in the normal boarding houses, without supervision.

i) Are any changes needed? In relation to any first principles?

Special attention should be paid to these cases, along with a "long life plan" for the minor (with the help of professionals). To analyse the possibility of "quota figures" in training courses would also prove to be interesting.

To evaluate to what extent the existing system which was prepared for the East Timor people (not considered as refugees under the Portuguese law because they are considered to be nationals), can be applied to the refugees. The costs that the Portuguese State has with these cases are often presented as one reason for the lack of resources for other situations, like the refugees.

Adoption (SGP: C12.1.4)

j) Please describe relevant law, policy and practice in your country.

Cases of international adoption are very rare. The process of adoption is also a very hard one. Adoption only occurs in the best interest of the child and with the parents consent. If this is not possible there can be a long process of evaluation of the situation and possible adoption. Nevertheless, the opinion of the child, especially if he/she is older than 12 years is taken in consideration (Adoption Act, Decree No. 185/93 of 22nd May and Decree No. 120/98 of 8th May²⁰).

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

It conforms to the Statement.

l) Are any changes needed? In relation to any first principles?

No changes are needed.

Identity and Nationality (SGP: C12.1.5)

m) Please describe relevant law, policy and practice in your country.

There is no mention of this issue in the relevant Aliens and Asylum law, but there is the possibility that a child may apply for nationality with the help of a guardian. In order to apply he/she must have a former legal residence

²⁰ Changes have been introduced to the adoption legislation by the Law 31/2003 of the 23rd of August of 2003.

of 6 years, for those that come from the African Portuguese speaking countries, or 10 years, for all other third countries nationals.

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

It conforms to the statement.

o) Are any changes needed? In relation to any first principles?

No. But the cases are very few also.

Family Reunification and Returns to a Country of origin (SGP: C12.2)
Voluntary return (SGP: C12.2.1)

p) Please describe relevant law, policy and practice in your country.

Family reunification is recognised as a right under the current Aliens Act (Article No. 56°) although the case of minors is not presented there. Nevertheless, in the Asylum law, Article No. 4°), family reunification is allowed and in the case of minors it includes the possibility of being joined by the parents and minor siblings.

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

It conforms, although there are no cases we can recollect as examples.

r) Are any changes needed? In relation to any first principles?

The fact that a minor can only be joined by other minor siblings should be considered, for example, in cases in which the only family left is an older sibling.

Conditions that must be fulfilled prior to return (SGP: C12.2.2)

s) Please describe relevant law, policy and practice in your country.

In most cases, the children who are inside the country manage to stay even illegally, because, until now, the return of refused asylum seekers has not occurred in a systematic manner.

Nevertheless, when asked about those who are at the airport the answers are not conclusive. If the "minor" is a "de facto child" (very young, no older

than 12) authorities state that they can contact the Portuguese embassy in the country. However the same does not seem to happen with the older ones.

As far as we know:

No guardian or adviser counselling is taken into consideration;

No family assessment is made (contact is not established);

No immediate and long-term care in the country of origin is prepared;

Counselling and support: The CPR does not know when the children are sent back.

The child is not accompanied;

No monitoring takes place.

In cases where children, or minors are returned to their countries of origin or, to the countries of transit, there is no special provision to analyse the conditions there.

There are one or two cases in which the Portuguese Red Cross has helped to trace family and to learn of their conditions there.

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

It seems that it does not conform to the Statement. It is however difficult to obtain information on these cases because there are very few of them and there is not so much discussion about this issue.

u) Are any changes needed? In relation to any first principles?

Yes, authorities should be more careful about the process of return and the NGOs should become more involved with this issue.

Programmes and Aid to Facilitate Reintegration (SGP: C12.2.2)

v) Please describe relevant law, policy and practice in your country.

Article No. 159° of the Aliens Act refers to aid for the voluntary return of foreigners "after illegal stay in the country". This is done in co-

operation with the International Organisation for Migration (IOM). There is also another program for the voluntary return of highly skilled professionals.

