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United States Conference of Catholic Bishops  
Migration and Refugee Services  
(USCCB/MRS)  
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## **Unaccompanied Minor Migrants Two Case Studies/Best Practices**

Caritas Internationalis, Caritas International Belgium and the US Conference of Catholic Bishops Migration and Refugee Services contribution to the Day of General Discussion on "The Rights of All Children in the Context of International Migration" of the United Nations Committee on the Rights of the Child September 2012

## **Caritas and its work with child migrants**

Caritas Internationalis is a global confederation of 164 national Catholic Church-related humanitarian assistance and social service organizations. It was granted general consultative status with the United Nations Economic and Social Council in 1999.

Bolstered by its experience protecting the poor, especially migrants and children, Caritas wants to contribute to the work of the UN Committee on the Rights of the Child for the protection of the rights of all children in the context of international migration, by highlighting the risks and challenges faced by unaccompanied minor migrants<sup>1</sup> during the whole migration process.

The first part of the contribution has been prepared by Caritas International Belgium (CIB) and it concentrates on the role of guardians in the determination of the best interest of the child. Guardians play a key role in the relationship between the unaccompanied minor and the family in the country of origin. CIB operates with the assistance of ethno-specialists in Belgium and local partners in different countries of origin. Their contribution is based on their practical field experience.

The second part has been prepared by the United States Conference of Catholic Bishops/Migration and Refugee Services (USCCB/MRS) which collaborates with Caritas organisations in the USA. It concentrates on alternatives to detention, as minors should not be subject to detention measures or these should be in the best interest of the child if really necessary. It also stresses that State parties should focus on the best interest of the child. It highlights the importance of appropriate training for border officers.

### **Part 1 Caritas International Belgium (CIB)**

1. Since 2005, CIB has invested in professional and trained guardians. At this moment it employs 5 guardians who accompany about 100 unaccompanied minor migrants.

#### **2. The role of a guardian: the ideals and challenges**

A Belgian guardian is supposed to fulfill the following tasks<sup>2</sup>:

- assisting in legal procedures;
- maintaining records;
- monitoring of housing, school attendance, medical and psychological matters;
- restoring/maintaining contact with the family;
- identifying the durable solution.

The last two tasks are of specific interest to our statement and will be discussed more profoundly.

##### *2.1 Contact with the family: a necessity and a challenge*

In Belgium restoring/maintaining of contact with the family is one of the prime responsibilities of the guardian. CIB is convinced that family involvement is necessary to be able to work with migrant children for several reasons.

The often sudden separation of the migrant child from its parents and/or extended family can lead to trauma and adaptation or integration difficulties in the host country (van Essen and Bala, 2007). The

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<sup>1</sup> General Comment CRC/GC/2005/6 - Treatment of Unaccompanied and Separated Children Outside Their Country of Origin.

<sup>2</sup> Art. 9-16 of the Program Law of 24 December 2002 regarding the guardianship of unaccompanied minor migrants. (Loi Programme de 24 décembre 2002 concernant la tutelle des mineurs étrangers non accompagnés).

lack of restoring family links can lead to a stop in the child's development, so they should be set in place whenever possible.

The role of the family cannot be underestimated in certain procedures (e.g. voluntary return is not possible without authorization of the parents). The family's role is crucial in defining the best interest of the child (for example, if the family has pushed the child to migrate for the benefit of the family) (Timmerman, Lodewyckx, Vanderwaeren and Vanheule, 2011).

CIB is regularly confronted with the challenges of restoring and maintaining family links. First of all, we need to have the consent of the minor. Often they fear the safety of their parents or they respect the wishes of the family (out of loyalty) and keep some information hidden. It often takes time and effort to convince the child of the necessity to involve their family. In many cases efforts are not successful.

If we do get consent, we are then faced with other challenges, that is to trace and contact families in remote or unsafe areas. We are also faced with language barriers. Fortunately, CIB belongs to an international network with partners in 200 countries. We can rely on the presence of our partners in the countries of origin to help restore and maintain contact with the family. Social assistants can visit the family. Our partners can offer administrative, legal, and psychological help to the parents if we feel it is in the best interest of the child<sup>3</sup>. For example: vocational training can be offered to a minor to empower him/her to return voluntarily at the age of 18. Meanwhile, their sick parent can benefit from social support for medical treatment, so the parent will be able to take care of the child after return.

Usually family involvement is linked to voluntary return. However, restoring or maintaining family links does not necessarily mean return or reunification.

