

ILPA EVIDENCE TO THE HOUSE OF LORDS EU SELECT COMMITTEE FOR ITS ENQUIRY INTO UNACCOMPANIED CHILDREN, MARCH 2015

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations.

ILPA provided evidence to the Committee for its enquiry on the EU Action Plan on migrant smuggling¹ and has briefed extensively for parliamentary debates on the topic in recent months, including in the context of the Immigration Bill currently before parliament.

Summary of ILPA's response

- i. ILPA has responded to all questions. Our response highlights relevant information contained in the UN Committee on the Rights of the Child's General Comment No. 6 *Treatment of unaccompanied and separated children outside their country of origin*. This was designed to be applicable in States with many fewer resources than the EU States and all EU States are parties to the UN Convention on the Rights of the Child although not all have extended it to their overseas territories, for example the UK has not extended it to Gibraltar.
- ii. There is not reliable data on unaccompanied minors in the EU. Moreover, statistics focus on the asylum system but not all unaccompanied children in the EU, whether or not they have a claim for international protection, have advanced a claim for asylum. Reluctance to engage with the authorities and lack of trust contribute to the inaccuracy of data.
- iii. The key challenges faced by unaccompanied minors in the EU are challenges they share with all refugees: border closures; carrier sanctions and the lack of safe and legal routes to safety including the lack of humanitarian visas and restrictive criteria under which people can seek to be reunited with family members. Our evidence draws on experience from Calais and from *Lesvos R (ZAT et ors) v SSHD* [2016] UKUT IJR 00016 (IAT). The EU Turkey deal violates international law.
- iv. Children's rights under the UN Convention on the Rights of the Child, the European Convention on Human Rights and the EU Charter of Fundamental Rights have been violated.
- v. All too often, unaccompanied children are not identified and where they are identified, action is not taken. In particular, no adult is appointed to represent their interests. In the UK, legal aid is not available for refugee family reunion and refugee children do not have the right to family reunion with parents. Every child must have a person responsible for them under the law. Children must have a real opportunity to put forward their claims for international protection and this entails access to legal representation. Children are exposed to violence and witness the

¹ See <http://www.ilpa.org.uk/resources.php/31315/ilpa-submission-to-house-of-lords-select-committee-on-the-euroepan-union-home-affairs-sub-committee->

despair and hopelessness of the adults around them. Children on the move are also subject to neglect and are at risk of destitution.

- vi. Even where a requirement appears to be set out in clear cut and mandatory terms, such as the requirement for a guardian set out in Article 31 of the recast Qualification Directive, Article 30 of the original by which the UK is bound, cited above, States such as the UK have not recognized an obligation to appoint a guardian.
- vii. The last EU Action plan must be judged by its results. The treatment of refugee children in the EU since 2010 has not improved; it has worsened.
- viii. The figures of 10,000 unaccompanied children lost with the EU horrifies those who see them as having fallen prey, as no doubt some have, to criminal. It is no less shocking to envisage that in many cases, there may have been no such active efforts to thwart States intent on protecting these children. Instead, systems have failed these children and allowed them to disappear.
- ix. Some parts of the recast directives make better provision for unaccompanied children than the versions by which the UK is bound, save insofar as these are imported by the UK's having signed up to the Dublin Regulation. The UK's decision not to opt into the Family Reunification Directive affects refugees. In the UK there is no legal aid for refugee family reunion and children do not enjoy rights of family reunion with their parents.

RESPONSE

I. Are there reliable data on the number, age, gender, nationality and immigration routes of unaccompanied minors in the EU? What implications do these factors have for policy?

Are there reliable data on the number, age, gender, nationality and immigration routes of unaccompanied minors in the EU?

No.

There are not reliable data on these factors because there are not reliable data on the number of unaccompanied children in the EU. This is not simply a problem of the collation of data. It is about fundamentals of refugee and child protection: identification and registration. Too many unaccompanied children are not being identified in the EU. They are not being registered. This has implications for every aspect of respect for their rights, their protection and care.

The observations of the UN Committee on the Rights of the Child in its General Comment No. 6 are applicable:

97. It is the experience of the Committee that data and statistics collected with regard to unaccompanied and separated children tends to be limited to the number of arrivals and/or number of requests for asylum. This data is insufficient for a detailed analysis of the implementation of the rights of such children. ...

98. Accordingly, the development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children²

The *EU Action Plan on unaccompanied minors*³ stated in the introduction “Statistics on unaccompanied minors are not widespread or consistent.” The examination of data in the second part provides more detail. Progress has been made and statistics on the number asylum applicants considered to be unaccompanied children in the EU is published, broken down by citizenship, age and sex⁴. But this data set is incomplete. The Asylum Information Database (AIDA) 2015 briefing on Asylum Statistics explains

*The Migration Statistics Regulation specifically requires Member States to provide Eurostat with the number of unaccompanied minors applying on their territory, I5 albeit less periodically than for other applicants, as seen below. I6 However, while all EU countries provide Eurostat with this information, not all countries include it in their respective national statistical reports. This is the case for Bulgaria, Germany, Ireland, Italy, Malta, Poland and Switzerland, for instance.*⁵

These are however data only on unaccompanied children seeking asylum. The European Asylum Support Office and the detailed statistics all focus on the asylum system and this will always mean that data can at best be regarded as incomplete.

Not all unaccompanied children in the EU, whether or not they have a claim for international protection, have advanced such a claim. For an example of this, see the discussion of *R (ZAT et ors) v SSHD* [2016] UKUT IJR 00016 (IAT)⁶ below.

Reluctance to engage with the authorities or to give accurate information contribute to the inaccuracy of data.

A child may reluctant to reveal their route of travel for fear that they will be sent back to, or stuck in, under the Dublin Regulation, a country in which they do not wish to live. In the *ZAT* case, although the children has compelling claims to come to the UK under the Dublin regulation, they feared that if they claimed asylum in France they would be stuck in France for the foreseeable future and unable to join their families in the UK. Again, see the discussion of the case below.

A family that has taken in a child may be reluctant to reveal this for fear that the child will be separated from them again. Children who are perceived as part of a family unit on arrival in the EU ay be attached, more or less loosely, to a family not their own.

UNHCR records that many minors on Lesvos declare that they are adults⁷ to avoid the closed centres in which they would otherwise be placed as children.

² UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 6 March 2016]. See further details in paragraph 99.

³ Brussels, 6.5.2010 COM(2010)213 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF>

⁴ http://ec.europa.eu/eurostat/en/web/products-datasets/-/MIGR_ASYUNAA

⁵ Asylum statistics in the European Union: a need for numbers, AIDA Legal Briefing No. 2, August 2015

⁶ The Secretary of State is appealing the case.

⁷ <http://reliefweb.int/report/greece/how-unhcr-helps-change-young-lives-lesvos>

UNHCR in its 3 March 2016 paper *Stabilizing the situation of refugees and migrants in Europe Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016* identifies a need to carry out proper registration in line with EU standards and specifies:

- **Establish the necessary processing capacities** to ensure identification, nationality screening, registration, fingerprinting, security checks, and channelling into respective follow-up procedures. The European Asylum Support Office (EASO) and FRONTEX, working with the Greek authorities, need to step up their support to registration, with EASO taking the lead on the matching processes to facilitate expedited relocation.
- **Address delays in securing connectivity to relevant databases** to ensure the effectiveness and credibility of the system.

Problems were graphically illustrated in the legal challenge to the South part of “la Lande”, the Calais “jungle. There was no official census of the camp; there was no comprehensive census carried out by an NGO. The Préfecture of Calais and the charity Help Refugees UK each carried out a census of the unaccompanied children in the South part on the eve of the demolition. The difference between the charity’s survey and that carried out by the Préfecture of Calais was striking; in court when the eviction was challenged⁸ the Préfète’s representative had to acknowledge that when those carrying out her survey found a tent or other dwelling empty they marked the numbers of inhabitants as 0, whereas the charity took steps to establish how many people were living in each shelter. Help Refugees UK and L’Auberge des Migrants recorded 438 children in Calais of which some 326 were unaccompanied. Their survey recorded 2,808 men in that part of the camp and 183 women. The Préfecture had recorded 800-1000 persons in toto in that part of the camp. The judge indicated in court that she had considerable difficulty in reconciling the figures. Help Refugees UK recorded a quarter of the separated children they counted to be under 15, the youngest only ten. There are no comparable figures yet for the Grande Synthe camp in Dunkerque, although those working there suggest that there are more women and children in the Dunkerque camp.

Being unaccompanied is not in all cases a static state

Families may become separated by conflict, and then come together again. Children may become attached to other family groups. The child may be seeking reunion with family members identified to be elsewhere in Europe but whom they are unable to join. As the ZAT case demonstrated, there are children living alone in Europe who have family members in other parts of the European Union, including in some cases parents, willing and able to take care of them.