These programs are not made specifically for children but the IOM reported that they have sometimes co-operated, with the UNHCR (on an *ad hoc* basis), for returning children.

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

Even though there are no programs of reintegration for children, very few are able/willing to return at the moment.

x) Are any changes needed? In relation to any first principles?

Although not relevant in the actual context, the issue of the reintegration of those who arrive as children and are now adults could be thought about.

Settlement in a Third Country (SGP: C12.3)

y) Please describe relevant law, policy and practice in your country.

Although this is not prescribed by the law, resettlement in a third country is possible if both authorities agree. There are not sufficient cases to make an objective analysis of such situations.

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

It conforms, on a case by case basis, because it depends on the person's will to propose and wait for the process to be carried out.

zz) Are any changes needed? In relation to any first principles?

The need to envisage this possibility should be stressed further.

13. DATA COLLECTION

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

Information about refugee issues has to be presented to the Refugee Division of the Aliens and Borders Service. The Aliens and Boarder Service

is responsible for collecting data on aliens entering and exiting Portugal. The Refugee Division collects the data on asylum seekers and refugees.

Although the system is improving, much data is still not available, or differentiated between immigration and asylum seekers issues (namely the refusals and expulsions).

The INE, the National Statistics Institute, does not provide much data on these issues either.

b) What sort of data is required? From government? From NGOs?

Aside from the Aliens and Borders Service statistics it is very difficult to obtain data from other sources. Nevertheless, some NGOs (CPR, SCML) have their own data, this is not representative but can be useful for comparison.

c) Current data (1997 - 1999) on separated children available.

The data available is very limited. At present, we refer to the data available in recent years, 1997-1999. As we can see all the countries of origin are African. The main country of origin is Sierra Leone, followed by Liberia. Compared with total applications, "unaccompanied minors" represent only 5.1% (Table 1).

The figures seem to indicate a decrease in the number of minor asylum seekers. However, we must consider the fact that the cases of Guinea Bissau refugees are not listed under these statistics.

Table 1 Number of asylum seekers "minors" between 1997 - 1999 (October)²¹

Nationality/Year	1997	1998	1999 (October)	TOTAL
Angora	1	1	1	3

²¹ There is a substantial decrease in the numbers of applications (1999: 18 requests; 2000: 10 requests; 2001: 9 requests; 2002: 8; first semester 2003: 2; figures that represent less than 10% of the total asylum demands. Two women, nationals from Angola, arrived in Portugal with 3 and 4 children, respectively, which constituted a social problem, since Portugal does not have a system to support single-parent families.)

In fact, Portugal is still considered a poor country with no favourable geographical or economic situation. Others factors to be considered are:

- a) The end of the civil wars in Angola and Sierra Leone;
- b) The measures of border control taken by the authorities after the September 11th attacks.

Cameroon			1	1
Algeria		1		1
Ghana	1	2		3
Guinea Bissau		1		1
Guinea Conacky		1		1
Liberia	3	2		5
Nigeria	1	2	1	4
Rwanda		1	1	2
Sierra Leone	8	5	4	17
Somalia		1		1
Sudan		1	2	3
Uganda		1		1
Zaire (RDC)	2		1	3
TOTAL	16	19	11	46
Asylum Applications	298	338	265*	901
TOTAL	(5.4%)	(5.6%)	(4.2%)	(5.1%)

Sources: 1997 - 1998 Borders and Aliens Service (SEF); 1999 Portuguese Refugee Council (the data for 1999 was still not available from the SEF so we used the list of cases registered at the CPR).

Also, many other situations exist in the country that are not represented in these numbers. For example the case of the 51 Angolan children that are in the Project Nuclisol Jean Piaget. A Project that intends to provide secondary education for all the children in order to allow them to follow this up with university studies in Angola in the first Piaget University to be built there. These children are being accompanied by this organisation which acts as a guardian for all them.