## *2.2 Best Interest Determination*

The common thread behind the different tasks of the guardian is to come to the Best Interest Determination (BID).

The UNHCR Guidelines on determining the best interests of the child<sup>4</sup> indicate that identification of long-term solutions should be based on an individual approach that takes into account the personal, familial and social situation of the child.

When the development of the minor is stalled due to the separation from family, it is very difficult to come to a BID that will be successful in the long run. In Belgium the responsibility of the BID procedure lies with the guardian in consultation with psychologists and intercultural workers. In the country of origin we do appeal to our local partners, who can contact the family. The BID procedure should involve collaboration between the minor, the guardian and the family, all supported by local partners.

## **3. Good practices: an example**

CIB is currently working on a case of a 6 years old unaccompanied Liberian girl. She has been recognized as a refugee by the Belgian refugee authorities. The guardian was able to trace her family with the help of an international organization. In the meantime, the girl was able to integrate well in Belgium due to proper counseling and the care of foster parents. After explaining to her parents

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<sup>3</sup> Convention on the Rights of the Child, Article 3.

<sup>4</sup> United Nations High Commission for Refugees (2008), *UNHCR guidelines on determining the best interests of the child*, UNHCR, Geneva.

what happened to their daughter, and giving them information about family reunification in Belgium, the parents decided to stay in Liberia, but to keep on playing a role in her life by calling her each month. However, the girl is confused about the role of her biological parents. Therefore the guardian and the girl--with the approval of counselors, the foster parents and the biological parents--will visit the parents in Liberia with the help of CIB's local partner. The aim is to find a long-term solution (protection in Belgium and co-responsibility of the parents in Liberia) that works for the child and her biological parents.

## **Part 2 USA Conference of Catholic Bishops/Migration and Refugee Services (USCCB/MRS)**

The USCCB/MRS carries out the commitment of the Catholic bishops of the United States to serve and advocate for refugees, and other forced migrants and people on the move. Special concern is given to the most vulnerable among these populations, including unaccompanied children who are refugees, asylum-seekers and victims of trafficking. USCCB/MRS is the largest non-governmental refugee resettlement agency in the world. It also provides nation-wide services for unaccompanied children.

### **1. Determining the Child's Best Interests and Finding Durable Solutions**

The new 2012 UNHCR Framework for the Protection of Children<sup>5</sup> offers a concrete strategy for refugee and other displaced children, including both accompanied and unaccompanied children. Attention and implementation of this framework needs to be elevated within the UN system, transit and destination States, and implementing NGOs. Conducting Best Interest Determinations (BID)s<sup>6</sup> and strengthening comprehensive child welfare systems are crucial strategies for the realization of durable solutions. States should be encouraged to prioritize funding for best interest assessments and determinations. States should also work to achieve rapid assessments and to provide immediate child protection assistance, family tracing and durable solutions grounded in protection and well-being.

In the forced migration context, durable solutions<sup>7</sup> are recognized as safe repatriation to the country of origin, local integration in the country of asylum, or resettlement to a third country. Durable solutions, which are long term, should not be confused with providing immediate assistance such as temporary care arrangements and emergency child protection assistance. Resources for child protection assistance and BIDs should be available as soon as possible during forced migration flows.

An example of successful partnerships to help children in a forced migration context is the implementation of BIDs for unaccompanied and separated refugee children in Tunisia soon after the outflow of refugees from Libya. The UNHCR worked with several States, international NGOs and refugee resettlement agencies, including the U.S. Conference of Catholic Bishops, to implement BIDs, conduct family tracing and set in motion third-country resettlement for a number of unaccompanied and separated refugee children.

Unfortunately, there are other protracted refugee situations, both in urban and camp settings, where the UN and implementing partners lack the capacity to conduct similarly needed work. Examples include Eritrean children in camps in Ethiopia and urban refugee children in Uganda and Kenya. A concrete step to take is the development of proactive coordination agreements among UN agencies

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<sup>5</sup> <http://www.unhcr.org/refworld/docid/4fe875682.html> .

<sup>6</sup> [http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4566b16b2&query=UNHCR Best Interest Determination Guidelines](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4566b16b2&query=UNHCR%20Best%20Interest%20Determination%20Guidelines).

<sup>7</sup> Framework for Durable Solutions of Refugees and Persons of Concern. UNHCR 2003. [http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=3f1408764&query=durable solutions](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=3f1408764&query=durable%20solutions).

and NGOs to ensure a rapid response early in the stages of refugee flows and build local child protection capacity beyond immediate assistance needs.

