**Human Rights Council Advisory Committee**

**UNACCOMPANIED MIGRANT CHILDREN AND ADOLESCENTS AND HUMAN RIGHTS**

**Questionnaire**

*This questionnaire forms part of consultations undertaken by the Human Rights Council Advisory Committee with* ***States*** *with a view to developing a research-based study on the global issue of unaccompanied migrant children and adolescents and human rights, pursuant to Human Rights Council resolution 29/12.*

**Background**

In its resolution 29/12, the Human Rights Council requested the Advisory Committee to develop a research-based study on the global issue of unaccompanied migrant children and adolescents and human rights, in which it identifies areas, reasons and cases where this issue arises in the world, and the ways in which human rights are threatened and violated, and makes recommendations for the protection of human rights of members of this population, and to submit it to the Council at its thirty-third session for its consideration.

In this context, the Advisory Committee decided, at its fifteenth session held in August 2015, to establish a drafting group in charge of the preparation of this study.[[1]](#footnote-2) The drafting group will present a draft progress report at the sixteenth session of the Committee in February 2016, before its submission to the thirty-third session of the Council.

In its preparation of the study, the drafting group decided to seek the views and inputs of Member States of the United Nations, international and regional organizations (including UNICEF, IOM and OHCHR), relevant special procedures mandate holders and treaty bodies (such as the Special Rapporteur on the human rights of migrants and the Committee on the Rights of the Child), national human rights institutions, civil society organizations and other relevant stakeholders.

The drafting group elaborated the hereunder questionnaire in order to seek the views and inputs of States. Respondents are advised to reply only to questions that are applicable to them, on the basis of their country’s situation (source, transit or destination country).

1. **General situation**

**1.1 What is the situation of unaccompanied migrant children[[2]](#footnote-3) and adolescents in your country? Please provide available statistics and relevant information.**

* **Recent developments with regard to the number of UAMs and reception capacity problems**

Until 2011 there was a sharp increase of UAMs as registered by the guardianship service compared to previous years. In 2011, the number of persons declaring to be an unaccompanied minor increased up to 3,258 persons. This was a significant increase compared to 2,510 UAMs in 2010 and 1,887 in 2008.

In 2012 there were 2,811 self-declared UAMs registered by the Guardianship Service and the number significantly dropped in 2013 with 1,786 UAMs[[3]](#footnote-4). This trend was mainly caused by the increasing and decreasing number of unaccompanied asylum seeking minors[[4]](#footnote-5).

There are specialised centres and specific places in regular centres for unaccompanied minors. However due to the high number of asylum applicants there was a reception crisis between 2009 and 2012 which also affected the reception quality for unaccompanied minors. Due to a lack of reception places minors were housed in hotels with little assistance, in inappropriate reception structures or in adult departments. Due to the creation of additional places, but especially due to the decrease of the number of asylum applicants and unaccompanied minors applying for asylum there are now a sufficient amount of places to accommodate them.

Since May 2015 there is a sharp increase in the number of UAM, putting the reception network for UAM once more under pressure.

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| --- | --- | --- |
| Asylum demands UAM/month | 2014 | 2015 |
| January | 36 | 53 |
| February | 24 | 43 |
| March | 21 | 36 |
| April | 32 | 35 |
| May | 29 | 81 |
| June | 32 | 125 |
| July | 49 | 195 |
| August | 51 | 228 |
| September | 56 | 482 |
| October | 52 |  |
| November | 55 |  |
| December | 48 | Source: CGRS |

* **Task force unaccompanied minors**

Belgium established a task force on unaccompanied minors in 2009, which examined possible actions with the aim of risk -minimizing for this group of migrants, most notably minimizing the risk of being the victim of smuggling and human trafficking. In June 2010 the task force, which was led by Ilse Derluyn (Ghent University) published its final report, which addressed several recommendations to the Minister in charge concerning the detection, identification and protection of UAMs[[5]](#footnote-6). The task force also elaborated a “cartography” to facilitate the cooperation between different entitled authorities. All Federal and Community actors that have a specific role or mission regarding unaccompanied minors are mapped. This mapping facilitates the exchange of information. The emphasis is on the manner in which the prevention, detection, identification and monitoring of unaccompanied minors in (potential) situations of abuse – with special attention to child trafficking and smuggling – is now happening and how this can be improved. Next to this cartography the work of the Task Force has also resulted in a series of recommendations covering the entire travel route of a minor travelling alone with the focus on maximizing prevention with regard to potential victimization of unaccompanied minors, as much as possible.

* **Incorporation of the Circular Procedure for UAMs in the Immigration Act**

A Circular of 2005 introduced a specific procedure for UAMs who had not applied for asylum and who could no longer apply for another residence procedure. The objective of this specific residence procedure for UAMs was to find a sustainable solution in the best interest of the child for each UAM. The procedure aims at UAMs who are no (longer) asylum seekers. On September 12, 2011, an Act regarding the granting of residence permits to unaccompanied minors was adopted and the specific procedure for UAMs described in the circular was incorporated into the Immigration Act, thereby providing greater legal certainty for this category of unaccompanied minors. Since the amendment of February 26, 2015 , which went into effect on March 26, 2015 , an UAM can start this procedure if he/she has already applied for asylum or has started another residence procedure.

* **Protocol Agreement on Unaccompanied minors (non-asylum)**

In January 2013, a new Protocol Agreement, developed by a working group consisting of representatives from the Cabinet of the State Secretary for Migration and Asylum, the Immigration Office, the Guardianship Service, Fedasil and the Police, came into force. The purpose of this Protocol Agreement is to prevent illegally staying UAMs from living on the street where they could be the victims of exploitation or trafficking. The Protocol Agreement between the different bodies active with UAMs provides for a more systematic monitoring of UAMs (who are not asylum seekers). The Agreement stipulates concrete methods and a roadmap for identification, age determination and reception, this taking as little time as possible. It is also the intention to optimize the deployment of the expertise in identification and reception fields.

* **General Guidelines for Guardians of Unaccompanied minors**

Depuis le 1er mai 2004, en vertu des dispositions du Titre XIII chapitre 6 de la loi-programme du 24 décembre 2002, dite loi sur la tutelle des mineurs étrangers, chaque mineur étranger se voit désigner un tuteur revêtu de la quasi autorité parentale qui est chargé de le représenter dans toute procédure administrative ou judiciaire et de veiller à son bien-être général. Institué en application de ladite loi tutelles au sein du Service public fédéral Justice, le service des Tutelles est chargé d’identifier les jeunes isolés, de leur désigner un tuteur. Il est également responsable pour agréer les candidats tuteurs, de les former et de contrôler le respect des dispositions organisant l’exécution de leur mission.

Depuis décembre 2014, le bénéfice des dispositions initialement limité aux jeunes issus de pays situés hors EEE, est étendu aux mineurs européens vulnérables.

Au 31/12/2014, 1663 jeunes étaient sous tutelle de l’un des 243 tuteurs actifs.

Au 30/9/2015, 1000 tutelles supplémentaires ont été désignées. Pendant ce même laps de temps, 640 tutelles ont cessé.

Toujours pendant de même laps de temps, le service a réalisé 911 tests médicaux destinés à déterminer l’âge des jeunes dont les déclarations faisaient l’objet d’un doute. Environ 70% des jeunes se sont vus déclarer adultes à l’issue du test.

Les tableaux en annexe fournissent davantage de statistiques.

On 2 December 2013 general guidelines for guardians of UAMs were issued. These new guidelines for guardians are intended to harmonize the actions of the guardians and to define a framework for their activities. On the other hand these guidelines clarify the role of the guardian in relation to other institutional actors and social workers. The guidelines provide an overview of the mandate and the most important legal acts of the guardian, as stipulated in the Guardianship act.

* **Decree integrated youth care**

On February 21, 2014, the Flemish Parliament approved the implementation of the Decree “Integrated Youth Care”. As a result, the integrated Youth Care in Flanders is a fact since March 1, 2014. This means that the access to Youth Care, including services for people with disabilities, for very small children,… is reorganized[[6]](#footnote-7). For UAMs, special access procedures will be created. Overall, mainstream youth care services (organised by the Flemish, French and German-speaking Community) are accessible for those UAMs who are in need of specific support. With this Flemish Decree the distinction between asylum seekers and non-asylum seekers is abandoned. The administrative status of the UAM no longer plays a role in the procedures giving access to youth assistance.

* **Extension of the Guardianship Act for European UAMs**

As indicated in the 2009 European Migration Network (EMN) report on UAMs, the Guardianship Act excluded by definition UAMs with a nationality of one of the countries of the European Economic Area[[7]](#footnote-8). A bill of March 20, 2014[[8]](#footnote-9), makes it possible for the Guardianship Service to appoint a guardian for European UAMs who are in a vulnerable situation or who are in the procedure for victims of human trafficking and to providing assistance to the European UAMs in finding a sustainable solution (a residence permit in Belgium or voluntary reunification of the minor with his parents). This measure ensures better protection and equal treatment regardless of the nationality of the child or the minority population to which he or she belongs (these European UAMs often concern people of Roma origin). This new law is also in accordance with the National Action Plan against trafficking of human beings and to combat abuse and exploitation of minors in general.