14. INTERNATIONAL INSTRUMENTS

14.1 Refugees

◆ **1951 UN Convention relating to the status of refugees**

Ratified: DL No. 43 201, 01/10/1960

◆ **1976 Protocol relating to the status of refugees**

Ratified: Decree No. 207/75, of 17th April

◆ **UNHCR**

◆ **The handbook on Procedures and Criteria for Determining Refugee Status, paras 213-216**

It is published in Portuguese by UNHCR.

◆ **Guidelines on Policies and Procedures in dealing with Unaccompanied children Seeking Asylum, 1997**

Not all aspects of it are followed in practice.

14.2 International Human Rights Instruments

◆ **UN Declaration on Human Rights, 1948**

Published in the official paper on the 09/03/1978

◆ **International Covenant on Civil and Political Rights, 1966 (and Optional Protocol)**

Ratified: Law No. 29/78, 12th July

◆ **International Covenant on Economic, Social and Cultural Rights, 1966**

Ratified: Law No. 45/78, 11th July

◆ **Convention for the reduction of statelessness, 1961**

Not ratified.

◆ **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed**

Conflicts (Protocol I)

- ◆ **Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II)**

Both in Decree No. 10/92 DR 77/92 Série I-A of 1992-04-01

- ◆ **Convention against Torture, 1984, Art.3**

Approved: Resolution No. 11/88, 21st May; Ratified: Decree No. 57/88, 20th July

- ◆ **Convention for the Elimination of all Forms of Racial Discrimination (1966)**

Approved: Law No. 7/82, 29th April

14.3 Children - International and Regional Instruments

- ◆ **UN Convention on the rights of the Child, 1989**

Signed: 26/01/1990; Ratified: Decree No. 49/90, 12th September

- ◆ **UN Standard Minimum rules for the Administration of Juvenile Justice (25 Nov., 1985)**
- ◆ **UN Rules for the Protection of Juveniles Deprived of Their Liberty ("Beijing Rules") 1990**

These standards are being extensively included in the new legal framework of the Children's Law.

- ◆ **European Convention on the Repatriation of Minors, 1970**

Not signed

- ◆ **European Convention on the Exercise of Children's Rights, 1996**

Hague Conference on Private International Law

- ◆ **Convention for the Protection of Minors, 1961**

DG 20/69 Série I of 1969-05-24

- ◆ **Convention on the Civil Aspects of International Child Abduction, 1980**

Decree No. 33/83 DR 108/83 Série I of 1983-05-11

- ◆ **Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 and the associated "Recommendation on the Application of the Convention to Refugee children"**

Signed in 1999-10-26

- ◆ **Convention on Jurisdiction, Applicable law, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996 (not yet in force)**

Not signed

European Union

- ◆ **Joint Action to combat Human trafficking and the Sexual Exploitation of Children, Feb. 1997**

- ◆ **Council Resolution on unaccompanied minors who are nationals of third countries, June 1997**

Not fully applied.

14.4 Europe

- ◆ **European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols), 1950**

Signed: 04/11/1950; Ratified: Law No. 65/78, 13th October

Protocol 1: 29/03/1952

Protocol 2: 06/05/1963

Protocol 4: 16/09/1963

◆ **The Convention Determining the State Responsible for examining Applications for Asylum Lodged in One of the Member States of the European Community (Dublin Convention), 1990**

Approved: Resolution No. 34/92, 18th December; Ratified:
Decree No. 58/92, 18th December

◆ **Schengen Convention, 1990**

Decree No. 55/93 of 25 November.

European Union

◆ **Joint Position on the harmonised application of the definition of the term "refugee" in Article 1 of the 1951 Geneva Convention relating to the status of refugees, Council of the EU, March 1996**

Very little refugee status is being granted annually. On an individual basis the Residence Permit for Humanitarian reasons is more commonly applied. In 1998 and 1999 the concept of temporary protection made its appearance with the Guinea Bissau and Kosovar refugees respectively.