The UN Committee on the Rights of the Child, in its General Comment No.6, identifies not only unaccompanied children but the wider group of “separated children”

“7. 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.

8. Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

⁸ Ordonnance du 25 février 2016, M. Sharifi A et autres, Tribunal Administratif de Lille N°1601386 et ors.

Where unaccompanied minors in the EU have family members elsewhere in the EU, reasons for the continued separation include:

- i) As in *ZAT*, procedures for family reunion under the Dublin regulation are not working. This may be due (as in *ZAT*) to the length and complexity of procedures for making a request in the country where the child is to be found or (as in *ZAT* also) the child's lack of information about formal procedures and fear of engaging with formal procedures and the lack of legal assistance to do so;
- ii) The relationship between the relative, who may be the only living relative, who is a refugee and the child is not one which falls within the rules for refugee family reunion in the country where the relative is;
- iii) The family member is not a refugee but is a national of the State in which they are living or an EU citizen. There may be difficulties in identifying an appropriate application to make. Even if the relationship is one that can be brought within applicable immigration laws and rules and/or laws on free movement they may not be able to afford the application fee and may be unaware of the possibility of any fee waivers or not know how to apply for this. The family member may be unable to satisfy the applicable requirements.

What implications do these factors have for policy?

Overall

Because it is not easy to identify unaccompanied children, without **measures to treat all migrants with dignity and respect and ensure that their rights are respected** children will be at risk.

Unaccompanied children may or may not claim asylum and **therefore efforts to protect them cannot be predicated upon their making a claim for asylum.**

It is important to win the trust of children and those around them and caring for them if children are to be protected. To this end, **children need access to independent advice that not only is trustworthy but has been identified by recipients as trustworthy**, usually because it is endorsed as such by people they trust.

See further the response to questions 2 and 8 below.

Age

Not all children know their age. Even where they do, there may be no documentary evidence and their stated age may be disputed. **Persons whose age is disputed must be afforded the protection offered to children until a dispute is resolved against them.**

See answer to question 2 below.

Nationality

Caution must be exercised in drawing conclusions from information on nationality. For example, UNHCR's Global Appeal for 2012-13⁹ records

⁹ Available on refworld at <http://www.unhcr.org/4ec23102b.html>

The Syrian Arab Republic hosts one of the largest urban refugee and asylum-seeker populations in the world. The Government and people of the Syrian Arab Republic continue to maintain a generous open door policy that allows Iraqi refugees to seek asylum and gain access to basic services such as education and primary health care.

At that time, according to UNHCR, Syria hosted over one million Iraqi refugees and 150,000 stateless persons among a larger refugee population. Many of these have been displaced by the conflict alongside Syrians. At ILPA's seminar on Article 1D of the Refugee Convention on 25 February 2016, held with Professor Guy Goodwin Gill, UNHCR and UNWRA we discussed the Palestinians who were living in Syria before the conflict and had to flee. As refugees or as stateless persons, or as both, they stand in need of international protection.

The notion that a country is safe does not hold true for all its inhabitants and one must be especially cautious about children, including adolescents, who may be exposed to particular threats which are not always well covered in generalist human rights reports¹⁰. The UN Committee on the Rights of the Child reminds States parties to the Convention in its General Comment No. 6

59. ...of the need for age and gender-sensitive asylum procedures and an age and gender-sensitive interpretation of the refugee definition, the Committee highlights that under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, and should lead to the granting of refugee status where the well-founded fear of such recruitment or participation in hostilities is based on "reasons of race, religion, nationality, membership of a particular social group or political opinion." (art. 1A(2), 1951 Refugee Convention).

While a country which otherwise appears safe may be dangerous for some, there are countries where situations of generalized violence appear unlikely to abate in the short to medium term. Those affected by the conflict may be refugees or may be entitled to subsidiary protection because they are at risk of suffering "serious harm" as defined in Article 15 of the Qualification Directive¹¹

Article 15

'Serious harm' consists of:

- (a) the death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

¹⁰ In respect of reports by the UK Home Office, this is analyzed in *An analysis of the coverage of issues related to children in Country of Origin Reports produced by the Home Office Prepared for the Independent Advisory Group on Country Information (IAGCI)*, 2012.

¹¹ *Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, Directive 2004/83/EC (by which the UK is bound), now recast as Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

We have seen in a number of EU countries differentiation by nationality. Thus for example on Lesbos in Greece, Moira camp was for non-Syrians, Kara Tepe, a larger camp with better services and a faster registration process for Syrians. Being in the slow lane when the system, such as it was, was overwhelmed by arrivals of up to 100 boats a day meant being stuck in limbo. But with the reorganization of the “hot spot” then Syrian refugees starting registering in Moria also and non-Syrians in Moria were being registered outside the camp. Save the Children described the system as having been “thrown into disarray”¹².

Differential treatment on the grounds of nationality not only risks discrimination contrary to Article 3 of the UN Convention on the Rights of the Child; it creates its own pressures. A person’s membership of the nationality getting the best deal is all too frequently regarded as suspect with the result that those whom a differential system aimed to protect find themselves doubted and disbelieved.

Gender

EU policies are resulting in the splitting of families and this can be especially problematic for girls and young women on their own, for example those who are over 18 and do not qualify for refugee family reunion as minors

The attitudes of the adults around the unaccompanied child may differentiate on grounds of gender, for example where education is a scarce or costly resource it may be considered more important to procure it for boys.

A girl’s relatives may feel that she is safest under the protection of a man (as may she) and this may lead to early marriages.

At the secure facility for unaccompanied children in Moira on Lesbos children were at some points held for over a week (the intention was a few days) and girls were held with boys. There were initially no locks on the doors. This has subsequently been resolved.

An Initial Assessment by the UNHCR, the UN Population Fund and the Women’s Refugee Commission released on 20 February 2016 identified risks within Europe of sexual and gender based violence¹³. It recommended that the UN

- *establish a coordinated response system within and across borders that protects women and girls;*
- *Acknowledge the protection risks and put personnel and procedures in place specifically to prevent, identify, and respond to sexual and gender based violence;*
- *Ensure a response to sexual and gender based violence that recognises women will not stop moving to report sexual and gender based violence or access services; and*
- *Provide legal pathways to protection, especially for women, children and survivors of sexual and gender based violence, including effective family reunification and prioritisation of these refugees with specific needs in relocation and resettlement opportunities.*

¹² <http://www.savethechildren.org.uk/child-refugee-crisis-lesvos#sthash.DMSW72Ae.dpuf>

¹³ http://www.unhcr.org/569f8f419.html#_ga=1.249391875.54841547.1453815558

The Council of Europe High Commissioner for Human Rights called on 7 March 2016 for the human rights of refugee and migrant women and girls to be better protected¹⁴. See also below on immigration routes and the response to question 8.

Immigration routes

Routes are constrained by factors such as border controls and carrier sanctions¹⁵. Negotiating these is a task that normally falls to smugglers. In its 4 March 2016 paper *Back to Schengen: a roadmap*¹⁶ the Commission describes

The conflict and crisis in Syria and elsewhere in the region have triggered record numbers of refugees and migrants arriving in the European Union, which in turn has revealed serious deficiencies at parts of the Union's external borders and resulted in a wave-through approach applied by some Member States. This has led to the creation of a route across the Western Balkans which sees migrants travelling swiftly north. In reaction, several Member States have resorted to reintroducing temporary internal border controls,

Europe is struggling to provide protection both to children on the move: children in the European Union who are not in the place that they want to be and who are struggling to travel onward and to children have come to a (possibly) temporary or permanent halt. Protection has been inadequate in transit States, including those coping with large volumes of persons, but also in States not overwhelmed by numbers, whose child protection systems function for the indigenous population. As UNHCR reminds States in *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*¹⁷

The majority of European States have not been directly affected by the present situation. However, the participation of these States in a collective solution is critical to managing it effectively. The collective failure to implement the measures agreed by EU Member States in the past has led to the current escalation in the crisis

See responses to questions and 8 below.

2. **What are the key challenges faced by unaccompanied minors in the EU? Are there common issues across Member States? Please provide examples of problems and best practices experienced at each of the following three stages:**
 - a) **Reception (this may include the accessibility and quality of legal representation, and age assessment procedures)**
 - b) **Protection (this may include issues of accommodation, availability of foster care and accessibility of appropriate medical attention)**

¹⁴ http://www.coe.int/en/web/commissioner/-/human-rights-of-refugee-and-migrant-women-and-girls-need-to-be-better-protected?redirect=http://www.coe.int/en/web/commissioner/news?p_p_id=101_INSTANCE_easZQ4kHrFrE&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1

¹⁵ See ILPA's evidence to the Committee's enquiry on the *EU Action plan on migrant smuggling* and the report for the LIBE committee, described above.

¹⁶ Brussels, 4.3.2016 COM(2016) 120 final, Communication from the Commission to the European parliament, the European council and the Council .

¹⁷ Op.cit.

c) Integration (this may include access to appropriate education and leisure facilities, longer term care, family tracing and reunification procedures).