Please see attached document Annex 1: Statistical data, *source: Policies, practices and data on unaccompanied minors in Belgium. 2014 Update. Focused Study of the Belgian National Contact Point of the European Migration Network (EMN).*

**1.2 What are the main causes that force or encourage children and adolescents into situations of unaccompanied migration?**

1. **Structural causes.**
2. **Immediate causes. [[9]](#footnote-10)**

Preliminary note: The presence of unaccompanied minor children is not always and necessarily due to their individual migratory motives (or we must also consider migration causes that drive parents to migrate). Indeed, it is not uncommon for a child to be abandoned by his parents on Belgian territory or even be born on Belgian territory of a parent staying illegally and then be abandoned at birth.

Among the causes cited by unaccompanied foreign minors , a multitude of reasons can be noted (not exhaustive):

- Those related to asylum (Geneva Convention, etc ...)

- Seeking a better life in the broad sense (either by deliberate choice of the young person or pushed by the parents or the family)

- Education is often cited among non-asylum seekers

- The medical care not available in the country of origin;

- Obstacles encountered in legal procedures: adoption; Kefála; the handing over of children;

- Lack of the possibility for education, in particular for girls (e.g. Afghanistan), forced marriages, FGM, children accused of witchcraft based on traditional beliefs, LGBTI…

- The abuses in the country of origin (due to the parents or adults who have taken in the child but with bad intentions -> exploitation, neglect,, domestic work, sexual slave, inheritance motives, forced marriage, ...)

- Etc ...

It is not easy to provide a clear overview on the motives of unaccompanied minors to come to Belgium because the motivation is often multi-layered and depends on the country of origin, social and cultural background and personal or familial aspirations. Furthermore, in their contact with the Belgian authorities, or even with their guardian, unaccompanied minors are reluctant to reveal all their motives, or might indicate other reasons than the actual reason why they came to Belgium. Thirdly, the migration motives revealed might differ regarding the ‘procedure’ UAM choose for, and this choice might depend on the ‘chances’ they judge they have in particular procedures.

There is an obvious difference in the profiles between UAMs applying for asylum and those who do not apply for asylum:

* Asylum seeking UAMs often flee their country out of fear for persecution or out of generalised violence in their country of origin. During the last 5 years (2009 – 2013), about 36% of all asylum applications from UAMs in Belgium where Afghans, 19% came from Guinea and 6% from Congo. These three countries make up about 60% of all asylum applications from UAMs during the past five years. Most UAMs who apply for asylum come from countries where the general security situation is problematic or where human rights violations are common, in combination with a poor economic situation.

A recent scientific article (*Vervliet, M., Broekaert, E. & Derluyn, I., 2014: The aspirations of Afghan unaccompanied refugee minors before departure and at arrival in the host country. Childhood-A Global Journal of Child Research. Doi: 10.1170/0907568214533976*) based on interviews with 52 Afghan UAMs revealed that finding security and studying particularly influenced the decision to migrate. With some exceptions, the socio-economic status of most participants in this survey was rather low: large families, headed by one parent or child-headed, limited financial means and few educational opportunities. It is interesting to learn that in most cases the decision to migrate was made in the first place by one or both parents or another family member, usually an uncle, and not by the minor him/herself.

Besides finding a secure environment, UAMs also left their country with high aspirations related to educational and job opportunities.

So the search for security, better educational and job opportunities seem to be important motives to migrate. However, these are mostly motives to leave the country of origin, and not so much reasons to come specifically to Belgium. The presence of friends, family or a large community from the own ethnic and/or national background is often a key factor why these young asylum seekers preferred Belgium above another European country, together with the choices made by family members and/or smugglers. This could be one of the reasons why during the past five years, Belgium was also a popular destination for adult asylum seekers from Afghanistan, DR Congo and Guinea. Nevertheless, there are also UAMs who did not plan to come to Belgium, but arrived in Belgium by coincidence or by choice of a smuggler. Some of the UAMs are apprehended by the police and are on their way to other European countries such as the UK or Sweden.

* UAMs who do not apply for asylum have a different profile. A significant share of them is originating from Maghreb countries, especially Morocco and Algeria. Others belong to the Roma community and come from the Western Balkans. There are also European minors, who also often belong to the Roma population. The reason why they are in Belgium is mostly to find a better future (no perspectives in their country of origin) and to raise some money. Moreover, it seems that one major difference with the group of asylum seeking UAMs is that these minors not always want to be registered as an UAM or do not want to be cared for in reception centres. They are intercepted by the police, frequently do not respond to the invitation for registration at the Immigration Office or disappear from the reception structures. Much is unknown about this group, for example whether they are together with other young people (in particular to commit certain offences), or if they are actually in Belgium without the guidance of a person with parental authority, and often they take up different identities, rendering it difficult to identify or ‘follow’ them. Given these specific difficulties, it is a large group of concern regarding human trafficking and sexual or other forms of exploitation.

**1.3 Based on your experience, what are the transit, reception and living conditions of unaccompanied migrant children and adolescents in your region?**

Fedasil, the federal agency for the reception of asylum seekers, is responsible for the reception of all UAMs regardless of their administrative status (asylum seekers as well as non-asylum seekers newcomers) during the **1st reception phase in the Fedasil Observation and Orientation Centres** (OOC). These Observation and Orientation Centres organise the reception of all newly arrived UAM to allow for their identification, the assignment to a guardian by the Guardianship Service (Federal Public Service of Justice), and a first observation and orientation.

S’il est identifié comme mineur étranger non accompagné, le jeune se voit désigner une tuteur. Le tuteur veille au bien-être de son pupille et, le cas échéant, fait appel à une aide-psycho-médicale. Il l’accompagne au long de sa scolarité. Le tuteur veille à établir une relation de confiance avec son pupille et, notamment, au respect de ses convictions religieuses et philosophiques.

The organisation of the first reception is an acclimatization and psycho-social assessment phase in view of a first orientation. This phase lasts for a period of 15 days and is renewable once, in case of necessity.

The UAM seeking asylum or vulnerable UAM not seeking asylum (girls, minors younger than 15 years, …) will be accommodated in two OOC, each of them can accommodate 50 minors (in the towns of Neder-Over-Heembeek and Steenokkerzeel). The UAM not seeking asylum and not vulnerable (boys, minors above 15 years) will be orientated to a specific OOC in the town of Sugny (accommodation for 20 minors), opened in May 2012. This last centre can accommodate a minor from 1 up to 4 months.

The young victims of human trafficking are referred to specialised facilities for UAM victims of human trafficking (such as Esperanto, a non-profit association accredited and funded by the Youth Care Service of the French Community and Minor N’Dako & Juna, a non-profit association accredited and funded by the Youth Care Service of the Flemish Community). This takes place directly if it is clear that they are victims of human trafficking or after an initial stay in the OOC.

The very young (< 13 years) or most vulnerable UAM are also referred to specialized facilities of the Youth Care Services, such as El Paso. El Paso, a non-profit association accredited by the Youth Care Services of the French Community, is financed by the French Community (25 UAM), by the Social Integration Federal Public Planning Service through Fedasil (13 UAM) and the Federal And Walloon Government.

UAM arriving at the borders (airport) for which there is a doubt that they are underage, a medical examination for the age assessment is organized within three days of their arrival. During these 3 days, the person concerned will stay in the closed detention centre for adults and families near the airport until the results of the age assessment are known. In case the person is a minor, he will be transferred to an OOC[[10]](#footnote-11). UAM encountered inland for which there is a doubt that they are underage, will be directly transferred to an OOC (cf. supra).

In the **second reception phase**, the UAM who has no particular needs will be oriented towards a federal collective reception centre (Fedasil) or a collective centre from one of the reception partners, like Red Cross. The minors stay there in a separate ward, with their own team of social workers and educators, and this for a period from 4 months up to 1 year. The minors are accompanied in their school career and on a progressive way prepared for more autonomy. Minors in need of specialized aid can be accommodated by the Youth Care Services of the Communities (Flemish, French and German-speaking Community). A special assessment has to be made before the minor is granted a place here. This can be placement in a residential (inpatient) centre, living alone with guidance or placement in a foster family. When there are no places available through the Youth Care Services (which is often the case), the minor still can be accommodated by the Fedasil reception network.

Unaccompanied minors, from the age of 16, can ask to be transferred to the facilities of the third reception phase. These are mostly individual reception facilities, the local reception initiatives (LOI), organized by the Public Centers for Social Welfare in Belgium. Here the minors also receive material aid, but they enjoy more freedom and have more autonomy. But they also get the necessary accompaniment until they turn 18 or until the end of the school year in which they turn 18.