◆ **Resolution on Minimum Guarantees for Asylum Procedures, June 1995**

The principles are incorporated in the asylum law, but the practice is not very soundly based on all of these principles.

◆ **Resolution on manifestly unfounded applications for asylum, 1992**

Manifestly unfounded applications determines the application of non-admissibility. This situation permits the appeal to the National Commissioner for Refugees with suspensive effects, but, if denied again, the appeal to the court has no suspensive effect. The appeal after a negative decision on the asylum process (after admitted) has suspensive effect.

◆ **Resolution on a harmonised approach to questions concerning host third countries, 1992**

A person can be returned to a host country on a manifestly unfounded procedure (especially those that are at the airport, outside which the application of this measure is more difficult)

◆ **Conclusions on countries in which there is generally no serious risk of persecution, 1992**

There is no official list of safe countries of origin.

◆ **Resolution on the harmonisation of national policies on family reunification, June 1993**

Family reunification has received a special article in the Aliens Law and is also present in the Asylum law.

Council of Europe

◆ **European Social Charter, 1961**

15. CONSULTATION WITH SEPARATED YOUNG CHILDREN

a) Description of the young people consulted (age, sex, country of origin)

Due to time limits, we did not have the opportunity to develop a major work in this area. Nevertheless, we obtained some opinions about the issue through brief contact and two short "life stories" in the country of asylum.

These life stories belong to two male boys, each 18 years old (they arrived as minors) who are both from Africa.

b) Main problems faced since arrival

We will list the main points resulting from both of the life stories collected.

The main problems faced by these youths, both of them became adults during their stay in Portugal and both are waiting for the result of their appeal in court (they do not have a temporary resident permit) are:

Personal problems/barriers:

Missing family at home (not knowing the situation of their family at all, some have lost one or both parents)

Overcoming of "cultural differences", like language (*other situations concern food habits, interpersonal relations, like public behaviour norms*)

Problems/barriers coming from society:

The recognition of their cases and their true stories by the authorities who: "seem to know very little about our countries".

The fact that they have no documentation: this situation is a continuous source of stress and presents major problems when it comes to job finding and education.

The problem of a place "to lay my head" after loss of help from Santa Casa.

The jobs/work available are mostly those in civil construction "obras", working illegally and always depending on the boss' - "patrão" - disposition (*there are many cases where they are not paid or lose their temporary jobs. This kind of job also involves regular changes of address in order to look for work or follow the company to another place.*).

Racism (*a problem faced in certain circumstances, namely in interpersonal relations, when looking for a room to stay*).

Lack of opportunity to continue studying due to lack of documents.

Positive aspects:

They are "still alive".

Help provided by the CPR and the SCML.

The opportunity to learn about a new culture and meet new people.

c) Recommendations or ideas

The main suggestions presented concern the need to speed up the process of the decision (the situation under appeal to the supreme court can be lengthy).

The need for any kind of documentation that can give them a sense of legality during their stay in order to overcome the limbo and uncertainty faced in daily life.

"I need to be legal to experience the other side of legality as a foreigner"

16. POLITICAL LEVEL - SUPPORT FOR CHANGE

a) Level of contact NGOs have with: central governmental departments, local and regional governments

There is an effort to involve the NGOs in the issues. This is seen by the fact that, for the first time, the asylum law mentions other institutions to develop work in the mainframe of asylum issues. Also, there is a growing activity of associations, of child issues and immigrants. However, we realise that many organisations, even at the governmental level do not realise the work that they can do in this area.²²

b) Contacts with European institutions

Portuguese EU Commissioner António Vitorino is a key person at the moment.