The key challenges faced by unaccompanied minors in the EU are challenges they share with all refugees. These can be summarised as

- Border closures;
- Carrier sanctions
- The lack of safe and legal routes including
 - the lack of humanitarian visas;
 - Restrictive criteria under which people can seek to be reunited with family members

See ILPA's evidence to the Select Committee for its response to the EU Action Plan on Migrant Smuggling¹⁸.

The effect of these challenges is that many children have been unable to reach the EU, that children have drowned crossing an eight kilometre stretch of water between Turkey and Greece and that many remain alone in Europe because they are prevented from joining family members elsewhere on the continent. The extent to which the failure of Europe's response has resulted in their *refoulement* or in their exploitation, is unknown.

Children, like adults, have faced extreme cold, lack of basic medical treatment and have been reliant on voluntary contributions for sustenance. Provision has not been made for basic needs and to ensure physical safety and emotional psychological support.

The UN Committee on the Rights of the Child's General Comment No.6 is not directed specifically at European States. States with many fewer resources were also within its purview. But its summary of the challenges resonates with those faced by unaccompanied children in the European Union today

The issuing of the General Comment is further motivated by the Committee's identification of a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of inter alia sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials, and in other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status which ends when they turn 18, and there are few effective return programmes.

¹⁸ Op.cit.

As to the overall implications for policy, the Select Committee has already made highly pertinent recommendations

66. One effective way of addressing the root causes of irregular migration would be to create safe and legal routes for refugees to enter the EU. We welcome the Commission's recognition of this but urge that more be done at EU level to work towards the creation of such routes. It is regrettable that the Action Plan does not set out further details in this regard. We recommend that this be addressed as soon as possible. In particular, we recommend that the Commission should bring forward further initiatives to encourage Member States to create such routes, for example by making use of humanitarian visas¹⁹.

UNHCR in its *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*²⁰ has made specific suggestions for pledges States could make on 30 March 2016 at UNHCR's High-level meeting on global responsibility sharing through pathways for admission of Syrian refugees. Not all of its recommendations are applicable to unaccompanied children; for example labour mobility schemes are unlikely to assist them. Unaccompanied children not in need of international protection should be treated in a way that protects and promotes their best interests and this will often militate against their inclusion in programmes of return under readmission agreements. But there are recommendations which can be applied in the cases of unaccompanied children:

Since 2013, UNHCR has called on States to increase pathways for admission of Syrian refugees, ... so that refugees do not resort to dangerous onward movements and the use of smugglers ... States are encouraged to:

- *Indicate ... what admissions programmes they are considering... This could include initiatives related to private sponsorship, student scholarships, ... This could build on the EU's support for increased resettlement ...*
- *Enhance pathways for ...admission ...*
- *Facilitate family reunification. ... with the support of UNHCR and partners, ...simplify and facilitate the process and provide information and assistance for those eligible for family reunification in the EU, countries of transit, and countries of origin.*

d) Reception (this may include the accessibility and quality of legal representation, and age assessment procedures)

The first difficulty is that of identification. The essentials are, once again, set out in the UN Committee on the Rights of the Child's General Comment No. 6, which describes global standards

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by

¹⁹ HL Paper 46 of session 25-2015.

²⁰ Op.cit.

qualified professionals who are trained in age and gender sensitive related interviewing techniques.

The census of separated children in the Calais camps, described in response to question I, illustrates how far EU States are falling short of this basic standard. A colleague who spent several months working on Lesbos also identifies

Poor identification of unaccompanied minors - it is still volunteers manning the beaches - they are better informed but nonetheless it's easy for kids to slip through the net...the whole way up the Balkan route there is also a lack of training on how to identify children.

Where children are identified, the response should be immediate, as described in General Comment No. 6.

4.1 Wherever unaccompanied minors are detected, they should be separated from adults, to protect them and sever relations with traffickers or smugglers and prevent (re)victimisation. From the first encounter, attention to protection is paramount, as is early profiling of the type of minor, as it can help to identify the most vulnerable unaccompanied minors. Applying the different measures provided for by the legislation and building the trust are indispensable to gain useful information for identification and family tracing, ensuring that unaccompanied minors do not disappear from care, identifying and prosecuting traffickers or smugglers. Unaccompanied minors should always be placed in appropriate accommodation and treated in a manner that is fully compatible with their best interests.

The Committee goes on to describe specific steps that should be taken including assessment of protection needs, of health needs, of needs deriving from exposure to violence trafficking or trauma. It urges that unaccompanied children be provided with their own personal identity documents and that tracing commence as soon as possible. The Committee emphasizes:

21. Subsequent steps such as the appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child and, therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

...69. An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests ...The unaccompanied or separated child should also, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.

Article 31 of the recast qualification directive²¹ reflects these obligations

Article 31 Unaccompanied minors

1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where

²¹ Directive 2011/95/EC

necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

(a) with adult relatives; or

(b) with a foster family; or

(c) in centres specialised in accommodation for minors; or

(d) in other accommodation suitable for minors. In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

The UK remains bound by the earlier directive 2004/83/EC. Article 30 therein is in the same terms save for the tracing provision which is expressed as follows:

5. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

References currently before the Court of Justice of the European Union²² examine the extent, if any, to which a person seeking asylum can challenge the criteria relied upon to effect his/her transfer.

Throughout the European Union there are unaccompanied children to whom no adult has been appointed to represent their interests. It is all very well to make reference to the State as a "corporate parent" but all too often this does not translate into an individual with responsibility for the child and indeed, in cases where States are trying to deter others from arriving or to husband resources, there may be a conflict of interest. The legal representative cannot play this role when a child is then expected to pass through an asylum determination procedure. A legal representative acts on instructions and is placed in an impossible position where a child client is not competent to give such instructions but is the only client in sight. We have seen cases where young children contend that the person they are with is their parent, while the State argues that the person is their trafficker. What case can the lawyer put forward in those circumstances and how can a legal representative protect their interests.

²² Karim Case C- 155/15; Ghezelbash, Case C- 63/15.

Identified, and supported by a guardian and a legal representative, an unaccompanied child is in a position to build trust in the protection system and to engage with it. Even where children have been identified, without such support they are likely to disengage from protection systems. All too often in Europe this has meant that they have been lost to child protection systems also. Does this being allowed to happen in countries with functioning child protection systems suggest that systems are overwhelmed or that these children have not been a priority for such systems?

The recent case of *R (ZAT et ors) v SSHD* [2016] UKUT IJR 00016 (IAT)²³ suggests the latter, for the systems in France and the UK are not overwhelmed. The three child claimants were living in France, a country with a sophisticated child protection system including a system of children's courts, guardianship and a Children's Commissioner²⁴. The children had been living in France but were unknown to the authorities and had not, at the time of bringing the action, made a claim for international protection. They were not in a family setting but were living in La Lande, the Calais "jungle" with informal support for from their fellow refugees and from volunteers.

The Upper Tribunal recorded

19. Another of the central themes of the evidence is that of the fears and apprehensions of the first four Applicants. These are linked in no small measure to the treatment they claim to have suffered in their country of origin, their age, the absence of parental or other adult support in their lives, the circumstances in which they have been surviving since departing their home country and their respective psychological conditions. The lawyers' witness statements make clear that by reason of this constellation of factors communications with and taking instructions from the first four Applicants have been consistently difficult exercises. The lawyers describe in persuasive and measured terms these Applicants' fears and mistrust of the French authorities. From these sources of evidence one also learns of the first four Applicants' desperation to be reunited with their refugee siblings in the United Kingdom.

The judgment in *ZAT* records evidence presented to the Tribunal that

21....Insufficient and inappropriate reception conditions for unaccompanied asylum seeking children were considered to impair their effective access to the asylum procedure....

22.... the detailed evidence of a practising French lawyer...draws attention to the unavailability of public funding for legal advice at the stage of preparing and formulating applications for asylum to the relevant local Prefecture. ... Unaccompanied foreign minors are not legally competent to make a claim for asylum. Such claims must be made on their behalf through a specified State funded agency, followed by the appointment of a species of administrator or representative. The process of registering a child's asylum application takes at least three months. This is followed by a decision on whether the Dublin Regulation process applies. "Take charge" requests of another Member State are unlikely to materialise until almost a year has elapsed from the beginning of the process.

The background to this is that In France it has been a requirement to obtain a temporary residence permit from a Préfecture before an asylum application could be lodged before the

²³ The Secretary of State is appealing the case.