Same as for the reception in collective centres, the reception in a LOI is limited in time. Until the youngster receives the refugee status or subsidiary protection or receives an ‘order to bring the minor back’ (annex 38). Respectively a ‘postponement of departure’ or a ‘periodical extension of the annex 38’ is possible until the age of 18.

The **three-phase reception system of Fedasil** (not the Youth Care Services) means that UAMs who stay in one of the different reception facilities will not receive financial assistance, but social aid is provided in kind (accommodation, food, clothing, psycho-medical-social assistance and a small daily allowance). UAMs who stay in the reception centres of one of the three phases will have access to medical care and education. The reception centre covers the costs of medical care and is, depending on the reception structure, reimbursed by Fedasil or the Federal Public Service Social Integration.

At the moment a decision has been taken on the residence permit / procedure of the minor (e.g. granted refugee status or subsidiary protection; overall negative outcome of the asylum procedure,…) or the minor and/or his guardian has received an “order to bring the minor back” (annex 38), Fedasil has no longer the obligation to care for the UAM in their reception structures. Nevertheless a periodical extension of the stay or ‘postponement of departure’ is allowed (in theory until the guardian has found a solution). In practice the prolongations are given until adulthood.

Like all asylum seekers, the UAM has the right to refuse the accommodation offered by Fedasil, and to choose to live with an adult, often a member of his (extended) family. However, in this case, checks will be carried out by the guardian on the “bona fide” character of the adult and to see if this adult can adequately accommodate the UAM. If this cannot be guaranteed, the UAM will be placed in an adapted reception centre. Also in these cases of “private housing”, a guardian is appointed who follows up this living situation.

All minors, regardless of their age and the “phase” of reception, can at any time be referred to the services of the mainstream Youth Care, organized by the regional authorities, on condition that they have ‘special needs’ which are recognized by the responsible authorities and actors here (recently reorganized in the “Integral Youth Care”). These services encompass reception in residential structures, foster care, and living alone with guidance. The Youth Care is organized by the regional authorities, but private, non-governmental organizations organize the services themselves, hereto recognized and funded by the government. Given their nature and the nature of the funding available, the Youth Care Services differ largely from the services organized by Fedasil, in terms of, amongst other elements, type of accommodation and infrastructure, number of staff and training level of staff, and number of children living together. However, there are long waiting lists to access the Youth Care Services and they are not able to meet all the needs of the youngsters.

All reception centres within the Fedasil network employ social workers and educators; some centers have an overall UAM - coordinator. Each UAM is assigned a social worker and an educator who follow the UAM together.

The main tasks of the social worker are:

- ensure a global accompaniment of the UAM;

- individual support to the UAM;

- support the young person in building his ‘life project’

- ensure the follow-up of the minor: individualized educational project, ‘life’ project, …

- provide explanations on the functioning of the reception in order that the minor is informed of his rights and obligations and can take decisions with full knowledge of the facts;

- being the referent of the UAM and ensure the link between the UAM and the outside world;

- facilitate the link between the UAM and the guardian;

- ensure the follow-up of the procedure (asylum and others) of the UAM;

- follow up if extra socio-psychological support is necessary.

The main tasks of the educator are:

- responsible for the daily life of the UAM in the centre;

- organisation of activities for the group of UAM;

- working towards autonomy of the UAM (by means of a number of general sessions such as ‘how do I take the public transport’, the numerous aspects of life in Belgium, sexual education, recycling, learn to cook);

- organisation of sports activities, follow-up of hobbies & leisure activities;

- responsible for the follow-up of the schooling of the UAMs (some centers have a separate responsible for this) All tasks of the social workers have to be done in consultation with the guardian of the UAM.

The number of UAM per staff member depends on the reception phase, and if it is a centre for the reception for UAM with or without special needs.

1st phase: In the OOC each minor is assigned a personal coach who will monitor the UAM during his stay in the centre. The personal coach will help and advise the UAM, report on his situation and explain the centre’s rules and regulations. The regulations will specify how to receive visitors, make telephone calls, see a doctor, but will also give the daily timetable and the rules that need to be respected such as for going out, activities etc.

Through conversations, activities and his daily functioning the coach can get a view on the UAM and his possible needs. The coach will write a report in the perspective of orientation to a second reception facility, based on his impression and a medical and psycho- social evaluation.

The staff to UAMs ration is 1,85.

2nd phase: in the Federal reception centres the staff to UAMs ration is between 2,66 and 4,16.

3th phase: in the local reception initiatives, there is 1 fulltime + 1 part-time (50%) staff member for 8 UAM. There is always a permanence by phone.

All staff are, as much as possible, appropriately trained (graduated) social workers and educators.

There is specific training for the staff: joint information sessions organised by Fedasil, such as aggression management, the asylum procedure in Belgium, training in dealing efficiently with conflicts and difficult behaviour, training in smuggling and trafficking in human beings, … In addition the centres have a budget to invest in external training for the staff.

The staffing of the Youth Care services, including the special centres for unaccompanied minors and for minor victims of trafficking, are subject to the regulations of the regionalised Youth Care services, including regarding the number of staff and their education. Overall, the staff-youth ratio and the educational level of the staff are higher in the Youth Care Services, compared to the care structures for asylum seekers and recognized refugees.

UAMs are entitled to free legal support and they have access to medical care and to health insurance under certain conditions. UAMs, just like all minors in Belgium, have access to education. Foreign minors, including UAMs, who arrive in Belgium can make use of specially adapted programmes for primary and secondary education that allow them to attend normal mainstream education on a regular basis after this initial period. School is also one of the most important factors in the integration process. Besides, there are also specific integration programs organised by several partners. Reception and integration support provisions are in principle never withdrawn from UAMs. Minors with behavioural and emotional difficulties can be enrolled in a six-day supervision programme in a specific location.

The detention of unaccompanied minors is forbidden by law, although there is one exception: if an UAM arrives at the border, and there is a doubt about the age, he/she can be held in detention for three working days (exceptionally extendable for another three working days). Once minority has been proved, the UAM is transferred to an Observation and Orientation Centre within 24 hours.

Note: The management of young people in transit is particularly sensitive. Indeed, these young people have as a project to travel to a country other than Belgium and therefore refuse all aid interventions (reception, care, housing and/or appointment of a guardian) and put themselves in danger at the mercy of human trafficking and smuggling. Without agreement and active and positive cooperation on their part, the Belgian authorities cannot impose that aid in a binding way.

**1.4 What are the main human rights violations faced by unaccompanied migrant children and adolescents in your region? Please give examples.**

For unaccompanied children, the main reasons for claiming international protection in Belgium are:

* General insecurity, war, forced recruitment, dictatorial regime, oppression (e.g. Afghanistan, Iraq, Syria, Eritrea)
* FGM/C – Forced marriages (in particular certain African countries like Guinea)
* Cultural and/or ancient traditions/practices (e.g. Blood feuds in Albania)

En Belgique, les jeunes adolescents peuvent être victimes de réseaux criminels qui les utilisent dans le but de réaliser des vols, cambriolages ou de se prostituer. Pour la plupart, ces jeunes refusent l’aide proposée. Vu leur méfiance, il est difficile de les identifier, notamment quant à l’existence ou non d’un lien d’autorité parentale.

The fact of not being systematically reported to the authorities by all field services, generates the “invisibility” of these unaccompanied foreign minors which can have harmful consequences, including the possibility of being exploited and abused.

1. **Cross-cutting issues**

**2.1 In connection with article 12 of the Convention on the Rights of the Child, in your country or region, are there specific mechanisms or procedures to ensure that migrant children and adolescents’ views are heard and fully taken into account in all matters affecting them? If yes, please describe.**

En vertu des dispositions de la loi sur le Tutelle, le tuteur représente le mineur étranger dans toutes les procédures administratives et judiciaires. A ce titre, il a l’obligation de désigner un avocat spécialisé au bénéfice de son pupille.

La priorité des autorités et du tuteur est de rechercher une solution durable conforme à l’intérêt de l’enfant.

Celle-ci peut consister en :

* Soit une procédure relative à la traite et au trafic des êtres humains
* Soit une demande d’asile ou de protection subsidiaire
* Ou une demande de séjour provisoire en vue rechercher une autre solution durable, et le cas échéant un retour volontaire, conforme à l’intérêt de l’enfant.

Regarding the asylum procedure, every unaccompanied child has the right to an interview, in the presence of his/her legal guardian. Every accompanied child can ask to be heard, but so far this is not specifically mentioned in the Aliens Law. When an accompanied child asks to be heard, this request is always granted. Furthermore, so far the presence of a legal guardian or parent(s) is requested by law. Experience has proven that this might prevent children from talking without restraint, in particular children facing forced marriage, FGM/C or children facing problems within their family because they might be LGBT. Therefore a preliminary draft of law has been proposed to the government to ensure that every accompanied child has the right to be heard, without the presence of their parent(s) or legal guardian, to make sure the child can speak freely. This proposal/law should be entering into force in 2016.