## **2. Implementing key procedural safeguards within States' immigration enforcement policies and practices**

Children represent 47% percent of the world's refugees, asylum-seekers and internally displaced persons<sup>8</sup>. Yet discussions often primarily centre on responding to the movement of adults.

Forced child migration is a result of social and economic insecurity, lack of access to basic services, forced conscription into national militaries and rebel groups, trafficking, and persecution from state and non-state actors. Other unaccompanied child migrants may be seeking to reunite with family members in the destination State. In these situations, the principle of family reunification and the right of the child to be with his/her family of origin needs to be examined within a State's immigration laws, policies and programs for unaccompanied children.

The challenge States face is to protect children from maltreatment and prioritize their best interests even when those best interests may conflict with law enforcement priorities. In this regard, States should work with those whose primary missions are to serve migrant and refugee children to incorporate proper training for the screening and protection of children at risk.

In the United States, for example, the U.S. Customs and Border Protection partnered with the U.S. Conference of Catholic Bishops/Migration and Refugee Services to provide training to front line immigration enforcement officers in high border crossing areas. They trained officers in child-sensitive interviewing techniques, as well as in identification and screening for potential child trafficking situations. Border patrol officers who participated in this training stated they would use their new knowledge during contact with unaccompanied minors to "be more conscious of who's crossing our borders", that the information was "essential for our everyday job", that they now understood the differences between smuggling and trafficking, and that they would apply the new knowledge with their next cases. The U.S. government has developed and implemented screening tools which assess the possibility and risk for child trafficking at border locations. The challenge is ensuring that screening takes into account the needs of both girls and boys, is age-sensitive, and meets the immediate needs of vulnerable minors. This is often not the case.

Separating, while also coordinating, the two functions of enforcement and child protection would be a step in the advancement of a rights-based approach. However, this coordination must occur from immediate identification (at border, airports, and at sea) through processing, care and return.

## **3. The inclusion of migrant children within existing comprehensive child protection systems in destination States**

Contrary to the intent of Article 22 of the CRC, the immigration status of children within international migration contexts often means their treatment, case planning and status determination is treated as separate from a State's existing comprehensive, domestic child welfare protection system for children in "out of home" care.

Asylum-seeking children in particular are detained and treated as irregular migrants rather than children in need of protection. As a result, these children are often detained separately from the community for weeks or months. Community-based care can and should be implemented for unaccompanied children in transit and destination States. This model can be successfully implemented if there is a focus on culturally appropriate care which is small scale and which allows children access to community resources. Ideally, States should consider accepted domestic child welfare practice for placement of children in the most family-like setting possible. For example, in the U.S., alternative community-based care models for children in immigration proceedings include

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<sup>8</sup> UNHCR Global Trends 2011.

Catholic social service programs which provide unaccompanied children with licensed and trained foster parents from similar countries of origin as the children. These programs provide case management to locate the children's parents or other relatives, educate the children about immigration proceedings, and provide counselling. Children live in community neighbourhoods, rather than separate detained facilities.

Migrant children should also be included in the State's existing child welfare oversight infrastructure rather than a parallel one. However, in situations where migrant children are included within the care of a State's child welfare system, that system may lack the will or ability to provide appropriate attention to the children's circumstances. For example, a State's child welfare program may only look at family reunification options for a child within that country, and ignore family reunification options in the country of origin, simply because child welfare workers do not know how to work across borders to identify and assess other family members as placement options or do not have the policies in place to do so. As a result, States may neglect diligent relative searches across national boundaries. Out of home placements also may not be culturally appropriate, and parental rights are even terminated solely because a parent is in immigration detention by the State, despite the fact that this would not, alone, be defined as abandonment by virtually any definition of abuse and neglect. The solution is for destination States in particular to develop care that is designed and implemented with the unaccompanied child's needs (including legal services, mental health services, trans-national family reunification planning, and cultural and religiously appropriate care) as a goal while also providing them with the rights and treatment given to any national child in "out of home" care in their States.

## **ANNEX with recommendations**

States should be encouraged to:

1. invest in resources to achieve durable solutions for unaccompanied refugee and other child migrants, such as the creation of capacity to implement best interest determinations, including an independent panel to decide which durable solution is in the child's best interest;
2. in the implementation of child protection responses, work in partnership with non-governmental organizations that have a mission to serve unaccompanied migrant and refugee children.