²⁴ See

French Office for the Protection of Refugees and Stateless Persons (OFPRA). This creates a high risk of applicants, including children, being left in limbo. The Code de l'entrée et du séjour des étrangers et du droit d'asile was modified on 1 January 2015 to make provision for a person seeking asylum to attend offices of, for example, an NGO to make arrangements to register the claim and to attend the préfecture within a normal time of three days with provision for a delay of up to 10 days. It is when the person attends at the prefecture that the claim is registered. The change has however led to delays shifting from the prefecture to the initial attendance at the offices. The UN Committee on the Rights of the Child in its January 2016 *Concluding observations on the fifth periodic report of France*²⁵ was highly critical of the way in which these procedures operated in cases of unaccompanied children

Asylum-seeking, unaccompanied migrant children and refugee children

73. The Committee is concerned about the situation of unaccompanied migrant children in the State party who cannot access special protection and assistance measures. It is concerned that the State party does not sufficiently consider the best interests of the child as a guiding principle in all initial assessment processes and subsequent arrangements. The Committee notes with concern the difficulties to access child protection structures and legal representation, psychological support, social assistance, and education, especially for 17 year olds. The Committee is also concerned that the procedure set out by the circular of 31 May 2013 (for equitable distribution of services provided to unaccompanied migrant children) has been partially annulled by the Council of State (Conseil d'Etat) decision of January 2015 resulting in insufficient quality of care and protection of children and refusals by certain municipalities to provide such protection. It also notes with concern the number of children subjected to administrative detention in 2014, most of them in Mayotte, in degrading conditions and without access to a judge.

The Committee is also concerned about:

(a) The situation of unaccompanied migrant children automatically placed in waiting zones of airports or hotels, and other administrative detention facilities (locaux de rétention administrative), sometimes detained with adults, and reports of their removal, even before speaking to an ad-hoc administrator;

(b) The overreliance on bone tests to determine the age of children, and cases where the child's consent was left out, in practice.

74. The Committee recommends that the State party guarantee sufficient human, technical and financial resources throughout its jurisdiction to specialist and child specific support, protection, legal representation, social assistance, education and vocational training of unaccompanied migrant children and build the capacities of law enforcement officials in this regard.

It also recommends that the State party:

(a) Adopt the necessary measures, including those of a legal nature, to avoid the detention of children in waiting zones through increased efforts to find suitable alternatives to deprivation of liberty and place children in appropriate accommodation, and to fully respect non-refoulement obligations;

²⁵ UN Committee on the Rights of the Child (CRC), *Concluding observations on the fifth periodic report of France*, 29 January 2016, CRC/C/FRA/CO/5, available at: <http://www.refworld.org/docid/56c17fb64.html> [accessed 7 March 2016]

(b) Put an end to the use of bone tests as the main method to determine the age of children using instead other methods that are proven to be more accurate.

75. The Committee welcomes the State party's commitment to receive a large number of Syrian refugees, including children, over the next two years. However, the Committee is concerned at the precarious situation of children and their families in refugee camps in the northern part of the State party, such as in Calais and in Grande-Synthe, the refusal by authorities to register children and the insufficiency of venues and services to provide them with appropriate and adapted protection.

76. The Committee reminds the State party of its primary responsibility for the protection of children in accordance with its international obligations and urges the State party to ensure the rights of all children, including children living in refugee camps, to registration, humane living standards, and adequate health care services.

ILPA is working with others including, MSF, Help Refugees UK and Citizens UK to try to support the lawyers from the ZAT team to ensure that there are teams of UK lawyers able to assist with the UK end of Dublin take charge cases and with requests for family reunion. We identify that there is not a lack of information in the camps in Northern France. Information proliferates. But it is of very variable quality. Refugees lack a means to judge what is reliable and what is not. We have requested that UNHCR produce information branded as its own. This has been agreed and we shall continue to work with UNHCR to achieve this.

For all the reasons set out in ILPA's evidence to the Committee on our 21 August 2015 evidence to the Committee in response to its call for evidence on the EU Action Plan on migrant smuggling, the Dublin regulation causes refugees to fear to cooperate with the asylum system in European countries. As the case of ZAT illustrates, this is true also of children although they may have much to gain from a correct application of the Dublin provisions. The Dublin Regulation (recast) provides

Article 8 Minors

1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his

or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 9 Family members who are beneficiaries of international protection

Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10 Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing

Article 11 Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

A relocation scheme with no element of choice is likely to be regarded with a similar degree of suspicion as the Dublin system. As we did in our evidence on migrant smuggling, we commend the study for the LIBE Committee of the European Parliament *Enhancing the Common European*

*Asylum System: Alternatives to Dublin, paper for the LIBE committee of the European parliament*²⁶. As set out in our evidence, it identified needs for: humanitarian evacuation and transport; humanitarian visas; resettlement; and immigration visas. The study for the LIBE Committee also argues for mutual recognition of positive asylum decisions so that those recognised as refugees are free to move and is critical of the wrongful characterisation of the onward movement of persons seeking asylum as ‘irregular secondary movement’, asylum seekers and refugees are seeking a place of refuge and access to reception standards and fair procedures in line with their entitlements under international and EU law.

The UK’s support for the Dublin regulation has focused on its obligations under the “take back” provisions which push refugees rather than the “take charge” provisions under which children be transferred to the UK. Where the Dublin regulation operates, it is vital that States take as proactive an approach to their responsibilities to take charge as to their call for another State to take back.

The applicants in ZAT sought reunification with siblings, for which provision is made in Dublin III. In the ZAT case it was held that given its obligations under Article 8 of the European Convention on Human Rights, the UK could not shelter behind circumstances that had resulted in no “take charge” request having been made by another State. The Upper Tribunal drew on a line of jurisprudence including *Tuqabo Tekle v. the Netherlands* Application no. 60665/00, 1 March 200 and *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* Application No. 13178/03. In the latter case, the ‘extreme vulnerability’ of unaccompanied minors is identified as a decisive factor.

The Upper Tribunal takes a purposive approach to the Dublin regulation in the case and uses Article 8 to give effect to the right to family unity in circumstances where the family member is coming to the UK not under its rules on refugee family reunion, but to make an application for asylum.

One problem in the ZAT case was the lack of legal aid at the initial stage for asylum applicants in France. The children did not have individual advice on their situation or representation. Rights are illusory if they cannot be accessed in practice and lack of legal aid can contribute to failure to provide international protection.

In the UK, while there is legal aid for asylum applications, there is no legal aid for refugee family reunion. The problems this causes start before the reception stage, when an unaccompanied children is trying to gain access to the EU.

One of the test cases in the legal aid exceptional funding litigation *Gudanaviciene et ors v SSHD* [2014] EWCA Civ 1622 was the case of B, an Iranian national who was recognized as a refugee for her political activities on behalf of Kurds. She sought family reunion with her son, who was an unaccompanied child.

Case of B, *Gudanaviciene et ors v SSHD* [2014] EWCA Civ 1622

Following her departure from Iran, B’s husband and their son, who was born on 2 June 1997, were arrested and interrogated. They were beaten and threatened and ordered on release to give the authorities information about the B. The Court of Appeal records

²⁶ PE 519.234. Authors Professor Elspeth Guild; Dr. Cathryn Costello; Ms. Madeline Garlick, and Dr. Violeta Moreno-Lax. Professor Elspeth Guild is co-convenor of ILPA’s European subcommittee.

...In the ordinary course the applicants and sponsor would be expected to provide proof of marriage, proof of parentage, proof of a de facto pre-flight family relationship which was still subsisting, and proof of the sponsor's UK refugee status. ... (a).. the family did not have access to all documentation required to satisfy the requirements of the rules, on account of their separation and dispersal, (b) the son was a 16 year old now living separately from his parents and it could be contended that he was living an independent life, so that assistance was required with preparing a witness statement to set out what had happened, and submissions were required on the point of continued dependency; and (c) evidence was needed on the psychological/psychiatric impact of separation on members of the family. In addition, the family would need legal advice and assistance in order to make a concurrent application to expedite the family reunion applications, on the basis of factors including the best interests of the son.

B's son had no passport and there were no facilities available in Iran to enable a visa to allow entry to the UK to be obtained there. B feared that if he approached the Iranian authorities for a passport he would be arrested or ill-treated. The High Court records "The only way he could apply for the necessary documentation to enable him to achieve entry to the UK was to go unlawfully to Turkey and apply there".

This he did. He was staying in Turkey unlawfully, afraid to go out, very distressed and suffering from mental health problems. The husband was at that time hiding in Iran and it was not clear when he would be able to go to Turkey. They had no financial resources. In the words of the Court of Appeal "B did not speak English, had no experience of UK immigration law and was herself in poor psychological health and without financial or practical resources. ..."

Yet an application for exceptional case funding was refused. The refusal was the subject of a review decision, by the Head of the Exceptional Cases Team. He concluded B would not be incapable of submitting an application form without the assistance of a lawyer.