The unaccompanied foreign minors hearing is planned pursuant to Article 61/16 of the 15 December 1980 law. It is the same in the context of the asylum procedure .

Each minor is assigned a personal coach who will monitor the UAM during his/her stay in the centre. The personal coach will help and advise the UAM, report on his/her situation and explain the centre’s rules and regulations. Through conversations, activities and his daily functioning the coach can get a view on the UAM and his/her possible needs. The coach will write a report in the perspective of orientation to a second reception facility, based on his impression and a medical and psycho- social evaluation.

When an unaccompanied foreign minor is registered in Belgium, a guardian is assigned to him/her by the Guardianship Service. When the Immigration Service or other authorities have doubts on the minor’s age, the Guardianship Service commissions an age determination test. This medical test (a triple radiograph of the teeth, collarbone and wrist) takes place in a hospital designated by the Guardianship Service. The role of the representative has been defined by law in the [Guardianship Act (link is external)](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2002122445) (Programme Law (I) (Art. 479) - Title XIII - Chapter VI: Guardianship of unaccompanied foreign minors, 24 December 2002

Taking into account the high vulnerability of children, the [Royal Decree (link is external)](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003071105&table_name=loi) of 11 July 2003 defining the functions of and the judicial procedures for the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) established a special procedure for dealing with asylum applications from unaccompanied minors. All children are vulnerable, and unaccompanied children even more so. These children often arrive in a foreign country, with a foreign culture, after a traumatising journey. As a result, they often find it hard to tell their asylum story in a clear way.

At the CGRS a team of specialised protection officers is responsible for dealing with asylum applications submitted by unaccompanied minors.

In addition to the basic training and at least two years interviewing experience, these protection officers have also received **specific training**. This training focuses, in particular, on:

* Belgian and European legislation, directives, provisions and the legislation on guardianship
* the principle of the higher interest of the child
* the phases in children's development and the different levels of maturity
* the functioning of children's memory
* indicators of vulnerability in children
* the possible mandate of a child
* the position of a child in the different cultures and intercultural communication with children
* child-specific forms of persecution.

Adapted interview method: an interview of a child differs in certain aspects from that of an adult. For instance, it takes place in a separate interview room. The protection officer adapts his language to the child and encourages it to tell as much as possible of its story spontaneously, from the perspective of its own perception. In doing so, he avoids asking closed questions as much as possible to avoid influencing the child. During the interview the child can draw or use other tools to clarify its story. Breaks are provided. The child can request a break whenever it needs one. The interpreters who assist the children during the interview have also received specific training.

As it is not easy for a child to tell its asylum story to an unknown protection officer, a representative assists the child during the interview at the CGRS. For unaccompanied children the presence of a representative during the interview (also provided for in the Guardianship Act) is in particular important. The CGRS always arranges the interview with an unaccompanied child in consultation with the representative. This allows the representative to prepare for the interview, thoroughly and with enough time, together with the child.

The representative:

* appoints a lawyer for the child
* ensures that the child's rights are respected throughout the asylum procedure
* provides support to the child during the interview
* can – before, during or within five days after the interview – submit relevant information, documents, medical reports or notes about the child's asylum application to the CGRS, or inform the latter about specific issues that are important with respect to the child
* makes sure during the interview that the child is able to tell everything that has led to the asylum application or is related to its fear
* is the only person present who is allowed to interrupt during the interview and make notes or additions.

Adapted Assessment Of The Asylum Application:In its assessment of the asylum application the CGRS applies the benefit of doubt in the broadest sense possible. The higher interest of the child and its vulnerability are crucial in this. Children experience the world around them in a different way than adults, and interpret things and events in a child-specific manner. Children cannot be expected to know the answer to all questions or to always answer unambiguously.

Where desirable and possible, the CGRS calls witnesses for an interview (uncles, aunts, etc. who are staying in Belgium) to clarify the child's situation. Finally, the CGRS uses child-specific information to study the child's situation as thoroughly as possible and assess it correctly.

In his decision, the Commissioner General uses a language that is adapted to the age and profile of the unaccompanied minor applicant.

The representative receives the decision concerning the unaccompanied minor, the lawyer and the minor both receive a copy.

The CGRS has a coordinator for minor applicants. This coordinator knows everything related to dealing with asylum applications from unaccompanied minors. She also closely supervises their asylum applications. The protection officer can turn to the coordinator for questions concerning legislation and law on children in the asylum procedure. The protection officer can also consult with the coordinator on individual applications. Representatives can turn to this coordinator as well when they have questions or remarks.

**2.2** **If your answer to question 2.1 is positive, what have unaccompanied children or adolescents expressed as their main reasons for migrating? And what did they describe as their reception and living conditions in transit and destination countries?**

See questions 1.1, 1.2 and 1.3 regarding main reasons for migrating.

Research questioning UAM indicates that they experience large constraints in the accommodation and overall material reception conditions (both in reception centres as in independent living situations). Often, these material stressors even increase the longer they are in the host country[[11]](#footnote-12).

Further, there are very little possibilities within the system to differentiate the reception and care in relation to the particular needs and situation of the minor. This involves that certain UAMs do not fit into the existing system, and therefore do not receive adequate and adapted care[[12]](#footnote-13). Moreover, academics have repeatedly questioned why there are differences in material conditions (including accommodation, staff-client ratio,…) between mainstream Youth Care services and the reception structures for unaccompanied minors in the asylum system – while also UAM can be considered as children and youths who are in need of specific and quite intensive support[[13]](#footnote-14). Hereby, it needs to be mentioned that these Youth Care Services are in principle accessible for UAMs, but in practice, it is often difficult to access these.

Reception and living conditions in certain transit countries are described as being inhuman (e.g. Libya, Turkey, Sudan where children are held captive or are being abused by human smugglers, or being imprisoned by the authorities, without respect or consideration for their young age).

**2.3** **Based on your experience, do you think the human rights violations inflicted on unaccompanied migrant children and adolescents are motivated by gender considerations?**

Yes, but not in every case. Particularly in FGM/C, forced/arranged marriages, sexual exploitation, other exploitation of children (forced to commit crimes), domestic exploitation or problems regarding LGBTI.

**2.4 In your country, what is the legal definition of a child / an adolescent?**

Article 1 of the Convention on the Rights of the Child defines a child as “ every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. This definition is also applicable in Belgium.

The adolescent notion is not defined.

The Reception Act (Loi sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers de 12 janvier 2007 defines the unaccompanied minor as: “le mineur non accompagné : une personne de moins de dix-huit ans non accompagnée au moment de son entrée sur le territoire du Royaume ou cessant d'être accompagnée postérieurement à celle-ci par une personne exerçant sur lui l'autorité parentale ou la tutelle, en vertu de la loi applicable conformément à l'article 35 de la loi du 16 juillet 2004 portant le Code de droit international privé, et se trouvant dans l'une des situations suivantes :

 - soit, avoir introduit une demande d'asile au sens du 1° (1° le demandeur d'asile : l'étranger qui a introduit une demande d'asile, ayant pour objectif soit la reconnaissance du statut de réfugié, soit l'octroi du statut de protection subsidiaire);

 - soit, ne pas satisfaire aux conditions d'accès au territoire et de séjour déterminées par les lois sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers”.

According to the European Migration Glossary ‘Unaccompanied minor’ refers to a third-country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States. Note that not all those who claim to be a UAM will be confirmed as such by the relevant authorities. (Source: EMN Glossary 2.0).

1. **Laws, policies and coordination mechanisms**

**3.1 Do you consider that your country’s migration policies take into account the protection of the rights of migrant children and adolescents in general, and of unaccompanied migrant children and adolescents in particular? Is the migrant child/adolescent considered as a distinct right-holder? Are there any specific measures implemented to protect the rights of unaccompanied migrant children and adolescents? If yes, please provide details.**

Yes, the unaccompanied foreign minors are considered as a vulnerable group that must be protected. Their situation is still managed and reviewed by experts in juvenile matters whatever the responsible department (reception, guardian; residence and asylum authorities, etc. ..). In addition, these experts work in network.

Concerning the residence, a specific procedure is determined in the 61/14 to the 61/25 Articles of the Law of 15th of December 1980. Specific provisions are included in the asylum procedure (Article 48 and following of the law of December 15, 1980 ) as well as when they are victim of human trafficking (Articles 61/2 to 61/5 of the Law of 15th of December 1980).

In the asylum procedure, every unaccompanied child has a legal guardian. This is a legal obligation. The guardian has to make sure all the child’s legal rights are being applied and/or protected.