Portuguese Eurodeputies

²² - The efforts of PRC pressuring the authorities and others organisations on the necessity of paying special attention to refugee children.
- The relations with UNHCR policies and priorities in this area, in the context of the Programme of Separated Children in Europe (SCE);
- PRC in his campaign to bring more attention to children, disseminating the policy content in the "Statement of Good Practise".
- Referring the contacts with local and regional organisation the PRC presented in last July a "Study for a diagnosis and evaluation on the reception process of asylum seekers in Portugal", prepared under the EQUAL project, by GEOIDEIA. This study had two main objectives: to accomplish a concise description and diagnosis of the asylum system in Portugal (by identifying actors, resources, actions, partnerships and its strengths and weaknesses) and to carry out an evaluation of the system and to present recommendations in order to improve levels of efficiency and effectiveness). This was achieved through the analysis of the legal framework, the characterisation of the asylum seekers in Portugal and a characterisation and evaluation of the institutions' intervention.
- The administration of the Asylum Seekers Reception Centre, located in Bobadela throughout the first phase of procedure.
- The Protocol signed between PRC and CAVITOP ("*Centro de Apoio a Vítimas de Tortura*" / Support Centre for Victims of Torture) to provide free systematic and continuous psychological and psychiatric support to asylum seekers and refugees that suffered from torture, violence or ill treatment. This is a great achievement since there is an increase in the number of asylum seekers that present symptoms of having been tortured, or victims of violence or ill-treatment in their country of origin. The lack of adequate psychological support was much felt.
- Despite all the efforts, it is necessary to understand that the existing number of separated children and the substantial decrease in the application represent a obstacle in a general policy toward reaching the authorities at any level, and also other organisations. Moreover, in the PRC's actions, separated children will have a special attention.

c) Sources of support for improving the situation of separated children.

Presidency of the Republic:

Both the president, and in particular his wife, have previously shown concern for the situation of the children.

Government:

Ministry of Work and Solidarity

Ministry of Equality (recently instituted with the new government)

High Commissioner for Immigrants and Ethnic Minorities

Portuguese Ombudsman:

António Meneres Pimentel

Parliament:

President of the Parliament: Almeida Santos

1st Commission: Rights, Liberties and Guaranties.

President: Jorge Lacão

Co-ordinator: José Magalhães

13th Commission: Parity, Equality, Opportunities and Family

President: Maria Fátima Amaral

Co-ordinator: Sónia Fertuzinhos

Deputies in general

Media:

Newspapers and televisions

Individual journalists with work on refugees issues (e.g. Cândida Pinto)

Academia:

(e.g. a new masters degree, child studies, is about to be made available in Minho University)

Institutions and ONGs:

Dra. Maria Barroso Soares, President of the Red Cross.

Those contacted for the Assessment, plus others like the Cáritas

Others persons in key international organisations:

Marta Santos Pais, UNICEF, New York

d) Main obstacles to change.

We are facing a lack of knowledge about refugees in general, and refugee children in particular, among many of the officials and NGOs. There is the need to raise awareness about this issue, as people associated this issue with Africa, and people in refugee camps, somewhere far away from them.

Lack of co-operation between existing institutions of children's affairs and asylum. (need to establish links and networks)

APPENDIX: SPECIFIC QUESTIONS ON MIGRANT AND TRAFFICKED CHILDREN DOC. A

Trafficked children

Identify any domestic legislation which can be (a) used against traffickers and (b) applied to trafficked children

*According to the **Aliens' Law**, Traffickers are liable to imprisonment for up to three years. In case of lucrative trade, the penalty can go from one to four years (article 134 A of the Aliens' Law).*

When the offence is committed by a group, the punishment can go from one to six years of imprisonment. The punishment for the leader of the group ranges between two and eight years of imprisonment (Article 135 of the Aliens' Law).

*Regarding the **victims of the traffickers**, there is no prescription of a penalty for illegal entrance in the country. Still, an expulsion order may be automatically issued under administrative procedures (Article 117 of the Aliens' Law). In some cases if the alien collaborates with the authorities within the scope of investigations of illicit activities, such as organised criminality, he may be exempted from the presentation of a visa for the granting of a residence permit (Article 137B of the Aliens' Law).*

In conclusion, there are no specific provisions concerning traffickers of children or trafficked children into the Aliens Law.