It took six months for the application, prepared without funding, to be decided. B's son was refused. The High Court comments "Apart from the inexcusable delay in dealing with the application having regard to the circumstances in which the applicants were living in Turkey, the decision was extraordinary." The reasons for refusal were:

"You have not fully completed your Annex 4 of your application form, but according to your claimed father's application form you last saw your sponsor in February 2013. ... You have provided a birth certificate, however apart from this, you have not provided any evidence that you were or are in a relationship with your sponsor. You have provided no photographs of the two of you together or any evidence of any contact ... I acknowledge that you have provided your sponsor's Screening interview, but this does not mention you by name. If you had been in a relationship since you were born I would expect there to be overwhelming evidence of this. I am therefore not satisfied that you have been part of a family unit of your father at the time he left his country of his habitual residence in order to seek asylum."

The Court of Appeal concludes

... It is striking that even though the application on behalf of the son was prepared with legal advice and assistance, it was refused at first on the ground of failure to satisfy the entry clearance officer that the son was part of the family unit – ... The resulting appeal and request for reconsideration added to the overall procedural complexity of the exercise. In relation to all of this, B was wholly unable to represent herself or her other family members. It was not simply that she was unable to speak English

but that “[s]he did not have the first clue”, as it was graphically put by IKWRO. Without legal advice and assistance it was impossible for her to have any effective involvement in the decision-making process”

It found the refusal of exceptional case funding to be unlawful.

In B’s case²⁷, the judge in the High Court held that refugee family reunion had been within the scope of legal aid all the time, because it was a right “arising from” the Refugee Convention and thus fell within the definition of “asylum” in Schedule 1 to the 2012. Following this the Legal Aid Agency reinstated legal aid for refugee family reunion. The Court of Appeal disagreed with the judge in the High Court and legal aid for refugee family reunion was again withdrawn.

The Government said in its response to the consultation on legal aid:

“Applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum. Respondents argued that these cases are akin to claims for asylum but if a person wishes to claim asylum it is open to that person to do so either as a dependant of a primary asylum claimant or to do so in his or her own right. Legal aid for any such asylum claim will be in scope.”

This is incorrect. The family members are outside of the UK and hence cannot claim asylum. It would be unlawful²⁸ to assist them to do. To deny family reunion increases the risk that children make hazardous and clandestine journeys to the UK.

The Home Office record in dealing with these applications is especially poor, and belies the suggestion they are straightforward. Management information collected in 2008-2009 indicated that some 61% to 66% of refusals are overturned on appeal.²⁹

Refugee family reunion cases frequently take a long time. Often family members must be traced. Communication may then be indirect and very slow. Even when they can be reached, they may be in a camp and unable under their own steam to travel to interviews at embassies or consular posts etc. Even submitting the application may be a matter of considerable difficulty. It is too often the case that not all family members survive long enough to be reunited in the UK.

Family members are expected to cross international borders if there is no Visa Application Centre in the country in which they are living. This can be impossible for those without documents, and dangerous for those who attempt the journey. Having got there they face the dilemma of whether to remain in that country while the application is processed, something which can take a considerable time.

ILPA has put detailed proposals to the Home Affairs Select Committee³⁰ on refugee family reunion³¹ and these have been debated in the context of the Immigration Bill, most recently in Amendment 234 in the name of Lord Hylton at Lord’s Committee stage of the Bill³².

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²⁸ Immigration Act 1971, s25A

²⁹ Management information collected by the UK Border Agency for 2009 and 2008, and shared with ILPA and others in discussion on refugee family reunion applications and policy. More recent evidence is not to ILPA’s knowledge available. For further statistics, see *Hansard*, HC Report, 22 June 2010 cols 143-144W

³⁰ <http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration>

Age assessment

The UN Committee on the Rights of the Child says of age assessment in its General comment No. 6

... identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such.

Age assessment is not an exact science³³. It is a matter of comparing a child with a cohort and there is often no cohort data for the population from which the child originates. It is also difficult to compare a child who has had varied and extreme life experiences with any cohort which might otherwise be used. The margin for error is such that the possible range of accurate ages may encompass the child's actual age and an adult age. **Children must be given the benefit of the doubt in all age assessment procedures.**

While 21 is the minimum age at which a person ceases to be a child for the purposes of EU free movement instruments³⁴, 18 is the age in the Common European Asylum System. Even where it is accepted that they are under 18, older children are more likely to be treated as though they can live as adults and not accorded the special protection to which they are entitled as children under the UN Convention on the Rights of the Child. **A policy to afford special protection and care to all under 21, and beyond for those remaining or wishing to remain in education³⁵ would be welcome.**

b. Protection (this may include issues of accommodation, availability of foster care and accessibility of appropriate medical attention)

We highlight above all protection from persecution: the need for international protection, provided in the form of surrogate protection in the country in which the refugee finds him/herself. Borders must be kept open and refugees, including children, must not face *refoulement*

³¹ See <http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration>

³² HL Report 3 Feb 2016 : Column 1887.

³³ See the European Asylum Support Office (EASO) *Age assessment practice in Europe*, December 2013. ILPA supplied extensive evidence to the Office for its research in preparing this publication. LPA's *When is a child not a child Asylum, age disputes and the process of age assessment*, ILPA/Heaven Crawley, May 2007 and the chapters on age assessment in *Working with children and young people subject to immigration control: Guidelines for best practice (second edition, March 2012)*, ILPA/Heaven Crawley and *Working with refugee children: current issues in best practice (second edition, February 2012)* Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo for ILPA (first edition May 2011). See also the ILPA resources at <http://www.ilpa.org.uk/resource/14484/ilpa-further-resources-for-members-re-x-rays-and-age-assessment-29-march-2012> which includes the late Lord Avebury's 1981 paper on the topic and his bundle of documents collected on the topic from 2007-2012.

³⁴ Directive 2004/38/EC.

³⁵ See the judgment of the European Court of Justice in Case C-310/08 *Ibrahim*.

I found it very sobering actually to meet people as they waded from the boats and scrambled up the beach at the point of arrival in Europe, only to face no shelter and a walk of 60 kilometres or more (some with babies and small children in their arms, and one a wheelchair-bound teenage girl)) to what we knew, having seen them, are the ghastly registration conditions and waiting camps at Mytilene. ILPA member, retired solicitor, volunteering on Lesvos

Children must have a real opportunity to put forward their claims for international protection and this entails access to legal representation as described above.

As to protection in the sense of child protection, for the reasons described above, every child must have a person responsible for them under the law.

That children are in frightening and violent situations is visible from a television screen. Children, whether or not they are targets, have been subjected to violence and have witnessed violence and their needs have been neglected children have witnessed scenes of extraordinary violence and aggression, whether in the seas off Greece and Italy, at the Hungarian border or in the Calais camps. ILPA members, like many other people, have volunteered in those settings and their reports sit alongside other testimony. In a presentation at ILPA and Matrix Chamber's *Law of the Sea* seminar on 7 October 2015, an ILPA member, a retired solicitor who had been present on Lesvos, described a teenage resident of the island

"..carrying a small refugee child, who had come off the boat in a frighteningly weak condition, into a local pharmacy for advice and treatment. This was refused, and she was castigated for bringing a refugee into the shop"

She also recalled

"... local thugs on motor scooters who delight in driving at speed up to groups of refugees to frighten them, screeching to a halt at the last minute, wielding their hands like guns and saying "Bang!" as they put their fingers to the heads of babies in arms. The police do nothing"

She described the violence of the techniques used, particularly by the Turkish Coastguard, to try to turn the boats back or to take the refugees off the boats and back to Turkey and a baby with an injured face as a result of this tactic.

Volunteers in Calais describe children whose eyes are red and sore from tear gas. There are multiple reports of violence, including police violence, from the Calais camps. Children also witness the despair and hopelessness of the adults around them, such as the refugees who have sewn their lips together in protest at their treatment.

Children on the move are also subject to neglect and are at risk of destitution, in breach of Article 17 of the recast Reception Conditions Directive³⁶.

On 2 November 2015 the Tribunal Administratif de Lille held of La Lande in Calais, where large numbers of separated children are living.

³⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

..... As a result of manifestly inadequate access to water and toilets and the lack of refuse collection operations, the population at the camp are living in conditions which do not meet their basic needs in terms of hygiene and access to drinking water and which expose them to health risks; As a result, there is a serious and manifestly unlawful breach of their right not to be subjected to inhuman and degrading treatment.

Such support as is provided is not always provided in a manner which respects human dignity. For example, on the secure facility in Moira on Lesbos, where separated children are initially held, sandwiches were thrown to the children over the bars.

At the Society of Black Lawyers and Society of Asian Lawyers conference at Westminster Central Hall on 12 December 2015 one lady, a dentist, who had volunteered on Lesbos, described how difficult it is to take wet clothes off a shivering baby.

The United Nations and its implementing partners are having to contemplate shifting resources, already insufficient, from Turkey which is hosting 2.3 million refugees, Lebanon where one in three of the population is a refugee and Jordan, to one of the richest continents in the world, because the States of Europe have failed to get refugees to places where they can be provided with food and shelter³⁷ .