**Asylum procedure**: To apply for asylum, the UAM must present him/herself at the Immigration Office. The UAM is separated from the other asylum seekers and is assisted by staff from the Immigration Office trained to deal with UAMs. Basic information on the identity of the UAM will be collected and fingerprints and photographs are taken. If the Guardianship Service has not been informed yet on the presence of the UAM, an identification form for UAMs has to be filled out. The identification form is transferred to the Guardianship Service, which will take charge of the UAM and transfer the person to one of the Orientation and Observation Centres (OOCs). In case of possible victims of trafficking – even when there is still an ongoing asylum procedure, the person will be transferred to a special centre for minors victims of trafficking and very young children to special centres within the youth care system.

If there has been expressed doubt about the age of the UAM, the Guardianship Service will perform an age assessment test. If the minority is confirmed, a guardian will be appointed. In consultation with the UAM, the guardian will decide if the asylum application is the appropriate procedure to follow in the best interest of the child.

If it has been decided to apply for asylum and the asylum application has been registered, the UAM and the guardian will be invited together to the Immigration Office to be interviewed by a specialised caseworker trained in interviewing vulnerable persons. The UAM will be asked to fill out a questionnaire, with the help of the guardian, the interviewer and interpreter. The UAM will receive a document annex 26 as proof of the asylum application.

The UAM will be invited to the Office of the Commissariat-General for Refugees and Stateless Persons (CGRS) for the actual asylum interview, where the UAM will need to explain the motives for applying for asylum. The guardian will be present during the interview, and the UAM may also be assisted by a lawyer or another trusted representative. Also an interpreter (appointed by the government) will be present, if needed.

A specialised caseworker of the CGRS will conduct the interview and will take into account the minor’s age, maturity and other personal and cultural factors. The CGRS caseworkers who interview the minors are specialised in the geographical area the minor is originating from, and have received specific training. The CGRS has a coordinator for UAM who is closely involved in the development and updating of the EASO teaching modules on interviewing children, vulnerable persons and interview techniques. The Interviewing Children module is built on the structured interview method presented in the core module ‘Interview Techniques’. The module aims to help protection officers acquire skills to perform personal interviews in a sensitive and empathic manner, while taking due consideration of the age and maturity of the child, cultural variances and effects of trauma and/or distress.

After the interview, the asylum application will be further assessed to qualify if the UAM can be granted the refugee or subsidiary protection status. The age and personal development of the minor will be taken into account and the fact that the applicant is a minor will shift the burden of proof more towards the authorities and the principle of the benefit of the doubt will have a larger field of application. If the decision about the asylum application and subsidiary protection status is negative, an appeal can be lodged at the Council for Aliens Law Litigation (CALL).

In 2014 the CGRS worked on a project regarding the best interests of accompanied and unaccompanied children. A literature research was conducted, as well as research was done on how the concept “best interest of the child” should be interpreted according to national and international legislation and jurisprudence. Besides, also a questionnaire was launched to other member states via EASO and workshops with relevant stakeholders were organised.

**Guardianship**: There are some qualifications required to become a guardian. The guardian must be an adult and reside in Belgium or have a permanent residence permit. (S)he must explain his/her motivation to be a guardian, and most demonstrate that (s)he has particular competencies related to UAM, in particular with respect to migration and youth care law, guardianship law, psychological and pedagogical aspects related to UAM, and care for UAM, in particular its intercultural aspects. Further, the applicant must give an official attestation of “good behaviour, model 2” (proof that there were no convictions related to offenses against vulnerable people, including children).

If these criteria are met, the Guardianship Service invites the applicant for an interview. The Guardianship Service will question the applicant about his/her motivation and motives to become a guardian, his/her attitude towards the target group, and will try to explore the skills and knowledge of the applicant (is there a genuine concern with the issue of UAMs, relational skills, skills in the area of organisation and coordination, etc…). All guardians receive a basic training, on procedures, task of a guardian, psychological aspects, trafficking, return, family tracing,…, and also further training and supervisions once they have started with their guardianship. Several organisations of guardians, in particular those in the “voluntary system”, bring guardians together to share experiences and knowledge, and also organise training and lectures for their members. Regular evaluations and supervision of the guardian are carried out by the Guardianship Service (through, yearly evaluation meetings with the Guardianship Service). Further, a minor can always submit an inquiry to the Justice of the Peace to appoint another guardian, although minors seldom do this, as barriers are rather high. The Guardianship Service has created some ‘pools’ of guardians with special expertise in specific situations, for example the guardianship of minors arriving at Brussels Airport or in a seaport, given that the immediate presence of a guardian is required there.

**Sustainable solution**: A specific procedure for UAMs was introduced in a Circular of 15 September 2005 and subsequently included in articles 61/14 to 61/25 of the Belgian Immigration Act. Since the amendment of February 26, 2015 , which went into effect on March 26, 2015 , a UAM can start this procedure if he has already applied for asylum or has started another residence procedure. The overall goal of this specific procedure is to find a “sustainable/durable solution” for the UAM. The guardian assigned to the UAM can file a request for a residence permit with the Belgian authorities. Then, the authorities will interview the minor and decide on the most appropriate, “durable solution” in his or her specific situation. In this respect, three possibilities are described in the Law as a durable solution:

• Family reunification in the country where the parents have legal residence in accordance with article 9 and 10 of the UN Convention on the Rights of the Child;

• Return of the UAM to the country of origin or another country where he/she has a right of residence. There have to be guarantees on adequate reception, depending on the age and degree of autonomy of the UAM. This reception should be provided either by the parents or other adults taking care for the UAM, or by governmental or non-governmental organization;

• A residence permit and settlement in Belgium.

The decision on what is the sustainable solution in the best interest of the child might take long, and options might change over time. If tracing the family was unsuccessful, a return is less likely. The MINTEH Bureau of the Immigration Office can decide to issue an immatriculation certificate, if a durable solution for the UAM has not yet been found, and on condition that the minor can present a passport or other identity document. If this is not possible, the guardian will have to provide all documents which prove that all the necessary steps have been taken to obtain identity documents. The immatriculation certificate allows residence in Belgium for a period of six months. If within these six months no durable solution has been found, the guardian has to submit a new application with a proposal on the most appropriate, durable solution and supporting evidence one month before the day of expiration of the immatriculation certificate. The Immigration Office will examine the elements of the application and the specific circumstances of the case. The Immigration Office hereby may interrogate the minor. The UAM can be asked to clarify his family status, the reason for his travel to Belgium, etc. The minor is assisted by his guardian during the hearing. If the most appropriate solution is not yet clear, the validity of the immatriculation certificate can be extended with another six months. The Immigration Office can also decide to issue a temporary residence permit valid for one year (‘electronic A card’).

However, if the investigation shows that a return to or a family reunification in another country is the best solution, the Immigration Office will give the mayor (or his representative) the instruction to deliver an order to bring back to minor (annex 38) to the guardian. If no durable solution is found at that time, the child will get a residence permit for 6 months (registration certificate model A).

One month before the date of expiration of the temporary residence permit, the guardian has to submit a file with the Belgian Immigration Office. The file has to consist of different elements that clarify the life of the UAM in Belgium and his or her (future) “life project”. Elements that need to be proved here are the specific situation of the minor, his or her family situation, the knowledge of one of the three Belgian, official languages and regular school attendance. If false or misleading information about the age (or other elements of the ‘life project’) are given, the UAM will receive an order to leave the country by the Immigration Office if he/she turns out to be an adult or they will change the durable solution.

Once the UAM has stayed in Belgium with a temporary residence permit during three years, a permanent residence permit will be granted to that UAM (‘electronic B card’), on the condition the person in question is still a minor after these three years.

If the guardian does not agree with the durable solution proposed by the Immigration Office, the guardian can lodge an appeal with the Council for Aliens Law Litigation.

**3.2 In your country, are there specialized authorities/personnel/services trained to specifically deal with migrant children and adolescents (such as migration or border officers, psychosocial support, etc.)?**

The protection officers responsible for handling an application for international protection from children (accompanied and unaccompanied) all receive special training. This training consists out of the EASO Interviewing Children Module and a specific training provided by Solentra, an NGO specialized in dealing with (psychological issues from) migrant children in families or unaccompanied. This training in particular focusses on the cognitive development of a child, culture, particular problems of a migrant child having to leave his/her country, family and having to adapt to a new culture, trauma, resilience, etc…

a) The Action Plan 2012-2014 on the fight against trafficking of human beings (THB) underlines the need to (continue to) train different actors on the identification of victims of human trafficking. These actors include police officers and border guards, but also social inspectors, prosecutors, staff from reception centres for unaccompanied foreign minors and closed centres. The integrated and coordinated approach mentioned in this national plan is based on

• Prevention (page 12 - 17 of the national action plan)

• Protection (page 17 - 21 of the national action plan)

• Prosecution (page 26 - 33 of the national action plan)

• Partnership (page 33 - 39 of the national action plan)29

Obviously the “4 P’s” in this national action plan refer to the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.

