

**Response from the Republic of Estonia regarding the Human Rights Council
resolution 12/6**

1) Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:

a) The situation of separated and unaccompanied migrant children.

Estonia experienced a significant increase in the number of asylum seekers last year. When in 2008 Estonia received 14 applications, then in 2009 already 40 applications were submitted. However, only 3 of all asylum applicants were unaccompanied minors. In asylum proceedings involving an unaccompanied minor, the rights and interests of the minor shall be taken into consideration above all. No unaccompanied minor asylum seekers have been returned to their countries of origin in 2007-2009.

b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation.

An unaccompanied minor has the same rights as an adult and some additional rights due to the vulnerability of the group. Therefore, under § 12 of the Act on Granting International Protection to Aliens the right and access to health care services, accommodation, emergency care, clean water etc is ensured by the Illuka initial reception centre, which is administered by the Ministry of Social Affairs and funded from the state budget.

According to the law, minors may be placed in a more appropriate child welfare institution or foster family, in which case the financing is also provided by the Illuka reception centre. The system is flexible as the reception centre may take into account the needs of a specific minor and conclude contracts with service providers.

Access to education is also guaranteed as a right to unaccompanied minors. There is an agreement with Illuka school, where the teachers have received appropriate training and such arrangements are financed by the Ministry of Education and Research (all children legally residing in the territory of Estonia who are subject to compulsory school attendance have the right to free education in Estonia). If necessary a minor may also attend school elsewhere and home-schooling may be used. Language training is provided and financed by the Illuka reception centre.

A more problematic issue arises in connection with representing the minor, which has been temporarily solved by selected social workers. A minor is appointed a social worker, who accompanies the minor if necessary, participates in interviews etc, but is not the legal representative of the minor. The minor has a right to free legal aid in the course of proceedings but not in the organising of everyday life. The Family law Act which will enter into force on 1 July 2010 should solve this issue and enable the appointing of a special guardian to the minor who may assist in the organising of everyday life.

c) Legislative framework and practice in the context of detention and repatriation, including mechanism to ensure protection from refoulement and to ensure family unity.

An asylum applicant who is an unaccompanied minor shall be placed in the reception centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. In asylum proceedings, an unaccompanied applicant with restricted active legal capacity shall be represented by a guardian, guardianship authority, the head of the reception centre or a person authorised by him or her. When placing an applicant who is an unaccompanied minor in the reception centre, a social welfare institution, with an adult relative or foster family, the rights and interests of the minor shall be taken into consideration above all. If possible, unaccompanied minors who are siblings shall not be separated from one another.

According to the Obligation to Leave and Prohibition on Entry Act an alien may not be expelled to a state to which expulsion may result consequences specified in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty. Judgments concerning the detention of persons to be expelled and extension of the term of detention shall be made by an administrative court. If possible in an expulsion centre family members shall be accommodated together.

d) Criminalization of irregular migration.

Illegal crossing of the state border or temporary border line of the Republic of Estonia, illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia as well as stay of alien in Estonia without legal basis are punishable by a pecuniary punishment or imprisonment.

Even though the Estonian Penal Code does not define the term of trafficking in human beings, the Code includes many penalties for trafficking in human beings (e.g. enslaving, provision of opportunity to engage in unlawful activities, pimping, abduction etc).

e) Access to the right to identity, including birth registration.

An alien of at least 15 years of age may perform the acts arising from Aliens Act (e.g. apply a visa/ residence permit) independently. An alien who is at least 15 years of age has a right to acquire Estonian citizenship by naturalisation.

f) Protection of children left behind in countries of origin.

Estonia has no practice concerning this issue. IOM Tallinn (International Organization for Migration) is currently carrying out a project “Voluntary Assisted Return and Reintegration – VARRE”. The project is financed by the European Return

Fund and co-financed by the Estonian Ministry of the Interior. VARRE project includes a reintegration program in countries of origin.

2) Examples of best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, with particular regards to:

a) National legislation, policies and practice, including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the right of the child in the context of migration.

Currently the Ministry of the Interior is preparing a draft law transposing the Directive 2008/115/EC on common standards and procedures in member States for returning illegally staying third-country national into national law. The mentioned directive provides some more safeguards in relation to returning unaccompanied minors to a third country. In accordance with the objectives of the Estonian multi-annual programme of the Return Fund Estonia is developing national programmes and strategies for assisting voluntary return. Special attention is paid to measures for improving the support and protection of vulnerable persons in the return process.

b) Joint efforts and strategies available at the bilateral, regional and international levels to assess and address challenges in the implementation of the international framework for the protection of the right of the child in the context of migration.

By the initiative of the Ministry of Social Affairs “Guidelines for identifying and assisting victims of trafficking in human beings” was prepared in cooperation with other relevant agencies in 2009. The guidelines set forth also the features characteristic to a minor victim as well as guidelines for preliminary assistance. Furthermore, on 1 January 2009 the national children’s helpline 116 111 started its work. The aim of the helpline is to create a possibility for notifying of a child in need (including unaccompanied minor) and operative assistance for a child in distress. The national children’s helpline was introduced in order to improve feeling of security as well as possibilities for assistance and support for children.

c) The work of National Human Rights Institutions and other relevant stakeholders.

In May 2009 a study “[Unaccompanied minors in Estonia](#)” was published which gives an overview of the legal acts regulating this area and the organisations working on these issues. Furthermore, the Institute of Human Rights published a [report](#) on the situation of trafficked children in Estonia in 2009. The report was compiled in cooperation with the European Union Agency for Fundamental Rights (FRA).