Key elements of reception conditions for separated children are set out in the UN Committee on the Rights of the Child's General Comment No. 6

41. States should ensure that access to education is maintained during all phases of the displacement cycle. ...

44. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in art 27(2) of the Convention, States shall in particular provide material assistance and s

... 60. States shall develop, where needed, in cooperation with international agencies and NGOs, a comprehensive age appropriate and gender sensitive system of psychological support and assistance for unaccompanied and separated children affected by armed conflict.

Yet the reality is that unaccompanied children in many parts of Europe are being cared for by volunteers: fellow refugees and persons in their own community or people who have stepped into a vacuum to work with fellow volunteers to provide everything from food and shelter to emotional support.

In the camps in Calais, support for unaccompanied children has been provided by volunteers. One of those working most closely with the children, Liz Clegg, contributed to the *Letters of Note* series her *Letter to Jamil*. He is 12. As the letter graphically illustrates, the position of volunteers seeking to assist is very different from the position of persons with legal responsibility for a child, or for organizations which have clearly defined their roles:

I've packed another bag for you tonight. I've managed a really good sleeping bag this time, it's cold. I remembered the bin bags. Please use them – it will help keep you a bit drier. There's two

³⁷ <http://data.unhcr.org/mediterranean/regional.php>

pairs of socks and torch in the side pocket. I've put in some snacks and five euros. Please don't lose your phone again.

... The forms they've given me don't have a box for you, and no one's prepared to change this. You have to be clever in this game Jamil, you have to talk the talk, understand complex law. They're not interested in the nightly ritual of watching you leave, 'to try' get to the UK, ... don't get into the refrigerated lorries, wait for something safer. Massoud was older, he still died. ... I can't promise to solve this, but I'm trying.³⁸

c. Integration (this may include access to appropriate education and leisure facilities, longer term care, family tracing and reunification procedures).

From the instruments and standards described above, we derive the view that access to education and initiation of family tracing and reunification where it is safe to do and where this is in the best interests of the child, is part of emergency response and we have therefore touched on them above.

Family tracing

See above for the provisions of the EU Reception Directives on family tracing. The UN Committee on the rights of the Child says in its General Comment No. 6

80. Tracing is an essential component of any search for a durable solution and should be prioritised except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardise fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure.

Local integration and family reunification

UNHCR identifies three durable solutions for refugees and persons of concern: return, local integration or resettlement³⁹. Where return in the short to medium term is not on the agenda, efforts must be made to achieve local integration or resettlement. European States have historically been destination countries for resettlement rather than countries from which refugees are resettled. It is now the case that provision is being made for the relocation of refugees between member States, moving refugees away from Greece and Italy because of the uneven distribution of refugees across member States⁴⁰ although this is the subject of a challenge by Slovakia and Hungary.

The UN Committee on the Rights of the Child said in General Comment no. 6

88. Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status

³⁸ <http://www.helprefugees.org.uk/2016/02/24/watch-liz-from-the-calais-women-and-childrens-centre-read-her-letter-to-jamil/#sthash.S5kTxARE.dpuf>

³⁹ UN High Commissioner for Refugees (UNHCR), *Framework for Durable Solutions for Refugees and Persons of Concern*, May 2003, available at: <http://www.refworld.org/docid/4124b6a04.html> [accessed 5 March 2016]

⁴⁰

(including residence status) and be governed by the Convention rights which are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as a refugee, other legal obstacles to return, or, whether the best interests-based balancing test has decided against return.

...

92. Resettlement to a third country may offer a durable solution for an accompanied or separated child who cannot return to the country of origin and for whom no durable solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best interests assessment, taking into account, in particular, ongoing international and other protection needs. Resettlement is particularly called for if such is the only means to protect effectively and sustainably a child against refoulement or against persecution or other serious human rights violations in the country of stay. Resettlement is also in the best interests of the unaccompanied or separated child if it serves family reunification in the resettlement country.

Even where a country is a transit country and refugees have no wish to stay there, being a transit country may mean that significant numbers of persons are passing through that country.

While refugees may aspire to return, the burden of fear of the risks of premature return can weigh very heavily with them. It is desirable that local integration is promoted in EU countries such as the UK, which are far from overwhelmed by its obligations toward the refugees that make it to its shores, in contrast to countries such as Turkey, thought to be hosting over 2 million refugees and Lebanon, where one in three of the population is a refugee. Obligations under Article 8 of the European Convention on Human rights, to respect private and family life, also come into play when a refugee has become integrated in an EU State.

3. How has the EU response to the refugee crisis, including emergency measures such as relocation schemes and the establishment of ‘hotspots’, affected unaccompanied minors?

See responses to question 2 above. Children’s rights under the UN Convention on the Rights of the Child, the European Convention on Human Rights and the EU Charter of Fundamental Rights have been violated.

UNHCR in its *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*⁴¹ emphasizes that the “hotspot” approach and the relocation schemes have yet to be implemented because the registration of refugees does not meet EU standards and while those eligible for relocation should be referred on for relocation from hotspots, this is not yet the case for most.

Lawyers in Italy have described the difficulties of determining the legal basis of the hotspots under Italian law and thus being able to challenge denials of access to the hotspots where these occurred.

4. EU law and policy include a number of provisions on unaccompanied minors in various fields including asylum, human trafficking, border security and returns.

⁴¹ Op.cit.

Are these measures effective? Is the European Commission doing enough to ensure that Member States comply with their obligations under this acquis?

Are these measures effective?

As set out in this evidence, *passim*. these measures are not effective.

Is the European Commission doing enough to ensure that Member States comply with their obligations under this acquis?

The European Commission proposes but member States dispose. Proposals such as the Commission's initial proposal for a relocation scheme did not find favour with member States. The second proposal, in September 2015, was adopted but implementation has been poor. The question is thus perhaps less whether the Commission is doing enough but rather whether it is doing the right things, in very difficult political circumstances, to promote protection.

One of the recommendations of UNHCR in its *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*⁴² is

Improve compliance with the EU Asylum Acquis

For the relocation system and existing asylum systems in the EU to function effectively, it is recommended that the EU and Member States take the following measures:

- *Develop mechanisms capable of ensuring that minimum standards for asylum systems are maintained in all Member States, building on existing structures and frameworks. This could reduce factors contributing to the onward movement of asylum-seekers and refugees and the exclusion of Member States from transfer arrangements under the Dublin Regulation due to non-compliance with standards.*
- *Expand the roles of the European Commission and EASO to support the systematic monitoring of the Common European Asylum System, to ensure the full and coherent implementation of the EU Asylum Acquis, and to take action where needed to address shortcomings.*

Discussion of the potential for EU cooperation has followed the call made by the charity Save the Children has called for the UK to relocate 3000 unaccompanied children from other parts of the European Union. This has been taken up by, for example, the International Development Committee. The matter was debated in the House of Commons on 25 January 2016.

The Government responded to the calls on 28 January 2016. It said that

- The UK will work with UNHCR on a new initiative to resettle unaccompanied refugee children from conflict regions such as Syria to the UK;
- The Department for International Development will create a new fund of up to £10 million to support the needs of vulnerable refugee and migrant children in Europe.

Both of the above will complement existing aid and resettlement programmes. The Minister made explicit that the programme would not be limited to children fleeing Syria.

⁴² Op.cit.

The proposals are a step change from the UK's previous insistence on targeting its aid outside the European Union and the first indication that the UK should show solidarity with other European States to whom refugees are turning for protection.

The Government also announced that it would provide further resource in the European Asylum Support Office to help Greece and Italy identify persons, including children, who could be reunited with direct family members elsewhere in Europe under the Dublin Regulation in the UK. See the discussion of *R (ZAT, IA), KAM, AAM, MAT, MAJ and LAM v SSHD* UKUT JR/15401-1405/2015, above.

5. Article 3 of the UN Convention on the Rights of the Child states that the best interests of children must be the primary concern in making decisions that may affect them. Do EU measures seeking to “mainstream” the best interest principle form a comprehensive and coherent whole? Do the obligations they set out translate into sufficiently clear requirements for all national actors dealing with unaccompanied minors?

Do EU measures seeking to “mainstream” the best interest principle form a comprehensive and coherent whole?

No. There is a fundamental tension between the EU policies on asylum and immigration and the best interests' principle which begins with efforts to prevent minors, among others, from crossing at the external borders of the EU.

Do the obligations they set out translate into sufficiently clear requirements for all national actors dealing with unaccompanied minors?

The evidence suggests not. Even where a requirement appears to be set out in clear cut and mandatory terms, such as the requirement for a guardian set out in Article 31 of the recast Qualification Directive, Article 30 of the original by which the UK is bound, cited above, States such as the UK have not recognized an obligation to appoint a guardian.

In the UK, the evaluation of the pilot of advocates for trafficked children has concluded that they should not be provided⁴³, despite the independent evaluation of the trial, conducted by the University of Bedfordshire⁴⁴, finding that the service was important in “ensuring clarity, coherence and continuity” for children and the services around them. It stated the advocates' trial was “successful” and noted a number of beneficial outcomes for children. Most importantly, children themselves found the role of the advocate was positive.