Although not always specifically aimed at UAMs, the tools, training sessions and workshops on the fight against THB could be useful for the identification of UAMs who may be victims of THB.

b) Specialized reception centres for victims of THB (Pag-Asa, Payoke and Sürya, and Esperanto) organize training modules for different target groups, including the police, legal guardians, medical staff, public social welfare centres, students and the wider public. The training sessions for the police are given on a regular basis, others are on an ad hoc basis. There are both elementary training courses for those who don’t specialize in THB (start-of-career police officers, magistrates in internship), and refresher or advanced training courses for those who specialize in THB, including police officers and prosecutors (every year refresher courses for police investigators, supplementary week- long theme-based training courses for investigators, twice a year thematic training sessions for police officers and open to reference prosecutors within the public prosecutor's office).

c) In the reception centers there are trained social workers and educators who get additional training to work with unaccompanied minors (see above).

d) The asylum instances have trained personnel to deal with UAM (see above).

e) The guardians receive specific training to perform their task (see above).

**3.3 What are the main challenges and barriers (legal, political, financial, administrative, economic, social and cultural) that impede the effective protection of unaccompanied migrant children and adolescents?**

There are a number of challenges related to the reception, care and integration of UAM’s in Belgium. An overview of some of these challenges, which are mainly based on particular academic publications[[14]](#footnote-15):

* **large asylum centres**, with limited number of staff and often with limited educational background
* large **emotional challenges** due the particular living situations (alone, in a ‘strange’ country; often traumatizing experiences), in combination with lack of psychological support in asylum centers and difficult access to mainstream mental health care services, including psychiatric care.
* **limited differentiation** the living and care arrangements, whereby not all specific needs of particular groups can be met (e.g. children who lived already for long time in the streets often do not fit any more in the strict regime of an asylum center; lack of foster care arrangements; limited care, guidance and support in independent living arrangements)
* **difficult transition processes** from separate language classes to mainstream educational systems
* **difficulties in creating social networks** with peers and other members of the host communities due to separate living arrangements (asylum centres) and separated educational systems (language classes)
* access to **appropriate housing** (independent living) with granted refugee status or subsidiary protection
* lack of possibilities to meet the **educational and financial aspirations** they came with (difficulties to obtain a diploma, given the limited time in education (up till 18) and the language barriers; difficulties to work)
* access to **leisure activities** limited because of financial constraints and practical barriers (geographical location of the asylum center for example)
* number of **daily stressors** (financial limitations, difficulties in access to services,…) aggravating the psychological stress
* large contrasts between the integration dream and efforts (e.g. in education) and the long-lasting insecurity regarding residence documents (and often the negative outcomes of residence procedures).

#### **Remaining challenges**

Nombre des jeunes connaissent un parcours chaotique et rejoignent le territoire, soit pour le traverser, soit en espérant y trouver des ressources. Ils ont toutefois méfiants vis-à-vis de toute prise en charge par les autorités et refusent fréquemment l’accueil proposé dans le cadre de la loi Tutelle.

Certains d’entre eux sont en situation précaire ou même victimes de réseaux criminels. En l’absence de mandat judiciaire, ils ne peuvent toutefois être retenus.

Though there are no comprehensive statistics available, the number of **UAMs who disappear** during the first reception stage or even before arrival at a reception facility continues to be a major concern. Regarding the **disappearances from the reception facilities**, the fully open character of the reception facilities, especially regarding the Orientation and Observation Centres where most disappearances occur, might be worth a debate. Obviously it is a good thing that UAMs cannot be detained, but maybe UAMs could be held in a more secured reception facility, at least during the first days after their interception when the risk of absconding seems to be most significant. The objective of this approach would be to be able to provide at least a minimum of information to the minor regarding his options and to get a better chance of making an assessment regarding the vulnerability of the UAM or the risk to become a victim of human trafficking or other forms of exploitation. Specialised reception centers such as Minor Ndako could serve as an example in finding a better balance between securing reception facilities in the interest of the child and the right to freedom.

As stated in the previous EMN report on UAMs (2009), some guardians tend to be reluctant to see return as a durable solution in the best interest of the child. In Belgium many actors and services with different legal responsibilities are involved when it comes to UAMs and they do not always necessarily share the same vision on what is in the best interest of the child. In Belgium an order to leave the territory cannot be issued to an UAM, but an order to bring back the minor can be issued to the guardian, if the Immigration Office considers this to be the best durable solution. In practice, however, these orders are rarely enforced and are in fact ignored by guardians. In many cases a return is indeed not the preferable solution, but in other cases this could avoid that UAMs disappear, become victims of human trafficking or become illegally staying persons once they reach majority.

The fact that **several stakeholders** are involved and each of them has its own **statistics** makes it difficult to get a clear overview of the number of UAMs, the number of UAMs within each procedure, or the number of disappearances. It also makes it more difficult to do a follow-up and to develop a policy to address issues such as disappearing, reaching majority, switching from one procedure to another, etc. A centralised database, more concentration and/or better exchange of available information between different stakeholders are other challenges where further progress is desirable.

Other challenges identified include:

- establishing contact point between Member States and third countries in order to exchange information, search for family members for the unaccompanied foreign minors.

- Promoting decision making allowing children to join their parents or family members staying in other European countries.

- Having shareable and reliable databases and having an overview of the phenomenon (de-identified data) and customized reliable data to achieve monitoring for all unaccompanied foreign minors of the EU, in cooperation with the various competent bodies (eg in terms of disappearance)

- Moving towards a more uniform protection status including the concepts of "sustainable/durable solution" in the best interests of the child (children seeking asylum or non-asylum seekers)

**3.4** **Are there in your country coordination mechanisms to ensure that all relevant stakeholders effectively collaborate to elaborate effective measures to protect the rights of migrant children and adolescents, and monitor and evaluate their implementation?**

There are no formal coordination mechanisms but there is ad hoc coordination organized with and between stakeholders.

There is also a national commission for the rights of the child and two ombudspersons who focus on children’s rights.

**3.5** **How do you collaborate with other countries in your region to guarantee the promotion, protection, respect and fulfilment of the rights of unaccompanied migrant children and adolescents during the various phases of their migration processes (departure, journey, stay in transit and reception countries, return to country of origin)? Please explain your answer.**

Regarding asylum, international cooperation is mainly established through EASO, the European Asylum Support Office. This can be on the request of EASO or on the request of an EU-MS. Through EASO participation, Belgium has contacts with our EU partners via immigration officials (mainly inquiries) and also cooperates with the European Commission, UNHCR, IOM, etc.

Le tuteur a pour mission de rechercher la famille de son pupille : en concertation avec son pupille, il fait appel aux services de l’Organisation internationale des migrations, ou des ONG comme Caritas et la Croix-Rouge.

1. **Others**

**4.1** **In your opinion, what is the role of civil society organizations in the protection of unaccompanied migrant children and adolescents?**

Civil society organisations play an important role in the protection and accompaniment of UAM ranging from protecting the rights of these children, awareness raising, integration processes of the child, etc…it also plays a role of information towards minors so that they can approach the competent authorities and enjoy the security measures that were taken for them.

For all these reasons, Fedasil concludes specific conventions with different organisations on a yearly basis.

List of 2015 concluded conventions with organisations, specialised in the accompaniment of UAM:

1. Mentor-Escale
2. Synergie 14
3. Solentra
4. El Paso (accompaniment and vocational training for UAM)
5. Rode Kruis Vlaanderen (Red Cross): Family reunification for UAM
6. Espace 28
7. Minor-Ndako
8. SAM accompaniment of minors who encounter difficulties in regular reception facilities

Le service des Tutelles a conclu des protocoles d’accord avec de telles organisations en vue de l’agrément des membres de leur personnel comme tuteurs. Par ailleurs, un contrat public met un disposition des tuteurs novices un programme de coaching par des tueurs expérimentés employés par lesdites organisations. Enfin ,le programme de formation des tuteurs comprends plusieurs volets animés par des représentants des organisations de la société civile.

**4.2 Please provide examples of best practices with regard to issues related to unaccompanied migrant children and adolescents.**

1. In Belgium there are no forced returns of UAMs. Those UAMs who are refused entry at the border can only be returned to their home country or another country where they have the right to stay, following a thorough assessment of the situation and assuming that the guardian agrees that return to his/her country or to a third country is a sustainable solution and in the best interest of the child; which is also the case for a Dublin transfer to another European Member State. The UAMs who are refused entry at the border cannot be detained awaiting return but they have extraterritorial status in an orientation and observation centre.
2. The functioning of the Guardianship Service.

- La formation et les sessions d’information organisées à l’attention des tuteurs apportent les éléments nécessaires à l’accompagnement efficace des jeunes pupilles, notamment en terme d’harmonisation des pratiques.

- Les passagers clandestins se déclarant mineurs étrangers non accompagnés à bord des navires accostant dans les ports belges sont identifiés par le service des Tutelles et la cas échéant transférés vers un COO..