*Still, Article 176 of the Penal Code (**Pandering and traffic of minors**), establishes “Those who foment, favour or facilitate the exercise of the prostitution of a minor between 14 and 16 years, or the practice or relevant sexual behaviours by minors, is liable to imprisonment between 6 months to 5 years.*

If the same practise is in foreign country, for prostitution or sexual acts, the punishment ranges from 1 to 8 years of imprisonment..

If the agent uses violence, serious threat, fraudulent manoeuvre, abuses of authority, act professionally with lucrative intention, taking advantage of the minority or psychic incapacity of the victim, or any another situation of special vulnerability, for minors up to 14 years, punishment ranges between 2 and 10 years of imprisonment.

*The Section: **Crimes against sexual liberty**, from article 163° to 175° relates to coercion, rape, sexual abuse, trafficking, pandering, sexual abuse in children, homosexuality etc.*

This section foresees strong penalties augmented considering the consequences for the victims, according to the relationship of the agent with regard to the victim, guardianship, relation of hierarchy, economic dependence, transmittion of venereal disease, pregnancy of the victim as a result of the facts, offence to physical integrity, transmission of virus, danger for the life, suicide or death of the victim. Etc.

What international covenants on trafficking have been signed by your country?

Portugal has signed the United Convention against transnational Organised Crime (as well as its Protocol on trafficking and smuggling) on December 2000. So far this Convention has not been ratified.

What is known about children being trafficked into your country? E.g. country of origin, routes of entry, estimated numbers, forms of exploitation

See the case appointed in 2.

To what extent are relevant authorities identifying trafficked children? E.g. police, social services, immigration authorities

The authorities, namely police and immigration services, are attentive of the needs on prevention and punishment, and they have been taken some preventive steeps. It is necessary to say that, today, the Portuguese society is more sensitive, because of the existence of the trial of paedophilia involving some people of the high Portuguese society.

How are trafficked children being dealt with under immigration and asylum law and procedures?

As seen before, regarding victims of the traffickers, there is no prescription of a penalty for illegal entrance in the country but an expulsion order may be automatically issued under administrative procedures (article 117 of the Aliens' Law).

As for trafficked children, so far no provision has been taken in order to protect them or to facilitate their regularization in the territory.

Do trafficked children have access to welfare provision available to other separated children or to child sex-workers or otherwise exploited children who are nationals of your country? E.g. education, health care, psychological support.

With the existence of the organisation engaged in the protection of minors, any minor in need of the social care is entitled to welfare provision applied to minors in danger.

What additional or specific welfare provision does trafficked children need, which is not currently being met?

Trafficked children are in need of an effective guardianship, there is still a gap between practice and legal provisions.

Still, in August 2003, a recommendation of the Cabinet has been published in order to enforce the provisions concerning the guardianship of unaccompanied minors.

Not applicable

What arrangements are there for family contact, family reunification and managed return for trafficked children?

Based in what is said, there is no need for this kind of programme.

Migrant children

What is known about other migrant children who are neither refugee nor trafficked children? E.g. country of origin, routes of entry, numbers means of subsistence.

We pointed out already one ethnic group - nationals and those coming from Romania. It seems a case of need of protection, because it is a kind of exploitation of the child accepted by parents and the society as normal.

Can you identify particular groups with international protection needs?

In our opinion this case is to be studied in connection with the existing programmes dealing with the roma ethnic group.

How are these children dealt with under immigration and asylum law and procedures?

There is no specific provision for this group.

Their existence is known, but the police and the society are tolerant towards them. See above.

What welfare provision is available to such children, formally or informally?

They can have a support if they wish, based in an existence of the organisation of the social welfare.