6. Is there a need for further EU action to support Member States in implementing these measures in a sustainable way? What role do EU Agencies play in this regard?

⁴³ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486693/53019_Un-num_Report_PRINT.pdf

⁴⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf

Are they adequately equipped for these tasks? Do their activities have any proven impact?

UNHCR in its *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*⁴⁵ said “The collective failure to implement the measures agreed by EU Member States in the past has led to the current escalation in the crisis.”

The Select Committee said in its report on the EU Action Plan against Migrant Smuggling⁴⁶

55. We welcome the fact that the Commission has sought to place the Action Plan within the context of a broader approach to migration. The Action Plan, however, must focus on the rights of refugees and vulnerable migrants and not just on law enforcement.

ILPA said in its evidence to the Committee on the Action Plan of the Commission’s approach in formulating that plan:

We recognise a response couched in terms of enforcement is designed to appeal to those States whose political stance on immigration is based on an enforcement approach. But insofar as this approach was designed to sugar the pill of responsibility-sharing and make it politically acceptable to States to agree to take refugees from Italy, Malta, Greece and parts of Europe under most pressure, it has failed

Although revised relocation proposals were subsequently adopted⁴⁷, their implementation has not been a success. UNHCR in its *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*⁴⁸

The relocation scheme has not yet been implemented effectively with only around 600 asylum-seekers having been relocated to date. The current number of relocation pledges is lower than the average number of daily arrivals on the Greek islands

Ways in which the EU institutions, as well a member States could assist are identified by UNHCR in the paper *Stabilizing the situation of refugees and migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*. For the 7 March meeting. Those on databases have been quoted in answer to question I above. The recommendations specific to children are

5. Develop protection safeguards for individuals at risk

To ensure access to effective protection, safeguards are required for individuals with specific needs. States are recommended to enhance search and rescue operations; develop coordinated systems to protect unaccompanied and separated children; develop measures to prevent and respond to sexual and gender-based violence; address smuggling and trafficking as a protection issue; and counter exclusion, racism, xenophobia, and Islamophobia.

B. Develop systems to protect unaccompanied and separated children

⁴⁵ Op.cit.

⁴⁶ HL Paper 46.

⁴⁷ See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm and in particular http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/docs/communication-back-to-schengen-roadmap_en.pdf

⁴⁸ Op.cit.

Child protection systems are needed for unaccompanied and separated children on the move, that take into account the best interests of the child from a broad perspective that goes beyond considerations of asylum alone. It is recommended that the EU and Member States:

- *Establish specialist child protection services to uphold the best interests of unaccompanied and separated children from the moment of arrival. UNHCR can assist in developing this concept together with States and partners.*
- *Improve age assessment, family tracing, inter-State collaboration, and reunion with parents in countries of asylum up- or downstream (and sometimes in countries of origin).*

These must be situated within the wider body of recommendations in the paper, of which those directed at EU institutions as opposed to just to member States are grouped under the headings:

- Implement the hotspot approach and the relocation schemes
- Carry out registration in a proper manner, in compliance with EU Standards
- Ensure the effective return of individuals not in need of international protection (this recommendation does not examine specifically the position of unaccompanied children, where child protection as well as international protection concerns may militate against return)
- Support the emergency response in Greece
- Improve compliance with the EU Asylum Acquis

This paper provides evidence of the ways in which the failings of the system in Greece are affecting children. The specific recommendations as to Greece are

- *Provide support for longer-term stay in Greece, including through the establishment of adequate reception facilities, taking into account age, gender, and diversity considerations.*
- *Reinforce access to protection and durable solutions. UNHCR will assist Greece and States receiving significant numbers of arrivals to improve access to protection and information, including through communicating with communities and with particular attention to those with specific needs.*

7. Should there be another EU Action Plan on Unaccompanied Minors? If so, what should the content, focus and purpose of the next Action Plan be, with reference to the 2010– 2014 Action Plan and evaluations thereof?

The last EU Action plan must be judged by its results. The treatment of refugee children in the EU since 2010 has not improved; it has worsened. An evaluation of the achievement of individual goals from the plan would be meaningless were it not set within the context of the extent to which EU has failed to protect unaccompanied children in recent years.

The Action Plan was not written with an eye to movements of persons such as have been seen over the past few years. It wholly failed to anticipate the extent to which systems at the borders of and within some EU countries would break down. The most urgent need is not a minute examination of the extent to which States furthest from the front line have implemented particular recommendation in the action plan, but to address the most egregious failings of member States.

We suggest that the tools are not lacking. The UN Convention on the Rights of the Child, to which all member States of the EU are parties although not all have extended it to their overseas territories, for example the UK has not extended it to Gibraltar. The UN Committee on the Rights of the Child's General Comment No. 6, oft cited in this response, was written for all States, including States with much fewer resources than the EU and States dealing large scale movements of refugees. It focuses on the most important matters; it makes demands that States can, and must, meet, if separated children are to be protected. It is these tools that the Commission should be trying to use.

8. There are growing concerns about unaccompanied minors going missing from reception centres and care facilities across the EU. What steps should the EU and its Member States take to address this problem?

We understand the focus of the question to be on children who have already been identified as unaccompanied minors. Risks are all the greater prior to identification.

The figures of 10,000 unaccompanied children lost with the EU horrifies those who see them as having fallen prey, as no doubt some have, to criminal gangs to have evaded the child protection systems of States. It is no less shocking to envisage that in many cases, there may have been no such active efforts to thwart States intent on protecting this children. Instead, systems have failed these children and allowed them to disappear. As described above, prompt action must be taken on identification of unaccompanied children and child must be given a reason to engage with the authorities.

While children may simply have been lost to view rather than snatched away by criminal gangs, the risks that they will fall into the hands of criminals, including those operating organized crime, are high. The risks of putting children in the hands of criminal gangs is self-evident. Not all smugglers are traffickers, but some are and some have links to organized crime. The UN Committee on the Rights of the Child says in its General Comment No. 6

50. Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation.

51. Articles 34 to 36 of the Convention must be read in conjunction with special protection and assistance obligations to be provided according to article 20 of the Convention, in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence.

A colleague who spent many months on Lesvos describes

“High rates of kids escaping from the secure homes - this is mostly free will but when I visited some homes, there were migrant gangs hanging around on street corners behind them - possible traffickers”

UNHCR in its paper *Stabilizing the situation of refugees and migrants in Europe Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*⁴⁹ highlights the risks of gender-based violence to girls on the move.

⁴⁹ *Op.cit.*

*C. Develop measures to prevent and respond to sexual and gender-based violence
Women and girls on the move are at heightened risk of sexual and gender-based violence as they move onward, often at night, along insecure routes, or staying in places that lack basic security such as parks, trains, railways, or bus stations. They are particularly at risk at the hands of smugglers and traffickers.*

It is recommended that the EU and Member States:

- *Make efforts to ensure that measures are in place to identify survivors of sexual and gender based violence, and refer them to appropriate services.*
- *Ensure that all facilities are established to minimize risks, including through appropriate sleeping facilities, separate sanitary facilities for women and men, and adequate lighting.*

In the Commons debate on 25 January 2016, the Minister argued that

“The vast majority are better off staying in the region so they can be reunited with surviving family members. So we have asked the UNHCR to identify the exceptional cases where a child’s best interests are served by resettlement to the UK and help us to bring them here.”

He cited UNICEF.

UNICEF itself has emphasised

“the importance of first and foremost assessing the individual situation of unaccompanied children, and their best interests, before any actions are taken; noting that in these situations children who may appear unaccompanied are in fact being supported by family members, or others, and decisions on how they are cared for should take this into account.”

ILPA shares UNICEF’s concerns about the effect on the likelihood of eventual family reunion. In cases where children have family members in the UK, there is a response to these concerns. The child is not going into public care in the UK, but in the family unit. Parents are likely to get in touch with the family. Moreover, some 26,000 unaccompanied children have come to the European Economic Area. Any advantage to their prospects of family reunion that derive from remaining in the region of origin have already been lost, as Sir Eric Pickles MP reminded the Minister

I am pleased that the Prime Minister is looking at this matter again. He is quite right to try to keep children in the region, but to use one of those phrases, we are where we are. There are children at risk, and I urge the Government to look carefully at that.

Tim Loughton MP echoed him:

Notwithstanding the considerable aid that we have given to displaced Syrians in the area, which is the right thing to do, there is a humanitarian case for helping the children who are in limbo and very vulnerable to traffickers, the elements and so on.

UNHCR is charged with the identification of the children outside European Economic Area and the UNHCR Best Interests determination and assessment procedures take very seriously the question of whether relocating the child will enhance or reduce their chances of family reunion and whether current risks make it imperative to move the children. The Minister said in the 25 January debate:

We know that the people traffickers exploit anything that we say and twist it in a perverse manner to encourage more people to travel and put more lives at risk. That is why we are looking at this issue very closely to determine what is in the best interests of the child, to ensure that more lives are not put at risk and to see how we can support this activity.