1. Regarding the age assessment test, the manner these medical triple test is conducted and the caution regarding the interpretation of the results and the submitted documents are largely considered as good practices, definitely a good practice in the best interest of the child. Despite a careful interpretation of the test results and the application of a standard deviation, the high number of persons whose minority can’t be confirmed is somewhat problematic. Not only does this cause a distorted picture of the number of UAMs in Belgium, but it also results in a loss of time and resources to reserve for genuine UAMs.
2. A significant number of UAMs in Belgium apply for asylum. The CGRS has continued to improve the asylum procedure for UAMs via the training of specialised protection officers and by taking into account the mental development and maturity of the child during the interview and the examination of the asylum application. In 2014 a project has been launched and workshops have been held regarding the interpretation of the concept “best interest of the child” within the scope of international protection.
3. Another good practice in Belgium results of the fact that, besides the asylum procedure, a specific procedure exists to grant residence permits to UAMs. This procedure has existed since 2005 based on a circular but has been incorporated in the Immigration Act in 2011, providing greater legal certainty to UAMs. Furthermore UAMs can also obtain a temporary or permanent residence permit through other procedures such as the procedure for victims of human trafficking, but for this procedure strict conditions apply and only a limited number of UAMs make use of this procedure. Besides this, there are also the regularisation procedures on humanitarian or medical grounds; although these procedures are not specifically developed for UAMs.
4. Detention of UAMs is forbidden by law and there are no forced returns. Besides the voluntary returns organised via IOM, there is also a limited number of returns of UAMs who are refused entry at the border or who are transferred to another member state via the Dublin regulation. Although these returns cannot be considered as typical assisted voluntary returns, they occur at present only when this is in the best interest of the child and when there are guarantees that the UAM will be taken care of by family members in the country to which the minor is returned or transferred.
5. An expert team responsible for the handling of claims for international protection from children (accompanied or unaccompanied). Only members from this team can interview children.
6. Kizito: a comic book which is designed to explain the asylum procedure to unaccompanied or separated children
7. Directives regarding the handling of an asylum application of a child
8. Independent legal guardians assigned to assist and protect the rights of unaccompanied or separated children

Overall it can be concluded that the Belgian authorities, through the different residence procedures, the satisfactory functioning of the guardianship system and the currently sufficient number of places available for adequate reception, manage to limit the protection gapsfor UAMs. Also UAMs have a good chance of extending their residence permit when reaching majority if they meet certain conditions such as having a job or being enrolled as a fulltime student. A recent bill of March 20, 2014, also allows the Guardianship Service to appoint a guardian for UAMs from an EU member state who are in a vulnerable situation, or who are in the procedure for victims of human trafficking.

**Annex 1: Statistical data**

**Table 1: Statistics on asylum applications from unaccompanied minors in the (Member) State (2009-2013)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| *1. Statistics on numbers of asylum applications submitted by third- country nationals unaccompanied minors* | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
| 1.1 Total Number of Asylum Applications submitted by unaccompanied minors in the (Member) State in each reference periodTotal Number of Asylum Applicants who claimed to be UAMs | 710(935) | 860(1081) | 1385(2020) | 975(1546) | 420(679) | National authorities/ Eurostat, consultation on 25/09/2014 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1.2 Total number of Asylum Applications submitted by unaccompanied minors in the (Member) State in each reference period, disaggregated by their country of nationality, where available: | 20092009 | 20102010 | 20112011 | 20122012 | 20132013 | National authorities/ Eurostat |
| Afghanistan | 225 | 220 | 570 | 425 | 110 | Eurostat consultation on 25/09/2014 |
| Guinea | 130 | 215 | 265 | 155 | 60 |  |
| Congo (DR) | 45 | 50 | 50 | 80 | 45 |  |
| Other: (please include any numbers of unaccompanied minors not included in any of the categories above) | 310 | 375 | 500 | 315 | 215 |  |
| Total (must equal the total in 1.1) | 710 | 860 | 1385 | 975 | 430 |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1.3 Total number of Asylum Applications submitted by unaccompanied minors in the (Member) State in each reference period, disaggregated by their sex and age, where available: | 2009 | 2010 | 2011 | 2012 | 2013 | Source/ further information |
| M | F | M | F | M | F | M | F | M | F | National authorities/ Eurostat |
| Less than 14 years old | 30 | 25 | 45 | 25 | 95 | 55 | 55 | 40 | 30 | 25 | Eurostat consultation on 25/09/2014 |
| From 14 to 15 years old | 170 | 35 | 180 | 50 | 370 | 40 | 210 | 40 | 70 | 30 |  |
| From 16 to 17 years old | 350 | 105 | 395 | 165 | 615 | 210 | 465 | 165 | 180 | 80 |  |
| Unknown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |  |
| Total (should equal 1.1) | 550 | 165 | 620 | 240 | 1080 | 305 | 730 | 245 | 280 | 135 |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1.4 Total Asylum Decisions for unaccompanied minors, disaggregated by sex | 2009 | 2010 | 2011 | 2012 | 2013 | Source/ further information |
| M | F | M | F | M | F | M | F | M | F | National authorities |
| 1.4.1 Total number of asylum decisions for unaccompanied minors in the reference year (disaggregated by sex) | 305 | 189 | 538 | 264 | 614 | 406 | 1288 | 412 | 1253 | 455 | CGRS |
| 1.4.2 Total number of positive asylum decisions for unaccompanied minors in the reference year (disaggregated by sex) | 177 | 110 | 278 | 135 | 291 | 248 | 712 | 222 | 625 | 244 | CGRS |
| 1.4.2.1 Of the total positive asylum decisions provided above please provide the status granted to the unaccompanied minor: |  |  |  |  |  |  |  |  |  |  | CGRS |
| a) Refugee status | 136 | 110 | 157 | 133 | 202 | 245 | 269 | 215 | 266 | 234 |  |
| b) Subsidiary protection | 41 | 0 | 121 | 2 | 89 | 3 | 443 | 7 | 359 | 10 |  |
| c) Humanitarian reasons |  |  |  |  |  |  |  |  |  |  | In Belgium, a humanitarian status can not be the outcome of an asylum procedure.93 |
| Total (must equal 1.4.2.1) | 177 | 110 | 278 | 135 | 291 | 248 | 712 | 222 | 625 | 244 |  |

93 The Immigration Act provides specific procedures for residence permit on humanitarian and medical grounds (art 9bis and art. 9ter Immigration Act)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1.5 Total number of residence permits granted to unaccompanied minors receiving positive asylum decisions | 2009 | 2010 | 2011 | 2012 | 2013 | Source/ further information |
| M | F | M | F | M | F | M | F | M | F | National authorities |
| Type of residence permit granted 1 etc… (please add in additional rows as required): |  |  |  |  |  |  |  |  |  |  | See table 1.4.94 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1.6 Asylum seeking unaccompanied minors that abscond and/ or are reported as missing from the asylum system (including those then accounted for) | 2009 | 2010 | 2011 | 2012 | 2013 | Source/ further information |
| M | F | M | F | M | F | M | F | M | F | National authorities |
| 1.6.1 Total number of Asylum seeking UAMs that abscond and/ or are reported as missing from the asylum system (e.g. before first interview/ decision, etc.), disaggregated by sex | 5 | 4 | 11 | 5 | 9 | 5 | 15 | 3 | 18 | 10 | CGRS database95 |
| 1.6.2 Total number of Asylum seeking UAMs that are found back (after being reported as missing) |  |  |  |  |  |  |  |  |  |  | Not available |

94 All the persons in table 1.4 who were granted refugee status received a permanent residence permit, and all those who were granted subsidiary protection got a temporary (renewable) permit. Although the residence permits for persons who were granted subsidiary protection are in theory temporary (electronic card A), they are in practice always renewed and after five years a permanent residence permit is issued. (electronic card B).