The people traffickers are not short of things to exploit. They have the situation in Syria; they have the dire situation in many countries through which refugees travel and where they end up. The idea that the UK's sharing responsibility within Europe will fundamentally alter the calculations of refugees seeking safety or those who exploit them is a proposition for which no evidence has been advanced and for which, we suggest, evidence is unlikely to exist to be advanced. ILPA has made this point to the House of Lords Committee on the European Union in its evidence to the Committee's enquiry into The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU and on the EU Action Plan on Migrant Smuggling⁵⁰.

The Committee described itself as “not convinced” by the Government's reasoning. It

31. ... we heard arguments that the Government's concern that the proposal could act as a “pull factor”, which would encourage further migration to the EU, was not supported by evidence. The migrants affected by the present proposal are those belonging to nationalities for which international protection is on average granted in at least 75% of cases—at present, those from Syria, Eritrea and Iraq. The situation in each of these countries is dire: it is clear that the vast majority of those leaving these countries are fleeing civil war or the imminent threat of persecution. This is underlined, for instance, by the presence of millions of Syrian refugees in camps in Jordan and Lebanon. The Government's argument that the relocation of 40,000 migrants who have reached Greece or Italy will somehow encourage more to leave their countries of origin is therefore unconvincing.

32. The Government's approach will do little to help the response to a humanitarian crisis within the EU's borders.

33...we are concerned that, by failing to opt in, the Government would fail to live up to its duty of solidarity and burden-sharing between the Member States during an “emergency situation”.

34. Finally, we recognise the international and domestic political implications of failing to opt in. The EU's delayed response to the crisis has significantly weakened its credibility as an international actor and has attracted global criticism.

ILPA concurs with the Committee. To describe the situation in terms of “pull factors” is to ignore that the push factors, persecution, war, torture, extra-judicial execution and overburdened countries of first asylum provide more than enough motive for persons to flee to the European Union. Conditions of insecurity in countries of first asylum, and basic needs not being met, are further push factors.

9. The UK has not opted in to the second phase of the Common European Asylum System, and does not participate in the Family Reunification Directive. What, if any, are the implications of this for unaccompanied minors in the UK?

⁵⁰ HL Paper 46, 4th Report of Session 2015-2016 , 27 October 2015
<http://www.publications.parliament.uk/pa/ld201516/ldselect/lddeucom/46/46.pdf>

We have drawn attention above to areas in which the recast directives make better provision for unaccompanied children than the versions by which the UK is bound, save insofar as these are imported by the UK's having signed up to the Dublin Regulation.

Neither the original versions nor the recast directives make express provision for refugee family reunification although the enlarged definition of a family member in the recast Qualification Directive is helpful in cases to which it applies. The 27th Preamble to Directive 2004/83, the "Qualification Directive"⁵¹ provides

(27) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.

This is repeated as the 36th preamble to the recast Qualification Directive.

The judgment of the European Court of Justice in *Parliament v Council*, Case C-540/03, emphasizes that EU States must apply the rules of the Directives in a manner consistent with the protection of fundamental rights, in particular the rights to family life and with respect for the principle of the best interests of the child.

The UK's decision not to opt into the Family Reunification Directive affects refugees who gain rights under the Directive in line with other EU nationals.

The Directive permits legally residing non-EU nationals to bring their spouse, under-age children and the children of their spouse to the EU State in which they are residing. EU States may also authorise reunification with an unmarried partner, adult dependent children, or dependent older relatives. Once in the EU, eligible family members receive a residence permit and obtain access to education, employment and to vocational training on the same basis as other non-EU nationals. After a maximum of five years of residence, family members may apply for their own status if the family links still exist.

The UNHCR Resettlement Handbook⁵² at 6.6.2 sets out, in the resettlement context, UNHCR's views on family relationships which should be protected by the principle of family unity. The *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*⁵³ recommends to governments:

"...to take the necessary measures for the protection of the refugee's family especially with a view to: (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country (2) The protection of refugees who are minors, in particularly unaccompanied children and girls, with special reference to guardianship and adoption."

⁵¹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

⁵² *Op.cit.*, page 276/

⁵³ UN Doc. A/CONF.2/108/Rev.1, 25 Jul. 1951, Section IV, Recommendation B,

UNHCR's Executive Committee Conclusions⁵⁴ provide

No. 24 (XXXII) – 1981 – Family Reunification

Adopted the following conclusions on the reunification of separated refugee families.

1. In application of the Principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families.

2. For this purpose it is desirable that countries of asylum and countries of origin support the efforts of the High Commissioner to ensure that the reunification of separated refugee families takes place with the least possible delay.

...

No. 85 (XLIX) – 1998

(w) Exhorts States, in accordance with the relevant principles and standards, to implement measures to facilitate family reunification of refugees on their territory, especially through the consideration of all related requests in a positive and humanitarian spirit, and without undue delay;

The rules on refugee family reunion in the UK⁵⁵ do not make provision for minor children to be reunited with their parents or grandparents, for adults to be reunited with their parents or with their siblings. The stance taken on minor children is often stated to be to ensure that children are not sent on ahead alone to secure leave for the family but this is based on a misunderstanding of the position of the children who could apply for refugee family reunion. They are not being given discretionary leave because they are unaccompanied; they are being recognized as refugees because they are at risk of persecution by reason of their race, religion, nationality, political opinion or membership of a social group in the country of origin. They have as much right to international protection and to respect for their rights as refugees as any adult. Many people will recognize the choice of parents, forced to pay smugglers because of a lack of safe and legal routes to safety and not having enough money to bring the whole family out, to get their child to safety first and put the child's needs before their own. We have seen the dangerous journeys parents make both with and without their children to try to get them to safety.

Examples

A Syrian girl aged 18 years and four months was refused because she is over 18. At the time of the application she was in Damascus with her grandmother.

Two Afghan girls aged 19 and 21 whose father is a refugee in the UK following distinguished service for the UN for which he had been targeted by the Taliban, were refused family reunion and left separated from the rest of the family.

⁵⁴ Available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4bace8f62>

⁵⁵ HC 395, Part 11.

Two orphan Afghan siblings are separated; one has been recognised as a refugee in the UK but as a child is not entitled to family reunion.

Entitlement for a person with leave to remain as a refugee to be reunited with spouse, partner and minor children ceases when the person becomes a British citizen; at that point they must fulfil the requirements of the immigration rules, as must British citizens and the settled, even if their family member overseas is a person in need of international protection. The Immigration Rules make provision for British citizens and settled persons, and refugees where the relationship is outside the scope of the family reunion rules, to be reunited with family members in the UK⁵⁶. The rules include stringent eligibility requirements as to income and savings thresholds and other requirements such as that adult dependent relatives must stand in need of personal care which cannot be provided by the sponsor or by family members in the country of origin.

The current rules on bringing spouses, partners and children to the UK⁵⁷ require that the sponsor in the UK demonstrate that they have an income of at least £18,600 per year plus an extra £3,800 for one dependent child and extra £2,400 for each additional child. Only specified sources of income and evidence specified in the Immigration Rules can be taken into account. Thus the income of the UK sponsor can be taken into account, the spouse's income overseas, income they would derive from offers of employment in the UK, and offers of third party support cannot. A person looking to sponsor a spouse, partner or child cannot look to other members of the family, friends or concerned community members to put up the relevant sums.

Where a person does not earn the relevant amount then £16000 plus two and a half times the shortfall in savings must be demonstrated. Again there are rules as to what counts.

The current rules for adult dependant relatives to come to the UK require that the applicant must, as a result of age, illness or disability, require long-term personal care, described in Home Office guidance⁵⁸ as requiring help performing everyday tasks. This is the test that the 19-year old Syrian girls described above would have to meet. The applicant must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable. The Entry Clearance Officer (must be satisfied that the applicant will be maintained adequately, accommodated and cared for in the UK by the sponsor without recourse to public funds.

The All Party Parliamentary Group on Migration recommended⁵⁹:

Adult dependent relatives

⁵⁶ *Ibid.*, Appendix FM, supplemented by Appendix FM-SE.

⁵⁷ See House of Commons Briefing Paper no. 06724, 16 July 2015 *The financial (minimum income) requirement for partner visas*. See also the June 2013 report of the All Party Parliamentary Group on Migration, available at <http://www.appgmigration.org.uk/family-inquiry>

⁵⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263241/section-FM-6.0.pdf

⁵⁹ http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf

7. Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:

- Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so;*
- An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.*

The Home Secretary has expressed interest in community sponsorship schemes. Schemes that build on existing family relationships are likely to be more stable and raise fewer safeguarding concerns. Persons with relatives in a country have a ready made support network there and a real prospect of integrating and in their turn supporting other refugees, to resettle, to integrate.