95 This reflects the number of implicit withdrawals for UAMs in line with Article 28 of the Asylum Procedures Directive.

**Table 2: Statistics on unaccompanied minors NOT applying for asylum in the (Member) State (2009-2013)**

*Note: In Belgium there are no statistics available specifically on UAMs who did not apply for asylum. An estimation can be made through calculations based on the difference between the total number of unaccompanied minors96 (source guardianship service), and the number of asylum seekers considered to be UAMs (source Eurostat database on 25/09/2014)*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| *Statistics on numbers of third-country national unaccompanied minors NOT applying for asylum* | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
| 2.1 Total number of unaccompanied minors NOT applying for asylum in the (Member) State in each reference period | 1469 | 1326 | 1144 | 1147 | 911 | Guardianship Service and own calculations |

**More detailed statistics are only available for the most important special residence procedure for UAMs who are no asylum seekers**

 **(the specific residence procedure as described in Article 61/14 – 61/25 of the Immigration Act).97**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Procedure for UAMs not applying for asylum (61/14 Immigration Act):*****Statistics on numbers of third-country national unaccompanied minors NOT applying for asylum98*** | **2009** | **2010** | **2011** | **2012** | **2013** | **Source / further information** |
| Number of unaccompanied minors not (Member) State in each reference period | **263** | **233** | **310** | **207** | **165** | Immigration Office (MINTEH) |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Procedure for UAMs not applying for asylum (61/14 Immigration Act): Number of unaccompanied minors NOT applying for asylum in the (Member) State in each reference period, disaggregated by their country of nationality, where available: | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further informationImmigration Office (MINTEH) |
| Afghanistan | 35 | 9 | 23 | 13 | 15 |  |
| Congo (DR) | 34 | 41 | 75 | 40 | 22 |  |
| Morocco | 43 | 45 | 41 | 39 | 29 |  |
| Algeria | 0 | 12 | 6 | 3 | 0 |  |
| Guinea | 16 | 11 | 28 | 23 | 11 |  |
| Other: (please include any numbers of unaccompanied minors not | 135 | 115 | 137 | 89 | 88 |  |
|  |  |  |  |  |  |  |
| included in any of the categories above) |  |  |  |  |  |  |
| Total (must equal the total in 2.1) | 263 | 233 | 310 | 207 | 165 |  |

96 excluding those who cannot be considered as a minor after an age determination test (guardian service: 322 persons in 2009, 324 in 2010, 729 in 2011, 789 in 2012 and 405 in 2013 self-declared UAMs could not be considered as a minor).

97 These statistics do not include UAMs who are in the procedure for human trafficking, or in other procedures such as family reunification, regularisation, etc… Those who declare to be an UAM but disappear are also not included.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Procedure for UAMs not applying for asylum (61/14 Immigration Act): Number of unaccompanied minors NOT applying for asylum in the (Member) State in each reference period, disaggregated by their sex and age: | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
|  |  |  |  |  | Immigration Office (MINTEH) |
| Less than 14 years old | 60 | 82 | 88 | 53 | 45 |  |
| From 14 to 15 years old | 51 | 35 | 57 | 40 | 32 |  |
| From 16 to 17 years old | 144 | 113 | 161 | 111 | 85 |  |
| Unknown | 8 | 3 | 4 | 3 | 3 |  |
| Total (should equal 2.1) | 263 | 233 | 310 | 207 | 165 |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Procedure for UAMs not applying for asylum (61/14 Immigration Act): number of residence permits granted to unaccompanied minors not in the asylum system, disaggregated by sex | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
| M | F | M | F | M | F | M | F | M | F | Immigration Office (MINTEH) |
| Type of residence permit granted 1 etc… (please add in additional rows as required): |  |  |  |  |  |  |  |  |  |  |  |
| A Card (temporary permit) | 39 | 56 | 51 | 51 | 36 | 38 | 15 | 34 | 10 | 21 |  |
| B Card (permanent permit) | 19 | 18 | 22 | 29 | 17 | 13 | 10 | 15 | 11 | 23 |  |

**Table 3: Statistics on asylum and / or non-asylum seeking unaccompanied minors in the care of public authorities in the (Member) State (2009-2013)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 3.1 Statistics on numbers of third-country national unaccompanied minors in the care of the public authorities | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
| Immigration Office (MINTEH) |
| Total number of unaccompanied minors in the care of the public authorities in each reference period | 1177(931M/246F) | 1431(1098M/333F) | 1591(1194M/397F) | 1591(1232M/359F) | 1558(1262M/296F) |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 3.2 Total Number of unaccompanied minors in the care of the public authorities in each reference period, disaggregated by their country of nationality | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
| National data Fedasil |
| Afghanistan | 377 (374M/3F) | 480 (471M/9F) | 605 (591M/14F) | 667 (653M/14F) | 687 (680M/7F) |  |
| Guinea | 186 (116M/70F) | 351 (214M/136F) | 385 (217M/168F) | 309 (157M/152F) | 211 (116M/95F) |  |
| DR Congo | 70 (29M/41F) | 74 (29M/45F) | 61 (27M/34F) | 81 (26M/55F) | 84 (35M/19F) |  |
| Morocco | 72 (70M/2F) | 34 (32M/2F) | 34 (32M/2F) | 61 (56M/5F) | 77 (74M/3F) |  |
| Iraq | 56 (56M/0F) | 56 (54M/0F) | 42 (39M/3F) | 29 (28M/1F) | 18 (17M/1F) |  |
| Somalia | 18 (17M/1F) | 41 (30M/11F) | 30 (20M/10F) | 31 (17M/14F) | 39 (24M/15F) |  |

**Table 4: Statistics on unaccompanied minors in detention pending return in the (Member) State (2009-2013)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 4.1 Total Number of unaccompanied minors in detention pending return in each reference period, disaggregated by their sex and age: | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
| M | F | M | F | M | F | M | F | M | F | National data |
| Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Law forbids the detention of UAMs |

**Deadline for submission of responses to the questionnaire:**

All parties are encouraged to submit their responses via email or fax as soon as possible but no later than **30 October 2015** to:

**hrcadvisorycommittee@ohchr.org**[Subject line: HRC AC unaccompanied migrant children and adolescents]

or

Secretariat of the Human Rights Council Advisory Committee

Attn. Ms. Dina Rossbacher

Office of the United Nations High Commissioner for Human Rights

Geneva, Switzerland

Fax: +41 22 917 9011

Thank you in advance for your contribution.

For more information about the Advisory Committee, please visit <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>

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1. A/HRC/AC/15/L.2 [↑](#footnote-ref-2)
2. According to CRC General Comment No.6 (2005), “Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. [↑](#footnote-ref-3)
3. Source: Guardianship Service [↑](#footnote-ref-4)
4. In 2011, the number of unaccompanied asylum seeking minors increased up to 2,039 asylum applications of persons declaring to be an UAM (of which 1,385 turned out to be a minor

after the age assessment test who was performed for those whose age was doubtful). This was a significant increase compared to 1,081 UAMs applying for asylum in 2010 (860 after

age assessment test), 935 UAMs applying for asylum in 2009 (711 after age assessment test) and 470 in 2008 (364 after age assessment test). From 2012 on, the number decreased again

considerably, with 1,558 persons in 2012 (975 after age assessment) and only 683 in 2013 (420 after age assessment) applying for asylum as a minor. [↑](#footnote-ref-5)
5. http://www.lesfamilles.be/documents/TaskForceNL.pdf [↑](#footnote-ref-6)
6. More information on: http://www4wvg.vlaanderen.be/wvg/ijh/vlaanderen/nieuws/paginas/default.aspx [↑](#footnote-ref-7)
7. EMN, BELGIAN CONTACT POINT, Unaccompanied minors in Belgium, Reception, Return and Integration Arrangements, p.68. [↑](#footnote-ref-8)
8. The Law came into force on 1 December 2014 [↑](#footnote-ref-9)
9. Structural and immediate causes are defined as follows: The structural causes are those depending on a system already installed. In the case of migration, this could be the control of production and distribution of national resources, social norms or social organization.

The immediate causes or direct causes are actions, events, flaw, or forces that are the immediate, initiating, or primary agent which leads to, or allows an action, event, or state to happen. One can refer to: beliefs, behaviours, practices, access to services and people's capabilities. [↑](#footnote-ref-10)
10. For this UAM and UAM arriving at the border for whom there is no doubt about the age (transfer to the OOC within 24 hours after arriving) the OOC is considered to be an extra

territorial place. In this situation, for a period of 15 days, the UM will be considered as not having accessed the territory. During this 15 days the Immigration Office examines if the

UAM is permitted on the territory (and the OOC ceases to be an extraterritorial place) or is sent back. The return will only be possible if it is proven that this is the durable solution for

the UAM. [↑](#footnote-ref-11)
11. Vervliet, M., Lammertyn, J., Broekaert, E. & Derluyn, I. (2013). Longitudinal Follow-Up of the Mental Health of Unaccompanied Refugee Minors. European Journal of Child and

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 framework for unaccompanied refugee mothers’ experiences. British Journal of Social Work, 1–19; Vervliet, M. & Derluyn, I. (2014). De trajecten van niet-begeleide buitenlandse

 minderjarigen. Verwachtingen, agency en psychosociaal welzijn. Gent: Academia Press. [↑](#footnote-ref-12)
12. http://www.lesfamilles.be/documents/TaskForceNL.pdf; Vervliet, M. & Derluyn, I. (2014). De trajecten van niet- begeleide buitenlandse minderjarigen. Verwachtingen, agency en

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13. Derluyn, I. & Broekaert, E. (2008). Unaccompanied refugee children and adolescent: the glaring contrast between a

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14. Dauvrin, M., Derluyn, I., Coune, I., Verrept, H. & Lorant, V. (2012). Towards fair health policies for migrants and ethnic minorities: the case-study of ETHEALTH in Belgium. BMC

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